

About this new law:

1. What is the purpose of the ESSB 6440 and the new law?

The Department of Labor and Industries (L&I) administers the Workers' Compensation Insurance program, supporting the health and safety of the state's workforce. If requested by L&I, an injured worker may be asked to undergo an independent medical exam (IME) as part of receiving or claiming any workers' compensation benefits.

The passage of ESSB 6440 amended the law, RCW 51.32.110 and 51.36.070 and adding a new section, 51.08, affecting those employers who purchase workers' compensation insurance through the State Fund, as well as those who are self-insured.

These amendments or insertions more clearly define:

- Specific reasons an exam may be requested by L&I or a self-insured employer.
- Requires that examinations must be at a place reasonably convenient to the injured worker.
- Identifies telemedicine as an option to be considered.
- Limits when no-show fees can be assessed
- Requires that copies of the IME report be sent to the worker and attending physician.

2. What has changed regarding when an IME can be requested?

Before this new law, an IME was scheduled "Whenever the director or the self-insurer deems it necessary." This new law further clarifies when an IME can be requested.

These instances include:

- To make a decision regarding claim allowance or reopening.
- To resolve a new medical issue, an appeal, or case progress.
- To evaluate a worker's permanent disability or work restriction.

A "new medical issue" is defined as a medical issue not covered by a previous medical examination requested by the department or self-insurer.

3. What if a worker or their representative feels a scheduled IME does not meet the criteria for when an IME can be requested?

- State Fund Workers can contact their Claim Manager directly to discuss their concern.
- Self-Insured workers can file a dispute with the department for resolution by a self-insured adjudicator.

4. What about complex mental health conditions that can wax and wane, can we do a repeat Mental Health IME because the status now is unclear?

We would still be required to verify if an exam already occurred for the same condition(s) for the same reason(s) prior to creating a new request.

5. So if we had a prior IME addressing a condition before, we can't ask for another IME for that same condition?

We could do another IME for the same condition if the issue is different than a prior exam. For example, if we have gotten a causation IME to determine validity for a right knee condition, and at the end of the claim need an IME for PPD of that same condition.

6. Would this apply to forensic IMEs as well?

No, a forensic IME would not count towards the limitations on number of IME's. RCW 51.36.070(1)(a) lists the bases for the Department requesting an IME, stating "...a worker shall submit to examination..". This indicates that the worker has to do something, which would not be the case with a forensic IME.

7. How will this affect customer-requested IME's within the State Fund?

To ensure clarity on terms, customer-requested IMES are employer-requested IMES, typically from "Retro" groups or third party administrators (TPAs). L&I has updated the [CRQEX](#) form.

8. What does "reasonably convenient location" mean?

This is now defined as being held 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.

Exception:

If the attending provider or other treating providers declined to refer for a consultation and there is no available approved examiner in the reasonably convenient location, the department or self-insured employer may make arrangements including but not limited to:

- Scheduling with the next available examiner at a location as close as possible to the worker. ([link to interim policy 13.05](#))
- Minimizing travel for multiple examination appointments.
- Use of telemedicine when appropriate [Temporary Telehealth Policy](#)

For example, let's say a worker lives in Aberdeen needs to see an orthopedic surgeon residents in the community typically travel to Thurston County to see an orthopedic surgeon. Having the worker travel to Thurston County is then considered reasonably convenient for the IME. Further work on rule making will begin in 2021.

9. How do the changes apply to workers with claims who live outside of Washington State?

We should take steps to ensure we are trying to accommodate the worker at a location as close as possible to their community. When this is not possible we will need to consider all other options available to schedule the exam.

10. What has changed regarding IME no-show fees?

The new law specifies that L&I may not assess a no-show fee if the worker gives at least FIVE (5) business days' notice that they will not attend the examination. However, this

restriction on no-show fees does not remove the ability to pursue non-cooperation and potentially suspension of the claim. [Interim Policy 13.07](#)

11. Who receives a copy of the IME report?

The report goes to the Attending Physician (AP), the worker and their attorney, if the worker has one.

12. Will addendums also be required to send to all parties?

An addendum is considered part of the IME, and thus must be sent to all parties.

13. Will this change the time frame on when we can request an IME addendum or how many addendums we can have?

It is unlikely that there will be changes to the time frame for addendums or how many addendums we can request. Because an addendum asks for additional opinions from the examiner that already wrote an IME. The addendum doesn't require the worker to attend an additional examination so it doesn't impose any new obligation on the worker.

14. Is it acceptable to email or FAX the (IME) report?

We recommended that paper copies be printed and sent to the recipients.

15. What about mental health reports? Do those go to the worker?

L&I recommends applying the same review criteria as set forth in WA State law RCW 51.28.070.

16. Is there a time requirement on mailing the copy of the IME report to all parties?

The new law did not indicate a specific timeframe in which this needs to be done, however it should be mailed in a timely manner from the date of receipt.

17. What are the other elements of this law?

The legislature also tasked L&I to establish an IME Work Group to discuss ways to improve the IME process and report findings and recommendations to the legislature. The work group represented a cross-disciplinary group of ten (10) representatives from the legislature, state fund, self-insurers, labor, and the medical community.

18. What were the specific items examined by the IME work group?

The work group examined IMEs, their associated claims, medical records and reports, scheduling, efficiencies and were asked to identify barriers to increasing in-state IME physicians. The Work Group met four times between August and October 2020 to explore these specific issues:

- Reducing the number of IME's per claim with consideration for claim duration and medical complexity.
- Scheduling and selection of examiners.
- Addressing workers' rights issues in the IME process, including attendance, specialist consultations, recording of exams, and distance/location of exams.
- Improving the efficiency of the process through better access to medical records and availability of examiners.

19. Who were the participants in this IME Work Group?

Member	Representation
Representative Larry Hoff	Representative (R)
Representative My-Linh Thai	Representative (D)
Senator Derek Stanford	Senator (D)
Senator Curtis King	Senator (R)
Rick Clyne	State fund employers
Ryan Miller	Self-insured employers
Brenda Wiest	Labor representative
John Adams	Labor representative
Kristin McCoy	IME physicians & panel companies
Doug Palmer	Attorney for injured workers

20. What were the outcomes of the IME work group? Or, when are they due?

The Work Group members identified about two dozen strategies for L&I's consideration. L&I is already working to implement about half of those recommendations. These focus on clarifying and defining claim progress, improving claim documentation and quality through training, identifying ways to recruit and retain IME providers and providing clear instructions for workers and providers, alike. [Legislative Report](#)