

**SHB 1068** - H AMD 15

By Representative Robertson

**NOT ADOPTED 02/15/2023**

1 On page 2, beginning on line 15, after "(a)" strike all material  
2 through "appeals" on line 36 and insert "When agreed to by the parties  
3 and the examination provider, any examination, except for psychiatric  
4 examinations and neuropsychological evaluations, ordered under this  
5 section, RCW 51.32.110, or by order of the department or board of  
6 industrial insurance appeals, may be recorded using video or audio  
7 recording equipment if: (i) the recording is done in an unobtrusive  
8 manner; (ii) the recording does not interfere with the examination;  
9 and (iii) the worker does not hold the recording equipment during the  
10 examination. Intent to record and agreements to record must be made  
11 in writing and communicated to all parties within 14 days prior to the  
12 examination date to avoid scheduling delays.

13 (b) Recordings made under this subsection are deemed confidential  
14 pursuant to RCW 51.28.070. An unedited recording of an examination  
15 must be kept in a secure location, and access to the recording is  
16 restricted to authorized individuals, including the worker or worker's  
17 representative, employer or employer's representative, the examiner or  
18 examiners, the department, and the board of industrial insurance  
19 appeals.

20 (c) The recording shall not be tampered with in any way, and any  
21 benefits received as a result of any material alteration of the  
22 recording by the worker or done on the worker's behalf may be subject  
23 to repayment pursuant to RCW 51.32.240.

24 (d) A record of who has viewed the recording and when the  
25 recording was viewed must be kept by the entity securing the recording  
26 and must be provided to all parties within 14 days of the viewing.

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1 (e) The party requesting audio or video recording is responsible  
2 for the reasonable cost of the recording, unless otherwise ordered by  
3 the department or board of industrial insurance appeals.

4 (f) Prior to making a recording of an examination, the party  
5 recording shall attest in writing, on a form provided by the  
6 examination provider, that: (i) the party making the recording is  
7 making a recording to document the examination; (ii) the parties  
8 consent to the recording or were ordered to record the examination;  
9 (iii) there may be privacy and confidentiality concerns associated  
10 with the recording, including the potential for sensitive information  
11 about the worker's health and medical history to be disclosed; and  
12 (iv) the examiner or examiners conducting the examination are not  
13 responsible for any privacy or confidentiality issues that may arise  
14 from the worker's recording.

15 (g) The worker has the right to have one person, who is at least  
16 the age of majority and who is of the worker's choosing, to be present  
17 to observe all examinations, except for psychiatric examinations and  
18 neuropsychology evaluations, ordered under this section, RCW  
19 51.32.110, or by the board of industrial insurance appeals"  
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EFFECT:

- Requires the parties and the provider to agree, before a worker may record the examination, and requires that the intent and agreement to record must be in writing and communicated to all parties within 14 days prior to the examination.
- Excludes psychiatric examinations and neuropsychological evaluations from the provisions allowing recordings.
- Requires the party making the recording to attest in writing, on a form provided by the examiner, that: (a) the party is making the recording to document the examination; (b) the parties consent to the recording or were ordered to record; (c) there may be privacy and confidentiality concerns and disclosure of potential sensitive information about the worker's health and medical history; and (d) the examiner is not responsible for any privacy or confidentiality issues arising from the recording.
- Requires that an unedited recording be kept in a secure location, and access must be restricted to authorized individuals.

- Requires the entity keeping the recording to keep a record of who has viewed the recording and when, and to send the record to all parties.
- Specifies that the recording may not be tampered with in any way.
- Requires that the cost of the recording be paid for by the person requesting the recording unless ordered otherwise by the Department or the Board of Industrial Insurance Appeals.
- Excludes psychiatric examinations and neuropsychological evaluations from the provisions allowing third party observers.

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