

WSR 24-17-142
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 21, 2024, 10:07 a.m.]

Subject of Possible Rule Making: Third-party recording of independent medical examinations (IMEs). Chapter 296-23 WAC, Radiology, radiation therapy, nuclear medicine, pathology, hospital, chiropractic, physical therapy, drugless therapeutics and nursing—Drugless therapeutics, etc.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 51.32.110, 51.36.070, 51.04.020, and 51.04.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: SHB 1068, chapter 166, Laws of 2023, allows a worker to audio and visually record an IME. The department of labor and industries (L&I) is considering adding a new section to chapter 296-23 WAC. Significant impacts of this rule change include scheduling and claim resolution delays. Some IME providers want to corecord or have a third party record when a worker wants a recording. Some workers and worker advocates express concerns about the need for another party to have a recording, and the chain of custody for recordings taken by someone else. IME providers may already be conducting corecording on their own when they ask and are given the worker's consent.

L&I is considering adding a new section to chapter 296-23 WAC to establish standards for third party recording of the IME exam when the worker consents. Rules will establish standards for the use of a third party company to conduct and store recordings when workers consent to the third party recording of the IME. Workers retain the right to do their own recording. L&I intends to use pilot rule making to develop the proposed rules.

L&I is separately conducting rule making to consider rules for corecording by IME providers with the consent of the worker.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Pilot rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kristen Baldwin-Boe, L&I, Insurance Services, 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.

Additional comments: For more information on L&I rule making, visit the Rulemaking Activity web page at <https://www.lni.wa.gov/rulemaking-activity/>.

August 21, 2024
Joel Sacks
Director