

# SENATE BILL REPORT

## SB 5102

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As of January 19, 2021

**Title:** An act relating to industrial insurance medical examinations.

**Brief Description:** Concerning industrial insurance medical examinations.

**Sponsors:** Senators Stanford, Conway, Das, Keiser and Kuderer.

**Brief History:**

**Committee Activity:** Labor, Commerce & Tribal Affairs: 1/21/21.

**Brief Summary of Bill**

- Limits the number of independent medical examinations (IMEs) in certain circumstances.
- Requires a self-insurer to provide 28 days notice before a scheduled IME.
- Allows a worker to have a person present to observe all IMEs and to record all IMEs, provided the worker pays all recording costs and provides a copy of the recording to the Department of Labor and Industries (L&I) or the self-insured employer.
- Limits each party, in a Board of Industrial Insurance Appeals proceedings, to presenting the testimony of one medical expert witness of the same medical specialty, except the attending physician.
- Reduces the time period for a self-insurer to submit certain information to L&I from ten days to five days.

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**SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS**

**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 part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** An injured worker, for workers' compensation purposes, must submit to examination by a physician selected by the Department of Labor and Industries (L&I), also known as an independent medical exam (IME), whenever L&I or the self-insurer deems it necessary in order to:

- make a decision regarding claim allowance or reopening;
- resolve a new medical issue, an appeal, or case progress; or
- evaluate the worker's permanent disability or work restriction.

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.

An IME report must be provided to the person ordering the examination, the attending physician, and the injured worker. The examination must be at a place reasonably convenient to the injured worker or utilize telemedicine, if appropriate. 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. L&I must address in rule how to accommodate the injured worker if no approved medical examiner in the specialty needed is available in that community.

L&I or the self-insurer must provide the physician performing an examination with all relevant medical records from the worker's claim file.

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 or the self-insured employer or by order of the board of industrial insurance appeals.

On any industrial injury claim where the self-insured employer or injured worker has requested a determination by L&I, the self-insurer must submit all medical reports and any other specified information not previously submitted to L&I. When L&I requests information from a self-insurer by certified mail, the self-insurer must submit all information in its possession concerning a claim within ten working days from the date of receipt of the certified notice.

In 2020, an IME work group was established. The work group was required to:

- 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 or pursuant to the IME;
- consider whether L&I should do all the IME scheduling, the circumstances for which examiners should be randomly selected or specified, and worker's rights, including 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 IME physicians.

The work group met and L&I provided a report, including recommendations, to the Legislature in December, 2020.

**Summary of Bill:** The total number of IMEs per claim is limited as follows:

- one exam prior to an order allowing or denying a new claim, becoming final and binding;
- one exam for a permanent disability evaluation. Another permanent disability evaluation examination is allowed following each time a claim is reopened or after completion of further treatment if L&I or the self-insurer authorizes curative or rehabilitative treatment;
- one examination following the filing of any application to reopen a claim and prior to a final order allowing or denying reopening of the claim; and
- additional examinations may be performed after a final allowance order or final order to reopen a claim and prior to any permanent disability evaluation but no more than one examination per each new medical issue.

L&I must adopt rules to address when it may order an exam or request the attending physician to arrange a consultation where injured workers do not improve with sustained treatment.

In claims involving self-insurers, notices of IMEs scheduled must be mailed to the injured worker no later than 28 days prior to the exam. Where a timely dispute of the IME has been filed by an injured worker, L&I must adjudicate whether or not the injured worker should be compelled to attend. L&I must adopt rules governing what constitutes a timely dispute and under what circumstances it may delay such examinations to complete its investigation.

A worker has the right to record either the audio, video, or both, of all IMEs ordered by L&I, the self-insurer, or by the Board of Industrial Insurance Appeals (BIIA). The worker must pay the costs of recording the IME and must provide one copy, upon request, to L&I or the self-insured employer within 14 days of receiving the request, but in no case prior to the issuance of a written report of examination. The worker must take reasonable steps to ensure the recording equipment does not interfere with the examination. Any material alteration of the recording by the injured worker or done on their behalf that results in the receipt of benefits may require repayment of those benefits. The worker has the right to have one person, of the worker's choosing, present to observe all examinations ordered by L&I, the self-insurer, or by the BIIA. The observer must be unobtrusive and not interfere with the exam.

In proceedings before the BIIA, each party is limited to presenting the testimony of one medical expert witness of the same medical specialty, except the attending physician, unless good cause is shown.

A self-insurer must electronically submit information to L&I. The time period to submit the

information is reduced from ten days to five days.

Psychology is added to the types of medical care provider licenses for IMEs.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 2021.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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