



Washington State Department of
Labor & Industries

Legislative Work Group on Independent Medical Examinations (ESSB 6440 Implementation)

Report to the Legislature

December 2020

Table of Contents

Executive summary	1
Background information	6
Findings	14
Recommendations	21
Conclusion	28
Appendices	
Appendix A: Work Group Data Request.....	29
Appendix B: Work Group Meeting 1	34
Appendix C: Work Group Meeting 2.....	44
Appendix D: Work Group Meeting 3.....	51
Appendix E: Work Group Meeting 4.....	62
Appendix F: Washington Independent Medical Coalition Suggested Strategies	73
Appendix G: Voting Slides.....	77
Appendix H: IME Coalition Joint Response.....	84
Appendix I: Employer Representatives Joint Response	87
Appendix J: Senator King and Representative Hoff Joint Response	89
Appendix K: Labor, WSAJ, and Democratic Member Response	90

Executive Summary

Introduction

Engrossed substitute senate bill 6440 amended requirements for Independent Medical Examinations (IMEs) for administration of workers' compensation claims by the Department of Labor & Industries (L&I). The changes affected those employers who purchase workers' compensation coverage from the department (the "State Fund") as well as those that are self-insured. The legislature also tasked the department with establishing an IME Work Group (referred to in this report as the Work Group) to discuss ways to improve the IME process and report findings and recommendations to the legislature by December 11, 2020.

IMEs

An IME is a medical evaluation that may be requested by the State Fund or self-insured employer's claim manager. The medical information may be needed to assist claim managers in making certain benefit decisions and in identifying how to ensure the worker has continued recovery. IMEs may also be arranged in response to a request or issue raised by the attending doctor or the employer of injury. The most common reasons that State Fund claim managers request exams are to establish whether the worker has reached maximum benefit from treatment, determine any permanent impairment, and assist in ensuring case progress (when worker recovery is seemingly stalled). High-quality examinations should provide unbiased, accurate, and medically sound information to assist adjudication of the claim.

For workers, IMEs may create anxiety because the information reported by the examiner may directly impact a benefit decision. In addition, they are instructed to meet with a doctor or doctors with whom they do not have a relationship.

For State Fund and Self-Insured claim managers, IMEs are an important tool to help them make decisions about what treatment is needed, whether a condition is related to the workplace injury, and what benefits the worker may be entitled to receive.

The Work Group's task was to discuss several issues surrounding IMEs and develop strategies for the Department's consideration to address these topics.

L&I regularly collaborates with stakeholder groups to improve IME processes and the quality of service provided to customers. This legislative report includes an overview of IME improvements made over the past five years.

The Work Group

L&I established a ten-member Work Group as required by ESSB 6440 and in collaboration with representatives from the legislature, business, labor, and the IME provider community. Work Group members are shown below.

IME Work Group Members	
Member	Representing
Derek Stanford	Senator (D)
Curtis King	Senator (R)
My-Linh Thai	Representative (D)
Larry Hoff	Representative (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

The legislature requested discussion of seven topics. The Work Group met four times between August and October 2020. The seven topics were combined as follows:

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

At each meeting of the group, department staff provided an overview of the discussion topics and any available data and responded to questions from Work Group members. Potential strategies to address the issues under discussion were recorded by staff during each meeting. After the final meeting, Work Group members were asked to comment on each of the strategies discussed and to provide an advisory vote to the department indicating whether they support the strategy.

The Work Group requested data on IME cost, utilization, provider availability and reasons that IMEs are requested. Department staff provided all data that was readily available. Although self-insured employers are required to report data as of January 1, 2020, L&I has not yet had time to receive sufficient self-insurance data to provide to the Work Group for their discussions. Therefore, the data was limited to State Fund claims.

Findings and recommendations

Despite the need to meet virtually due to the COVID-19 pandemic, the Work Group was engaged and shared a variety of perspectives on the discussion topics. Across the seven topics, Work Group members identified 25 strategies for the department's consideration. Support for the strategies varied from unanimous support (all votes received supported the strategy) to majority non-support (more than half the votes received did not support the strategy). All strategies had some votes in support.

The department considered all strategies proposed by the Work Group, and added two: rulemaking to define case progress (or lack thereof) and audio/video recording of IMEs. Case progress is included in the list of reasons for IMEs delineated in ESSB 6440 but is not clearly defined. Rulemaking gives the department an opportunity to define the term. No change is recommended at this time to the current prohibition in rule for audio/video recording of IMEs.

The department considered the discussion and varied perspectives presented by the Work Group members as well as the results of the advisory vote in deciding whether or not to recommend each of the strategies.

The strategies the department recommends are listed below. Details about each of these strategies can be found in the Recommendations section starting on page 21.

- Enforce current rules for consultations
- Conduct rulemaking to define case progress (or lack thereof)
- Invest in better IMEs by updating the fee schedule to improve the availability of examiners, particularly specialists
- Focus on the subset of claims that have too many IMEs/Improve the availability and quality of chart notes and required report documentation of attending providers
- Encourage consultations via attending provider and claim manager training on the process; develop consultant list
- Set an enforceable deadline for claim/medical records to be sent to the IME firm (for self-insured claims)
- Reduce duplicate documents in claim files by adding funding for technology and more department staff to edit claim files
- Conduct rulemaking to give the department authority to place a self-insured claim IME on hold
- Update IME letters and materials to provide information on how to file a complaint, instead of just providing a phone number

- Conduct exit interviews of examiners who do not reapply for IME credentialing
- Update the fee schedule, making it preferential to in-state examiners
- Compensate examiners for IME record reviews when the worker fails to appear or there is a late cancellation
- Revisit extensive requirements on documentation for the IME report to determine if they can be streamlined
- Implement Electronic Data Interchange (EDI) to collect billing data for medical testimony
- Add incentives to recruit more bilingual examiners

L&I has already begun working on implementing 11 of these strategies. Seven other strategies are recommended as future projects, which are dependent on resource availability. These strategies may be referred to the department's internal IME Steering Committee for discussion and prioritization. External stakeholders will be engaged as work proceeds on each of these.

Nine more strategies are not recommended by the department:

- Establish standards for when additional IMEs are allowed to be requested by self-insured employers
- Amend 60-day report rule ([WAC 296-20-035](#)) to incorporate stalled treatment situations and mandate a consultation in lieu of an IME
- Increase 14-day notice period for IMEs ordered by self-insured employers
- Schedule all independent medical examinations (both State Fund and Self-Insured) through the department
- Conduct audio or video recording of exam (until data related to the potential impact to IME accessibility is obtained)
- Reduce IMEs for complex cases based on original bill language (SB 6440)
- Ensure attending providers are aware of a worker's right to a consultation for stalled treatment and second surgical opinion per the original bill language (SB 6440)
- Reconvene Work Group when EDI data is more mature
- Research how Washington compares with other states

The Work Group also considered distance/location of the exam, but no strategies were identified specific to this discussion topic. As required by ESSB 6440, the department will be addressing in rule how to accommodate the worker when there is no reasonably convenient examiner of the needed specialty near the worker's community.

Conclusion

The department greatly appreciates the Work Group's time and input. While stakeholder perspectives on how to achieve the highest quality, most efficient processes to ensure appropriate benefit decisions are not always aligned, the discussion provided valuable insights that will assist the department in continuing to improve IMEs for workers, insurers, and providers.

Work Group members were provided with a draft copy of the report for their review and comment. Comments are included in the report as Appendices H through K.

Though the Work Group has completed its work, the department will continue to work with stakeholders to implement the recommendations.

Background information

Engrossed substitute senate bill (ESSB) 6440 amended requirements for Independent Medical Examinations (IMEs) for administration of workers' compensation claims by the Department of Labor & Industries (L&I). The changes affect those employers who purchase workers' compensation coverage from the department (the "State Fund"), as well as those who are self-insured. The legislature also tasked L&I with establishing an IME Work Group (referred to in this report as the Work Group) to discuss ways to improve the IME process and report findings and recommendations to the legislature by December 11, 2020.

INDEPENDENT MEDICAL EXAMINATIONS (IME)

An IME is a medical evaluation that may be requested by the State Fund or self-insured employer's claim manager. The medical information may be needed to assist claim managers in making certain benefit decisions and in identifying how to ensure a worker has continued recovery. IMEs may also be arranged in response to a request or issue raised by the attending doctor or the employer of injury. The most common reasons that State Fund claim managers request exams are to establish whether a worker has reached maximum benefit from treatment, determine any permanent impairment, and assist in ensuring case progress (when worker recovery is seemingly stalled). High-quality examinations should provide unbiased, accurate, and medically sound information to assist adjudication of the claim.

Examiners

IMEs must be performed by independent medical examiners approved by the department. Examiners are licensed doctors whose credentials meet specific criteria as outlined in [WAC 296-23-317](#), sections 1-3. IMEs are primarily coordinated by firms that must also meet specific criteria outlined in [WAC 296-23-317](#), section 4. IME firms facilitate the scheduling of and payment to providers for examinations and any required follow-up such as additional reports and testimony. IME firms enable the examiner to work independent of insurer influence by having the insurer make referrals to the IME firms, which then selects the examiners. Recruitment and retention of examiners is key to the success of IME firms. Financial compensation to the examiners, as well as requirements related to preparing for, conducting, and documenting the examination, may influence a doctor's willingness to perform IMEs.

Referrals

In 2015, the department implemented an IME scheduling system to randomize the way State Fund claim referrals are distributed by having the IME firms assign claims to examiners. The majority of State Fund referrals are now assigned through this system. Self-Insurance IME referral procedures vary by insurer. Some insurers contact IME firms directly by phone to schedule exams. Some IME firms have scheduling available online through their website. In addition, in a few instances, third-party

administrators managing the self-insurer's claims have systems in which they generate and transmit scheduling requests to IME firms. Like State Fund, self-insurers can request a specific examiner or simply a specialty, leaving the IME firms to assign the specific examiner.

Perspectives on IMEs

IMEs are regarded differently by each of the three groups they involve: workers, employers and claim managers, and attending physicians.

- For workers, IMEs may create anxiety because the information reported by the examiner may directly impact a benefit decision. In addition, they are instructed to meet with a doctor or doctors with whom they do not have a relationship.
- For State Fund and Self-Insured claim managers, IMEs are a tool to help them make decisions on what treatment is needed, whether a condition is related to the workplace injury, and to what benefits the worker may be entitled.
- Attending physicians may request an IME when they are unable or unwilling to answer questions related to worker benefits. They may also perceive an IME being requested by the claim manager to be “second-guessing” their clinical judgment.

History of IME improvements

The department collaborates with stakeholders regularly to identify and implement improvements to IMEs for State Fund and self-insured claims.

Stakeholder engagement

The department convenes two stakeholder groups three to four times per year:

- The IME Business and Labor Advisory Team was established in 2007. The team meets a minimum of three times per year and includes representatives of the department, business, labor, and the self-insurance ombuds. This group is the primary venue for business and labor representatives to advise the department on quality improvement initiatives, research and evaluation, best practices, and incentives related to IMEs for injured workers. It represents the broader community of both State Fund employers and self-insurers. This group provides input on IME organizational concepts and directions with a visionary view, as well as providing insight on short- and long-term strategies in support of IME initiatives and future legislative mandates.
- The IME Roundtable was established in 2010. This group meets a minimum of three times per year. It includes physicians and staff from IME firms, as well as department staff. The purpose of the IME Roundtable is to bring together department staff, IME company representatives, and IME providers in a formal setting to facilitate communication, provide education, foster a strong working relationship, and develop mutual process improvement initiatives.

Specific improvements have been made to the IME process, including or based on:

- Updated standards for examiners: Following implementation of the Medical Provider Network (MPN) in 2013, the rules for credentialing independent medical examiners were updated to meet or exceed and to be more consistent with the requirements for MPN providers. These requirements are found in WAC 296-23-317.
- Randomization and equitable distribution of referrals: For State Fund claims, an IME scheduling system was launched in June 2015. The scheduling system rotates referrals to distribute them across all IME firms by linking to an internal database of approved IME firms, examiners, and their locations. The system sends the referral offer to IME firms for consideration. The system looks for firms with examiners available within a 10-mile radius of the worker's residence and if none are available, the search distance is incrementally increased. Offers are sent based on the last date a firm received an offer so that firms that have been waiting the longest are given priority. Once the referral is accepted, the firm assigns examiners to conduct the exam.
- Worker satisfaction exit surveys: The department collected worker satisfaction survey data from State Fund workers who attended an IME between 2011 and 2016. Throughout this period, 87 percent of workers reported being satisfied or very satisfied with the IME process.
- IME fee schedule updates: The department makes regular updates to the IME fee schedule as part of an annual cycle as well as in response to stakeholder feedback. Recent fee schedule updates include:
 - Increased payment amount for IME procedure codes effective July 1, 2017. The update followed a 2016 request from a coalition representing Washington State IME firms and examiners (Washington IME Coalition).
 - Also in response to the coalition, in 2019 L&I activated a procedure code to increase reimbursement to additional IME providers for complex IMEs to the same rate that primary providers are reimbursed for complex IMEs.
 - Added payment for review of imaging records in 2019 after discussion with examiners who reported spending significant time reviewing electronic images from radiologic diagnostic studies in preparation for the IME.

In 2020, the department established an internal work group to research and update the IME fee schedule. The Work Group will engage with stakeholders to identify and prioritize other fee schedule updates.

Improving timeliness of exam referrals and decisions

In 2016, the State Fund collaborated with the Retrospective Rating community to address concerns about when it was appropriate to obtain an IME. The IME Pilot implemented an administrative solution and generated positive effects, which included:

- Increased two-way lines of communication and improved working relationships
- New processes to address participants' concerns
- Training and education for L&I and Retro employers and staff

- Informed development of the IME toolkit for self-insured employers
- Increased consistency between State Fund and self-insurers on the appropriateness of obtaining an IME

Self-Insurance Section

In 2016, L&I developed an IME toolkit to provide the self-insurance community best practices on the use of IMEs. The department met with IME providers, the Office of the Ombuds for Injured Workers of Self-Insured Employers, members of the Washington State Association for Justice, and the Washington Self-Insurers Association to gain insight on their experiences with self-insurance IMEs. The department staff has formally trained internal and external self-insurance claim managers on the toolkit multiple times and has widely distributed the resource.

The Medical Bill Electronic Data Interchange (EDI) is a component of the 2016 Self-Insurance Risk Analysis System (SIRAS) project funded by the self-insured employers. Through EDI, self-insured employers electronically report data about the medical bills they pay on their workers' compensation claims. Using data gathered through EDI, it will be possible to analyze how many IME bills were reported per claim, percent of reported claims with an IME code billed, average cost per IME bill paid and if an amount greater than the fee schedule was paid on IME bills. Reporting is mandatory as of January 1, 2020. This data will be used to inform future analyses, but was not sufficient to inform the Work Group's discussion at this time. The self-insurance program worked closely with members of the self-insurance community throughout the SIRAS project.

Spinal impairment ratings

Washington Administrative Codes (WACs) 296-20-230 through 296-20-280 detail the category rating system for spinal impairment following injury. Category ratings are used to determine the amount of permanent partial disability award due to a worker. Spinal impairment rating worksheets were developed to assist doctors when they are rating spinal impairment. The Washington State Association for Justice raised concerns that the worksheets were inconsistent with the applicable WACs and resulted in category ratings that were lower than if the rule language was followed. Department analysis revealed that this was true in some cases and, for some, the ratings were higher. For others, there was no difference between the worksheet and the rules. The department subsequently removed the worksheets and directed examiners to rely solely on the category rating rules.

Examiner availability for testimony

Concerns were raised about some examiners not making themselves available for deposition and testimony. In response, the department reinforced the requirements for examiners by adding language detailing the requirements to the Medical Examiners' Handbook, the IME Provider Agreement, and the IME Provider Welcome letter.

L&I IME Steering Committee

IME improvement efforts rarely include just one program in the department. Recognizing the need to ensure alignment of all department programs involved with IMEs, L&I established an internal steering committee. Goals for the committee work include:

- Improving agency collaboration and the exchange of IME information across agency programs

- Increasing communication, transparency, and accountability in IME efforts through structured meetings and prioritization of issues
- Decreasing duplicative efforts (waste) of resources within the agency by increasing awareness and tracking of IME improvement efforts

Program areas represented on the steering committee are Claims Administration, Health Services Analysis, Legal Services, Office of the Medical Director, Region 2 (IME Scheduling Unit), and Self-Insurance.

COVID-19 adjustments

In response to Governor Inslee’s Stay Home, Stay Healthy proclamation the department worked with the IME firms and examiners to implement several changes in order to ensure worker and provider safety and continued access to IME services. Changes in place as of this writing include:

- A temporary policy to allow IMEs to be conducted via telemedicine (real-time audio-visual connection) for specified conditions when all parties (examiner, worker, and claim manager) agree to a telemedicine exam
- A temporary policy to compensate examiners for completion and documentation of the record review when the exam is subsequently canceled and rescheduled with another IME firm
- Temporary suspension of orders to reduce fees for late examination reports
- Clarification of the requirements for requesting a forensic exam (respond to questions based on record review) in lieu of patient examination
- Notice to IME firms that they cannot refuse an accompanying person because the examination room is not large enough to allow for social distancing (if they cannot accommodate an accompanying person, then they should cancel or reschedule)

ESSB 6440 IME WORK GROUP

ESSB 6440 amended requirements for IMEs for administration of workers’ compensation claims by L&I for those employers who purchase coverage from the department (the “State Fund”) as well as by employers that are self-insured. The legislation also created an IME Work Group to develop strategies or consider ways to improve the IME process. Specifically, the Work Group was directed to:

- Develop strategies for reducing the number of medical examinations per claim while considering claim duration and medical complexity;
- Develop strategies for improving access to medical records, including records and reports created during the course of or pursuant to an examination;
- Consider whether L&I should do all the scheduling of independent medical examinations;
- Consider the circumstances for which independent medical examiners should be randomly selected or specified;

- Consider workers' rights in the independent medical examination process including attendance, specialist consultations, the audio or video recording of examinations, and the distance and location of examinations;
- Recommend changes to improve the efficiency of the independent medical examination process; and
- Identify barriers to increasing the supply of in-state physicians willing to do independent medical examinations.

In addition, the department was required to report its findings and recommendations to the legislature by December 11, 2020.

Work Group members

The department convened the Work Group, comprised of the following members:

IME Work Group Members	
Member	Representing
Derek Stanford	Senator (D)
Curtis King	Senator (R)
My-Linh Thai	Representative (D)
Larry Hoff	Representative (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

While ESSB 6440 also amends certain requirements for IMEs which apply to both the State Fund and to self-insured employers, these changes were beyond the scope of the Work Group. Briefly, these changes included:

- Adding specific criteria for when an IME can be ordered
- Ensuring exams are conducted at a location reasonably convenient to the worker, or via telemedicine, if deemed appropriate by the department
- Addressing in rule how to accommodate the worker if no approved medical examiner in the specialty needed is available in the worker’s community
- Placing limits on no-show fees assessed by the department or self-insurer
- Requiring the IME report to be shared with the worker, their attending provider, and the person or entity ordering the report (the department, self-insurer, or Board of Industrial Insurance Appeals)

Meeting format & approach

The department scheduled four (4) three-hour meetings to cover the seven topics presented above. Some topics covered a similar theme and were grouped as follows:

Meeting	Topic(s)	Date/Time
1	<p>Reducing the number of IMEs per claim</p> <p>Develop strategies, with consideration for claim duration and medical complexity</p>	<p>Aug 13, 2020</p> <p>9am-12pm</p>
2	<p>Scheduling & selection of examiners</p> <ul style="list-style-type: none"> • Consider whether all IMEs should be scheduled through L&I • Consider how examiners should be randomly selected or specified 	<p>Aug 25, 2020</p> <p>9am-12pm</p>
3	<p>Workers’ rights</p> <p>Consider workers’ rights in the IME process including attendance, specialist consultations, recording exams, and distance/location of exams</p>	<p>Sept 16, 2020</p> <p>1pm-4pm</p>
4	<p>Efficiency, access to medical records, and availability of examiners</p> <p>Develop strategies for improving efficiency of the IME process, access to medical records, and identify barriers to the in-state supply of examiners</p>	<p>October 6, 2020</p> <p>9am-12pm</p>

Due to the COVID-19 pandemic, the meetings were held virtually using Zoom. The meetings were open to observers. For each meeting, department staff presented an overview of the discussion topics and any available data. After a question and answer session with staff, the Work Group was provided with several discussion questions, and encouraged to identify shared values and goals and to suggest strategies to address each of the topic areas.

The department presented State Fund data to address several questions raised by the Work Group. A summary of this data is in Appendix A. Unfortunately, similar data is not yet available for self-insured claims. Reporting through the Medical Bill Electronic Data Interchange (EDI) for self-insured employers became mandatory on January 1, 2020. EDI data will be used to inform future analyses, but was not sufficient to inform the Work Group's discussion at this time.

Findings

After all meetings were completed, each Work Group member was asked to comment on each of the strategies discussed, and to provide an advisory vote to the department indicating whether they support the strategy.

MEETING 1 TOPIC: REDUCING THE NUMBER OF IMES PER CLAIM

During this meeting, department staff presented an overview of the use of IMEs in workers' compensation, alternatives to IMEs, the reasons that a worker may be asked to attend more than one IME, and strategies used by the department to ensure the appropriate use of IMEs. Presentation materials for this meeting are in Appendix B, and voting results on the strategies discussed are in Appendix G.

The Work Group requested data on the distribution of IMEs per claim. During calendar years 2015 to 2019, there were more than 554,000 accepted claims, of which just over 89,000, or 16 percent, included an IME. Of the 89,000 claims that included an IME, over 86,000 (93 percent) had one or two IMEs.

Figure 1: Distribution of IMEs per claim (claims with one or more IME)

State Fund IMEs per Claim, CY2015 – 2019

- These totals are based on the IME referrals found in 120,240 completed IMEs during this period
- Outliers: claims with three or more referrals (those above 2 std. dev above the mean)

Number of Referrals	Number of Claims	Pct.
1	66,866	75%
2	15,867	18%
3	4720	5%
4	1346	2%
5	316	0%
6+	83	0%
TOTAL	89,198	100%

The Work Group had a robust discussion around the use of medical consultations in lieu of an IME. A consultation is a medical visit with someone other than the attending provider. Consultation with a specialist may be requested by the attending provider to assist with the treatment plan. In other cases,

an administrative rule (e.g. WAC 296-20-045) requires that a consultation be performed to ensure medical care is effective and continues to be needed.

Potential benefits of consultations identified by the Work Group include:

- More timely information may be available to the claim manager
- Consultation may be a less stressful situation for the worker
- An option could be available to be deployed with additional claim manager training and increased awareness for attending and consulting providers

Concerns regarding consultations include:

- Whether a consultation should be considered equivalent to an IME
- What training should be required for consultants
- Availability of consultants
- Potential for perceived bias if the consultant is not agreed to by both the worker/representative and the claim manager/self-insurer.

The Work Group discussed concerns that chart notes and required reports from attending physicians do not consistently provide objective findings, physical restrictions and treatment recommendations. When the claim manager cannot obtain this information, one of the strategies to get this information is to schedule an IME.

Additional strategies to reduce the need for IMEs included improving the quality and availability of examiners, which reduces the need to request an additional opinion, and closer regulation of IMEs for workers of self-insured employers.

During the third meeting, the group also discussed two additional strategies specific to the topic of reducing the number of IMEs per claim: Enforce existing rules for consultations, and focus on the subset of claims that have multiple IMEs.

Work Group response

Several strategies were identified to address the topics discussed during the meeting related to reducing the number of IMEs, and additional data was provided on the distribution of IMEs per claim (Figure 1) which was subsequently discussed during a later meeting. Results of the Work Group voting are available in Appendix G.

The votes unanimously supported the following strategies:

- Focus on the subset of claims that have too many IMEs
- Enforce current rules for consultations

A majority of the votes supported these strategies:

- Improve the availability and quality of chart notes and required report documentation by attending providers
- Establish standards for when self-insured employers are allowed to request additional IMEs
- Encourage consultations via attending provider and claim manager training; develop a consultant list
- Invest in better IMEs by updating the fee schedule to improve the availability of examiners, particularly specialists

The votes were evenly divided in support of the following strategies:

- Amend the 60-day report rule (WAC 296-20-035) requiring that an examination and report must be completed when the worker requires treatment beyond 60 days following injury. Amendment of this rule would incorporate stalled treatment situations and mandate a consultation in lieu of an IME.
- Increase the 14-day notice period for IMEs scheduled by self-insured employers

MEETING 2 TOPIC: SCHEDULING AND SELECTION OF EXAMINERS

During the second meeting, the Work Group considered whether all IMEs should be scheduled through the department and how examiners should be randomly selected or specified. Department staff presented an overview of the State Fund's IME scheduling system that makes referrals to IME firms, and described what would need to be considered if the department were responsible for scheduling IMEs for self-insured workers' compensation claims. Presentation materials for this meeting are in Appendix C, and voting results on the strategies discussed are in Appendix G.

For the most part, the Work Group felt that there was not sufficient data available at this time to support having the department schedule IMEs for self-insurance in addition to State Fund claims. The group noted such an undertaking would require significant resources from the department, and they expressed concern that inserting another step into the request process for self-insurers would delay scheduling and decisions for self-insured claims. A few Work Group members felt strongly that having the department schedule all IMEs for self-insured employers would facilitate randomization and reduce the likelihood of the same examiners being used all the time.

In its discussion regarding random selection of examiners, the Work Group discussed potential rulemaking to limit hand-selection of examiners. Members shared concerns that self-insurers may select specific examiners to perform IMEs and that this may contribute to perceived bias. Reasons cited for selecting specific examiners include using the same examiner for re-opening, when the use of a specific examiner is agreed by all parties, and insurer preference to use the highest quality examiners based on the insurer's perception. For the most part, the group felt these strategies needed more

discussion to address potential impacts. L&I can sponsor such discussions through existing stakeholder groups to consider further improvements in State Fund and/or Self-Insured processes.

The Work Group also discussed another potential strategy to reduce the number of IMEs per claim during this meeting -- rulemaking to give the department authority to place a self-insured claim IME on hold under certain circumstances in response to a worker's protest or request for reconsideration. The department currently has the authority to intervene to resolve disputes about the necessity of an IME. However, many times, the department is not notified of a dispute until very close to the scheduled exam date. The delay in notification about disputes, along with current statutory requirements and timelines for the department to request that self-insurers provide copies of claim files, make it difficult and sometimes impossible to intervene prior to the scheduled examination. A concern about this strategy is that it may delay benefits or necessary treatment. On the other hand, there may be alternatives worth further discussion or research; for example, modernizing the statutory process for the department to obtain self-insured claim files, requiring that the department must receive a worker dispute within a specified timeframe in order to place the IME on hold, and/or requiring submission of the claim file in certain situations without waiting for a dispute. Given the limited time available for the Work Group to identify and consider alternatives, this is an issue that warrants further discussion.

During this meeting, the group also discussed data limitations and suggested that the department consider reconvening the Work Group when the EDI data for self-insured employers is more mature, researching access to data from other states for comparison purposes, and collecting medical testimony billing data via the self-insurance EDI.

Work Group response

The votes unanimously supported the strategy of collecting medical testimony data via the self-insurance EDI and votes were evenly divided in support of reconvening the Work Group when the EDI data is more mature.

Less than half of the votes supported the following strategies for the department:

- Scheduling of all independent medical examinations requested by self-insured employers
- Rulemaking to limit hand-selection of examiners
- Rulemaking to give the department authority to place a self-insured claim IME on hold
- Research to understand how Washington compares with other states

MEETING 3 TOPIC: WORKERS' RIGHTS

During the third meeting, the Work Group considered workers' rights in the IME process. Department staff presented an overview of the department's procedures to notify the worker of the IME request and the rescheduling of IMEs, the department's procedures to address worker complaints about an IME, issues surrounding audio or video recording of the IME, and the distance/location of IMEs.

Presentation materials for this meeting are in Appendix D, and voting results on the strategies discussed are in Appendix G.

The Work Group expressed interest in ensuring that workers know they have a right to file a complaint, and how to file it. A potential strategy was identified to update the IME notification letter and other materials to provide information on how to file a complaint.

The Work Group had a robust discussion about audio or video recording of IMEs. A potential benefit of recording is that the worker has a record of what happened during the examination. Concerns were expressed about examiners being unwilling to conduct exams if they are being recorded, the risk of the recording being released into social media, the potential cost for use of a videographer for video recording, and insurer capacity to store the recording if it needs to be part of the official record.

Several potential factors contribute to workers needing to travel a significant distance to attend an IME including the limited availability of some specialists. The requirements to be credentialed as an examiner, the requirements for conducting and documenting exams, and the amount examiners are paid per exam may limit the willingness of some physicians to perform IMEs. Specific recommendations to address travel distance were not discussed during this meeting.

The Work Group also briefly discussed two strategies that included references to the language in the original version of the bill (SB 6440). One strategy was to reduce IMEs on complex cases with specific limitations on when/under what circumstances an IME could be scheduled. The second strategy was to notify attending providers of the worker's right to a consultation with a specialist to resolve issues regarding medical treatment. If the attending provider does not facilitate a consultation within 14 days, an IME can be scheduled.

Work Group response

The votes unanimously supported a strategy to update IME letters and materials to provide information on how to file a complaint instead of just providing a phone number.

The Work Group discussed but did not vote on a strategy specific to recording an IME. The department considered all perspectives in developing a recommendation to the legislature on this topic.

The votes were evenly divided in their support of these two strategies:

- Reduce IMEs for complex cases based on the original bill language (SB 6440)
- Ensure attending providers are aware of a worker's right to a consultation for stalled treatment and second surgical opinion per the original bill language (SB 6440)

MEETING 4 TOPIC: EFFICIENCY, ACCESS TO MEDICAL RECORDS, AND AVAILABILITY OF EXAMINERS

During the final meeting, the Work Group discussed strategies for improving efficiency of the IME process, access to medical records, and barriers to the in-state supply of examiners. Department staff presented State Fund data on the length of time from IME referral to receipt of the IME report. Staff also described how IME examiners access medical records for review prior to the IME and provided data on the number of in-state examiners and potential barriers to increasing their number. Presentation materials for this meeting are in Appendix E, and voting results on the strategies discussed are in Appendix G.

The Work Group discussed several points in the IME process where delays may occur, including the need to wait for diagnostic studies before completing the report and the use of multiple examiners. When there are multiple examiners, they may not all be available on the same day which extends the time needed to conduct the exam. It also requires the examiners to collaborate to ensure a cohesive report. The Work Group generally agreed that high quality IMEs with minimal or no delays is the goal. The Work Group discussed a potential strategy to establish criteria for expedited exams and to pay more for those exams. This strategy may help reduce delays when treatment is needed to avoid harm to the worker due to lack of appropriate treatment. Concern was expressed that expediting an exam by waiving the 14-day notice requirement in [WAC 296-14-410 \(3\) \(a\)](#) may not have the intended effect, and that paying more for an expedited exam could contribute to further delays on non-expedited exams.

The discussion about access to records included file size of records, duplicate records in State Fund claim files, and concerns that self-insured employers may not be providing all relevant claim file information to the IME firm early enough to enable the examiners to review the file prior to the exam. The group discussed two potential strategies: reducing duplicate documents in State Fund claim files and ensuring that all relevant records are provided well in advance of the examination. Addressing the size and organization of State Fund claim files would require significant resources for the department. The impact on self-insurers is unknown.

The Work Group had significant discussions about barriers to examiner availability, particularly for in-state examinations. There are many reasons that examiners don't do or stop doing IMEs, but no data is available to help focus efforts for improving examiner supply. Anecdotal reports include non-compete clauses with their primary employer; retirement; dissatisfaction with the financial compensation and/or the burdens that are encountered, particularly with complex cases or cases that require testimony; and lack of education and training for examiners. Several potential strategies emerged, including:

- Conducting exit interviews with non-renewing examiners
- Compensating examiners for review of medical and vocational (where appropriate) records on IMEs with late cancellation or when the worker fails to attend a scheduled IME appointment (no-show)

- Revisiting IME report documentation requirements
- Increasing the use of bilingual examiners
- Updating the IME fee schedule to encourage in-state physicians to do IMEs.

Work Group response

Several strategies were identified to address the three major topics discussed during the fourth meeting.

The votes unanimously supported the following strategies:

- Conducting exit interviews with examiners who don't apply for recertification
- Recruiting bilingual examiners by using incentives

A majority of the votes supported these strategies:

- Establishing criteria for an expedited exam in certain circumstances and increasing payment for these exams
- Compensating examiners for record review on IMEs with late cancellation or no-show
- Reducing duplicate documents in claim files, with funding for technology and department staff
- Set an enforceable deadline for records to be sent to the IME firm (for self-insured claims)
- Revisiting extensive requirements on documentation for the IME report

The votes were evenly divided in their support of a strategy to update the IME fee schedule to encourage in-state physicians to do IMEs.

Just prior to the final Work Group meeting, multiple recommendations were submitted to the department by one of the Work Group members. There was insufficient time to incorporate them into the final Work Group discussion. However, the recommendations were subsequently distributed to all Work Group members and retained by the department for future consideration. The document is included in this report as Appendix F.

Recommendations

The department considered all strategies proposed by the Work Group and added two strategies: (1) rulemaking to define case progress (or lack thereof), and (2) continuing the prohibition on audio/video recording of IMEs. The recommendations are presented in this section under the relevant discussion topic required by the legislature.

The Work Group members shared valuable insights regarding each of the discussion topics. The department considered the discussion and varied perspectives presented by the Work Group members, as well as the results of the advisory vote, in deciding whether to recommend each of the strategies.

TOPIC (A): DEVELOP STRATEGIES FOR REDUCING THE NUMBER OF MEDICAL EXAMINATIONS PER CLAIM WHILE CONSIDERING CLAIM DURATION AND MEDICAL COMPLEXITY

Eight strategies were identified by the Work Group, and one by the department. Five of those are recommended by the department.

Recommended by the department

- Enforce current rules for consultations

This will be addressed through refresher training and updated reference materials on IME best practices for State Fund and self-insured claim managers. The training will emphasize the importance of obtaining information from the attending provider if possible and considering a consultation prior to requesting an IME. Training will also include information to increase awareness of worker perceptions and potential anxiety about IMEs.

- Rulemaking to define case progress (or lack thereof)

This strategy was identified by the department. The current definition of curative and rehabilitative in WAC 296-20-01002 (under proper and necessary) is not clear/objective. Providing a clear definition can assist claim managers in determining if case progress is stalled, perhaps without the need to obtain an IME. It may also reduce or address the concern of multiple IMEs being used to gain “preponderance of evidence.” This will require stakeholder work and cross-program coordination and prioritization.

- Invest in better IMEs by updating the fee schedule to improve the availability of examiners, particularly specialists

The department began a comprehensive review of the IME fee schedule during summer 2020. The effort will include research into other state’s fee schedules and best practices. It will also include stakeholder discussions to identify primary objectives for the fee schedule (which may include

preference for in-state examiners, promoting quality) and to ensure the proposed updates meet those objectives.

Recommended for future projects

- Focus on the subset of claims that have too many IMEs/Improve the availability and quality of chart notes and required report documentation by attending providers

The department will consider future projects to measure the problem and develop resources and strategies to reduce the subset of State Fund and self-insured claims with too many IMEs. This work requires more detailed analysis to define “too many” and to understand the characteristics of claims that have more IMEs, which may include medical complexity, age of claim, and frequency of IMEs requested. This analysis is likely to be resource-intensive. It also will require stakeholder discussions when more data is available. The topic has been referred to the department’s internal IME Steering Committee for discussion and prioritization.

The department will also incorporate the strategy to improve documentation by attending providers into the work on the subset of claims with too many IMEs. The department will consider whether attending provider documentation challenges contribute to the need to order IMEs.

- Encourage consultations via attending provider and claim manager training; develop a consultant list

The department will consider future projects to identify when/how consultations may be more appropriate than an IME. This will require stakeholder meetings, change management, and potential rulemaking. The topic has been referred to the department’s internal IME Steering Committee for discussion and prioritization.

Not recommended by the department

- Establish standards for when additional IMEs are allowed to be requested by self-insured employers

The department feels that the language in ESSB 6440, specifically the changes to [RCW 51.36.070](#) (1) (a), clarifies circumstances under which IMEs can be ordered. The department is considering how best to address the ability to place a self-insured IME on hold under certain circumstances. The department also intends to define case progress to help reduce or address the issue of multiple IMEs.

- Amend 60-day report rule (WAC 296-20-035) to incorporate stalled treatment situations and mandate a consultation in lieu of an IME

The department recommends rulemaking to define case progress, but will undertake that rulemaking separately and not amend the 60-day report rule.

- Increase 14-day notice period for IMEs ordered by self-insured employers

This would set different standards for State Fund and self-insured claims, and introduce additional delays for self-insured claim adjudication. The department is also considering how best to address the ability to place a self-insured IME on hold.

TOPIC (B): DEVELOP STRATEGIES FOR IMPROVING ACCESS TO MEDICAL RECORDS, INCLUDING RECORDS AND REPORTS CREATED DURING THE COURSE OF OR PURSUANT TO THE EXAMINATION

The Work Group discussed two strategies. Both of these are recommended by the department.

Recommended by the department

- Set an enforceable deadline for claim/medical records to be sent to the IME firm (for self-insured claims)

Records are available for State Fund claims upon acceptance of the referral. The Medical Examiners' Handbook indicates that the self-insured employer or their third party administrator should provide medical records at least 10 days before the exam. Because this requirement is not in policy or in rule, the department's self-insurance program is unable to enforce it. The department will consider policy or rule solutions.

Recommended for future consideration

- Reduce duplicate documents in claim files, with funding for technology and department staff

The department will consider future projects and incremental enhancements. This is a significant undertaking and likely requires a technology solution. Consideration of potential enhancements may be included as part of the workers' compensation system modernization project that is currently underway.

TOPIC (C): CONSIDER WHETHER THE DEPARTMENT SHOULD CONDUCT ALL THE SCHEDULING OF IMES

The Work Group discussed two strategies. One of those is recommended by the department.

Recommended by the department

- Rulemaking to give the department authority to place a self-insured claim IME on hold

While this strategy did not receive a majority of votes, it may address some of the concerns that prompted interest in having L&I schedule all IMEs. Work is under way to decide on an approach to resolve the issue, which may include rulemaking.

Not recommended by the department

- Schedule all independent medical examinations through the department

This was not supported by the majority of the work group and could introduce delays for scheduling IMEs on self-insured claims. The primary concern that prompted this suggestion is likely an interest in ensuring that the examiners are not hand-selected by the self-insured employer, but rather are randomly assigned.

TOPIC (D): CONSIDER THE CIRCUMSTANCES FOR WHICH INDEPENDENT MEDICAL EXAMINERS SHOULD BE RANDOMLY SELECTED OR SPECIFIED.

One strategy was discussed by the Work Group and recommended by the department.

- Rulemaking to limit hand-selection of examiners

While this strategy to limit hand-selection of examiners did not receive a majority of votes, it may address some of the concerns that prompted interest in having L&I schedule all IMEs, and can mitigate the perception that exams are not truly independent when examiners are hand-selected. It will require stakeholder discussions to identify criteria and develop appropriate processes. It may also require adjustment of the self-insurance medical billing EDI data, because data on specific examiners is not currently reported through the EDI -- only payments to IME firms are reported (firms in turn pay the examiners). Rulemaking will be considered as an option following analysis.

TOPIC (E): CONSIDER WORKERS' RIGHTS IN THE IME PROCESS INCLUDING ATTENDANCE, SPECIALIST CONSULTATIONS, THE AUDIO OR VIDEO RECORDING OF EXAMINATIONS, AND THE DISTANCE AND LOCATION OF EXAMINATIONS

The Work Group discussed four strategies. One of those is recommended by the department.

As required by ESSB 6440, the department has filed a CR101 to address in rule how to accommodate the worker when there is no reasonably convenient examiner in the needed specialty near the worker's community.

Recommended by the department

- Update IME letters and materials to provide information on how to file a complaint instead of just providing a phone number

The department and self-insured employers can include instructions in the IME notification letter and IME pamphlet for workers. This requires updating certain State Fund and self-insured policies, system-generated letters, and training materials.

Not recommended by the department

- Audio or video recording of exam

To best address this issue, the department needs more information. While the group did not vote on a strategy, there was considerable discussion both in support of and opposed to recording of IME exams. It's unclear whether or how allowing workers to record IMEs might impact access to IME providers, since many are unwilling to continue doing exams if recordings are allowed. Gathering data and information to understand the potential impact is important to ensure changes don't cause avoidable increased disability days and costs. Administratively, there are several issues that must be resolved, including retention, storage, protecting the integrity of the recording, and whether or how recordings might be used in litigation.

- Reduce IMEs for complex cases based on original bill language (SB 6440)

The Work Group is supportive of a related strategy to focus on a subset of claims with many IMEs, which the department recommends for future consideration. Implementing the detailed criteria from SB 6440 for all claims, including the 93 percent of claims with fewer than three IMEs, may not be efficient.

- Ensure attending providers are aware of workers' rights to a consultation for stalled treatment and second surgical opinion, per the original bill language (SB 6440)

The department recommends rulemaking to define case progress, and is considering future projects to encourage consultations under appropriate circumstances, which addresses the intent of this strategy.

TOPIC (F): RECOMMEND CHANGES TO IMPROVE THE EFFICIENCY OF THE IME PROCESS

One strategy was discussed by the Work Group and recommended by the department for future consideration.

- Establish criteria for expedited exams in certain circumstances and increase payment for those IMEs

Criteria already exist for expediting exams in certain circumstances. Broadening the criteria may potentially delay other exams if the examiner pool is not sufficient. This recommendation would require rulemaking to define the criteria.

TOPIC (G): IDENTIFY BARRIERS TO INCREASING THE SUPPLY OF IN-STATE PHYSICIANS WILLING TO DO IMES IN THE WORKERS' COMPENSATION SYSTEM

Eight strategies were discussed. Six of those are recommended by the department.

Recommended by the department

- Conduct exit interviews with examiners who do not reapply for credentialing
The department will work with stakeholders to develop, implement, and report on the exit interviews for non-renewing examiners.
- Update the fee schedule – preferential to in-state examiners
Another recommendation was made by the Work Group to invest in better IMEs to ensure an adequate supply of examiners. The department began a comprehensive review of the IME fee schedule during summer 2020. The effort will require research into fee schedules and best practices for other workers' compensation and disability insurers. It will also require stakeholder discussions to identify primary objectives for the fee schedule (may include preference for in-state examiners) and to ensure the proposed updates meet those objectives.
- Compensate examiners for record review on IMEs with late cancellation or no-show
This compensation is currently in place under temporary policies related to the COVID-19 pandemic. The department will consider making this permanent in the IME fee schedule review that is underway.
- Recruit more bilingual examiners using incentives
The department will consider options to assess the potential pool of bilingual examiners and the barriers to their recruitment. IME firms are responsible for recruiting examiners, and the department will work with the IME Roundtable to assess the situation.

Recommended for future consideration

- Revisit extensive IME report documentation requirements
The department will consider a future project to review best practices for IME report documentation to identify whether changes are appropriate. This work will require stakeholder discussions when the review of documentation best practices is complete. The topic has been added to the department's internal IME Steering Committee for discussion and prioritization.
- Electronic Data Interchange (EDI) – Collect billing data for medical testimony
The self-insurance medical billing EDI does not currently include billing data on payments to providers for medical testimony. The department will consider addition of this data to the EDI requirements for self-insured employers so that further analysis can be performed along with analysis of State Fund data.

Not recommended by the department

- Reconvene Work Group when EDI data is more mature

As the self-insured EDI data matures to enable more accurate evaluation of State Fund and self-insured processes incremental projects can be undertaken. Given standing department stakeholder groups and close working relationships with others, there is not a specific need to reconvene the full Work Group.

- Research to understand how Washington compares with other states

Workers' compensation regulations and data definitions vary from state to state, making clear comparisons difficult. The department does consider information about other state's processes when establishing policies and applies that information when possible and appropriate.

Conclusion

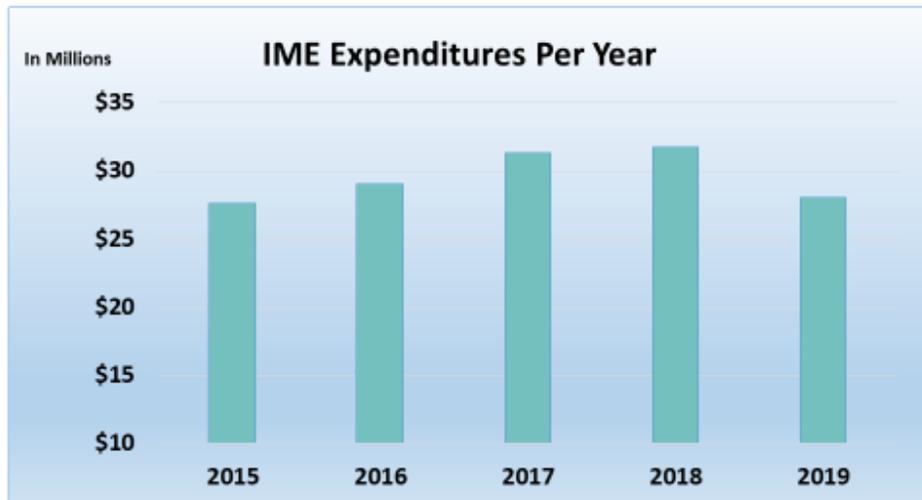
Independent medical examinations (IMEs) are an important tool that assists claim managers in making benefit decisions to support worker recovery and return to work, and determining permanent partial disability ratings. While stakeholders understand the value of independent opinions, their perspectives on how to achieve the highest quality, most efficient processes to obtain these opinions are not always aligned. The department regularly engages with stakeholders to identify and implement improvements to ensure quality and efficiency.

The Work Group discussed seven topic areas and suggested 25 strategies for the department's consideration. The discussion provided helpful insights that informed the department's recommendations. L&I recommends strategies to ensure workers know how to provide feedback about their IME, focus on the appropriate use of IMEs, and improve examiner availability while ensuring quality; and to improve efficiency of IME processes for State Fund and self-insured employers.

The Work Group has completed its work. The department greatly appreciates their time and input, and will continue to work with stakeholders to implement these recommendations.

Appendix A : Work Group Data Request

What are the IME Annualized State Fund IME Costs?



2019 Consultation Fees

Consultation Fee Description	Fee
IMPAIRMENT RATING BY CONSULT, STANDARD	\$ 618.40
IMPAIRMENT RATING BY CONSULT, COMPLEX	\$ 773.00
OFFICE CONSULTATION-Limited	\$ 88.69
OFFICE CONSULTATION-Straightforward	\$ 167.03
OFFICE CONSULTATION-Low Level of Complexity	\$ 228.53
OFFICE CONSULTATION-Moderate Level of Complexity	\$ 340.53
OFFICE CONSULTATION-Highly Complex	\$ 414.98

*Not all consultations are in lieu of IME. L&I does not track this issue.

2019 IME Fees

Description	Fee	Description	Fee
IME Addendum Report	\$ 123.15	Occupational disease report	\$ 199.32
IME Physical Capacities Estimate	\$ 32.87	IME, Extensive file review, payment per page over 400	\$ 1.09
IME standard, single	\$ 618.40	IME, terminated exam	\$ 381.81
IME complex, single	\$ 773.00	IME document handling fee, per page	\$ 0.07
IME, no-show fee, per examiner	\$ 228.08	IME CAC document processing fee	\$ 63.88
IME additional examiner	\$ 618.40	IME late cancellation fee, per examiner	\$ 228.08
IME by psychiatrist	\$ 1,120.85	IME late cancellation fee, psychiatrist	\$ 353.54
IME, no-show fee, psychiatrist	\$ 353.54	No show fee for missed neuropsychological testing	\$ 958.41
IME pain management impairment rating	\$ 535.98	No show fee for missed Functional Capacity Evaluation	\$ 306.59
IME communication issues	\$ 215.53		
Occupational disease history	\$ 199.32	Multi-claim fees	
IME, other, by report	By report	IME two claims included in evaluation	\$ 108.60
Physician travel per mile	\$ 5.27	IME three claims included in evaluation	\$ 217.18
		IME four claims included in evaluation	\$ 325.78

* These fees include both administrative and clinical costs

Consultations and IME WACs

Title 296 WAC: <https://apps.leg.wa.gov/wac/default.aspx?cite=296>

- WAC 296.20.2010
Impairment rating by AP or Consultant
- WAC 296-20-035, 045, and 051
Outline when/why the insurer may obtain a consultation
- WAC 296-23-195:
Chiropractic consultations
- IME WACs 296.23.302 – 296.23.392
Outline the reasons that L&I can remove an IME examiners

State Fund IMEs per Claim, CY2015 – 2019

- These totals are based on the IME referrals found in 120,240 completed IMEs during this period

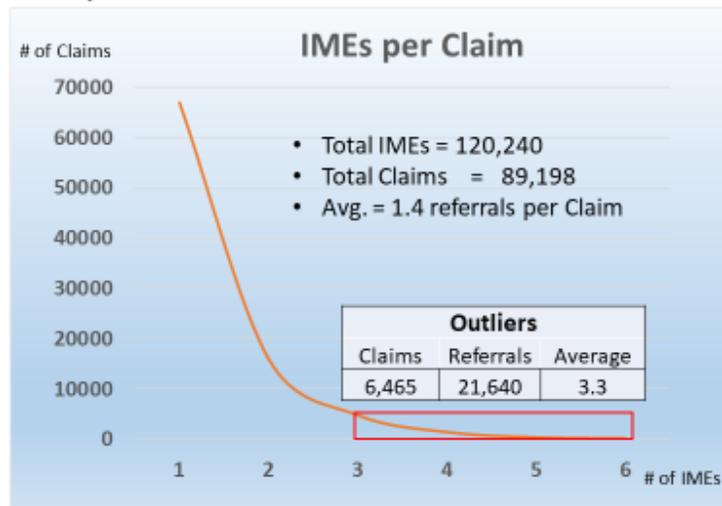
Number of Referrals	Number of Claims	Pct.
1	66,866	75%
2	15,867	18%
3	4,720	5%
4	1,346	2%
5	316	0%
6+	83	0%
TOTAL	89,198	100%

- Outliers: claims with three or more referrals (those above 2 std. dev above the mean)

* These IMEs include both medical only and time loss claims. 554,261 claims were received during this time period.

State Fund IMEs per Claim, CY2015 – 2019

- These totals are based on the IME referrals found in 120,240 completed IMEs during this period
- Outliers: claims with three or more referrals (those above 2 std. dev above the mean)



State Fund Retro vs. Non-Retro IME Activity

	2017	2018
Retro Claims	40,050	39,858
Non-Retro Claims	53,587	55,615
Retro IMEs	7,174	5,438
Non-Retro IMEs	9,664	7,112

Retrospective Rating (Retro) is a safety incentive program offered by L&I. In Retro, you can earn a partial refund of your workers' compensation premiums if you reduce workplace injuries and lower associated claim costs.

These totals are based on the date claims were allowed and IMEs completed through December 31st, 2019.

State Fund Purpose totals FY 2016 – FY 2019

	Purpose Description	Totals	Pct.
Claim managers may select multiple purposes for each IME referral. These totals are based on 98,682 scheduled referrals.	Closing/rating	67,827	40%
	Case Progress	45,926	27%
	Newly Contended Conditions	21,371	12%
	Diagnosis/Causation	15,488	9%
	Time Loss	7,979	5%
	Claim Validity	6,478	4%
	Reopening	6,512	4%
	Total	171,581	

Medical Provider Network & available IME Specialties

The Medical Provider Network includes medical doctors who may care for injured workers beyond the initial office or emergency room visit and provide ratings.

IME examiners are not required to be included in the MPN. However, to become an IME examiners, doctors must attain special certification.

Specialty	MPN	IME Examiners	Specialty	MPN	IME Examiners
Allergy	74	1	Ophthalmology	487	3
Cardiology	634	1	Oral/Maxillofacial Surgery	79	0
Chiropractic	2088	49	Orthopedic Surgery	1146	178
Dentistry	1534	7	Otolaryngology	367	12
Dermatology	174	2	Physical Medicine And Rehab.	403	17
Endocrinology	100	1	Plastic Surgery	125	8
General Surgery	818	5	Podiatry	453	14
Hand Surgery	28	31	Psychiatry	835	46
Internal Medicine	4370	19	Pulmonary	241	0
Neurological Surgery	235	9	Rheumatology	89	5
Neurology	737	38	Urology	297	3
Occupational Medicine	175	17	Vascular Surgery	137	2
				15626	468

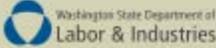
MPN totals are as of July 1, 2020, IME Specialties are based on 431 approved examiners as of August 21, 2020. This is a partial list of all specialties. The full list is available upon request.

Out of Scope/Data Unavailable

Unfortunately, we are unable to provide specific figures in response to some requests.

Some questions were unanswered because reports were unavailable or the request was out of scope of the work group.

Appendix B: Work Group Meeting 1



ESSB 6440 IME Work Group Meeting
August 13, 2020

Meeting 1: Introductions & use of IMEs in Workers' Compensation

Virtual Meeting Best Practices

Please remain muted when not speaking to reduce background noise.

- Work Group Members
 - Take time now to set your full name in Zoom
 - Limit video to introductions
 - Speak up during discussion! We will also be monitoring hand raises
 - Please avoid/limit use of the chat box
- Guest Attendees
 - Guests may listen in on the meeting. **Please remain muted at all times.**
 - If you would like to share comments on the discussion or recommendations, please contact your Work Group member representative.

Agenda

Agenda Item	Time	Discussion Lead
Welcome & safety topic	9:00 AM	Molly Christie
Introductions & background	9:05 AM	Molly Christie
IME primer	9:30 AM	Nancy Adams, LaNae Lien, Kelli Fussell
Questions	10:20 AM	Molly Christie
Break	10:35 AM	
Discussion	10:45 AM	Molly Christie
Recommendations	11:30 AM	Molly Christie
Wrap-up	11:55 AM	Molly Christie



Safety Tip: Know the Signs

Heat Exhaustion	Heat Stroke
<ul style="list-style-type: none"> Excessive Sweating Cold, Pale, Clammy Skin Fast, Weak Pulse Nausea or Vomiting Dizziness or Fainting Muscle Cramps 	<ul style="list-style-type: none"> Headache Possibly Unconscious High Internal Temperature Above 103°F Rapid, Strong Pulse Nausea or Vomiting No Sweating Hot, Dry Skin
<p>What To Do</p> <ol style="list-style-type: none"> 1. Move to a cooler location. 2. Lie down and loosen your clothing. 3. Supply cool, wet cloths to as much of your body as possible. 4. Sip water. 5. If you have vomited and it continues, seek medical attention immediately. 	<p>What To Do</p> <ol style="list-style-type: none"> 1. CALL 911 IMMEDIATELY. 2. Move the person to a cooler environment. 3. Reduce the person's body temperature with cool cloths or even a bath. 4. Do NOT give fluids.

Source:
cdc.gov/detremeh
eaf/warning.html

Introductions

- Molly Christie - Facilitator
- As I call your name, please:
 - Introduce yourself
 - Identify who you represent
 - Identify what you do

IME WORK GROUP MEMBERS	
Member	Representation
Larry Hoff	Representative (R)
My-Linh Thai	Representative (D)
Derek Stanford	Senator (D)
TBD	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

Purpose

- ESSB 6440:
 - Amends requirements for Independent Medical Examinations (IMEs) used for workers' compensation (state fund and self-insured)
 - **Creates an IME Work Group to develop strategies to improve the IME process**
 - L&I must report its findings & recommendations to the Legislature by 12/11/20

Scope

In

Consider or develop strategies for:

- Reducing the number of IMEs per claim
- Improving access to medical records
- Scheduling all IMEs through L&I
- Random selection of examiners
- Workers' rights
- Improving efficiency of the IME process
- Barriers to increasing in-state supply of IME physicians



Out

Implementation of recommendations in legislative report

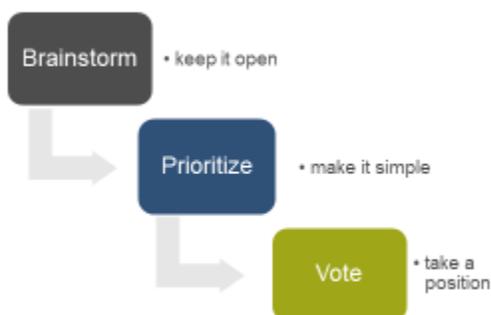
Statutory changes to IMEs in ESSB 6440:

- Reasons for obtaining an IME
- Reasonable convenience
- Coverage for workers' travel expenses and time loss for exam
- No-show fees
- Sharing IME report

Reaching consensus: goals & approach

- Shared values and goals

- Improve outcomes for injured **workers**
- Control **employer** costs
- Promote access to high quality **medical examiners**
- Reduce unnecessary delays and disability
- **Others?**



Schedule

MTG	Topic(s)	Date/Time
1	Reducing the number of IMEs per claim Develop strategies, with consideration for claim duration and medical complexity	Aug 13, 2020 9am-12pm
2	Scheduling & selection of examiners • Consider whether all IMEs should be scheduled through L&I • Consider how examiners should be randomly selected or specified	Aug 25, 2020 9am-12pm
3	Workers' rights Consider workers' rights in the IME process including attendance, specialist consultations, recording exams, and distance/location of exams	Sept 10, 2020 1pm-4pm
4	Efficiency, access to medical records, and availability of examiners Develop strategies for improving efficiency of the IME process, access to medical records, and identify barriers to the in-state supply of examiners	October 6, 2020 9am-12pm

Use of IMEs in Workers' Compensation

A brief primer

- Nancy Adams,
State fund claims operations manager
- Kelli Fussell,
Provider quality and compliance manager
- LaNae Lien,
Self-insurance claims operations manager



What is an Independent Medical Examination (IME)?

- Unbiased, accurate, medically sound, and comprehensive report on a worker's medical status related to a worker's compensation claim
- Requested by L&I or self-insurer
- Medical examiners provide clinical observations and conclusions based on solid fact (medical documentation/imaging) or evidence (observed via examination)
- May only be conducted by L&I-approved examiners as outlined in WAC 296-23-317

Typical reasons an IME is requested:

Current Process	Future Process – ESSB 6440
<ul style="list-style-type: none"> ▪ Closing / Rating (PPD*) ▪ Reopening ▪ Claim validity ▪ CR-35 (appeal) ▪ Case progress ▪ Newly contended conditions ▪ Time-loss ▪ Diagnosis/causation 	<ul style="list-style-type: none"> ▪ Rating / (PPD) ▪ Reopening ▪ Allowance ▪ Appeal ▪ Case progress ▪ New medical issue ▪ Work restrictions

*PPD - Permanent partial disability

When should an IME *not* be requested?

- If we have not first asked the questions of the attending provider (AP)
- Simply because an adjudicator doesn't know what to do on the claim
- When the worker is already scheduled for a consultation
- To "stack" medical opinions in favor of a certain outcome

Who can perform IMEs?

- Examiners must qualify and be approved by L&I through an application process
 - See list of approved examiners online under *"Find a Medical Examiner"*
- Specific credentialing criteria is outlined in WAC 296-23-317, and includes requirements such as:
 - Board certification in their specialty (or w/in 5 years of residency completion)
 - Successful completion of a *Medical Examiners' Handbook (MEH)* test.
 - Document a minimum number of non-IME patient services, or provide continuing medical education (CME)
 - Re-apply (and be approved) every three years
- Examiners can be removed for non-compliance with WACs, MEH, rules & policies, as well as for quality concerns

What does the IME process look like?

State Fund Process	Self-Insurance Process
<ol style="list-style-type: none"> 1. IME request initiated in scheduling system 2. Electronic offer goes out to panels (i.e., firms) & accepted or declined. When accepted, panel receives electronic access to the claim file 3. Panel schedules IME 4. Scheduling unit (L&I) informs claimant by letter & coordinates travel if necessary 5. Panel records exam attendance through scheduling system 6. Report electronically uploaded to imaging system 7. Document available in claim file for adjudicator review/action 	<ul style="list-style-type: none"> ▪ Scheduling approaches vary by insurer <ul style="list-style-type: none"> • Some contact the panel(s) directly • Some schedule online • Other systems transmit requests directly to panels

How many IMEs per claim?

State fund data only

- **Medical-only claims represent 84% of incoming claims**
 - In 2019, 6.9% (6,675) of all 96,600 medical-only claims had IMEs requested
- **Compensable claims represent 16% of incoming claims**
 - In 2019, 38.1% (5,812) of all 15,236 compensable claims had IMEs requested



Do we use IMEs too frequently?

- In 2019, **88%** of all incoming claims did *not* have an IME
- While the state fund data shows an average of about one IME per claim, in rare circumstances there are exceptions requiring multiple exams

Are there alternatives to IMEs?

	Advantages	Disadvantages	Challenges
Attending Providers (APs)	Knows patient history	Many APs prefer not to perform ratings/closing exams on their patients	L&I wants to encourage APs refer out to a consultation/rating
Consult	Usually referred by AP	Delays if not referred timely or scheduled out	<ul style="list-style-type: none"> • Getting medical records to consulting provider • AP may not know who is available in their community
Other resources	OMD*/ONC** Staffing with Coach/Supervisor/Peer/VSS***	Recommendations made solely on medical file/claim file and not physical exams	Not legally supported in most cases because they have not physically examined the worker

*OMD – Office of Medical Director **ONC – Occupational Nurse Consultant ***VSS – Vocational Specialist

Why might some claims have multiple IMEs?

- Medical complexity
- Multiple claims
- Protest/appeal
- Conflicting medical opinions
- Could require one at the beginning and the end of a claim
- Re-opening

How do we ensure adjudicators are requesting IMEs appropriately?

- Training for state fund staff
- Review of trends
- Individual training, as issues are identified
- Training for self-insurance

Bridging the self-insurance gap

- Historically only state fund data has been available
- 25% of Washington's workers are employed by self-insured employers (SIEs)
- Medical bill Electronic Data Interchange (EDI) developed in 2016
 - Through EDI, SIEs report data; what they pay on workers' compensation claims
 - Data includes procedures, prescriptions, IMEs, diagnoses, etc.
- Voluntary reporting began in 2017
- Mandatory reporting began in 2020

What other states are doing

- **Oregon** – State Accident Insurance Fund (SAIF)
 - Limit of three IMEs during each open period of a claim
- **California**
 - Insurer sends a list of three examiners for the worker to select from
- **British Columbia** - Medical and Return to Work Planning (MARP)
 - Limits frequency of a MARP service (i.e., IME) to no more than every six months

Questions for us?



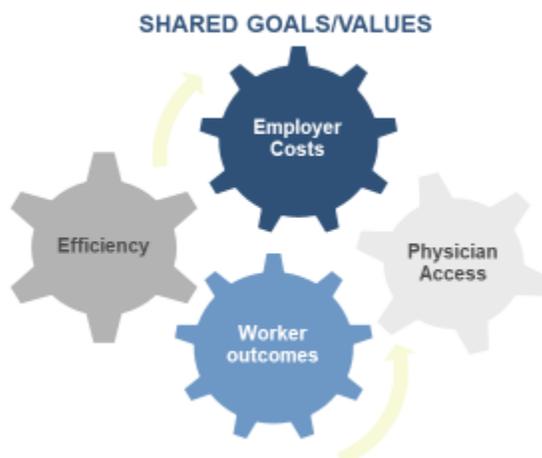
Questions for discussion

- How do you define "overuse" of IMEs? Do you think overuse is an issue in Washington?
- Should alternatives to IMEs be encouraged or more broadly adopted? How?
- What do you think of the Oregon and BC approaches to IMEs?
 - Advantages/Disadvantages?
 - Would these strategies impact overuse?
 - Would they work in our system?
- What have you seen in other state workers' compensation systems?

Keep in mind...

TODAY'S TOPIC

Develop strategies for reducing the number of medical examinations per claim while considering claim duration and medical complexity



Recommendations

Strategy	Priority (1-5)	Member	Position (Y/N)

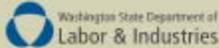
Up next

- Parking Lot / Follow-up



- Meeting #2 **August 25, 2020** – See you then!

Appendix C: Work Group Meeting 2



ESSB 6440 IME Work Group
August 25, 2020

*Meeting 2: Consolidating IME Scheduling and
Random Selection of Examiners*

Virtual Meeting Best Practices

Please remain muted when not speaking to reduce background noise.

- Work Group Members
 - Take time now to set your full name in Zoom
 - Limit video
 - Speak up during discussion! We will also be monitoring hand raises
 - Please avoid/limit use of the chat box
- Guest Attendees
 - Guests may listen in on the meeting. **Please remain muted at all times.**
 - If you would like to share comments on the discussion or recommendations, please contact your Work Group member representative.

Agenda

Agenda Item	Time	Discussion Lead
Welcome & safety tip	9:00 AM	Molly Christie
Follow-up meeting 1	9:05 AM	Chelsea Pomeroy Molly Christie
Scheduling & examiner selection primer	9:20 AM	Nancy Adams, LaNae Lien, Kelli Fussell
Questions	10:00 AM	Molly Christie
Break	10:20 AM	
Discussion	10:30 AM	Molly Christie
Recommendations	11:35 AM	Molly Christie
Wrap up	11:55 AM	Molly Christie



Safety Tip



SHARE INFORMATION FOR MEDICAL EDUCATION AND RESEARCH. ALL RIGHTS RESERVED.

- Keep moving
- Chin up
- Rest your eyes
- Perfect your posture
- Keep arms close
- Reposition your chair

Follow-up from Meeting 1: Data requests

- We are processing **20 requests** received via email
 - We will provide an update after the meeting on timeline/status for these requests
- After each meeting, an email will be sent to all IME Work Group members asking them to email their prioritized data requests with insight on how the requested data will help the work group complete its tasks
- ***Please be aware of time limitations for the Work Group and legislative report***

Follow-up from Meeting 1: Strategies

- Proposed strategies to **reduce the number of IMEs per claim, considering claim duration & medical complexity**:
 - Increase use of **consultations**
 - Increase **fee schedule** for examiners
 - Improve **medical documentation** by attending providers
 - Increase the **15-day notice period** for IMEs ordered by self-insured employers
 - Establish **standards** for when more than one IME is allowed by self-insured employers

Schedule

MTG	Topic(s)	Date/Time
1	Reducing the number of IMEs per claim Develop strategies, with consideration for claim duration and medical complexity	Aug 13, 2020 9am-12pm
2	Scheduling & selection of examiners <ul style="list-style-type: none">• Consider whether all IMEs should be scheduled through L&I• Consider how examiners should be randomly selected or specified	Aug 26, 2020 9am-12pm
3	Workers' rights Consider workers' rights in the IME process including attendance, specialist consultations, recording exams, and distance/location of exams	Sept 16, 2020 1pm-4pm
4	Efficiency, access to medical records, and availability of examiners Develop strategies for improving efficiency of the IME process, access to medical records, and identify barriers to the in-state supply of examiners	October 6, 2020 9am-12pm

IME scheduling & examiner selection

A brief primer

- Nancy Adams
- LaNae Lien
- Kelli Fussell



A look back: How is an IME requested?

State Fund Process	Self-Insurance Process
<ol style="list-style-type: none">1. IME Request initiated in scheduling system2. Electronic offer goes out to panels (i.e., firms) & accepted or declined. When accepted, panel receives electronic access to the claim file3. Panel schedules IME4. Scheduling unit (L&I) informs claimant by letter & coordinates travel if necessary5. Panel records attendance of exam through scheduling system6. Report is electronically uploaded to imaging system7. Document available in claim file for adjudicator review/action	<ul style="list-style-type: none">▪ Scheduling and approaches vary by insurer<ul style="list-style-type: none">• Some contact the panel(s) directly• Some schedule online• Other systems transmit requests directly to panels

A closer look: Examiner selection

- How are examiners selected?
 - IME firms are responsible for selecting examiners. This is typically based on geographic location, specialty, and availability.
 - State fund will occasionally select a specific examiner, for a few reasons:
 - If prior exam was performed by a provider, we may schedule again with that specific provider (ex. Re-opening)
 - As part of a legal agreement
- What do we know about selection by self-insured employers (SIEs)?
 - They have the option to select or specify a particular firm or examiner

Concerns

- Examiner selection creates bias
- Self-insured employers may pay more
 - [WAC 296-15-330](#) (1)
 - [RCW 51.04.030](#) (2)
- Overuse of IMEs among self-insured employers
 - [RCW 51.32.110](#) (1)
 - [RCW 51.36.070](#)

Reminder: more data coming

- Medical bill Electronic Data Interchange (EDI) developed in 2016
 - Specific data being collected on IMEs will include volume of exams, IME company or exam provider, billing, etc.
- Voluntary reporting began in 2017
- Mandatory reporting began in 2020

If L&I scheduled all IMEs: The work

- Technology
 - Scheduling system
 - Billing
 - Routing of medical records
- Personnel
 - Program coordinators
 - Workers' compensation adjudicator 3s
 - Office assistant

If L&I scheduled all IMEs, contd.

- Rulemaking
 - Defining the role of the department
 - Elements of an IME request
 - Delivery of the file
- Other considerations—medical-only claims
 - Represent approximately 85% of total claims
 - Notification not required until after claim closure

L&I's oversight role for self-insured employers

At a self-insurance program level:

- Audit
- Penalties
- Disputes
- Department orders

Other options?

- Possible interim solutions while EDI data matures
 - Rulemaking to:
 - Give the department the authority to place an IME on hold
 - Limit hand-selection of examiners

How does Washington compare to other states?

- **Scheduling:** Several states use firms like we do, some schedule directly with examiner or a combination of both
- **Selections:** Only California lets the worker choose from a list of 3 names

Questions for us?



Questions for discussion

- What problem(s) does consolidated scheduling for all IMEs by L&I solve?
- Are there interim solutions to perceived problems with IME scheduling and selection of providers while data on self-insured employers is collected?
- Are there elements of the state fund scheduling approach, such as selection of examiners, that would work for self-insured employers? What might not work?

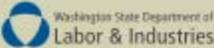
Up next

- Parking lot/follow-up
- Meeting #3, **September 16, 2020**



See you then!

Appendix D: Work Group Meeting 3



ESSB 6440 IME Work Group Meeting
September 16, 2020

Meeting 3: Workers' Rights

Virtual Meeting Best Practices

Please remain muted when not speaking to reduce background noise.

- Work Group Members
 - Take time now to set your full name in Zoom
 - Limit use of video
 - Speak up during discussion! We will also be monitoring hand raises
 - Please avoid/limit use of the chat box
- Guest Attendees
 - Guests may listen in on the meeting, but **please remain muted**.
 - If you have comments on the discussion or recommendations, please contact your Work Group member representative.

Agenda

Agenda Item	Time	Discussion Lead
Welcome & safety topic	1:00 PM	Brenda Heilman
Follow-up meeting 2 & Schedule	1:05 PM	Brenda Heilman
Primer: Workers' rights	1:25 PM	Kelli Fussell, Stuart Bammert, Nancy Adams
Questions	2:05 PM	Brenda Heilman
Break	2:25 PM	
Discussion	2:35 PM	Brenda Heilman
Recommendations	3:05 PM	Brenda Heilman
Wrap up	3:55 PM	Brenda Heilman



Today's safety tip

How to Protect Yourself Online

- Change your passwords frequently.
- Only shop online at secure sites starting with <https://> in the address bar.
- Set up a two-step verification process for signing on to online banking.
- Never click on links, open attachments, or respond to emails from suspicious or unknown senders.

Follow-up from Meeting #2

- Considerations on whether L&I should schedule all IMEs**
 - Funding
 - Communication
 - Efficiency
 - Data
 - Injured worker concerns
- Circumstances for random selection of examiners**
 - Rulemaking to limit hand-selection of examiners
- Other strategies**
 - Collect medical testimony billing data
 - Research comparison states
 - Reconvene when EDI data more mature

Schedule

MTG	Topic(s)	Date/Time
1	Reducing the number of IMEs per claim Develop strategies, with consideration for claim duration and medical complexity	Aug 13, 2020 9am-12pm
2	Scheduling & selection of examiners <ul style="list-style-type: none">• Consider whether all IMEs should be scheduled through L&I• Consider how examiners should be randomly selected or specified	Aug 25, 2020 9am-12pm
3	Workers' rights Consider workers' rights in the IME process including attendance, specialist consultations, recording exams, and distance/location of exams	Sept 16, 2020 1pm-4pm
4	Efficiency, access to medical records, and availability of examiners Develop strategies for improving efficiency of the IME process and access to medical records, and identify barriers to the in-state supply of examiners	October 6, 2020 9am-12pm

Workers' Rights

A brief primer

- Kelli Fussell
- Stuart Bammert
- Nancy Adams



Preview

- Assumptions regarding workers' rights
- IME process
- Complaints
- Recording exams
- Attendance
- Consultation
- Q&A

Assumptions

- **Recording**
 - Workers want the ability to verify their experience at the exam
- **Attendance**
 - Workers may feel that IMEs are not truly independent
 - Workers want to bring any person of their choice to the exam
- **Distance to exam**
 - Workers want exams scheduled close to home
- **Consultation**
 - Workers feel more comfortable attending a consultation

Exam Process – State Fund

1. Claim manager creates the IME **referral**
2. A **pre-call** is made to inform the worker of the IME process
3. Once scheduled, the worker receives an **appointment letter** along with the **IME pamphlet**
4. Workers may request to reschedule
5. An hour is allotted for each appointment

IME Pre-Calls

The purpose of the pre-call is to:

- Inform the worker that an IME is being scheduled and why
- Discuss the importance of attending and cooperating with the examination
- Verify the worker's residential address
- Confirm availability or discuss scheduling limitations
- Advise of travel reimbursement and wage replacement

Year	IMEs completed	Total IME Pre-Calls (CP) Answered/Unanswered	% needed letter (no contact)
2018	21,939	23,306	44%
2019	19,445	20,312	46%

Workers' Rights – Filing a Complaint

- [WAC 296-23-372](#) – Workers can send written complaints to the self-insurer or department
- Complaint process
- Types of complaints
- Complaint data

Workers' Rights – Filing a Complaint (cont.)

- 21,939 total State Fund IMEs in **2018**
- 419 unique IME complaints were logged*
- **1.91% total overall complaint rate**

- 19,445 total State Fund IMEs in **2019**
- 354 unique IME complaints logged*
- **1.82% total overall complaint rate**

* Complaints logged include all IME complaints received at the Department, a small number of which involve SI claims.

Recording of Exams

- WAC 296-23-367 - The use of recording equipment of any kind by the worker or accompanying person is not allowed

- WAC 296-23-362 – Worker can bring an adult friend/family member to the IME

Why No Audio / Video Recording?

- Examiner objection
- Worker “performing” for the camera
- IME is an independent *medical* evaluation and not meant to be used for litigation
- IME is an *adjudicative* tool

Other States

- New York – allows recording
- Wyoming & Oregon – allow recording, if the examiner approves
- Ohio – does not allow recording
- North Dakota – has no rule, but when requested by workers, it was not allowed

Attendance

- RCW 51.32.110
 - Workers are required to attend unless they provide good cause for not attending.
- WAC 296-14-410
 - L&I must mail notice to the worker at least 14 days before the appointment
- Initial reschedule requests are approved if we are able to accommodate the request
- In 2018, only 26% of the exams were rescheduled

Distance to Exams – Washington Residents

- 19,671 attended appointments
- 60% scheduled within 10 miles (as the crow flies)



Washington State Department of Labor & Industries

18

Specialty Access

FY2019 State Fund specialty request totals			
Specialty	Count	Specialty	Count
Orthopedic Surgery	17,507	Plastic Surgery	59
Neurology	5,661	Pulmonary Medicine	57
Psychiatry	2,548	Dermatology	47
Chiropractic	1,807	Cardiology	43
Occupational Medicine	1,420	Spinal Surgery	43
Hand Surgery / Surgery Of The Hand	1,158	Neuro-Ophthalmology	41
Physical Medicine And Rehabilitation	503	Gastroenterology	29
Podiatry	391	Endocrinology	27
Otolaryngology	382	Knee Surgery	10
General Surgery	241	Obstetrics And Gynecology	4
Ophthalmology	207	Oncology	4
Rheumatology	147	Addiction Medicine	4
Internal Medicine	136	Hematology	1
Neurological Surgery	135	Medical Oncology	1
Urology	130	Electrodiagnostic Medicine	1
Dentistry	99	Neuromuscular Medicine	1
Vascular Surgery	90	Oral And Maxillofacial Surgery	1
Foot and Ankle Surgery	73		33,008

Washington State Department of Labor & Industries

19

Out-of-State Claims

- 826 referrals scheduled in FY2019
- 18 referrals for workers out of country
- L&I typically flies workers back Washington State because of the availability of examiners and accommodations

Washington State Department of Labor & Industries

20

Consultations

Year	AP Rating /Consult requested	Total IMEs completed
2018	17,019	21,939

- Data shown is based on when the Adjudicator sent a request for the AP to rate, or to request a consult via letter. L&I does not have a mechanism to track when the referral is initiated by the provider.
- 2019 data is not shown as we started using a new letter that is used for multiple reasons, not just AP rating/consult requests.

Questions for us?



Questions For Discussion

- What are the opportunities and challenges for:
 - Changing elements of workers' rights in the IME process?
 - Obtaining consultations in lieu of an IME?

Up Next

- Meeting #4 **October 6, 2020** - See you then!
- **Topics:**
 - Improving IME efficiency
 - Improving access to medical records
 - Identifying barriers to the in-state supply of examiners



Appendix

Consultation WACs

- WAC 296-20-035 - Treatment in cases that remain open beyond sixty days.
- Conditions requiring treatment beyond sixty days are indicative of a major industrial condition or complication by other conditions. Except in cases of severe and extensive injuries, i.e., quadriplegia, paraplegia, multiple fractures, etc., when the worker requires treatment beyond sixty days following injury, a complete examination is necessary to determine and/or establish need for continued treatment and/or payment of time loss compensation. This may be accomplished either by the attending doctor or a consultation exam. In either case, a detailed exam report must be provided to the department or self-insurer. Refer to chapter 296-20 WAC (including the definition section) and department policy for the type of information that must be included in these reports.

Consultation WACs

- WAC 296-20-045 - Consultation requirements.
- In the event of complication, controversy, or dispute over the treatment aspects of any claim, the department or self-insurer will not authorize treatment until the attending doctor has arranged a consultation with a qualified doctor with experience and expertise on the subject, and the department or self-insurer has received notification of the findings and recommendations of the consultant.

Consultation WACs

WAC 296-20-045 continued

Consultations are also required when:

- (1) All nonemergent major surgery on a patient with serious medical, emotional or social problems which are likely to complicate recovery.
- (2) All procedures of a controversial nature or type not in common use for the specific condition.
- (3) Surgical cases where there are complications or unfavorable circumstances such as age, preexisting conditions or interference with occupational requirements, etc.
- (4) If the attending doctor, the department, self-insurer, or authorized department representative requests a consultation.
- (5) Conservative care, (e.g., nonsurgical cases) extending past one hundred twenty days following initial visit. Such consultation may be with a chiropractic or a medical or osteopathic consultant.

Consultation WACs

- WAC 296-20-051 - Consultations.
- In cases presenting diagnostic or therapeutic problems to the attending doctor, consultation with a specialist will be allowed without prior authorization. The consultant must submit his findings and recommendations immediately to the attending doctor and the department or self-insurer. Refer to chapter 296-20 WAC and department policy for reporting requirements.
- Whenever possible, the referring doctor should make his x-rays and records available to the consultant to avoid unnecessary duplication. The department's consultation referral form may be used to convey information to the consultant. Consultants may proceed with indicated and reasonable x-rays or laboratory work and reasonable diagnostic studies as permitted within their scope of practice.
- Consultations will be held with a specialist within a reasonable geographic area. Whenever possible, consultation should be made with a doctor outside the referring doctor's office or partnership.

Consultation WACs

- WAC 296-20-051 continued
- The attending doctor will not arrange a consultation if he has received notification that a special or commission examination is being arranged by the department or self-insurer. If he has had recent consultation and is notified that the department or self-insurer is arranging an examination, he must immediately advise the department or self-insurer of the consultation.
- The consultation fee will be paid only if a consultation report is complete and contains all pathological findings as well as all pertinent negative or normal findings. The report must be received in the department within fifteen days from the date of the consultation. No fee is paid to the consultant if the worker fails the appointment.
- The consultant may not order, prescribe, or provide treatment without the approval of the attending doctor and the injured worker. No transfer will be made to the consultant without the prior approval of the attending doctor and the injured worker.
- Consultation services will not be reimbursed for workers who are currently, or have been under the physician's care within the last three years. Such services should be billed as follow up visits, as listed in the fee schedules.

Consultation WACs

- WAC 296-23-195 - Chiropractic consultations.
- See [WAC 296-20-035](#), [296-20-045](#), and [296-20-051](#) for rules pertaining to consultation.
- Chiropractic consultation requires prior notification to the department or self-insurer. Consultants must be from an approved list of chiropractic consultants.
- The codes and reimbursement levels for chiropractic consultations services are listed in the fee schedules.

Appendix E: Work Group Meeting 4



Washington State Department of
Labor & Industries

ESSB 6440 IME Work Group Meeting
October 6, 2020

Meeting 4: Strategies for: Improving IME efficiency, improving access to medical records, and ID barriers to the supply of in-state examiners in the workers' comp system.

Virtual Meeting Best Practices

Please remain muted when not speaking to reduce background noise.

- **Work Group members**
 - Take time now to set your full name in Zoom
 - Limit video to introductions
 - Speak up during discussion! We will also be monitoring the chat box and hand raises

- **Guest attendees**
 - Guests may listen in on the meeting. **Please remain muted at all times**
 - If you would like to share comments on the discussion or recommendations, please contact your Work Group member representative

Agenda

Agenda Item	Time	Discussion Lead
Welcome & safety topic	9:00 AM	Brenda Heilman
Presentation	9:10 AM	Kelli, Stuart, and Nancy
Questions	9:50 AM	Brenda Heilman
Strategies for today	10:00 AM	Brenda Heilman
Break	10:30 AM	
Data	10:45 AM	Brenda Heilman
Wrap-up activity	11:00 AM	Brenda Heilman
Next steps	11:45 AM	Brenda Heilman



Safety Tip



Hydroplaning

- Tires begin to leave the road surface & ride on a film of water.
- Can happen at 30 mph.
- At 55 mph, the tires may be totally up on the water.
- A gust of wind, a change of road level, or a slight turn can create a skid or slide.
- To avoid hydroplaning, you must slow down on wet roads.



Defensive Driving

Follow-up from Meeting 3

- Workers rights
 - Complaints
 - Recordings
 - Attendance
- Overview of State Fund IME process
- Consultations

Schedule

MTG	Topic(s)	Date/Time
1	Strategies to reduce medical examinations, per claim <ul style="list-style-type: none">• Consider claim duration and medical complexity	Aug 13, 2020 9am-12pm
2	Should L&I schedule all Independent Medical Exams (IMEs)? <ul style="list-style-type: none">• Consider how examiners should be randomly selected or specified	Aug 25, 2020 9am-12pm
3	Workers' rights <ul style="list-style-type: none">• Consider their rights, including attendance, specialist consult, exam audio and video recordings, and distance/location of examinations	Sept 10, 2020 1pm-4pm
4	Strategies for: <ul style="list-style-type: none">• Improving IME efficiency• Improving access to medical records• Identify barriers to increasing the supply of in-state physicians willing to do IMEs in the workers' compensation system	October 6, 2020 9am-12pm ESSB 6440

Washington State Department of Labor & Industries

6

IME Efficiency, Access to Medical Care & Barriers to Increasing the Supply of In-State Examiners

A brief primer

- Stuart Bammert
- Nancy Adams
- Kelli Fussell



Washington State Department of Labor & Industries

7

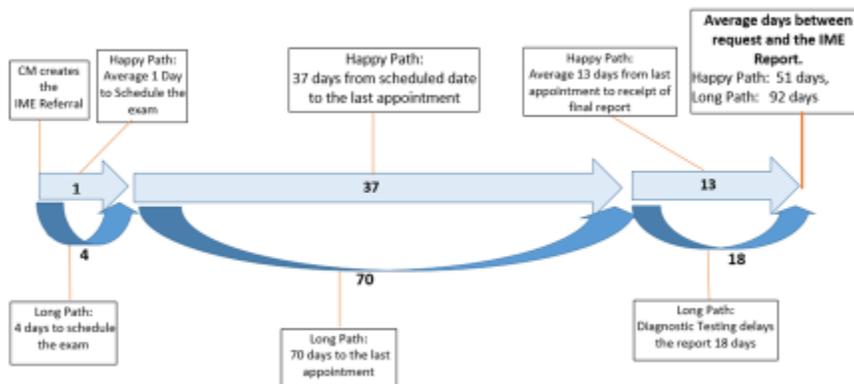
Assumptions

- Improving efficiency
 - Reduce the time between IME request and CM action.
- Improving access to the medical file
 - State Fund Medical records include duplicates.
 - Self-Insurance employers choose the records that are sent to the examiner.
- ID barriers to the supply of IME examiners
 - The number of examiners impacts convenience and efficiency

Washington State Department of Labor & Industries

8

State fund IME process life cycle



How do Examiners Access Medical Records?

State Fund Process	Self-Insurance Process
<ol style="list-style-type: none"> IME Request initiated in scheduling system Electronic offer goes out to panels & accepted or declined (when accepted, panel receives electronic access to the claim file thru the claim and account center (CAC)) Panel schedules IME Scheduling unit (LNI) informs claimant by letter & coordinates travel if necessary Panel records attendance of exam through scheduling system Report electronically uploaded to imaging system Document available to claim manager (CM) for review/action (uploaded to claim file) 	<ul style="list-style-type: none"> Scheduling and approaches vary by insurer <ul style="list-style-type: none"> Some contact the panel(s) directly Some schedule online Others systems transmit requests directly to panels.

Access to Medical Records: Assumptions

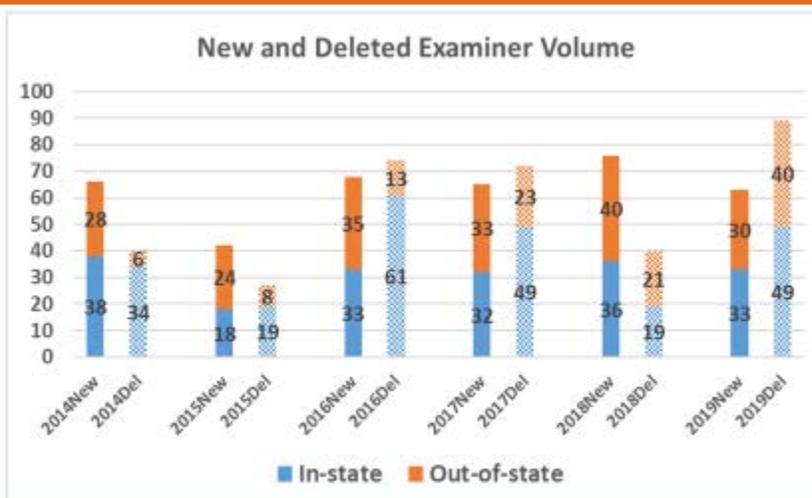
State Fund	Self-Insured
Files can be cumbersome to sort thru and include duplicate records	That the entire file isn't available to the examiners at the time of the exam.
Claim History Documents (Include Medical / Vocational records) can be very large, and include multiple claims and duplicates	All documents are not sent to the panel for the examination up front, which then requires an addendum at a later date.
Not all records are requested from provider before asking for an exam	
*RCW 51.36.070 states "The department or self-insurer shall provide the physician with "all relevant medical records from the workers claim file".	

Are There Enough In-State Examiners?

- [RCW 51.32.112](#)
- – Medical Exam – Department establishes standards and criteria for IME examiners
- [RCW 51.32.114](#)
- – Department to monitor quality and objectivity
- Examiners must qualify and be approved by L&I through an application process and meet criteria outlined in [WAC 296-23-317](#)
- Examiner Recruitment
 - IME firms do recruiting

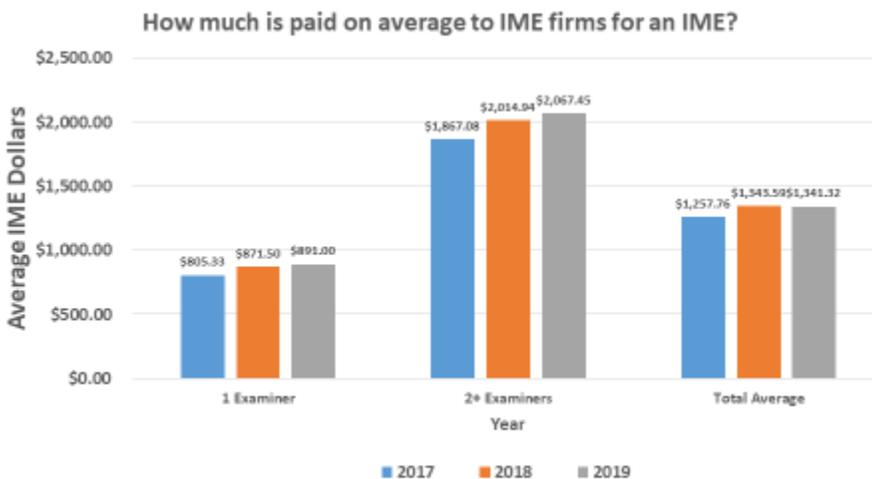
Are There Enough In-State Examiners?

- Total number of examiners
- Approved examiners = 431
 - In-state – 263 (61%)
 - Out-of-state – 140 (32%)
- General distribution of examiners by specialty
 - Low volume/rare specialties



Possible Examiner Recruiting Barriers

- Compensation
 - *Examinations*
 - IME, Standard Exam - \$618.40
 - IME, Complex Exam - \$773.00
 - IME by Psychiatrist - \$1,120.85
 - *Administrative fees*
 - Extensive file review (\$1.12/page over 400 – 10/1/20 increase)
 - Printing of medical records (\$0.07/printed page)
 - Document processing fee (\$63.88 payable 1x per IME)
 - *Imaging Review (\$ by image type)*
 - *Other miscellaneous fees*



Possible Examiner Recruiting Barriers

- Non-compete clauses
- Medical record file size
- Medical record organization

Possible Examiner Recruiting Barriers

- Testimony requirements
- Complicated and inefficient system
- Extensive requirements
- Lack of education/training

Questions for us?



Strategies for Today: Opportunities & Challenges

- Evaluating recruitment strategies
- Increase transparency of the records made available to examiners prior to the exam



IME Data

- Annual IME costs
- Consultation and IME fees
- Volume of IMEs per claim
 - Outliers and deviation
- Retro vs. non Retro
- Purpose of IMEs
- MPN and available IME specialties

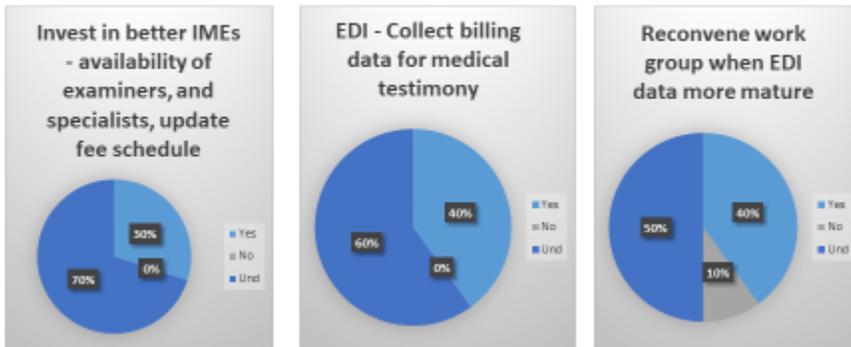
Wrap Up Activity

- (2) The work group must:
 - (a) Develop strategies for reducing the number of medical examinations per claim while considering claim duration and medical complexity;
 - (b) Develop strategies for improving access to medical records, including records and reports created during the course of or pursuant to an examination;
 - (c) Consider whether the department of labor and industries should do all the scheduling of independent medical examinations;
 - (d) Consider the circumstances for which independent medical examiners should be randomly selected or specified;
 - (e) Consider workers' rights in the independent medical examination process including attendance, specialist consultations, the audio or video recording of examinations, and the distance and location of examinations;
 - (f) Recommend changes to improve the efficiency of the independent medical examination process; and
 - (g) Identify barriers to increasing the supply of in-state physicians willing to do independent medical examinations in the workers' compensation system.
- (3) The department of labor and industries must report its findings and recommendations to the legislature by December 11, 2020.

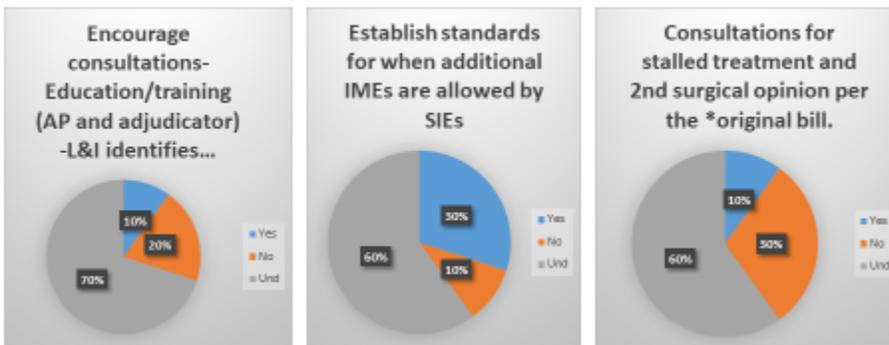
Most Supported Recommendations



Most Supported Recommendations

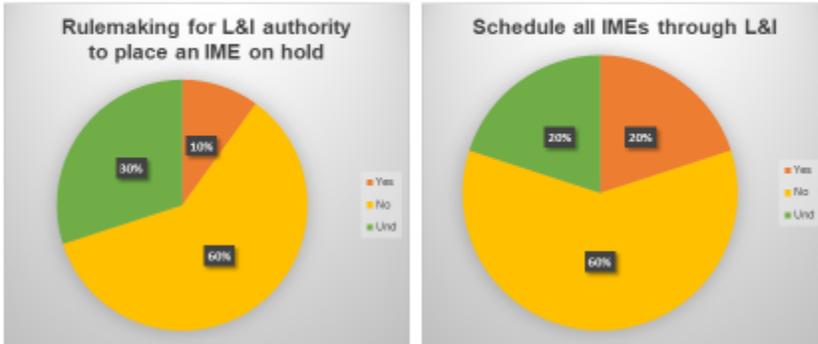


Undetermined - Consultations

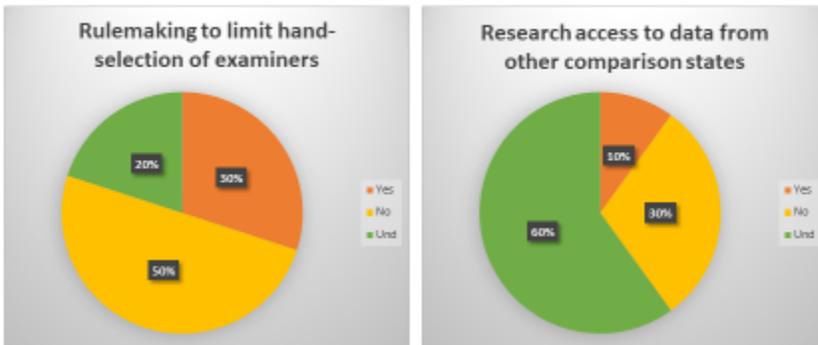


*Original bill language. Prior to ordering an examination, the department must first notify the attending physician in writing of the worker's right to a consultation with a specialist to resolve any issues regarding medical treatment. If the attending physician chooses to not facilitate the consultation or is unable to identify a consulting specialist within fourteen days of the receipt of notice, then an examination may be ordered.

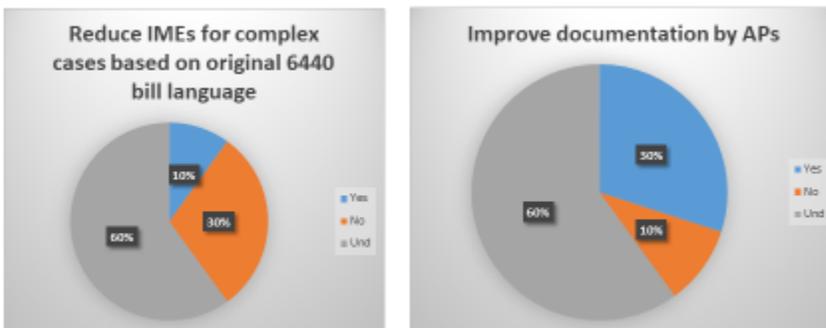
Least Supported Recommendations



Least Supported Recommendations

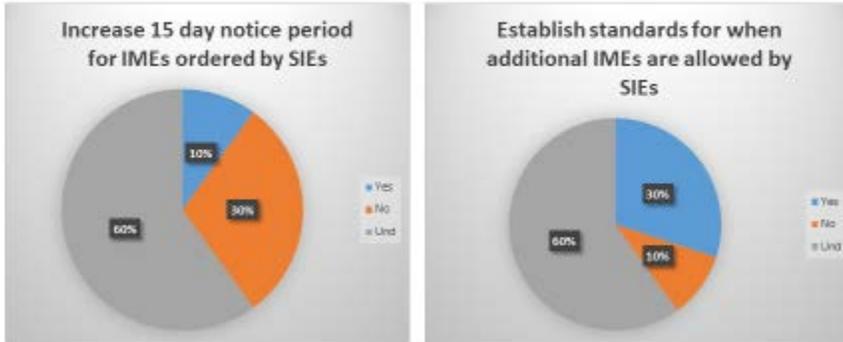


Undetermined



The total number of examinations per claim is limited as follows: (Summarized, not exact language.)
 (i) One examination prior to an order ... allowing or denying a new claim, becoming final and binding.
 (ii) One examination for a permanent disability evaluation. Another PPD examination ... each time a claim is reopened or if ... further curative treatment.
 (iii) One examination following the filing of any application to reopen a claim ... or prior to final order allowing or denying reopening of the claim.
 (iv) Additional examinations may be performed after a allowance order or order to reopen a claim and prior to any PPD but no more than one examination per each new medical issue as defined in section 1 of this act.

Undetermined – SIE specific



Up next

- Recommendations from today's meeting.
- Watch for email and send your responses by 10/14/2020.

Closing

Thank You!

Appendix F:

Washington Independent Medical Coalition Suggested Strategies



WASHINGTON INDEPENDENT MEDICAL COALITION

SUGGESTED STRATEGIES FOR 6440 MEETING #4

The Washington IME Coalition has the expertise and ideas to make the IME system work more efficiently and bring more physicians into the system. Many of the ideas below have been previously presented over the years to L&I in the form of Quality Improvement Initiatives, and have included streamlining of reports, strengthening assignment letters, and specific proposals to increase fees in areas that would address the most pressing problems. The response to most of these proposals has been to put them off or vague promises they are “working on it.” We hope this task force takes these proposals more seriously, since our firms and providers want an independent, IME process driven solely by the best medical evidence and the fairest, influence-free medical opinions for workers, and, by extension, all stakeholders

What changes could improve the efficiency of the independent medical examination process?

- **PREPARATION**
- **Better quality cover/assignment letters.** The accepted/allowed/denied/contended conditions need to be clearly stated on all letters, including those from self-insured employers. The purpose of the exam needs to be clearly stated also. The cover/assignment letters need to be more precise on listing the correct accepted/allowed/contended body parts (right vs left).
- **Medical records must be available prior to the IME.** All pertinent medical records need to be available at least two weeks before the IME to allow adequate for medical review. Often, important records such as diagnostic reports and operative notes are missing. If the

cover/assignment letter asks for job analyses to be reviewed, we need to have them at the time of the IME exam. We spend a lot of time chasing down missing records and job analyses after the IME appointment which delays finalization of the IME report.

- **Three weeks for report turnaround rather than two.** The fourteen-day turnaround time does not allow enough time for quality panel reports. Twenty-one days would allow our physicians to ensure accuracy which would reduce the need for addenda or multiple IMEs.
- **Schedule IMEs earlier in the claim to establish a baseline and avoid claims dragging on/spiraling.** An IME early in the claim helps establish the CORRECT diagnoses (a frequent problem with non MD attending providers); helps design a treatment plan that provides evidence based benchmarks for the “life” of the claim. Once a treatment plan agreed to by the AP comes to a close, an IME should be ordered for rating. ***Rating is a specialty all its own. It is not taught in medical school and requires expertise and training beyond board certification.*** An earlier second opinion, with complete records, accomplishes these other goals:
 - **Accurate diagnoses:** A screening process is needed to determine the correct diagnosis very early on in the process – and for many claims an early IME should serve as this screening. Once something is accepted that is not accurate, it complicates the case. This also ensures that “other” conditions (cancer, MS, etc.) are not the underlying cause of the worker’s symptomatology.
 - **Treatment plans with benchmarks:** Approved by the AP, this would ensure the injury recovery has a predicted course, accessible to all involved.

When considering additional IMEs: **Identify cases where an additional IME is needed after one has already been completed and create a process to review these IME requests and clearly identify the purpose for the second or additional IME.** This will have to be implemented by the claims handling side of things, which could include a manager approval process on these IME requests, for example.

If a second or additional IME is needed on the same claim for the same condition, it should be scheduled with a different doctor and different firm. This would ensure different eyes were looking at the claim.

Provide contact information for all persons who have to be contacted for telemedicine approvals. This should be done at the time the appointment is made, and there should be a consistent reporting method so all parties are on the same page.

Require unpaid time off for workers to attend IME appointments. If the worker is still working for the employer of record, they must give them paid time off to attend an IME. However, if they have a new job, they do not get time off. While employers should not have to pay for workers to have time off if they are not the employer of injury, they should be required to allow them unpaid time off for the IME.

COMMUNICATION

- **Better communication to injured workers from all parties (L&I, Self-Insured Employer, Attorneys) about what an IME is and why they should go.** Establish a system of communication with injured workers that allows the IME to be completed effectively to avoid delays and the need for additional IMEs. So much information is web-driven these days that it seems reasonable to counteract the bad actor narrative dominating the internet regarding IMEs.
- **Increase availability to actual claims managers, for both injured workers and for IME providers.** Too often we are immediately directed to voicemail causing a three-day delay. We hear the same from injured workers. This time delay can have severe impacts on the timeliness and quality of an IME. If IME providers are without answers to cover letter questions, missing records, or testing authorization, the final report is delayed and the providers are fined. This does not drive quality and clarity.
- **Department of labor and industries should appeal to major healthcare systems to either fast track or incentivize or otherwise promote imaging or other testing requests that are scheduled part of an independent medical exam.** The number of available facilities has declined for the past 5 years and scheduling imaging or testing (EMG/NCV, laboratory, etc.) as part of an IME has become a huge uncompensated staffing and cost burden. IME providers struggle simply to finalize the report. In an ideal world, claims managers should ensure that a **recent (within 6 months) update/retest of any historical imaging or testing is part of the file** when it is submitted for IME scheduling. It is far more efficient to have an AP request and schedule such testing and forward the most recent testing results to the IME provider. Test providers demand control of test scheduling. This results in delaying IME's for more than a week to get testing scheduled since the worker often has "no idea" why a testing facility has been contacting them (even though it has been explained to them in detail).
- **PROCEDURE**
- **Addendums should only be allowed if the IME was within the last 90 days.** It is becoming more and more common to see addenda being requested on reports that are 6 months older, past the time the examination was completed. Critical medical information can change significantly in that amount of time, leading to confusion and conflict with the original report conclusions. Frequently, intervening documentation is shoddy or lacking. To ask for rating, or other important information, without a new examination, is unfair to the worker.

Claims managers should request specialties, not providers, and the IME companies should select physicians by expertise. Injured workers receive a much more accurate assessment of their condition if they get the right type of provider in the first place (this would also decrease unnecessary IMEs).

Audio and video recording should not be allowed OR, only be allowed by all parties agreeing as per current CR 35 rules to ensure integrity and confidentiality of video for claim purposes only. Even under CR 35 rules, audio and video recording for legal examinations creates significant delays and is used for intimidation - the recording is never used in depositions or trial proceedings. This means the recording was not necessary to

the case. Recording invites “performances” for all involved, and destroys the necessary rapport a physician must establish with an injured worker. This is grounded in communication. A worker that is given an HONEST outline of what an IME is, what will happen, what the possible outcomes and protest processes are, is NOT going to feel intimidated, or “forced” into something that they cannot do anything about. An IME provider is not their enemy, and is not their friend. They are an OBJECTIVE, INDEPENDENT and NEW set of eyes to look at their injury and provide FAIR, OBJECTIVE and EVIDENCE BASED conclusions. There is no evidence to support the assertion that these examinations are adversarial, except those workers who have been terrified by their attorneys into believing that myth.

What would help the supply of in-state physicians willing to do independent medical examinations in the workers' compensation system?

PAYMENT

Increased fee schedule rates will attract physicians to the system. The current fee schedule allots 1 hour of time paid. If record review is done ahead of time and/or the case is complex, review and QA hours drive down the physician’s take-home on every exam. Example, a 150-page IME standard ortho, neuro, chiro exam in Oregon bills \$825-\$925. If over 150 pages, they are able to charge additional hours for larger files. Oregon pays 50% of the fee of an IME for a no show or late cancel. Similarly, **reducing cancellations and increasing payment for no-shows will drive improved, early record review for a better discussion with the worker, and higher quality reports.** Committing to rescheduling a no-show with the same provider will ensure that providers don’t feel exams are “lost” for no fault of their own and would ensure adequate compensation for doing record reviews ahead of the exam.

In-state physicians would work more if travel was a billable fee code. To facilitate laws requiring physicians to do IMEs closer to the worker’s location, the State needs doctors who are willing to travel to smaller towns and areas. There should be an hourly rate for travel for physicians PLUS their mileage. Since they are physicians, \$100/hour would be appropriate base compensation for their time while travelling.

RELATIONSHIP

- **Change how the Department handles complaints.** When the OMD renews a physician’s provider number for only one year, for complaints that could be easily resolved, it is a slap in the face. The already undercompensated physician is far less likely to continue doing IMEs. The department tends to “take the word” of injured workers, over that of the examining physicians, without questioning of any kind. The physician’s response is utterly disregarded. Most companies do exit

evaluations for every injured worker, and frequently, a chaperone has been present during the examination. This is documented to the department, in detail, when a “complaint” occurs. It is unclear how, or even if, the Department uses this information, when they are researching complaints against physicians. The overwhelming experience of injured workers in our offices is very positive. We regularly hear that we have spent more time with them than their attending providers, that we listened to them, and they were treated “really well.” They are frequently **very** happy that a medical doctor is actually seeing them in person, FREQUENTLY, for the very first time. The “complaints” are overwhelmed by the number of positive responses we get from injured workers, but the Department, and the legislature, turn a blind eye to these documented experiences. If you only seek out the negative; that is all you will find.

- **Respect the Independent Medical Examiners’ medical opinions.** Rules were long ago adopted by L&I that require IME providers be board certified in their specialty, as well as imposing education, and other requirements, to ensure only “top notch” physicians can become independent medical examiners. Independent medical examiners’ evidence-based conclusions are being questioned by attending providers who have never attended medical school, lawyers for employers who have never attended medical school, and claims staff at both L&I and self-insured employers who have never attended medical school. In addition, the utilization of occupational nurse consultants at L&I, who were brought into “triage” claims with the express purpose of reducing IMEs, are making decisions based on the file alone, and are not trained in the way that IME physicians are trained. This does nothing except insert delays in a process that worked much better when IMEs were used to perform this function.

Appendix G: Voting slides

ESSB 6440 IME Implementation Recommendations

October 15, 2020

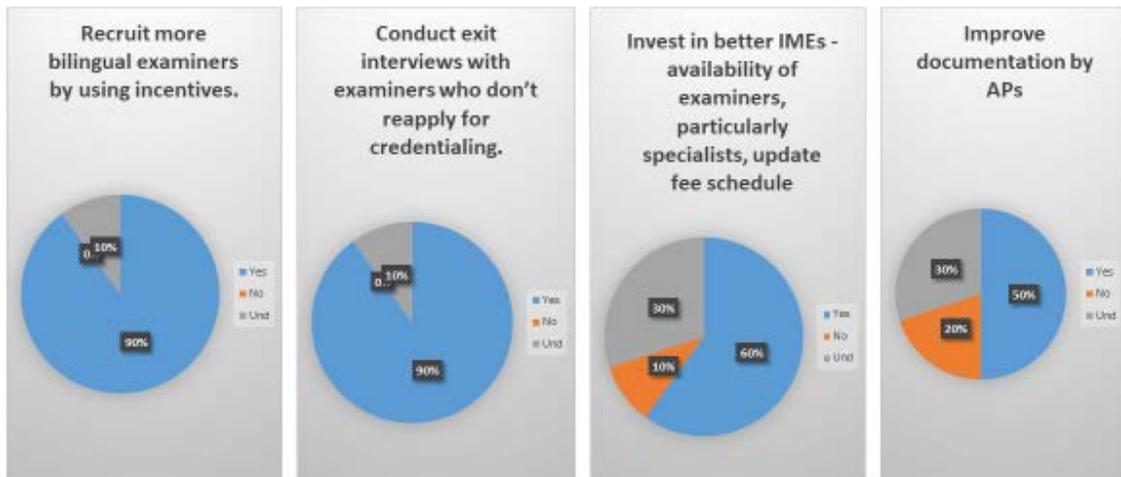
Wrap Up Activity

- (2) The work group must:
 - (a) Develop strategies for reducing the number of medical examinations per claim while considering claim duration and medical complexity;
 - (b) Develop strategies for improving access to medical records, including records and reports created during the course of or pursuant to an examination;
 - (c) Consider whether the department of labor and industries should do all the scheduling of independent medical examinations;
 - (d) Consider the circumstances for which independent medical examiners should be randomly selected or specified;
 - (e) Consider workers' rights in the independent medical examination process including attendance, specialist consultations, the audio or video recording of examinations, and the distance and location of examinations;
 - (f) Recommend changes to improve the efficiency of the independent medical examination process; and
 - (g) Identify barriers to increasing the supply of in-state physicians willing to do independent medical examinations in the workers' compensation system.
- (3) The department of labor and industries must report its findings and recommendations to the legislature by December 11, 2020.

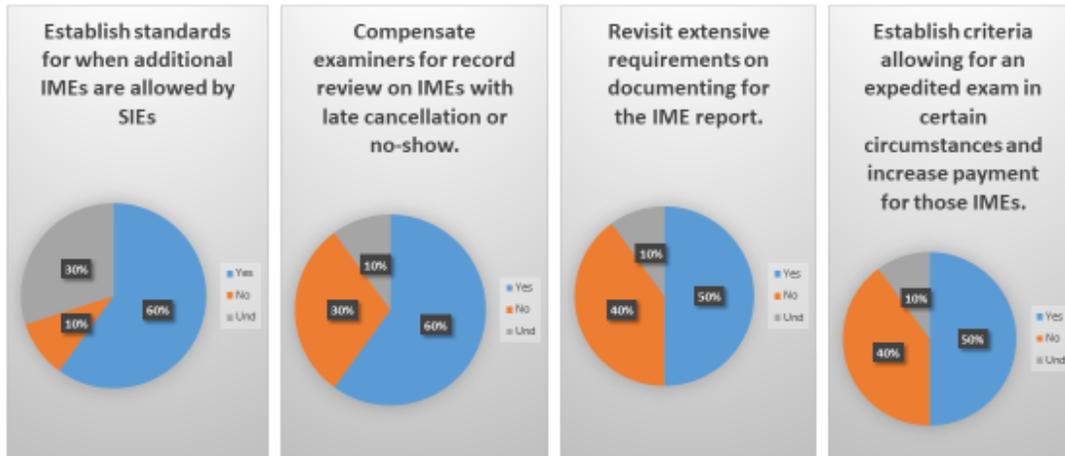
Most Supported Recommendations



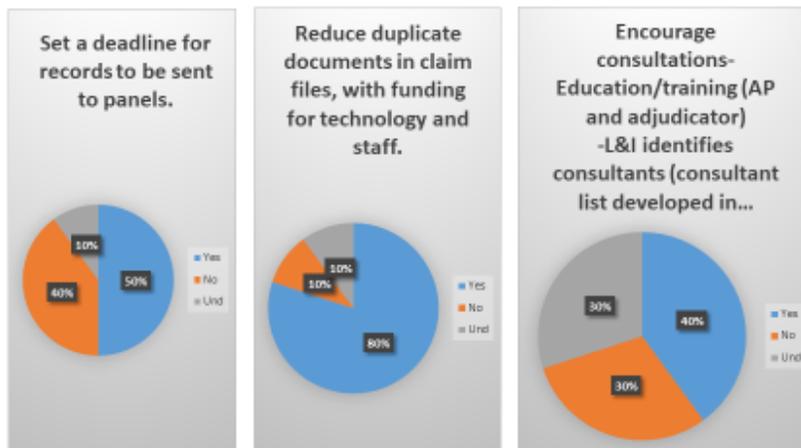
Most Supported Recommendations



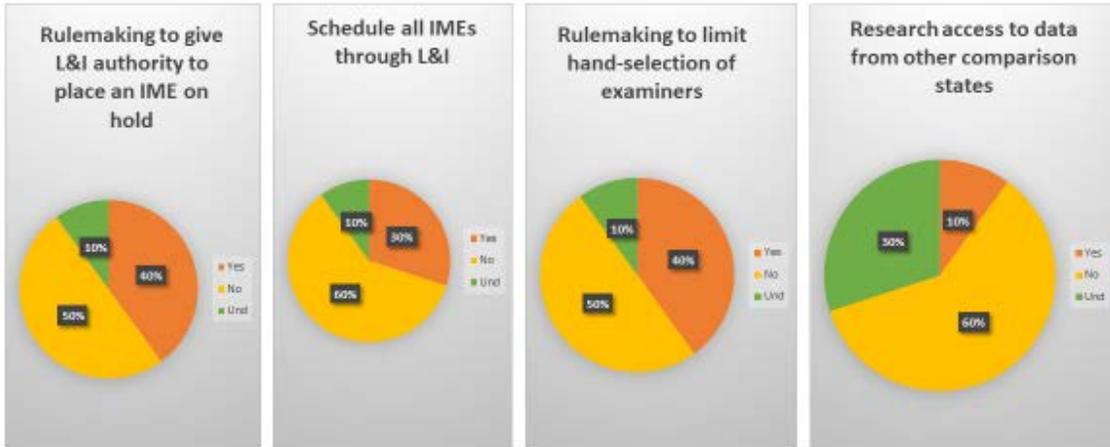
Most Supported Recommendations



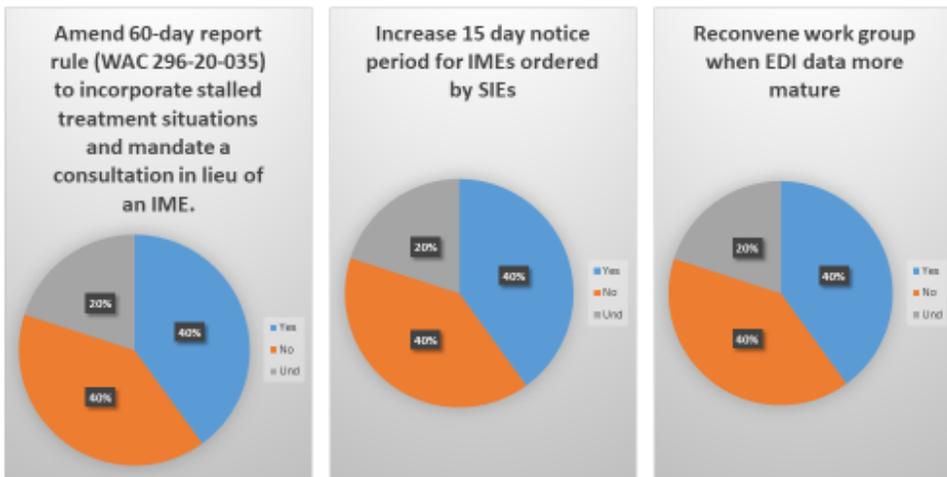
Most Supported Recommendations



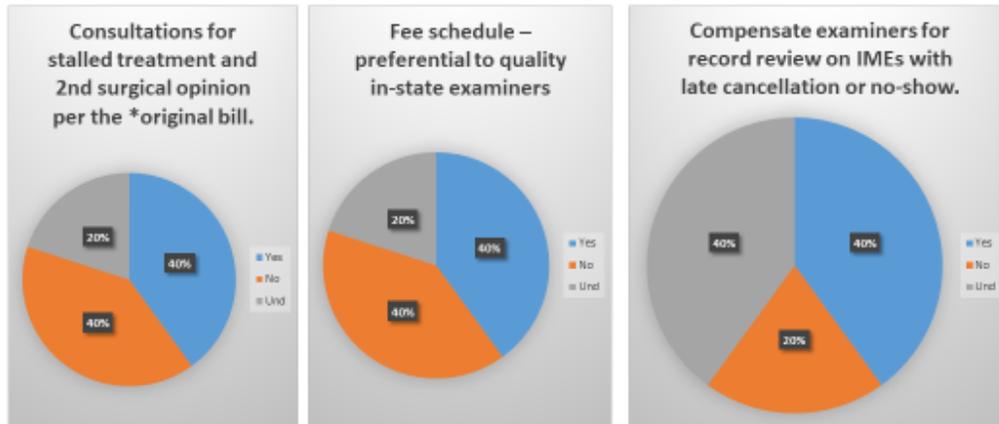
Least Supported Recommendations



Divided Recommendations

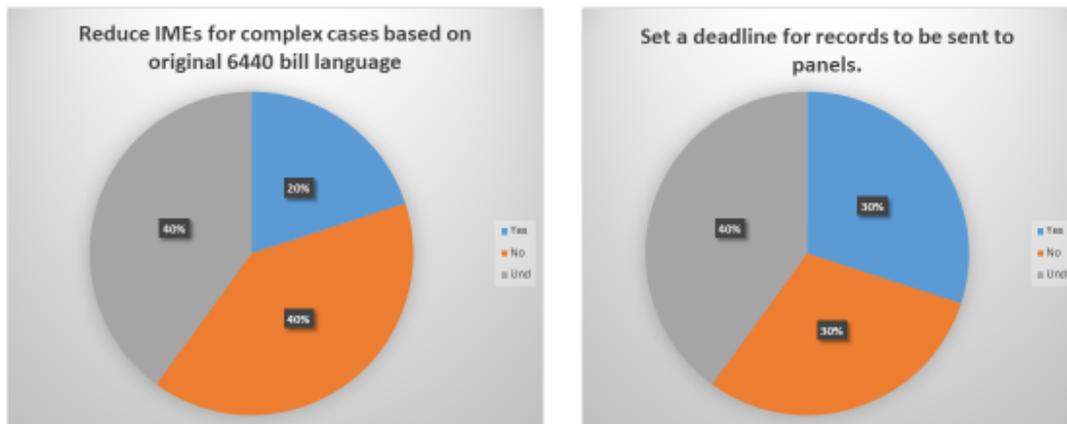


Divided Recommendations



*Original bill language. Prior to ordering an examination, the department must first notify the attending physician in writing of the worker's right to a consultation with a specialist to resolve any issues regarding medical treatment. If the attending physician chooses to not facilitate the consultation or is unable to identify a consulting specialist within fourteen days of the receipt of notice, then an examination may be ordered.

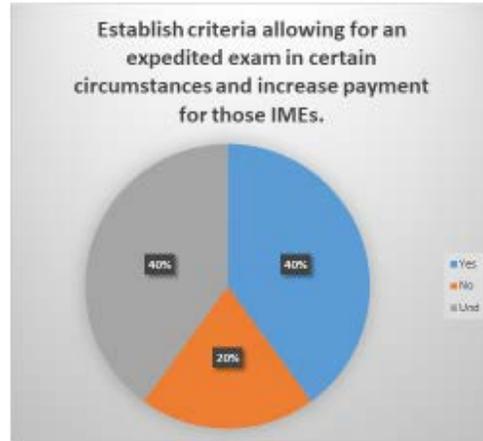
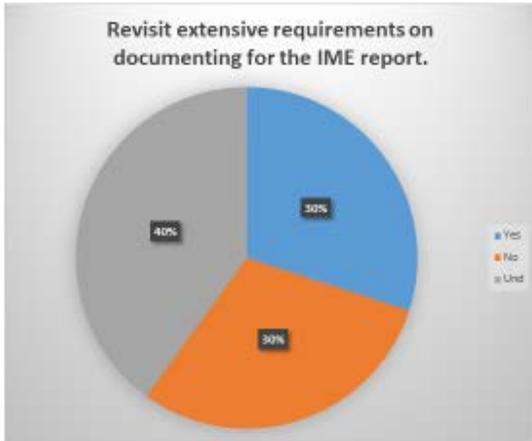
Divided Recommendations



The total number of examinations per claim is limited as follows: (Summarized, not exact language.)

- (i) One examination prior to an order ... allowing or denying a new claim, becoming final and binding.
- (ii) One examination for a permanent disability evaluation. Another PPD examination ... each time a claim is reopened or if ... further curative treatment.
- (iii) One examination following the filing of any application to reopen a claim ... or prior to final order allowing or denying reopening of the claim.
- (iv) Additional examinations may be performed after a allowance order or order to reopen a claim and prior to any PPD but no more than one examination per each new medical issue as defined in section 1 of this act.

Divided Recommendations



Appendix H:

Washington IME Coalition Joint Response



WASHINGTON IME COALITION COMMENTS TO 6440 TASK FORCE REPORT

November 30, 2020

The Washington Independent Medical Exam Coalition (the “Coalition”) thanks the Department for all of the time and effort put into the 6440 Workgroup. We believe the process was collaborative and that efforts were made to fully hear and understand all stakeholder perspectives.

The Coalition is in general agreement with the report and its recommendations. The measured approach to the recommendations is very reasonable and the development of additional opportunities for further stakeholder input is an appropriate and well received next step. Many of the recommendations will help IME providers and panels – particularly recommendations that work to increase the number of examiners willing to do IMEs, such as the recommendation to update the fee schedule with preference to in-state examiners.

However, the Coalition does have significant concerns regarding the emphasis on consultations, particularly some of the language surrounding it in the report, and we would appreciate greater attention

to our recommendations on this topic. While we agreed the Department should enforce the existing rule on consultations (WAC 296-20-045), we did not agree with the recommendation “Encouraging consultations, attending provider and claims adjudicator training and develop a consultant list.” This assumes, without any objective data to support such a policy, that a consultation may be used in preference to an independent medical evaluation in all instances. It further assumes that such consultations provide equivalent medical expertise to independent medical evaluations. No data has been submitted to support these assumptions.

The report mentions the “robust discussion” but does not identify the major concerns voiced during the workgroup meetings, particularly concerns about bias. If the Department intends to encourage consultations rather than IMEs, we believe there are a number of steps which must be taken in any rule or policy making on the subject:

- Stakeholder discussions must include IME physicians in addition to attending physicians, particularly if discussing appropriateness of IME versus consultation.
- A very clear definition of “consultation” should be established in rule or law to show how a consultation differs from an “independent medical exam.”
- The Department should very clearly define rules for how and when a consultations are conducted to clearly separate them from IMEs.
- Everyone in the system should be educated regarding the bias that automatically is inherent when a provider gets to choose the physician who will review their case.
- If consultations are to be given equal weight in decisions to an IME and considered with the same validity, then the requirements of consulting doctors should be the same as for IME physicians, including the same level of training and expertise required for consulting doctors and the same reporting and documenting requirements. This would include requiring the consulting physician to review ALL records and do a record review of ALL records. An interview of the patient should be required along with an exam and a review of the patient’s medical history. Only if all of this is done equally should compensation be the same (or even comparable) as for an IME. Consultants must also be subject to the same oversight by the Provider Review and Compliance unit as IME providers.
- Consultations should be performed by an unbiased physician not in the same practice. This should include an agreement that the consulting physician will not be taking over the injured workers’ case nor performing any treatment or surgery on the injured worker.
- Consultations should only be utilized if the injured worker’s attending physician is an MD or Chiropractor.
- Approved IME examiners should automatically also be on any list of consultants provided to attending providers.
- Attending providers or consultants who disagree with IMEs should have to provide objective medical evidence, in compliance with the Occupational Health and Safety Medical Treatment Guidelines to support any disagreement, as are IME providers. This could reduce the number of repetitive IMEs, particularly in situations where the attending provider is not an MD.

We would also like to address the current IME Roundtable process. We feel that the process needs to become much more collaborative. . Attendance and participation would greatly improve if those meetings were truly “roundtable” discussions with respect to improving quality IMEs. This could be accomplished by allowing IME physicians and panels to provide agenda items to the Department in advance of each roundtable along with any supportive data and documentation, as well as more input, generally, on IME policies.

Finally, we also would like to continue ongoing stakeholder work through inclusion of IME panel and physician representatives on the IME Business/Labor Advisory Committee. Through this inclusion, we will be able to have more discussions similar to those had by the task force in an effort to identify/resolve issues before they become problems.

In closing, we are generally in agreement with the report/recommendations. We look forward to future opportunities to continue to partner with all stakeholders to improve the IME system.

For more information please contact:

Kristin McCoy, 6440 Workgroup Member – Kristin.mccoy@mesgroup.com

Or

Carolyn Logue, Lobbyist for Washington IME Coalition – Carolyn.logue@comcast.net

Appendix I:

Employer Representative Joint Response

COMMENTS ON REPORT TO THE LEGISLATURE, LEGISLATIVE WORK GROUP ON INDEPENDENT MEDICAL EXAMINATIONS (ESSB 6440 IMPLEMENTATION)

Employer Representatives Rick Clyne (State Fund) and Ryan Miller (Self-Insurance)

Thank you for the opportunity to provide comments for inclusion in the Department's report to the Legislature. We are writing as representatives of the workers' compensation employer community, Rick Clyne having been nominated by the Association of Washington Business to represent primarily State Fund employers, and Ryan Miller by the Washington Self-Insurers Association to represent primarily self-insured employers. Throughout this process we have enjoyed the support and consultation of members of our nominating organizations and colleagues throughout the employer community.

We would like to congratulate the Department on a well-managed, methodical, transparent, and data-driven project, the completion of which was made all the more challenging given the constraints of online meetings during the COVID-19 pandemic.

Our view of IME administration remains as we described it over the course of the four work group meetings: we seek the continual development and maintenance of a process for independent medical examinations that promotes fairness and objectivity, is protective of injured worker interests, recruits and retains the highest quality examiners, and supports the overarching policy goals of industrial insurance.

In these brief comments, we would like to highlight three areas: Recognition of ongoing work to improve IMEs, points of agreement with Department recommendations, and points of further concern.

1. Ongoing work to improve IMEs

The Department's report is notable for its discussion, at pp. 6-9, of a long history of stakeholder engagement and actionable steps taken to improve IMEs in both the State Fund and Self-Insurance contexts. This is important, as we don't believe this background is always well known to the Legislature when it considers changes to the statutes governing IMEs.

The background history includes two stakeholder groups that have met quarterly for at least a decade and have involved both external stakeholders and personnel from multiple programs and platforms within the Department. The report lists numerous changes and improvements to IMEs that have arisen from this ongoing work, notes that this structure has already begun implementation of eleven of the work group's identified strategies, and reaffirms the Department's commitment to engage with external stakeholders as work proceeds.

We endorse the continued advancement of these processes both on our own behalf as well as on behalf of the organizations that nominated us, and believe that in the absence of acute concerns requiring urgent address, these various stakeholder discussions offer a superior forum in which to collect data, consider implications, and implement IME improvements when contrasted with the compressed timelines,

competing issues, and political contentions of a legislative session. We agree with the Department that all of its recommended strategies can be pursued without further legislative involvement.

2. Points of agreement with Department recommendations

Of those recommended strategies, we believe that most of them, if implemented, will improve IME access, experience, and usefulness for injured workers, aid in the recruitment and retention of high quality examiners, and provide additional data from which further strategies may be considered.

For example, investing in better IMEs by updating the fee schedule, introducing incentives to recruit bilingual examiners, and conducting exit interviews with non-renewing examiners can only help recruit and retain excellent examiners. Updating information to workers on how to bring an unsatisfactory examination to the Department or self-insured employer's attention is important. Reducing duplications and redoubling efforts to enforce current rules and focus on the subset of claims that are truly problematic will also improve the system.

3. Points of further concern

We share concerns with two recommended strategies and disagree with the Department's pursuit of them. First, we do not believe the Department should engage in rulemaking to assert the authority to place an IME on hold. This idea was not supported by a majority of the working group, presumably because the threat and underlying process for placing an IME on hold would likely delay necessary and proper care to injured workers and add expense for all participants of the examination, in contravention of the goals of the system.

Similarly, although the idea is only tentatively described, we have concerns with rulemaking regarding the selection of examiners. This concept likewise did not receive a majority of votes in the work group, and operates on a loaded term, "hand-selection." As discussed in the second work group meeting, there are many legitimate reasons the Department or self-insurer may request a specific examiner when possible, such as the availability of specific specialty expertise. In the rare instance where a party to the claim has valid articulable concern about an examiner, there is ample time for the worker or (in State Fund cases) the employer to suggest an alternative. If the Department continues its investigation of this topic, it should do so on the same evidence-based, even-handed basis on which this work group operated, eschewing loaded terms or preconceptions.

Respectfully submitted,

Rick Clyne, Washington State Farm Bureau (for State Fund employers)

Ryan Miller, Hall & Miller, P.S. (for Self-Insured employers)

Appendix J: Senator King and Representative Hoff Joint Response



Washington State Legislature

**COMMENTS ON REPORT TO THE LEGISLATURE
LEGISLATIVE WORK GROUP ON INDEPENDENT MEDICAL EXAMINATIONS (ESSB 6440 IMPLEMENTATION)
Submitted by: Senator King and Representative Hoff
December 2, 2020**

Thank you for the opportunity to provide comments for inclusion in the Department of Labor & Industries (LNI) report to the Legislature. As individuals that will also be recipients of this report as a Legislator, and who have participated in many work groups, we wanted to first take this opportunity to thank the Department for running a very fair and well-managed work group which was staffed by LNI employees with extensive knowledge (particularly medical) of the Independent Medical Examination (IME) process. We both learned a lot during this process which will be beneficial to us should legislation or concerns on this issue be in front of us again. We also appreciate that the Department is able to take action on all of the recommended strategies without further legislative involvement.

Although we may individually or jointly not support all of the recommendations in the report, we definitely do not support any recommendations where the votes of the work group members were evenly divided and those where at least half of the members of the workgroup did not support the recommendation (e.g. rule-making to give the Department authority to place an IME on hold).

In closing, we hope the Department will continue to work with external stakeholders on any proposed changes to the IME process.

Sincerely,

Handwritten signature of Senator Curtis King in black ink.

Senator Curtis King (14th Legislative District)

Handwritten signature of Representative Larry Hoff in black ink.

Representative Larry Hoff (18th Legislative District)

Appendix K: Labor, WSAJ, and Democratic Member Response

ESSB 6440 WORK GROUP REPORT

Lead Author: Douglas M. Palmer

Representing a majority of Labor interests

Introduction

The Legislature, in ESSB 6440, created a work group whose purpose was to develop ideas, strategies, and proposed legislation to reform the use of special medical examinations, provided for in RCW 51.36.070, by the Department of Labor & Industries and Self-Insured Employers. To that end, the work group was instructed to address the following topics:

- Developing strategies for reducing the number of medical examinations per claim, while considering claim duration and medical complexity.
- Developing strategies for improving access to medical records, including records and reports created during the course of or pursuant to an examination.
- Consider whether the Department of Labor & Industries should do all scheduling of these special medical examinations.
- Consider the circumstances for which special medical examiners should be randomly selected or specified.
- Consider workers' rights in the special medical examination process including attending, specialist consultations, the audio or video recording of examinations, and the distance and location of examinations.

- Recommend changes to improve the efficiency of the special medical examination process.
- Identify barriers to increasing the supply of in-state physicians willing to do special medical examinations in the workers compensation system.

In the work group meetings, these directives were grouped into four areas, some more broad than others. The first addressed limiting the volume of special medical examinations. The second addressed problems associated with the scheduling of special medical examinations by Self-Insured Employers. The third addressed workers' rights. The final meeting addressed miscellaneous topics like efficiency, access to medical records, and in-state medical examiners.

Through the testimony of injured workers to the legislature last session, the annual reports of the Self-Insurance Ombuds, and the reports collected by Washington's labor unions, one thing is clear: injured worker's rights to transparent and fair examinations are not being protected under the current rules and laws. ESSB 6440 codified the Department's existing processes, but did not go far enough to protect injured workers during these examinations. More can and should be done.

The Legislature should enact most of the reforms to the one-time medical examination system included in the original Senate Bill 6440. The Legislature should end all Preponderance or Cumulative Examinations. The Legislature allow injured workers to record these examinations.

Ending Preponderance or Cumulative Examinations

Preponderance or Cumulative Examinations occur where the Department or Self-Insured Employer orders an additional examination or examinations in order to break a numerical "tie" of medical opinions to justify typically a denial of treatment and/or benefits. The delays caused alone warrant ending this practice. After ordering the first examination, approximately fifty to ninety days later, the report is received. The attending physician is then given an opportunity to agree or disagree with that report, which then occurs a few weeks to a month after their receipt of the report. If the attending physician disagrees, rather than making a claims processing decision, the claims manager orders a Preponderance or Cumulative Examination. This should end.

Despite what the one-time examiners might say, injured workers know exactly what these appointments are for: justification for denial of treatment and/or benefits from a doctor they do not know,

they did not pick, and they do not trust. It is no coincidence these examinations occur after their doctors recommend additional treatment or benefits. Attending them is simply part of the process for workers who have been injured on the job.

Attending one compulsory medical examination is bad enough for these workers. Attending a second one, just because their doctor disagreed with the first one, is worse. As is detailed further below, it simply creates delay without adding anything of value to the claims manager's decision-making process. Preponderance or Cumulative Examinations are a violation of our workers' guarantee to sure and certain relief for the purpose of reducing to a minimum their suffering and economic harm. RCW 51.04.010; RCW 51.12.010.

Under the Department's current regulations, injured workers are guaranteed that any notice is mailed to them fourteen days prior to the examination. In practice, this means injured workers have around a 10-day notice by the time it is delivered by the USPS. The examiner is then required to send their report to the Department within fourteen days (with some exceptions) of the examination. WAC 296-23-347(3)(a). This means the regulation permits, at its quickest, a twenty-eight-day turn-around between scheduling an examination and receiving the report. According to the Department's data, the actual time ranges between fifty-one and ninety-two days.

This timeline is important when the group is tasked with improving efficiency for injured workers. When an injured worker needs surgery for a pinched nerve, every day that nerve dies a little. It will then take months for that nerve to regenerate, if it does at all. A single examination means nearly a two to three-month delay in the Department making a claims processing decision, let alone actually having the surgery performed.

Preponderance or Cumulative Examinations double that time to one-hundred to one-hundred and eighty days, or three to six months. As soon as an examination is scheduled, neither the Department nor Self-Insured Employers are obligated to authorize any additional treatment or pay any medical bills for conditions to be addressed by the examination. The claim is frozen. The Legislature should end Preponderance or Cumulative Examinations.

The Department provided the workgroup with its one-time examination data. But they were unable to identify the volume of these Preponderance or Cumulative Examinations. What we do know from their data is that from 2015 to 2019, there were 6,465 claims with three or more examinations. While most claims do not have these Preponderance or Cumulative Examinations, the complex claims, the difficult claims are where more examinations are ordered.

No one is suggesting the complete elimination of these one-time examinations. They are a tool used in every state's workers compensation system. But what this data shows is ending Preponderance or Cumulative Examinations will have zero effect on the Department's processing of 93% of claims. In the complex claims, it will speed resolution and move them along by eliminating the introduction of an additional fifty to ninety-day delay in making a claims processing decision (e.g., authorizing surgery, allowing the claim, paying time loss).

Permitting the Department and/or Self-Insured Employers to create an additional three-month delay means three more months of pain for the injured worker. It means three more months of disability. It means three additional months of the worker being unsure if they can pay their rent or mortgage. It is unfair and punishing to injured workers.

The Legislature should end Preponderance or Cumulative Examinations by adopting the language contained in the original SB 6440:

The total number of examinations per claim is limited as follows:

- (i) One examination prior to an order under RCW 51.52.050 or 51.52.060, allowing or denying a new claim, becoming final and binding.

- (ii) One examination for a permanent disability evaluation. Another permanent disability evaluation examination is allowed following each time a claim is reopened under RCW 51.32.160 or if the department or self-insurer authorizes further curative or rehabilitative treatment.

- (iii) One examination following the filing of any application to reopen a claim under RCW 51.32.160 and prior to a final order under RCW 51.52.050 or 51.52.060 allowing or denying reopening of the claim.

- (iv) Additional examinations may be performed after a final allowance order or final order to reopen a claim and prior to any permanent disability evaluation but no more than one examination per each new medical issue.

This provides a flexible framework that allows these examinations to occur prior to claim allowance or reopening, at claim closure, and whenever a new medical issue arises in a claim.

“Stalled” Treatment Plans

The Department has previously expressed concern about their ability to address “stalled” treatment plans. The prototypical example of this is where ninety days of physical therapy has been provided and the attending physician orders an additional thirty to sixty days of therapy. The Department wants the ability to double-check that recommendation. They already have the authority to do this.

First, in WAC 296-20-035, where treatment has been occurred beyond sixty days, the Department has the authority to order a consultation. A consultation is an examination with a local area specialist to address whether and what types of further treatment would help the patient. WAC 296-20-045. In other words: ask for a second opinion from a local provider. This gives the Department ample authority and opportunity to address these stalled plans, and, unlike a one-time examination under RCW 51.36.070, the consulting physician is actually able to provide any recommended treatment to the injured worker, further reducing unnecessary delays.

If there is not an available consultant, then the newly adopted “New Medical Issue” definition from ESSB 6440 gives the Department authority to order one of these one-time examinations:

"New medical issue" means a medical issue not covered by a previous medical examination requested by the department or the self-insurer such as an issue regarding medical causation, medical treatment, work restrictions, or evaluating permanent partial disability.

(Emphasis added). Nothing additional needs to be added to the one-per-issue cap on one-time examinations from the original SB 6440. With that being said, if the Department were to adopt rules defining stalled treatment plans, we would support that rule-making process. But it is important the rule not be so over-broad as to effectively negate the elimination of preponderance or cumulative examinations.

Examiner Reimbursement Rates

During the meetings, the representative of the panel companies expressed concern over the low reimbursement rates. This was identified as a potential barrier to recruiting additional specialists to do these examinations. We do not object to the Department adjusting reimbursement rates. However, this should not be a simple across-the-board increase.

The system has plenty of orthopedic surgeons and neurologists performing examinations. We are underserved in specialties like Ophthalmology, Vascular Surgery, Pulmonology, etc. The Department should identify under-served specialties and under-served communities. If, for example, there is only one vascular surgeon in the state doing one-time examinations, then it should adjust the fee schedule to pay more to vascular surgeons who sign up. If those vascular surgeons are performing examinations in Seattle, then the Department should adjust the fee schedule to pay them more to perform examinations in Spokane, Yakima, and Portland-Vancouver.

We do not believe the Department requires additional statutory authority to make these changes.

Self-Insured Employer Examinations

Workers whose employer have qualified to self-insure in our system face their own challenges with these one-time examinations. Generally, in cases involving self-insured employer, the Department intervenes when there is a dispute between the injured worker and their employer. Where a dispute is made, the Self-Insurance Section must then request a copy of the claim file from the Self-Insured Employer.

Per RCW 51.32.195, the Department is required to send a certified-mail request to the self-insured employer. They then have ten business days from receipt to respond. This is effectively fourteen calendar days.

As noted above, the minimum notice requirement for these examinations is fourteen days. This means the notice has to be mailed no later than fourteen days prior to the examination. Therefore, in self-insured cases, if an injured worker disputes the schedule of examination, the Self-Insurance Section must request a copy of the claim file from the self-insured employer. This gives the Department insufficient time to receive the file, review the file, and adjudicate the dispute.

Furthermore, it is rare for the Self-Insurance Section to actually pause or delay exams while it investigates. During the second meeting of the workgroup, the Department asserted it does not have the authority, under current law, to order a pause to an exam to adjudicate a dispute. We think they do under RCW 51.32.190(5), but it is concerning the Department believes it does not.

Practically, this means injured workers, with legitimate concerns, face an impossible choice imposed by RCW 51.32.110. They either go ahead and attend an examination, conceding the issue or they do not attend. But if they do not attend and the Department later determines it was without good cause, then the worker faces having their benefits and claim suspended. In other words, do they go to an improper examination, or risk having their benefits stopped? It is a lose-lose choice for workers and the self-insured employer community knows this.

To fix this problem, two statutory changes are necessary in self-insured cases. First, the minimum notice requirement of the examination should be increased to twenty-eight days. This gives the injured worker approximately one-month notice of the examination. Second, the time Self-Insured Employers have to return the claim file should be reduced to five business days. The Department must also be clearly told that it has the authority to pause the examination, where necessary, to resolve the dispute. This gives the injured worker more time to file a dispute and gives the Department more time to adjudicate such disputes.

Some members to the work group expressed concern over the potential delays imposed by such disputes. Those concerns are misplaced. While a dispute will cause a delay, it is a dispute initiated by the injured worker. If a worker wishes to impose a delay in care because of concerns over an examination, then that is a choice the worker can and should make in advance. The current system robs them of that choice by forcing them to choose between attendance or claim suspension. It forces them to choose between attendance and paying their rent or between attendance and having enough money for food or gas.

The original SB 6440 should be adopted, with minor changes, to enact this important policy change. It provides the necessary protections for injured workers in the scheduling of examinations:

(d) In claims involving self-insured employers:

(i) Notices of examinations scheduled pursuant to RCW 51.36.070 must be mailed to the injured worker no later than twenty-eight days prior to the examination.

(ii) Where a timely dispute of the examination has been filed by the injured worker, the Department shall adjudicate whether or not the injured worker should be compelled to attend.

(iii) If the Department cannot resolve a dispute by the injured worker regarding their attendance at the examination within seven days of the examination, it shall delay the examination until the dispute is resolved.

Also, the Legislature should amend RCW 51.32.195. With electronic transmission of claim file documents, sending a certified letter and then giving self-insured employers 10 working days to prepare and transmit documents is a statute from a by-gone era. It should be amended to read:

On any industrial injury claim where the self-insured employer or injured worker has requested a determination by the department, the self-insurer must submit all medical reports and any other specified information not previously submitted to the department. When the department requests information from a self-insurer by ~~certified~~ mail, the self-insurer shall electronically submit all information in its possession concerning a claim within ~~ten~~ five working days from the date of receipt of such ~~certified~~ notice.

Not only will this increase efficiency in resolving examination disputes, it will also increase efficiency in resolving all disputes between injured workers and self-insured employers.

These changes are protective of injured workers and their rights. When this state created the self-insurance program, it wisely understood the power disparity between self-insured employers and injured workers. The law created a dispute mechanism whereby injured workers can go to the Department to resolve disputes. That process has not worked for several decades regarding these one-time examinations. Given the Department an opportunity to resolve disputes in advanced protects injured workers.

This is also a good place to address a few miscellaneous issues regarding the process of transmitting and reviewing records for these examinations. The Department's file document system contains all records it receives in chronological order. This means its medical record documents contain many duplicate records and records that are not organized by date of service. The workgroup agreed that a technological upgrade to allow the Department create and store an organized set of medical records with all duplicates removed would improve efficiency for everyone: claims managers, injured workers, one-time

examiners, new treating providers, etc. Funding technology changes to allow the Department to do this would provide across-the-board benefits to the system.

Another miscellaneous issue is the problem with Self-Insured Employers hand-picking specific physicians to conduct examinations. We support a rule-making process by the Department to regulate how Self-Insured Employers select these examiners.

Increasing the Transparency of these Examinations

These one-time examinations are often ordered by the Department and Self-Insured Employers because they do not trust or believe the recommendations made by the injured worker's treating physicians. While some examinations are ordered because the treating physician requests one where they do not rate final impairment, they are not a majority of exams. The workers are warned, in the scheduling letters, that failure to attend may result in the suspension of their claim. Injured workers have no illusions about these examinations: they are not ordered for their benefit.

When it comes to worker rights in the examination process, the biggest issue for them is the ability to record these examinations. These are forced examinations with a doctor they don't know to potentially challenge the recommendations and considered advice of their treating doctors and surgeons. These one-time examinations occur in a closed room, where the only witness is another non-medical expert (a friend or family member). This lack of transparency diminishes the trust workers have in the process.

Washington is an outlier jurisdiction because it prevents injured workers from recording these examination and restricts witnesses to only friends and family members. However, there are no similar restrictions on recording of the examination by the doctors, who often record the workers' answers to questions and leave the recording on while the examination is conducted. The doctors then speak their examination findings for the recording. They are currently under no obligation to keep and preserve these recordings. Despite Washington being a two-party consent recording state, if an injured worker refused to be recorded by an examiner, they would result in their being found non-cooperative per RCW 51.32.110.

The importance of transparency should be obvious, yet the current rules and regulations prohibit that transparency. With recording, everyone will know exactly what was said by the doctor(s) and the worker. With recording, everyone will be able to see the conduct of the workers and the doctor(s). If there is a question about the sufficiency, completeness, or breadth of an examination, then with recording those questions can be answered.

The doctors should want recording as it protects them as much as it does the worker. There is currently a malpractice lawsuit being pursued against a special examiner for injuries caused during an examination. The Court of Appeals in Spokane just ruled that the lawsuit can move forward. If there are any allegations of inappropriate behavior by doctor(s) or workers, recording of the examination would answer a lot of questions from these types of incidents.

Recording an examination is no longer technologically difficult. Most workers have a recording device in their pocket. If they do not have a witness, then they can audio record. With a witness present, then they can video record in an unobtrusive manner. While a professional videographer may be technically better, there is insufficient space in these examination rooms. Also, this creates unnecessary cost to injured workers. The Legislature should not let the perfect be the enemy of the good.

There was a concern raised that workers may “perform” for the video. We already see in many reports that one-time examining doctors accuse injured workers exaggerate their complaints and symptoms. In other words, they already complain the workers are “performing” for the examination. The transparency provided by the recording will verify such allegations.

During the third meeting the Department asserted that an examination is not an adversarial process but is an adjudicative tool. Per ESSB 6440/RCW 51.36.070, an examination is only scheduled if an injured worker’s doctor certifies they were injured on the job, or there is an objective worsening (reopening), or there is a new medical condition caused by the injury, or a need for surgery caused by an injury, or is recommending further conservative care, or certifying the workers inability to work. Once that happens, the Department has a choice: it can either following the treating doctor’s recommendation or it can schedule an examination to challenge those recommendations.

This is an adversarial act; to adjudicate is an adversarial act. On the list of reasons for a special examination, the only potential non-adversarial examination is a PPD rating where the attending physician refuses to rate. To schedule an examination is a signal by the Department they do not trust or believe the treating provider. It is a signal by the Department that it is seeking to interfere in the doctor-patient relationship of the injured worker.

The Department must also be mindful of the inherent power disparities between injured workers and these one-time examiners. There is a basic status difference. If there is a dispute over what happened during an examination, who is the Department more likely to believe (all things being equal): an orthopedic

surgeon or an injured worker? This problem is magnified by comments and beliefs that injured workers are being paid “\$80,000 a year for doing nothing,” as was expressed by some members to the workgroup.

Injured workers are not trained medical professionals. They are not permitted to bring one with them to the examination. Besides their lived experience of being examined by their own doctors, they have no way of telling on their own if an examination was good or bad, complete or incomplete, straight-forward or misleading. The primary thing they know is how long the examination took to complete. This is flatly insufficient to verify the examiner performed a straight-forward, complete, and good examination.

The Panel Companies’ Representative’s response was to express outrage over how the Workers’ Representatives dared to impugn the integrity of these Board Certified doctors. Yet, in the same breath, they speculated injured workers would be altering these recordings, impugning their integrity. They also impugned the integrity of injured workers of accusing them, in advance, of performing for recording.

Again, if the examiners are doing straight-forward, complete, good examinations then they have nothing to hide from a recording. Transparency increases everyone’s trust. Also, rather than selectively record the examination themselves, these physicians can perform their own audio recording. The two recordings can then be compared for alterations.

The Panel Companies also asserted that doctors will leave the system if they know they will be recorded. If they are conducting full and fair examinations, then they should have nothing to hide. We should not have physicians examining workers who are afraid of transparency.

Also, this is a bluff as no other state has the level of prohibitions on recording as Washington. No other state prohibits recording as extensively as Washington. They are welcome to take their work to another state where recording is also permitted. We should not let empty threats by independent contractors interfere with protecting injured workers’ rights.

The Legislature should adopt the original language from SB 6440 to increase the transparency of these examinations:

(c) A worker has the right to record either the audio, video, or both, of all examinations ordered under this section, RCW 51.32.110, or by the board of industrial insurance appeals. The worker must pay the costs of recording the examination and must provide one copy,

upon request, to the department or self-insured employer within fourteen days of receiving the request, but in no case prior to the issuance of a written report of examination. The worker must take reasonable steps to ensure the recording equipment does not interfere with the examination.

(d) The worker has the right to have one person, of the worker's choosing, present to observe all examinations ordered under this section, RCW 51.32.110, or by the board of industrial insurance appeals. The observer must be unobtrusive and not interfere with the exam.

These workers face the indignity of a forced examination. Examiners with nothing to hide should embrace recording. If examiners are concerned about the recording created by workers, nothing stops them from making their own, complete recording like they currently do.

Some concerns have been raised that injured workers could alter these recordings. We think this risk is low, as most workers do not have access to computers let alone powerful audio or video editing software. Furthermore, examiners are currently recording part if not all of these examinations themselves. These recordings are not routinely kept, but could be if the examiners concerns are so high. Regardless, in our draft legislative proposal, we provide that where it is proven an injured worker has materially altered such recordings and those alterations lead to the wrongful receipt of benefits, those benefits would be repayable. The Act already has repayment provisions in RCW 51.32.240. This should allay any concerns.

In summary, the Department's current rules prohibiting all recordings prevent transparent oversight of examiners. These examinations are, by their very nature, adversarial. Having an untrained observer in the room is an insufficient safeguard and does not promote the workers' trust in the outcome. Recording technology is widely available and no longer requires professional videographers. Doctors, if they are concerned about alterations, can make their own audio recordings as an independent record. The original SB 6440 language permitting such recording should be adopted by the legislature.

The Department's Work Group Report

We are disappointed in the Department's overall approach taken in preparing their recommendations. As designed, the ESSB 6440 work group was equally balanced between business and labor, Democrat and Republican. It is not surprising to us that on the most needed reforms to our system,

the work group split evenly: 50-50. What is surprising is that in the face of such a split, the Department gtttttttttttttttttttttendorsed the status quo.

Rather than championing changes, the Department-endorsed status quo simply sides with the interest of business over the interests of labor. A guiding principle of our system of Industrial Insurance is that where a question is evenly divided, all doubts must be resolved in favor of the injured worker. The Department has failed to lead.

The following are specific responses to the Department's recommendations:

- Enforce current consultation rules: while this is necessary, this recommendation is not sufficient to meet the needs of injured workers. These current rules have been in place for at least a decade and the Department has failed to enforce them. Their expressed inability to provide adequate oversight to Self-Insured examinations makes this promise even more meaningless.
- Rule making to define case progress: we support this rule-making so long as it does not result in a rule so-broad that it becomes the justification for every single exam. If the rule does not meaningfully limit the volume of examinations, it is being made without purpose.
- Invest in better exams: rather than recommending meaningful limits on the volume of examinations and allow for meaningful transparency, the Department wants to pay these doctors more. We do not oppose changing how doctors are paid and to provide incentives to entice doctors to travel to underserved areas or to entice doctors in under-served specialties to become examiners. But paying doctors more without an increase in protections for injured workers is neither fair nor just.
- Investing in technology: we support improving the Department's technology to make it easier for doctors, injured workers, and others to easily access a concise, chronological set of medical records.
- Focusing on claims with "too many" exams: The original SB 6440 did exactly that as does our new proposed legislation. This is an empty promise that maintains the status quo. As noted above, providing a 1-per-issue cap to examinations provides the solution to claims with too many exams, without hampering the Department's ability to administer other claims.
- Self-Insured ordered exams: From the very first report of the Self-Insured Ombuds, the problem of exams in Self-Insured claims has been brought front-and-center to the legislature and Department. The Department does not support any meaningful changes to this unjust status quo. Without a hard cap, the Department must be given statutory limits for the ordering of Self-Insured Examinations.

- Examination Notice Requirements: The Department does not support increasing the notice period for either its own exams or Self-Insured examinations. Nor does the Department affirmatively support adopting explicit authority to place such examinations on hold, with reasonable limitations, where a timely, valid dispute has been filed. The Department identified during the meetings that it has inadequate time to provide meaningful oversight, pre-examination, in Self-Insured claims. This endorsement of the status quo is an abdication of the Department's oversight responsibility. The Department should adopt policies and rules to give it the ability to provide timely, pre-examination oversight of examinations.
- Setting deadlines to send records to exam firms: We do not oppose this most minor of reforms.
- Scheduling all examinations through the Department: this reform becomes necessary where the Department abdicates its oversight role in disputed Self-Insured examinations.
- Limiting the hand-selection of examiners by Self-Insureds: Meaningful rules that eliminate this practice would eliminate the need to have the Department schedule all examinations.
- Improving the examination-complaint filing process: the complaint forms should be included in all examination-notice letters. Providing links is helpful, but providing the actual form is better.
- Recording of examinations: This is an essential and necessary reform to protect injured workers. If the doctors are concerned about alterations, then they can simply keep their own audio recordings of the examinations.
- Ending Preponderance or Cumulative Examinations: The Department refuses to support a reform that their own data shows will improve efficiency and reduce delay in claims adjudication.

Proposed Legislation

In light of the adoption of ESSB 6440 last legislative session, we recommend the Legislature adopt further amendments to RCW 51.36.070:

(1)(a) Whenever the department or the self-insurer deems it necessary in order to (i) make a decision regarding claim allowance or reopening, (ii) resolve a new medical issue, ~~an appeal, or case progress,~~ or (iii) evaluate the worker's permanent disability or work restriction, a worker shall submit to examination by a physician or physicians selected by

the department, with the rendition of a report to the person ordering the examination, the attending physician, and the injured worker.

(b) The examination 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.

(c) The total number of examinations per claim is limited as follows:

(i) One examination prior to an order under RCW 51.52.050 or 51.52.060, allowing or denying a new claim, becoming final and binding.

(ii) One examination for a permanent disability evaluation. Another permanent disability evaluation examination is allowed following each time a claim is reopened under RCW 51.32.160 or after completion of further treatment if the department or self-insurer authorizes curative or rehabilitative treatment.

(iii) One examination following the filing of any application to reopen a claim under RCW 51.32.160 and prior to a final order under RCW 51.52.050 or 51.52.060 allowing or denying reopening of the claim.

(iv) Additional examinations may be performed after a final allowance order or final order to reopen a claim and prior to any permanent disability evaluation but no more than one examination per each new medical issue.

(v) The Department shall adopt rules to address when it may order an examination or request the attending physician to arrange a consultation where injured workers do not improve with sustained treatment.

(d) In claims involving self-insured employers:

(i) Notices of examinations scheduled pursuant to RCW 51.36.070 must be mailed to the injured worker no later than twenty-eight days prior to the examination.

(ii) Where a timely dispute of the examination has been filed by injured worker, the department shall adjudicate whether or not the injured worker should be compelled to attend.

(iii) The department shall adopt rules governing what constitutes and timely dispute and under what circumstances it may delay such examinations to complete its investigation.

(2) The department or self-insurer shall provide the physician performing an examination with all relevant medical records from the worker's claim file. The director, in his or her discretion, may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund as the case may be. The cost of said examination shall include payment to the worker of reasonable expenses connected therewith.

(3) For purposes of this section, "examination" means a physical or mental examination by a medical care provider licensed to practice medicine, osteopathy, podiatry, chiropractic, dentistry, psychology, or psychiatry at the request of the department or self-insured employer or by order of the board of industrial insurance appeals.

(4) (a) A worker has the right to record either the audio, video, or both, of all examinations ordered under this section, RCW 51.32.110, or by the board of industrial insurance appeals. The worker must pay the costs of recording the examination and must provide one copy, upon request, to the department or self-insured employer within fourteen days of receiving the request, but in no case prior to the issuance of a written report of examination. The worker must take reasonable steps to ensure the recording equipment does not interfere with the examination.

(b) Any material alteration of the recording by the injured worker or done on their behalf that results in the receipt of benefits may be subject to repayment of those benefits pursuant to RCW 51.32.240.

(c) The worker has the right to have one person, of the worker's choosing, present to observe all examinations ordered under this section, RCW 51.32.110, or by the board of industrial insurance appeals. The observer must be unobtrusive and not interfere with the exam.

~~(4)~~ (5) This section applies prospectively to all claims regardless of the date of injury.

We also recommend that RCW 51.32.195 be amended to provide the Department quicker oversight over disputes filed by injured workers:

On any industrial injury claim where the self-insured employer or injured worker has requested a determination by the department, the self-insurer must submit all medical reports and any other specified information not previously submitted to the department. When the department requests information from a self-insurer by ~~certified~~ mail, the self-insurer shall electronically submit all information in its possession concerning a claim within ~~ten~~ five working days from the date of receipt of such ~~certified~~ notice.

Summary

There is no legitimate reason for the Department to conduct Preponderance or Cumulative Examinations. If an attending physician disagrees with the opinions of a one-time examiner, then the Department should decide which opinion it is following. It should not create an additional 50 to 90-day delay by ordering a Preponderance or Cumulative Examination.

All examinations should be scheduled by the Department. Injured workers should be given a greater opportunity, prior to an examination, to have disputes investigated and resolved. They should not be forced to choose between conceding a legitimate dispute by attending an examination or risk having their claim suspended for after-the-fact non-cooperation.

The current examination process lacks sufficient transparency to protect injured workers. The vast majority of jurisdictions do not prohibit injured workers from recording examinations. They also do not limit who can attend as a witness. Good examiners who perform good examinations have nothing to hide from the recording of exams. Washington should provide injured workers greater protection and reassurance by allowing recording.

