

Examiner Co-Recording Draft WACs

WAC 296-23-XXX Independent medical examination (IME) – Recording by IME firm or examiner If a worker notifies an IME firm or examiner of an intent to record an independent medical examination (IME) pursuant to RCW 51.36.070 and WAC 296-23-364 or 296-23-366, the IME firm or examiner may record the examination with the worker’s consent. The IME firm or examiner does not have authority to record an examination unless the worker is recording the examination, and the worker consents to the IME firm or examiner obtaining a separate recording.

1. The recording by the IME firm or examiner does not replace the worker’s right to perform their own recording pursuant to RCW 51.36.070.
2. The worker shall not be coerced into consenting to a co-recording. Coercion subjects the IME firm or examiner, or other coercing party, to penalties pursuant to RCW 51.48.080.
3. The recording, audio or video, must be maintained and destroyed per the medical examiner handbook and WAC 296-20-02005.
4. The IME report that results from the recorded examination must include a notation that the examination was recorded and where the recording is stored.
5. The recording must be released to the department upon request. The recording may not be released by the IME firm or examiner to any party other than the department. Improper release of the recording may result in penalties pursuant to RCW 51.48.050.
6. The recording may be released by the department to other parties upon request if:
 - a. A complaint is made about the examination or examiner, claims adjudication relied upon review of the recording to make a claims decision, and a party needs to review, or use, the recording to support a request for reconsideration or appeal;
 - b. A complaint is made about the examination or examiner, and defense or adjudication of a provider complaint depends upon review, or use, of the recording; or
 - c. Any other purposes the department deems appropriate.
7. The recording is deemed confidential pursuant to RCW 51.28.070 and may not be used by the IME firm or examiner, or any other party, for any purpose other than allowed by the department according to the release by the department pursuant to section XXX above. Any party that reviews, or receives a copy of, the recording may not make a copy of, screen record, or otherwise share the recording.
8. The IME firm or examiner is responsible for the costs of recording the examination.
9. The IME firm or examiner must take reasonable steps to ensure the recording equipment does not interfere with the examination.
10. The IME firm or examiner, or any party that has received a copy of the recording, may not materially alter the recording.
11. Use of the recording by the IME firm or examiner for purposes other than permitted by the department pursuant to section XXX above, may result in penalties for the IME firm or examiner, up to, and including, revocation of approved provider status.
12. Use of the recording by any party for purposes other than permitted by the department pursuant to section XXX above may result in penalties, pursuant to RCW 51.14, RCW 51.48, and/or WAC 296.15.

Third Party Recording Pilot Rules

If a worker notifies an IME firm or examiner of an intent to record an independent medical examination (IME) pursuant to RCW 51.36.070 and WAC 296-23-364 or WAC 296-23-366, and the IME firm or examiner is not willing to perform the examination without a third party recording, a third party recording may occur with the worker's consent. The IME firm or examiner, and any party other than the worker, does not have authority to record an examination unless the worker is recording the examination, and the worker consents to the additional recording.

1. The third party recording must be performed by a department approved vendor
2. The third party recording does not replace the worker's right to perform their own recording pursuant to RCW 51.36.070
3. The worker shall not be coerced into consenting to a third party recording. Coercion subjects the IME firm or examiner, or other coercing party, to penalties pursuant to RCW 51.48.080.
4. The recording must be maintained by the third party vendor for a period of XXX years.
5. The IME report that results from the recorded examination, must include a notation that the examination was recorded using the department approved vendor.
6. The recording may only be released by the third party vendor to the Department, including in self-insured claims.
7. The recording may be released by the department to other parties upon request if:
 - a. A complaint is made about the examination or examiner, claims adjudication relied upon review of the recording to make a claims decision, and a party needs to review, or use, the recording to support a request for reconsideration or appeal;
 - b. A complaint is made about the examination or examiner, and defense or adjudication of a provider complaint depends upon review, or use, of the recording; or
 - c. Any other purposes the department deems appropriate.
8. Any party that has received a copy of the recording may not materially alter the recording
9. The recording is deemed confidential pursuant to RCW 51.28.070 and may not be used by any party, for any purpose other than allowed by the department according to the release by the department pursuant to section XXX above. Any party that reviews, or receives a copy of, the recording may not make a copy of, screen record, or otherwise share the recording.
10. Use of the recording by the IME firm or examiner for purposes other than permitted by the department pursuant to section XXX above, may result in penalties for the IME firm or examiner, up to, and including, revocation of approved provider status.
11. Use of the recording by any party for purposes other than permitted by the department pursuant to section XXX above may result in penalties, pursuant to RCW 51.14, RCW 51.48, and/or WAC 296.15.