

**WSR 23-09-053**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed April 18, 2023, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-111.

Title of Rule and Other Identifying Information: Independent medical examination (IME). WAC 296-23-358 What happens when there is no approved independent medical exam (IME) provider in a specialty needed available in a reasonably convenient location for the worker? and 296-23-359 When is telemedicine appropriate for an independent medical exam (IME)?

Hearing Location(s): On May 24, 2023, at 10:00 a.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/85477472867?pwd=YUtqMzBTSHUyNDdmVEJuaXhLL3R4Zz09>, Meeting ID 854 7747 2867, Passcode 52423Mtg#; or join by phone (audio only) 1-253-215-8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/u/kemOYtoXOf>. The hearing will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: August 1, 2023.

Submit Written Comments to: Kristen Baldwin-Boe, Department of Labor and Industries (L&I), Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, email [Kristen.Baldwin-Boe@lni.wa.gov](mailto:Kristen.Baldwin-Boe@lni.wa.gov), fax 360-902-4249, by 5:00 p.m., May 24, 2023.

Assistance for Persons with Disabilities: Contact Kristen Baldwin-Boe, phone 360-902-6815, fax 360-902-4249, email [Kristen.Baldwin-Boe@lni.wa.gov](mailto:Kristen.Baldwin-Boe@lni.wa.gov), by May 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal addresses in rule how to accommodate the worker when there is no reasonably convenient examiner in the needed specialty near the worker's community, and defines when it may be appropriate for IMEs to be conducted via telemedicine.

Reasons Supporting Proposal: ESSB 6440, passed during the 2020 session, resulted in updates to RCW 51.32.110, 51.36.070, new chapter 51.08 RCW, and new RCW 51.36.072. Specifically, ESSB 6440 amended RCW 51.36.070 to state that an IME "must be at a place reasonably convenient to the injured worker, or alternatively utilize telemedicine if the department determines telemedicine is appropriate for the examination." Under the statute, "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 is also required to adopt rules, policies, and processes governing the use and appropriateness of telemedicine for IMEs.

The rules are needed to ensure consistency when L&I or a self-insured employer schedules an in-person or telemedicine IME.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.055, 51.32.110, 51.32.112, 51.32.114, 51.36.070, and 51.36.072.

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: Kristen Baldwin-Boe, Tumwater, Washington, 360-902-6815; Implementation and Enforcement: Karen Jost, Tumwater, Washington, 360-790-2682.

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 Kristen Baldwin-Boe, L&I, 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.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 estimates that the proposed change will impose no new costs on the affected parties because the rule provides for alternative pathways to having an in-person IME performed when a worker cannot access a provider in a reasonably convenient location to the worker or in the worker's community.

April 18, 2023  
Joel Sacks  
Director

**OTS-4399.2**

NEW SECTION

**WAC 296-23-358 What happens when there is no approved independent medical exam (IME) provider in the specialty needed available in a reasonably convenient location for the worker?** When there is no approved examiner in the worker's community or in a reasonably convenient location for the worker, the department or self-insurer may make alternate arrangements for the examination including, but not limited to:

- (1) Considering whether a consultation might be a sufficient alternative;
- (2) Using telemedicine where appropriate;
- (3) Notifying the worker or their representative before scheduling the IME in the nearest location available. In this case:
  - (a) Travel must not exceed any travel restrictions imposed by the attending provider unless alternative methods of travel will overcome the travel limitations.
  - (b) The department or self-insured employer will assist the worker with travel accommodations when requested by the worker.
  - (c) Travel accommodations are paid by the department or self-insured employer as listed in the fee schedule.

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NEW SECTION

**WAC 296-23-359 When is telemedicine appropriate for an independent medical exam (IME)?** (1) The following exams may be conducted via telehealth:

- (a) Mental health;
- (b) Dermatology;
- (c) Speech when there is no documented hearing loss;
- (d) Kidney function;
- (e) Hematopoietic system;
- (f) Endocrine.

(2) The terms telehealth and telemedicine are used interchangeably and have the same requirements as in-person visits. Telemedicine may be appropriate to effectively conduct an independent medical exam when:

(a) Face-to-face services by a qualified medical provider can be delivered through a real-time, two-way, audio video connection, and complies with all federal, state, and local rules and laws; and

(b) A worker is able and willing to participate in an exam via telemedicine; and

(c) The department or self-insured employer, and worker, have agreed a telemedicine IME is appropriate; these individuals should also agree to the location of the worker during the exam; and

(d) The agreement is documented in the claim file; and

(e) A physical or hands-on exam is not required.

(3) Upon request of the department or self-insured employer and with the agreement of the worker, a telemedicine IME may be approved on a case-by-case basis for additional specialties not listed under subsection (1) of this section.

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