

WSR 24-02-068
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed January 2, 2024, 8:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-096.

Title of Rule and Other Identifying Information: Independent medical examination—Recording notification process—Accompanying person; chapter 296-23 WAC, Radiology, radiation therapy, nuclear medicine, pathology, hospital, chiropractic, physical therapy, drugless therapeutics and nursing—Drugless therapeutics, etc.: WAC 296-23-364 Definition of notification process required for workers to record independent medical examinations (IME) and 296-23-366 Independent medical examination (IME)—Recording notification time frame; and amending WAC 296-23-362 Independent medical examination (IME)—Accompanying person.

Hearing Location(s): On February 6, 2024, at 2:00 p.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501, Auditorium; or join electronically <https://lni-wa.gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone (audio only) 253-215-8782 US (Tacoma). Find your local number <https://lni-wa.gov.zoom.us/j/9361655337>. The hybrid meeting starts at 2:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: March 26, 2024.

Submit Written Comments to: Suzy Campbell, L&I, Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by February 6, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cristina Gaffoglio, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email cristina.gaffoglio@lni.wa.gov, by January 30, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I is creating new rules in chapter 296-23 WAC and amending WAC 296-23-362. The new rules will define the recording notification process for when a worker wants to record IMEs requested by L&I and self-insured employers.

Reasons Supporting Proposal: SHB 1068, from the 2023 legislative session, allows a worker to audio and visually record an IME, and includes an observer may be present for all examinations with the worker. The updated statute, RCW 51.36.070, requires L&I create rules defining the notification process the worker must follow when they want to record an IME. Existing rule, WAC 296-23-362, states an observer may not attend a psychiatric examination. This rule must be updated as the amended statute includes an observer may be present for all examinations.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.36.070.

Statute Being Implemented: RCW 51.36.070.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Sarah Jackson, Tumwater, Washington, 360-902-5118; and Enforcement: Mike Ratko, 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, L&I, Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@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 conducted a thorough assessment of the proposed rules' impact on both businesses and workers affected. Recording is optional for workers, as is bringing a companion to an IME. The time frame is clarified and gives options for providers. According to L&I's estimation, the proposed changes will not result in any additional costs to the impacted parties.

January 2, 2024

Joel Sacks

Director

OTS-4992.5

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

WAC 296-23-362 (~~(May a worker bring someone with them to an independent medical examination (IME)?)~~) **Independent medical examination (IME)—Accompanying person.** (1) Workers can bring an adult (~~(friend or family member)~~) observer to the IME to provide comfort and reassurance. (~~(That accompanying person may attend the physical examination but may not attend a psychiatric examination.~~

~~(2))~~) The accompanying person (~~(cannot)~~) will not be compensated for attending the examination by (~~(anyone in any manner)~~) the department or self-insured employer. The accompanying person must be unobtrusive at all times. Obtrusive behavior includes, but is not limited to, verbally or physically interrupting, interfering, or obstructing the examination in any way.

~~((3))~~) (2) The worker may not bring an interpreter to the examination. If interpretive services are needed, the department or self-insurer will provide an interpreter.

~~((4) The purpose of the IME is to provide information to assist in the determination of the level of any permanent impairment not to conduct an adversarial procedure. Therefore,)~~) (3) The accompanying person cannot be:

(a) The worker's attorney, paralegal, any other legal representative, or any other personnel employed by the worker's attorney or legal representative; or

(b) The worker's attending (~~(doctor)~~) provider, any other provider involved in the worker's care, or any other personnel employed by

the attending ((~~doctor~~)) provider or other provider involved in the worker's care.

The department may designate other conditions under which the accompanying person is allowed to be present during the IME.

NEW SECTION

WAC 296-23-364 Definition of notification process required for workers to record independent medical examinations (IME). (1) After receipt of the IME appointment/assignment letter, but no less than seven calendar days before the date of the examination, the worker or their representative must provide written notice to the IME firm or an examiner not in a firm, as listed in the appointment/assignment letter, to inform of their intent to record the examination.

(2) Written notification of the workers' intent to record must be given for each IME appointment.

NEW SECTION

WAC 296-23-366 Independent medical examination (IME)—Recording notification time frame. If notice is received less than seven calendar days prior to the IME, a worker may record the examination **only if** the IME provider waives the seven calendar day notification requirement. If notification is received after 5:00 p.m., in the time zone of the examination location, the notification is considered received the next calendar day.