

WSR 22-07-110
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 23, 2022, 11:27 a.m., effective April 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of labor and industries (L&I) is creating new rules and updating existing rules in chapters 296-23 and 296-15 WAC to define or outline criteria for "case progress" in relation to independent medical examinations (IMEs) requested by L&I and self-insured employers. The rules provide dispute rights when a requested IME is not for one of the reasons outlined in Title 51 RCW. Another new rule will regularly update interested parties with IME data that may reflect emerging trends. WAC 296-23-307 is being repealed as the rule is obsolete.

Citation of Rules Affected by this Order: New WAC 296-23-308, 296-23-309, 296-23-403 and 296-15-440; repealing WAC 296-23-307; and amending WAC 296-23-302.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Other Authority: RCW 51.36.070.

Adopted under notice filed as WSR 22-01-202 on December 21, 2021.

Changes Other than Editing from Proposed to Adopted Version:

WAC 296-23-302:

- Subsection (a), added reference to WAC 296-20-01002 that defines "proper and necessary" at stakeholder request.
- Subsection (b), was removed at stakeholders felt it was unnecessary. The removed criteria are defined under "proper and necessary."
- Subsection (c), was changed to subsection (b) as (b) was removed. The word "stalled" was kept from subsection (b) to describe the impact on the need for a case progress examination.

WAC 296-23-308:

- Subsection (1)(b), added "if requested" after "receipt of the last case progress examination report and additional treatment of the condition." This was done to provide clarity that the receipt of this information is not mandatory, it's only needed if that documentation exists.
- Subsection (2), "medical" was replaced with "attending," and changed "working" to "business." This was done to clarify the worker's doctor is the attending doctor not just any medical provider; and "working" was changed to "business" to reflect proper language.
- Subsection (2)(b)(iv), "is not proper and necessary or" was added to clarify the level of treatment and use consistent language with WAC 296-23-302 Definitions.

WAC 296-23-309:

- Subsections (1), (2), and (3), added "complete" and "including report." This was done because more than one examiner specialty may be needed for the examination.
- Subsections (2) and (3), added "from all appropriate specialty(ies)." This was done to clarify there may be more than one examiner necessary.

- Subsection (2), added "prior rating examination." This was for clarification as there could have been a previous rating examination.
- Subsection (4), was renumbered to subsection (3)(a) because subsection (3) is about reopening examinations.
- Subsection (4) (previously subsection (5)), added "to resolve a new medical issue prior to a final order, under RCW 51.52.050 or 51.52.060, accepting or denying responsibility of the condition, unless the department authorized an additional examination in state fund and self-insured cases." This was done to be consistent with subsections (1) and (3), and subsection (6) was renumbered to subsection (5).

WAC 296-15-440: Removed "their representative" from subsection (2)(a) and (3)(a) because it is redundant. Stating worker in the rule includes a representative if the worker has one.

A final cost-benefit analysis is available by contacting Suzy Campbell, L&I, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@Lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 1, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2022.

Joel Sacks
Director

OTS-3273.5

NEW SECTION

WAC 296-15-440 Use of independent medical examinations. What will the department consider when resolving a dispute to a scheduled independent medical exam (IME) in a self-insured claim?

(1) The department will consider whether:

(a) The notification letter included the self-insured employer's need for the IME consistent with RCW 51.36.070 and how this may be disputed by the worker.

(b) Notice of the IME was mailed to the injured worker and the worker's representative no later than 28 calendar days prior to the IME. Except for an IME scheduled to make a decision regarding claim allowance.

(c) The worker agreed to waive the 28 day notice for initial IME scheduling or reschedules.

(2) **When a written dispute is filed:**

(a) A worker or their attending provider may file a dispute at any time during the IME process. Disputes received by the self-insurer or third-party administrator must be submitted to the department within five working days of receipt.

(b) The department will only consider postponing an IME if the dispute is received by the department at least 15 calendar days prior to the IME.

(c) The dispute should include the specific reason(s) why the IME is out of compliance with RCW 51.36.070 and a copy of the notification letter from the self-insured employer.

(3) **The department will take action as follows:**

(a) Where the dispute presents a factual case that the examination was scheduled in violation of RCW 51.36.070 or these rules, pending a further investigation, the department may order the self-insurer to cancel the IME, and to notify the examiner, worker, and attending provider. The facts the employer provides in the IME notification letter, and the facts supplied by the worker or their attending provider will be used in this determination.

(b) The department will issue an order to resolve the dispute in accordance with RCW 51.52.050.

(c) Should a worker attend a disputed IME and, after a report is rendered, the department determines the IME was scheduled in violation of RCW 51.36.070, the report may not be considered in the administration of the claim.

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OTS-3259.5

AMENDATORY SECTION (Amending WSR 13-03-129, filed 1/22/13, effective 2/25/13)

WAC 296-23-302 Definitions. Approved independent medical examination (IME) provider - A licensed doctor or firm whose credentials are approved to conduct an independent medical examination, rating evaluation, or provide IME associated services including but not limited to file preparation, scheduling of examinations and processing billing. An approved IME provider is assigned a unique provider number.

Case progress examination - An examination requested for an accepted condition because:

(a) A proper and necessary treatment plan, per the definition of "proper and necessary" found in WAC 296-20-01002, is not in place; or

(b) The treatment plan has stalled or been completed without resulting in objective or functional improvement for physical conditions, or clinically meaningful signs of improvement for mental health conditions.

Department - For the purpose of this section, department means the department of labor and industries industrial insurance workers' compensation state fund and self-insured programs.

Direct patient care - For the purpose of meeting the qualifications of an independent medical examination (IME) provider, direct patient care means face-to-face contact with the patient for the purpose of evaluation and management of care that includes, but is not limited to:

- History taking and review of systems;
- Physical examination;
- Medical decision making;
- Coordination of care with other providers and agencies.

This does not include time spent in independent medical examinations.

Impairment rating examination - An examination to determine whether or not the injured/ill worker has any permanent impairment(s) as a result of the industrial injury or illness after the worker has reached maximum medical improvement. An impairment rating may be conducted by a qualified attending provider, a medical consultant, or an approved examiner. An impairment rating may be a component of an IME.

Independent medical examination (IME) - An objective medical-legal examination requested (by the department or self-insurer) to establish medical findings, opinions, and conclusions about a worker's physical condition. These examinations may only be conducted by department-approved examiners.

Independent medical examination (IME) provider - A firm, partnership, corporation, or individual licensed doctor (examiner) who has been approved and given an independent medical examination (IME) provider number by the department to perform IMEs.

Medical director - A licensed doctor and approved IME examiner in the firm, partnership, corporation or other legal entity responsible to provide oversight on quality of independent medical examinations, impairment ratings and reports.

Medical Examiners' Handbook - A handbook developed by the department containing department policy and information to assist providers who perform independent medical examinations and impairment rating examinations.

Patient related services - Patient related services are defined as one or more of the following professional activities:

- Direct patient care;
- Locum tenens;
- Clinical consultations for treating/attending doctors;
- Clinical instruction of medical, osteopathic, dental, podiatry, or chiropractic students and/or residents;
- On-call emergency services;
- Volunteer clinician providing direct patient care services in his or her specialty.

Provider number - A unique number(s) assigned to a provider by the department of labor and industries. The number identifies the provider and is linked to a tax identification number that has been designated by the provider for payment purposes. A provider may have more than one provider number assigned by the department.

Suspension - A department action during which the provider is approved by the department but not available to accept referrals.

Temporarily unavailable - Provider is approved by the department but is temporarily unavailable to accept referrals. Temporarily unavailable applies at the provider's request for personal reasons or by the department as part of an administrative action. Provider remains unavailable until the issue is resolved.

Termination - The permanent removal of a provider from the list of approved IME examiners. All IME provider numbers assigned to the examiner are inactivated.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.112, 51.32.114, 51.32.055, 51.36.060, 51.36.070. WSR 13-03-129, § 296-23-302, filed 1/22/13, effective 2/25/13. Statutory Authority: RCW 51.32.055, 51.32.112 [51.32.112], 51.32.114, 51.36.060, and 51.36.070. WSR 09-24-085, § 296-23-302, filed 11/30/09, effective 3/1/10; WSR 04-04-029, § 296-23-302, filed 1/27/04, effective 3/1/04.]

OTS-3385.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-23-307 Why are independent medical examinations requested?

OTS-3272.5

NEW SECTION

WAC 296-23-308 Scheduling case progress examinations. (1) Unless a case progress examination is requested by the attending provider, no case progress examination may be scheduled until 120 days have passed since the later of:

(a) The department or self-insurer's receipt of the claim; or
 (b) The department or self-insurer's receipt of the last case progress examination report and additional treatment of the condition, if requested, has been authorized.

(2) Subject to subsection (1) of this section, the department or self-insurer may schedule a case progress examination of an injured worker after:

(a) Requesting an explanation from the attending provider regarding status of the treatment plan per WAC 296-23-302, definition of case progress examination, or a referral of the injured worker to a consultation with the appropriate specialty(ies) per WAC 296-20-051 within 15 business days of the request; and

(b) The attending provider or consultant:
 (i) Did not respond within 15 business days of the department or self-insured employer request or the consultation could not be completed within 90 days;
 (ii) Omitted requested information;
 (iii) Did not have further treatment recommendations;
 (iv) Recommended a treatment plan that is not proper and necessary or does not meet the department's medical treatment guidelines; or

(v) Wrote a report that does not comply with the provisions of WAC 296-20-06101.

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NEW SECTION

WAC 296-23-309 How many examinations may be requested? Unless explicitly required by statute, the total number of examinations per claim is limited as follows:

(1) One complete examination including report prior to an order under RCW 51.52.050 or 51.52.060 allowing or denying a new claim unless an additional examination is authorized by the department in state fund or self-insured cases;

(2) One complete examination including report(s) from all appropriate specialty(ies) for an impairment rating unless the prior rating examination determined a rating was premature and/or further treatment was needed and is authorized by the self-insured employer or department;

(3) One complete examination including report(s) from all appropriate specialty(ies) to adjudicate any application to reopen a claim under RCW 51.32.160 prior to a final order under RCW 51.52.050 or 51.52.060 allowing or denying reopening of the claim, unless the department authorizes an additional examination in state fund and self-insured cases. Additional impairment rating examinations are allowed following each time a claim is reopened under RCW 51.32.160;

(4) One examination may be performed after any new medical issue is contended to resolve a new medical issue prior to a final order, under RCW 51.52.050 or 51.52.060, accepting or denying responsibility of the condition, unless the department authorizes an additional examination in state fund and self-insured cases; and

(5) Additional examinations per case progress rules and to resolve appeals as outlined in WAC 296-23-308 and 296-23-401.

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NEW SECTION

WAC 296-23-403 Independent medical examinations—Department data reporting. The department will regularly provide independent medical examination data to interested parties that includes emerging trends.

As much as possible, the data should include and differentiate between examinations for claims insured by the department and those covered by self-insured employers.

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