

**WSR 23-16-115**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 1, 2023, 8:33 a.m., effective September 1, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to address how to accommodate the worker by providing alternative pathways to having an in-person independent medical exam (IME) performed when a worker cannot access a provider in a reasonably convenient location; and to ensure mutual understanding of when telemedicine may be appropriate for IME. This rule making aligns with changes to RCW 51.36.070 under 2020's ESSB 6440 which states an IME "must be at a place reasonably convenient to the injured worker, or alternatively utilize telemedicine if the department determines telemedicine is appropriate for the examination." Under RCW 51.36.070, "reasonably convenient" means at a place where residents in the injured worker's community would normally travel to seek medical care for the same specialty as the examiner. 2020's ESSB 6440 also required the department of labor and industries (L&I) adopt rules, policies, and processes governing the use and appropriateness of telemedicine for IME. The rules ensure consistency when L&I or a self-insured employer schedules an in-person or telemedicine IME.

Citation of Rules Affected by this Order: New WAC 296-23-358 and 296-23-359.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.36.070.

Other Authority: RCW 51.32.055, 51.32.110, 51.32.112, 51.32.114, 51.32.072.

Adopted under notice filed as WSR 23-09-053 on April 18, 2023.

A final cost-benefit analysis is available by contacting Kristen Baldwin-Boe, L&I, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, phone 360-902-6815, fax 360-902-4249, email Kristen.Baldwin-Boe@Lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 1, 2023.

Joel Sacks  
Director

**OTS-4399.2**

NEW SECTION

**WAC 296-23-358 What happens when there is no approved independent medical exam (IME) provider in the specialty needed available in a reasonably convenient location for the worker?** When there is no approved examiner in the worker's community or in a reasonably convenient location for the worker, the department or self-insurer may make alternate arrangements for the examination including, but not limited to:

- (1) Considering whether a consultation might be a sufficient alternative;
- (2) Using telemedicine where appropriate;
- (3) Notifying the worker or their representative before scheduling the IME in the nearest location available. In this case:
  - (a) Travel must not exceed any travel restrictions imposed by the attending provider unless alternative methods of travel will overcome the travel limitations.
  - (b) The department or self-insured employer will assist the worker with travel accommodations when requested by the worker.
  - (c) Travel accommodations are paid by the department or self-insured employer as listed in the fee schedule.

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NEW SECTION

**WAC 296-23-359 When is telemedicine appropriate for an independent medical exam (IME)?** (1) The following exams may be conducted via telehealth:

- (a) Mental health;
  - (b) Dermatology;
  - (c) Speech when there is no documented hearing loss;
  - (d) Kidney function;
  - (e) Hematopoietic system;
  - (f) Endocrine.
- (2) The terms telehealth and telemedicine are used interchangeably and have the same requirements as in-person visits. Telemedicine may be appropriate to effectively conduct an independent medical exam when:
- (a) Face-to-face services by a qualified medical provider can be delivered through a real-time, two-way, audio video connection, and complies with all federal, state, and local rules and laws; and
  - (b) A worker is able and willing to participate in an exam via telemedicine; and
  - (c) The department or self-insured employer, and worker, have agreed a telemedicine IME is appropriate; these individuals should also agree to the location of the worker during the exam; and
  - (d) The agreement is documented in the claim file; and
  - (e) A physical or hands-on exam is not required.
- (3) Upon request of the department or self-insured employer and with the agreement of the worker, a telemedicine IME may be approved on a case-by-case basis for additional specialties not listed under subsection (1) of this section.

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