



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: April 18, 2023

TIME: 8:16 AM

WSR 23-09-053

Agency: Department of Labor & Industries (L&I)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-20-111 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) 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?

WAC 296-23-359:

When is telemedicine appropriate for an independent medical exam (IME)?

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|--------------|----------|--|--|
| May 24, 2023 | 10:00 am | Virtual and telephonic hearing Join electronically: https://lni-wa-gov.zoom.us/j/85477472867?pwd=_YUtgMzBTSHUyNDdmVEJuaXhLL3R4Zz09 Meeting ID: 854 7747 2867 Passcode: 52423Mtg# 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 (Note: This is NOT the effective date)

Submit written comments to:

Name: Kristen Baldwin-Boe

Address: Department of Labor and Industries
Health Services Analysis
PO Box 44322
Olympia, WA 98504-4322

Email: Kristen.Baldwin-Boe@Lni.wa.gov

Fax: 360-902-4249

Other:

By (date) 5:00 p.m. May 24, 2023

Assistance for persons with disabilities:

Contact [Kristen Baldwin-Boe](#)

Phone: 360-902-6815

Fax: 360-902-4249

TTY:

Email: Kristen.Baldwin-Boe@Lni.wa.gov

Other:

By (date) 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: Engrossed Substitute Senate Bill 6440 (ESSB 6440), passed during the 2020 session, resulted in updates to RCW 51.32.110 and 51.36.070 and the addition of new chapter 51.08 RCW, and new section 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 independent medical examinations (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

Is rule necessary because of a:

| | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Department of Labor & Industries

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|---------------------|-----------------|--------------|
| Drafting: | Kristen Baldwin-Boe | Tumwater, WA | 360-902-6815 |
| Implementation: | Karen Jost | Tumwater, WA | 360-790-2682 |
| Enforcement: | Karen Jost | Tumwater, WA | 360-790-2682 |

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
 Address:
 Phone:
 Fax:
 TTY:
 Email:
 Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Kristen Baldwin-Boe
 Address: Department of Labor and Industries
 Health Services Analysis
 PO Box 44322
 Olympia, WA 98504-4322
 Phone: 360-902-6815
 Fax: 360-902-4249
 TTY:
 Email: Kristen.Baldwin-Boe@Lni.wa.gov
 Other:

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

[RCW 34.05.310](#) (4)(b)
(Internal government operations)

[RCW 34.05.310](#) (4)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[RCW 34.05.310](#) (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. L&I estimates that the proposed change will impose no new cost 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.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:


Fax:

TTY:

Email:

Other:

| |
|-----------------------------|
| Date: April 18, 2023 |
| Name: Joel Sacks |
| Title: Director |

| |
|--|
| Signature:  |
|--|