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**SUBSTITUTE HOUSE BILL 1068**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Bronoske, Simmons, Ryu, Goodman, Berry, Bateman, Peterson, Taylor, Doglio, Gregerson, Wylie, Pollet, Davis, Santos, Ormsby, and Fosse)

READ FIRST TIME 01/26/23.

1 AN ACT Relating to injured workers' rights during compelled  
2 medical examinations; and amending RCW 51.36.070.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 51.36.070 and 2020 c 213 s 3 are each amended to  
5 read as follows:

6 (1)(a) Whenever the department or the self-insurer deems it  
7 necessary in order to (i) make a decision regarding claim allowance  
8 or reopening, (ii) resolve a new medical issue, an appeal, or case  
9 progress, or (iii) evaluate the worker's permanent disability or work  
10 restriction, a worker shall submit to examination by a physician or  
11 physicians selected by the department, with the rendition of a report  
12 to the person ordering the examination, the attending physician, and  
13 the injured worker.

14 (b) The examination must be at a place reasonably convenient to  
15 the injured worker, or alternatively utilize telemedicine if the  
16 department determines telemedicine is appropriate for the  
17 examination. For purposes of this subsection, "reasonably convenient"  
18 means at a place where residents in the injured worker's community  
19 would normally travel to seek medical care for the same specialty as  
20 the examiner. The department must address in rule how to accommodate

1 the injured worker if no approved medical examiner in the specialty  
2 needed is available in that community.

3 (2) The department or self-insurer shall provide the physician  
4 performing an examination with all relevant medical records from the  
5 worker's claim file. The director, in his or her discretion, may  
6 charge the cost of such examination or examinations to the self-  
7 insurer or to the medical aid fund as the case may be. The cost of  
8 said examination shall include payment to the worker of reasonable  
9 expenses connected therewith.

10 (3) For purposes of this section, "examination" means a physical  
11 or mental examination by a medical care provider licensed to practice  
12 medicine, osteopathy, podiatry, chiropractic, dentistry, or  
13 psychiatry at the request of the department or self-insured employer  
14 (~~or by order of the board of industrial insurance appeals~~).

15 (4)(a) The worker has the right to record the audio, video, or  
16 both, of all examinations ordered under this section, RCW 51.32.110,  
17 or by the board of industrial insurance appeals. However,  
18 examinations conducted by a neuropsychologist may not be audio or  
19 video recorded.

20 (b) The worker is responsible for paying the costs of recording.

21 (c) Upon request, the worker must provide one copy of the  
22 recording to the department or self-insured employer within 14 days  
23 of receiving the request, but in no case prior to the issuance of a  
24 written report of the examination.

25 (d) The worker must take reasonable steps to ensure the recording  
26 equipment does not interfere with the examination. The worker may not  
27 hold the recording equipment while the examination is occurring.

28 (e) Benefits received as a result of any material alteration of  
29 the recording by the worker or done on the worker's behalf may be  
30 subject to repayment pursuant to RCW 51.32.240.

31 (f) Recordings made under this subsection are deemed confidential  
32 pursuant to RCW 51.28.070.

33 (g) The worker has the right to have one person, who is at least  
34 the age of majority and who is of the worker's choosing, to be  
35 present to observe all examinations ordered under this section, RCW  
36 51.32.110, or by the board of industrial insurance appeals. The  
37 observer must be unobtrusive and not interfere with the examination.  
38 The observer may not be the worker's legal representative, an  
39 employee of the legal representative, the worker's attending  
40 provider, or an employee of the worker's attending provider.

1        (5) This section applies prospectively to all claims regardless  
2 of the date of injury.

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