

HOUSE BILL REPORT

ESSB 6440

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

Title: An act relating to industrial insurance medical examinations.

Brief Description: Concerning industrial insurance medical examinations.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Stanford, Hunt, Keiser, McCoy, Das and Conway).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/24/20, 2/27/20 [DPA];

Appropriations: 2/29/20 [DPA(LAWS)].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Limits the circumstances under which an injured worker must submit to a medical exam requested by the Department of Labor and Industries or a self-insurer under the Industrial Insurance Act.
- Makes other changes to provisions governing independent medical exams.
- Establishes a work group to develop strategies and consider issues regarding independent medical exams.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass as amended. Signed by 5 members: Representatives Sells, Chair; Chapman, Vice Chair; Mosbrucker, Ranking Minority Member; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 1 member: Representative Hoff.

Staff: Trudes Tango (786-7384).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Independent Medical Examinations.

Under the state's industrial insurance laws, employers must insure through the State Fund administered by the Department of Labor and Industries (Department) or may self-insure if qualified. Whenever the Director of the Department (Director) or the self-insured employer deems it necessary to resolve a medical issue, a worker must submit to an examination by a physician or physicians selected by the Director. This examination is often referred to as an independent medical examination (IME). For example, an IME may be requested to rate a permanent impairment or determine a diagnosis. A rendition of a report must be provided to the person ordering the IME.

The worker must submit to an IME at a time and place reasonably convenient for the worker. If the worker refuses to submit to, or obstructs, the IME, the Department or the self-insurer may suspend any further action on any claim so long as the refusal, obstruction, or noncooperation continues and may reduce, suspend, or deny any compensation during that period. However, the Department or the self-insurer may not take such action if the worker has good cause for refusing to submit to or obstruct any exam, evaluation, treatment, or practice.

Summary of Amended Bill:

Independent Medical Examinations.

A worker must submit to an IME if the Department or self-insurer deems it necessary to: (1) make a decision regarding claim allowance or reopening; (2) resolve a new medical issue, an appeal, or case progress; or (3) evaluate the worker's permanent disability or work restriction. "New medical issue" is defined as a medical issue not covered by a previous medical exam requested by the Department or self-insurer such as an issue regarding medical causation, medical treatment, work restrictions, or evaluating permanent partial disability.

The Department may not assess a no-show fee against a worker if the worker gives at least five business days' notice of the worker's intent not to attend the IME.

Using telemedicine is an alternative to having the IME be at a place reasonably convenient to the worker, if the Department determines telemedicine is appropriate. The Department must adopt rules, policies, and processes regarding the use of telemedicine, which may include creating a pilot project. "Reasonably convenient" is defined as a place where residents in the injured worker's community would normally travel to seek medical care for the same specialty as the examiner. The Department must address in rule how to accommodate the injured worker if no approved medical examiner in the specialty is available in the community.

In addition to the person ordering the IME, the attending physician and the worker must also receive a rendition of a report of the IME.

"Examination" is defined as a physical or mental examination by a medical care provider licensed to practice medicine, osteopathy, podiatry, chiropractic, dentistry, or psychiatry at the request of the Department or self-insured employer or by order of the Board of Industrial Insurance Appeals.

Work Group.

An IME work group is established within the Department, consisting of the following members:

- two members of the House of Representatives from each of the largest caucuses, appointed by the Speaker of the House;
- two members of the Senate from each of the largest caucuses, appointed by the President of the Senate;
- one representative for state-fund employers;
- one representative for self-insured employers;
- two labor representatives;
- one representative of both an association representing physicians who perform IMEs and the panel companies that work with them; and
- one attorney who represents injured workers.

The work group must:

- develop strategies for reducing the number of IMEs per claim while considering claim duration and medical complexity;
- develop strategies for improving access to medical records;
- consider whether the Department should do all of the IME scheduling;
- consider the circumstances for which examiners should be randomly selected or specified;
- consider workers' rights in the IME process;
- recommend changes to improve the efficiency of the IME process; and
- identify barriers to increasing the supply of in-state physicians willing to do IMEs.

The Department must report its findings and recommendations to the Legislature by December 11, 2020.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment: (1) clarifies language regarding who is prohibited from assessing no-show fees against workers by removing references to "self-insurer;" (2) specifies that the Department must determine if telemedicine is appropriate, in order to use telemedicine as an alternative to an IME at a place reasonably convenient to the worker; (3) specifies that the Department must address in rule how to accommodate the injured worker if no approved medical examiner in the specialty needed is available in the community that is reasonably convenient for the worker; (4) requires the Department to adopt rules, policies, and processes regarding the use of telemedicine, including using a pilot project; and (5) delays the effective date of all provisions of the bill except for provisions regarding the work group and rulemaking.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 through 3, relating to when exams may be requested, no-show fees, and telemedicine, which take effect January 1, 2021.

Staff Summary of Public Testimony:

(In support) The IME process is important and is used to provide objective medical information on a variety of issues. The original bill would have set standards for IMEs. The current version still has some policy changes but it mostly creates a work group. Workers with complicated cases are subject to multiple IMEs. The IME process is difficult to endure and stressful for the worker. Multiple IMEs lengthen the time it takes for a worker to get treatment. Current law does not set limits on the number of IMEs a worker must submit to or limit the reasons for the exams. Sometimes requesting multiple IMEs is a way of retaliating against a worker and IMEs are used to counter the worker's attending physician and close the claim. The IME process is complex and workers do not understand the process.

(Opposed) None.

(Other) Examinations are requested for a number of reasons at the discretion of claims managers. It will be helpful to look at the process and identify gaps, such as the need for more doctors willing to do IMEs. The language regarding telemedicine is concerning. Telemedicine may not be appropriate in cases where a doctor needs to see the worker in person. Examination panels were created to make sure doctors are truly independent and not paid by the Department or self-insurer. There should be a delayed effective date to allow the Department time for rule making.

Persons Testifying: (In support) Brenda Wiest, Teamsters Local 117; Kathy Comfort, Washington State Association for Justice; Hector Franco, Campaign Reform L&I; Jose Mendoza; Catalina Rodriguez; Jose Alcazar; and Kris Tefft, Washington Self-Insurers Association.

(Other) Carolyn Logue, Washington Independent Medical Exam Coalition; Luanne Niggemeyer, Inland Medical Evaluations; Irene Suver, Central Seattle Panel of Consultants; Breck Lebegue; and Tammy Fellin, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Labor & Workplace Standards. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen,

Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Michael Hirsch (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 28, 2020.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 through 3, relating to when exams may be requested, no-show fees, and telemedicine, which take effect January 1, 2021.

Staff Summary of Public Testimony:

(In support) The bill makes independent medical exams work for injured workers and employers. The amended bill will reduce costs by allowing the Department to define "reasonably convenient." The bill includes a work group to reduce the number of IMEs.

(Opposed) None.

Persons Testifying: Carolyn Logue, Washington Independent Medical Exam Coalition; and Michael Temple, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.