

# SENATE BILL REPORT

## ESSB 6440

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As Amended by House, March 4, 2020

**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 & Commerce: 1/28/20, 2/06/20 [DPS-WM, DNP, w/oRec].

**Floor Activity:**

Passed Senate: 2/14/20, 45-2.

Passed House: 3/04/20, 97-0.

**Brief Summary of Engrossed First Substitute Bill**

- Limits worker's compensation medical exams requested by the Department of Labor and Industries or the self-insurer to certain purposes.
- Limits the location of the exam.
- Establishes a work group to develop strategies, consider issues, and make recommendations regarding independent medical exams.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** That Substitute Senate Bill No. 6440 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

**Minority Report:** Do not pass.

Signed by Senators King, Ranking Member; Schoesler.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Braun and Walsh.

**Staff:** Susan Jones (786-7404)

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*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:** Any worker who is entitled to receive or is claiming any workers' compensation benefits, if requested by L&I or the self-insurer, must submit to a medical examination, at a time and place reasonably convenient for the worker. If the worker refuses to submit to the medical exam, or obstructs the exam, or refuses or obstructs evaluation or exam for the purpose of vocational rehabilitation, L&I or the self-insurer, upon L&I's approval, with notice to the worker may suspend any further action on any claim so long as such refusal, obstruction, noncooperation, or practice continues and reduce, suspend, or deny any compensation for such period. However, L&I or the self-insurer may not suspend such action if a worker has good cause for refusing to submit to or to obstruct any exam, evaluation, treatment or practice.

A worker's traveling expenses incurred to attend the exam must be repaid out of the accident fund or by the self-insurer. If the required medical exam causes the worker to be absent from work without pay, the worker must be paid the worker's usual wages for the time lost from work while attending the medical exam from the L&I accident fund or the self-insurer.

L&I or the self-insurer must provide the physician performing an exam with all relevant medical records from the worker's claim file. The L&I director, in the director's discretion, may charge the cost of the exam, including the worker's reasonable expenses, to the self-insurer or to the medical aid fund.

**Summary of Engrossed First Substitute Bill:** The examinations required by L&I or the self-insurer must relate to: (1) making a decision on claim allowance or reopening, (2) resolving a new medical issue, an appeal, or case progress, or (3) evaluating the worker's permanent disability or work restriction. A new medical issue means a medical issue not covered by a previous medical examination requested by L&I or the self-insurer such as an issue regarding medical causation, medical treatment, work restrictions, or evaluating permanent partial disability. L&I or the self-insurer may not assess a no-show fee against the worker if the worker gives at least five business days' notice of the worker's intent not to attend the exam. Any examination report must also be given to the worker and the attending physician.

The exam must be at a place reasonably convenient to the injured worker, which 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, or use telemedicine.

Examination means a physical or mental examination by a medical care provider licensed to practice medicine, osteopathy, podiatry, chiropractic, dentistry, or psychiatry at the request of L&I, the self-insurer, or by order of the board of industrial insurance appeals.

An independent medical examination (IME) work group is established with members as follows:

- two members from the House of Representatives, with one member appointed from each of the two largest caucuses, appointed by the speaker of the House of Representatives;
- two members from the Senate, one from each of the two largest caucuses, appointed by the President of Senate;
- one business representative representing employers participating in the state fund;

- one business representative representing employers who are self-insured for purposes of workers' compensation insurance;
- two labor representatives;
- a representative of an association representing both physicians who perform IMEs and panel companies; and
- one attorney who represents injured workers.

The representatives are appointed by L&I.

The work group must develop strategies for reducing the number of medical examinations per claim while considering claim duration and medical complexity and for improving access to medical records, including records and reports created during the exam; consider whether L&I should do all the scheduling of IMEs, the circumstances for which independent medical examiners should be randomly selected or specified, and attendance, specialist consultants, recordings, distance and location of exams; 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.

L&I must report its findings and recommendations to the Legislature by December 31, 2020.

**Appropriation:** None.

**Fiscal Note:** Available (partial).

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Injured workers go to their doctors for treatment and if it is a significant injury, they will go to a lot of doctors appointments. The worker, L&I, or the self-insurer might want to get a second opinion. The IME is not the primary care doctor that the worker should not have to go back to again and again and again. This is too much of a burden on the worker, including to go far from their area. They should be able to have a recording to know exactly what was said and what they were told to do.

Examples were given about repeated IMEs, IMEs causing delays in treatment, and lack of clarity of the purpose of IMEs. Sometimes workers are sent to multiple IMEs just to create a preponderance of medical evidence. This will put this in line with exams in civil litigation. Many exams by out-of-state examiners causes problems, including with testimony. IMEs may cause the person to have to recount a traumatic event over and over again to someone who is skeptical. These will set standards for IMEs and make sure they are reasonable in the number and time period.

CON: Workers comp is a dense and complicated area. This bill is a fundamental rewrite of the IME statute, favoring one side. IMEs are an important, objective part of the system, a check and balance. This will cause delays and costs to L&I. L&I should work with stakeholders on these issues. We support our employers, their safety, and top class medical

care for employees. The current IME system could be improved and there are groups working on this. Having L&I schedule IMEs will cause significant delays. IMEs are used in complex claims, often open at least six months but sometimes many years. When claims have been open for many years and the person is not getting better, this stops the process of trying to figure out why the worker is not getting better. There are ways to stop repetitive IMEs. Recently, the IME process went through a re-haul. We lost a lot of doctors. Let the IME improvement work group continue to work on this issue.

When you have many pages of medical records, it is complicated. This bill appears to make the assumption that the IME doctors are not trying to help the injured worker. That is not the case. It is hard to get doctors to do this work. We do not pay the doctors very well. The administrative burden on IME doctors and firms is unfair. It makes IME panels more lawyer driven. IMEs help workers avoid unnecessary treatment and overuse of opioids. Use of recording devices demeans the process. Where will these recordings wind up? It is nearly impossible for doctors to produce all the items in the bill. IMEs are not a legal construct.

**Persons Testifying:** PRO: Senator Derek Stanford, Prime Sponsor; Michael Wickoren, citizen; Kathryn Comfort, Attorney for Michael Wickoren; Brenda Wiest, Teamsters 117; Dan Bronoske, Washington State Council of Fire Fighters; Sam Grad, UFCW 21; Brian Wright, Washington State Association for Justice.

CON: Christine Brewer, Washington Self Insurers; Carrie Freeland, Sellen Construction; Natalee Fillinger, Fillinger Law; Tammie Hetrick, Washington Food Industry Association; Irene Suver, President, Central Seattle Panel of Consultants; Richard Marks, MD, IME Doctor; Beth Doohan, Inland Medical Evaluations; Carolyn Logue, Washington IME Coalition; Mathew Nguyen, Mitchell/MCN; Luanne Niggemyer, Inland Medical Evaluations.

**Persons Signed In To Testify But Not Testifying:** CON: Breck Lebegue, IME Doctor; Mark Johnson, Washington Retail Association; Lauren Gubbe, AGC; Brian Bishop, Association of Washington Cities; Robert Battles, Association of Washington Business.

OTHER: Vickie Kennedy, Department of Labor & Industries.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Clarifies language regarding who is prohibited from assessing no-show fees against workers; reference to "self-insurer" is removed.
- Modifies provisions regarding the use of telemedicine, as an alternative to an examination at a reasonably convenient place to the worker, to provide the use if L&I determines telemedicine is appropriate.
- Specifies that L&I 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.
- Requires L&I to adopt rules, policies, and processes regarding the use of telemedicine. Specifies the rules may include a pilot project and consideration should be given to all available research regarding the use of telemedicine for IMEs.
- Delays the effective date to January 1, 2021, of all provisions of the bill except for provisions regarding the work group and rule making.