



Cost-Benefit Analysis

Independent Medical Examination (IME) – Recording Notification Process and Accompanying Person

Chapter 296-23 WAC, Radiology, Radiation Therapy, Nuclear Medicine, Pathology, Hospital, Chiropractic, Physical Therapy, Drugless Therapeutics and Nursing – Drugless Therapeutics, etc.

Produced by: Research and Data Services

Questions: contact Sayeh Shojaeinia – email: shoj235@lni.wa.gov

March 13, 2024

TABLE OF CONTENTS

Acronyms	3
CHAPTER 1: Requirements of the Administrative Procedure Act	4
CHAPTER 2: Description of the Adopted Rule.....	6
CHAPTER 3: Probable Costs of the Adopted Rule	7
CHAPTER 4: Probable Benefits of the Adopted Rule	9
CHAPTER 5: Cost-Benefit Determination	10

Acronyms

APA	The Administrative Procedure Act
IME	Independent Medication Examination
L&I	Washington State Department of Labor & Industries
RCW	Revised Code of Washington
WAC	Washington Administrative Code

CHAPTER 1: Requirements of the Administrative Procedure Act

The Administrative Procedure Act (APA; Chapter 34.05 RCW) requires that, before adopting a significant legislative rule, the Washington State 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 amendment of chapter 296-23 WAC, including sections 296-23-362, 296-23-364, and 296-23-366, regarding Independent Medication Examinations that do not fall under the exemptions described above.

The APA also requires L&I to “determine, after considering alternative versions of the rule that the rule being adopted is the least burdensome alternative for those required to comply with it

that will achieve the general goals and specific objectives” of the governing and authorizing statutes. RCW 34.05.328(1)(e). Chapter 5 of this document describes that determination.

CHAPTER 2: Description of the Adopted Rules

The Insurance Services Division within Labor and Industries (L&I) is adopting new sections and amending one section under Chapter 296-23 WAC. The purpose of this adopted rule amendment is to implement aspects of Substitute House Bill 1068 (SHB 1068) that allows a worker to audio or visually record an independent medical examination (IME), and also grants the worker the right to have an observer present for examinations.

In this rulemaking, L&I adds two new sections to the current rule that outlines (1) the notification process required for workers to record an IME, and (2) the recording notification timeframe. Specifically, the adopted rulemaking will:

1. Create WAC 296-23-364(1) to explain when the written notice must be provided to inform the intent to record the examination by stating “After receipt of the IME appointment/assignment letter, but no less than seven calendar days before the date of the examination, the worker or their representative must provide written notice to the IME firm or an examiner not in a firm, as listed in the assignment letter, to inform of their intent to record the examination;”
2. Create WAC 296-23-364(2) to explain how the written notice must be provided by stating “Written notification of the workers’ intent to record must be given for each IME appointment.”
3. Create WAC 296-23-366 to explain what happens when less than seven days notification is given and clarifies when the notification is considered communicated: “If notice is received less than seven calendar days prior to the IME, a worker may record the examination only if the IME provider waives the seven calendar day notification requirement. If notification is received after 5:00 p.m., in the time zone of the examination location, the notification is considered received the next calendar day.”

In addition, the rulemaking adopts amendments to WAC 296-23-362 to clarify that the worker may bring an adult observer to all independent medical examinations and the accompanying person must be unobtrusive. The worker cannot bring their own interpreter. If needed, the department or self-insurer will provide one.

CHAPTER 3: Probable Costs of the Adopted Rules

The estimated costs in this analysis, if any, represent only the new costs of complying with the adopted 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.

Adopted Language: WAC 296-23-364(1) and (2) defines the notification process to record IMEs and states that on receipt of the IME appointment letter, the worker must provide notice to the IME firm or examiner of his/her intent to record the examination no later than seven days before the date of examination, and the worker must provide written notification for each IME appointment intended to be recorded.

Cost Implication: This definition specifies the notification process required for a worker who intends to record an IME. As recording the IME is an option to workers and is not required by the rule, any real or perceived costs can be avoided by not electing to exercise this option. For those workers who do request to record, written notification is not expected to take any significant time or require the use of special equipment. The worker can easily communicate the intent to record electronically, for instance via email. As a result, L&I does not believe this would impose any cost upon workers who voluntarily choose to record an IME.

Adopted Language: WAC 296-23-366 states that if notice is communicated less than seven calendar days prior to the IME a worker may record the examination only if the IME provider waives the seven calendar day notification requirement. If notification is received after 5:00 p.m., in the time zone of the examination location, the notification is considered received the next calendar day.

Cost Implication: This adopted language adds clarification for time frame of the recording notification, and an action the IME provider may take. As this adopted section simply provides clarity on the time frame for notification submission, and outlines IME provider options, it is not expected to impose any cost upon impacted entities.

Amended Language: Adopted amendments to WAC 296-23-362(1)(2) and (3) include (1) adding “Accompanying person” to the title of the sub chapter and adding language that

accompanying persons must be unobtrusive and that such behavior includes but is not limited to verbally or physically interrupting, interfering, or obstructing the examination in any way. (2) Adding this subsection that the accompanying person must not be: (a) The worker's legal representative or any personnel employed by them; or (b) The worker's healthcare provider or any personnel employed by them. The department may define further conditions for the accompanying person's presence during the IME; and (3) the worker is not permitted to bring their own interpreter to the examination. Should interpretive services be required, the department or self-insurer will arrange for an interpreter.

Cost Implication: The adopted amendment adds clarifications to the rule regarding accompanying persons and interpreters. Outlining the boundaries and conditions of an accompanying person is not seen to have any cost impact. Since there is no material change to the meaning or intent of the subsection from the adopted amendments, L&I does not expect it to impose any cost upon impacted businesses.

CHAPTER 4: Probable Benefits of the Adopted Rules

The adopted language is intended to add clarity to the process around video recording of IMEs. The benefits of the rule will generally be to the IME system as a whole. Specifically, it improves communication by requiring the worker to put in writing their intent to record. It provides flexibility by allowing the IME provider the option to waive the seven day notification requirement in the event the worker was not able to meet the required timeframe. Another benefit is improved accountability. Intent to record serves the effect of potentially improving the quality of service rendered during the IME, and the recording could serve as evidentiary material to help resolve any potential disputes which may arise. Finally, the adopted rule provides clarity around persons accompanying the worker in an IME by specifically outlining the limitations of this right.

CHAPTER 5: Cost-Benefit Determination

Labor & Industries has conducted a thorough assessment of the adopted rule's impact on both businesses and workers affected. According to L&I's estimation, the adopted changes will not result in any additional costs to the impacted parties. While it's difficult to precisely measure the advantages of these updates, it is expected that the adopted amendments will eliminate vagueness in the language and provide clarity in the recording request process. As outlined in the preceding sections, the updated wording will enhance comprehension of the rule, which will ultimately benefit the workers in Washington who are affected by it. Taking all these factors into account, it is anticipated that the benefits of this rule will outweigh any potential costs.