



Preliminary Cost-Benefit Analysis

Independent Medical Examinations (IME) – Telemedicine

WAC 296-23-358, What happens when there is no approved independent medical examination (IME) provider in the specialty needed available in a reasonably convenient location for the worker?

WAC 296-23-359 When is telemedicine appropriate for an independent medical examination (IME)?

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CHAPTER 1: Requirement of the Administrative Procedure Act

The Administrative Procedure Act (APA; Chapter 34.05 RCW) requires that, before adopting a significant legislative rule, the Department of Labor & Industries (L&I) must analyze the probable costs and benefits of the rule, and determine that the benefits are greater than its costs, taking into account both the qualitative and quantitative benefits and costs.” [RCW 34.05.328(1)(d)]

Under certain circumstances, a rule or rule component is exempt from this requirement. These exemption criteria are listed in RCW 34.05.328(5)(b) including:

- Emergency rules adopted under RCW 34.05.350;
- Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;
- Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Rules the content of which is explicitly and specifically dictated by statute;
- Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

This cost-benefit analysis has been prepared to comply with the APA for the creation of a new sections WAC 296-23-358 and 296-23-359 that does not fall under the exemptions described above.

CHAPTER 2: Background of This Proposed Rule

An independent medical examination (IME) is 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 self-insured employer or by order of the board of industrial insurance appeals, 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.

During the 2020 legislative session, the Washington state legislature passed the Engrossed Substitute Senate Bill 6440 (ESSB 6440) to amend the state law under RCW 51.36.070 concerning the requirements and conditions for conducting IMEs. It became effective January 1, 2021. 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. For purposes of this subsection, “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. The department must address in rule how to accommodate the injured worker if no approved medical examiner in the specialty needed is available in that community.” RCW 51.36.070(b). To implement these statutory changes, the Insurance Services Division within L&I is proposing to add a new sections to the Washington Administrative Code. The purpose of creating this rule is to define when it may be appropriate for IMEs to be conducted via telemedicine, also referred to as telehealth throughout this document. L&I consulted with a wide variety of groups directly and indirectly involved with IMEs in order to develop the new and amended rules. These consultations occurred on several occasions between August 2020 and April 2023.

CHAPTER 3: Probable Costs of the Proposed Rule

The estimated costs in this analysis, if any, represent only the new costs of complying with the proposed rule for the affected parties, excluding realized potential costs associated with or originating from the current practices, or “baseline” standards under existing laws, rules, or national consensus standards. Therefore, the costs that can be attributed to or are insignificantly different from these baseline standards are not analyzed or factored into our estimates. The baseline for this rule is in-person IME examination.

Proposed Language: WAC 296-23-358

Provides alternate options for conducting an in-person IME when there is no approved IME provider in a workers community or in a reasonably convenient location to the worker. This includes three alternate options, 1) consider whether a consultation must be sufficient, 2) having the exam conducted via telehealth, or 3) notification to the worker prior to scheduling the IME at the nearest available location. In the last instance, L&I or the self-insurer must ensure that the location is not outside travel limitations that may be in place by a worker’s provider, must provide travel assistance to the worker when requested, and lastly must pay for travel accommodations listed in the fee schedule. Assistance with travel arrangements and accommodations is already provided for in-person IMEs so this requirement is not different from the baseline.

Cost Implication: There are no costs above the baseline associated with the rule this 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 the worker’s community.

Proposed Language: WAC 296-23-359

Establishes what types of exams may be conducted via telehealth when it is determined that a telehealth appointment is appropriate. Defines the criteria that must be met to for telehealth to be deemed appropriate. The criteria includes the ability to have face-to-face real-time two-way communication, the worker is willing to have the exam performed via telehealth, L&I or self-insurer and the worker agree that telehealth is appropriate, that agreement is documented, and a

physical or hands-on exam is not required. This section also allows L&I or self-insurer to agree to a telehealth exam for specialties not enumerated in the rule on a case by case basis.

Cost Implication: There are no costs above the baseline associated with the rule as it 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.

CHAPTER 4: Probable Benefits of the Proposed Rule

The purpose of this rulemaking is to explain when and how IMEs may be conducted via telehealth when a worker cannot access a provider in a reasonably convenient location to the worker or in the worker's community. The expectation is that having all interested parties "on the same page" will reduce confusion and conflicts relating to scheduling IMEs either in-person or via telehealth. The reduction of confusion and conflict should reduce conflicts between the interested parties and reduce the likelihood of litigation. Where a consultation or telemedicine IME is performed, it also reduces costs by eliminating the need to pay for travel reimbursement and the indirect administrative costs associated with processing reimbursements. It reduces burden on injured workers and their families related to travel to IMEs.

CHAPTER 5: Cost-Benefit Determination

The proposed rule has been assessed for both cost and benefit impact to the affected businesses and workers. L&I estimates that the proposed change will impose no new cost on the affected parties. While the benefits of the rule are difficult to quantify, mutual understanding of when and how telemedicine can be used for IMEs will help reduce conflicts between the interested parties and reduce the likelihood of litigation. Considering this, the benefits of this rule are anticipated to outweigh the costs, if any.