Preliminary Cost-Benefit Analysis

Independent Medical Examinations (IME) - Case Progress/Disputes

WAC 296-23-302 - Definitions

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

WAC 296-23-308 - Scheduling case progress examinations

WAC 296-23-309 - How many examinations may be requested?

WAC 296-23-403 - Independent medical examination-Department data reporting.

WAC 296-15-440 - Use of Independent Medical Examinations

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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; and
- 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 proposed rules creating new WACs 296-23-308, 296-23-309, and 296-15-440 of the Washington Administrative Code that do not fall under the exemptions described above. Proposed amendments to WAC 296-23-302 and WAC 296-23-403 are exempt from analysis, as is the repeal of 296-23-307.
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. In 2020, L&I made 18,792 referrals for IMEs, 9920 of which were for case progress.

During the 2020 legislative session, Washington state legislature passed 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. To implement these statutory changes, the Insurance Services Division within L&I is proposing to add new sections to the rules under proposed WACs 296-23-308, 296-23-309, 296-23-403, and 296-15-440, amend WAC 296-23-302, and to rescind WAC 296-23-307. The purpose of the proposed rule is to improve our IME decision process by clarifying the terms, processes and requirements of the IME process for claims managers, employers, self-insured entities, and workers and their representatives. 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 June and October 2021.

In this rulemaking, L&I proposes the following to chapters 296-23 and 296-15 WAC. Specifically, the proposed rule will:

i. Add language under WAC 296-23-302 to define when a Case Progress IME is appropriate.


iii. Create WAC 296-23-308 that defines the circumstances in which a case progress IME can be requested.

iv. Create WAC 296-23-309 that limits how often an IME can be requested.

v. Create WAC 296-23-403 that indicates L&I will share data about IMEs with interested stakeholders.

vi. Create WAC 296-15-440, which explains the criteria for making and resolving disputes regarding requests for independent medical examinations.
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 rules 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.

Proposed Language: WAC 296-23-308

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 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 medical provider regarding status of the treatment plan per WAC 296-23-302, definition of case progress examination, and the medical provider does not respond within 15 days;
   b. Requesting the medical provider refer the injured worker to a consultation with the appropriate specialty(ies) per WAC 296-20-051 and the referral is not made within 15 days and completed within 90 days; or
   c. Completing (a) or (b) of this subsection and the medical provider or consultant:
      i. Omitted requested information;
      ii. Did not have further treatment recommendations;
      iii. Recommended a treatment plan does not meet the department’s medical treatment guidelines; or
      iv. Wrote a report that does not comply with the provisions of WAC 296-20-06101.

Cost Implication: This proposed language adds prerequisites for requesting a case progress IME. Fulfilling these requirements will mean that fewer case progress IMEs will
be scheduled as multi-purpose IMEs but more will be scheduled as stand-alone IMEs. L&I does not expect a significant change in the number of case progress IMEs scheduled. Therefore, this new rule does not impose a cost upon impacted businesses.

**Proposed Language: WAC 296-23-309**

Unless explicitly required by statute, the total number of examinations per claim is limited as follows:

1. One examination 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 examination for an impairment rating unless the examiner determines a rating was premature and/or further treatment was needed and is authorized by the self-insured employer or department;
3. One examination 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;
4. Additional impairment rating examinations are allowed following each time a claim is reopened under RCW 51.32.160;
5. One examination may be performed after any new medical issue is contended; and
6. Additional examinations per case progress rules and to resolve appeals as outlined in WAC 296-23-308 and 296-23-401.

**Cost Implication:** This proposed language defines the number of IMEs allowed per claim and the purposes of those IMEs. However, the language allows additional IMEs to be performed in accordance with the guidance in subparagraphs (1) through (4). L&I does not expect a significant change in the number of IMEs scheduled. Therefore, this new rule does not impose a cost upon impacted businesses.
Proposed Language: WAC 296-15-440

(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, their representative, 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, their representative, 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.

Cost Implication: This proposed language describes the process and requirements for disputing a scheduled IME. Since the ability to dispute IMEs already exists, this merely provides guidance around an existing process and is not expected to make a significant change in the number of IMEs scheduled. Therefore, this new rule does not impose a cost upon impacted businesses.
CHAPTER 4: Probable Benefits of the Proposed Rule

The overall purpose of this rulemaking is to update the current IME rules and bring them into alignment with the changes required by the passed ESSB 6440. The probable benefits of the proposed rule amendments are obvious, but are analyzed qualitatively in this chapter. The implementation of this new rule overall would help improve the claims process and ensure quality claims management, which benefit affected employers, injured workers, and L&I as well. Specifically, the benefits include:

- **Consistency**: The proposed rules would ensure all claims managers follow the same steps when making scheduling decisions and the necessary documentation is in each claims file. This will ensure equitable treatment for injured workers related to case progress IMEs.
- **Increased efficiency in claims processing**: Ensuring that all required steps are accomplished and necessary documentation is in hand before scheduling a case progress IME will benefit both workers and employers through more efficient use of IMEs.
- **Clarity**: Ensure that all parties involved in the IME understand the requirements and processes related to scheduling and disputes.
CHAPTER 5: Cost-Benefit Determination

The main goal of this rulemaking is to provide a reasoned and consistent process for requesting case progress IMEs.

The proposed rules have been assessed for both cost and benefit impacts to the affected businesses and workers. L&I estimates that the proposed rules will impose no new cost on the affected parties. While the benefits of the rules are difficult to quantify, the proposed requirements will help improve claims administration and the well-being of the affected Washington workers from the enhanced consistency of the administration of IMEs. They will also ensure an efficient and effective use of IMEs, thus benefitting both workers and employers. The explanations of the terms, processes and requirements will provide clarity to claims managers, self-insured entities, and workers and their representatives. Considering all these, the benefits of these rules are anticipated to outweigh the costs, if any.