

WSR 22-01-203
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 21, 2021, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-093.

Title of Rule and Other Identifying Information: Independent medical examinations (IME)—Appeals. Chapter 296-23 WAC, Radiology, radiation therapy, nuclear medicine, pathology, hospital, chiropractic, physical therapy, drugless therapeutics and nursing—Drugless therapeutics, etc: WAC 296-23-401 Can the department schedule an examination or order a self-insured employer to schedule an examination after receipt of an appeal to the board of industrial insurance appeals (BIIA)?

Hearing Location(s): On January 25, 2022, at 9:00 a.m. Virtual and telephonic hearing only. Join electronically <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone: Dial by your location +1 253 215 8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/j/9361655337>. The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 15, 2022.

Submit Written Comments to: Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by January 25, 2022, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Ashley Oberst, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email ashley.oberst@lni.wa.gov, by January 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries (L&I) is creating a new section in chapter 296-23 WAC to define how and under what circumstances an IME can be requested by L&I and self-insurers in order to resolve an appeal to a decision on a claim.

Reasons Supporting Proposal: ESSB 6440 was adopted into law by the legislature in 2020 requiring rules to be updated to reflect changes made to RCW 51.36.070. Additionally, an IME workgroup consisting of members from business, labor, the legislature, and L&I met in 2020 to discuss ways to improve IMEs. The proposed rule is needed to define how and under what circumstances an IME can be requested by L&I and self-insurers in order to resolve an appeal.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Statute Being Implemented: RCW 51.36.070.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@Lni.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. L&I looked at the estimated cost of complying with the new provisions of proposed rule and excluded the cost of any compliance with current standards. Upon review, L&I determined there are no new costs associated with the rule, because the proposal clarifies the limits on requesting an IME by the department and self-insured employer after an appeal. A small business economic impact statement is not needed because there are no costs of compliance.

December 21, 2021
Joel Sacks
Director

OTS-3262.1

NEW SECTION

WAC 296-23-401 Can the department schedule an examination or order a self-insured employer to schedule an examination after receipt of an appeal to the board of industrial insurance appeals (BIIA)?

Following receipt of an appeal by any party, the department may schedule or may order the self-insured employer to schedule an examination before the BIIA grants the appeal per RCW 51.36.070.

The self-insured employer may also schedule an examination regarding an appeal if a request has been approved by the department.

Examinations ordered by the BIIA once the appeal has been granted are allowed.

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