



So where are we at with Washington's new IME rules?

By Shawna Fruin ■ April 28, 2021

In 2020 and 2021, there was a lot of action in Washington's legislature surrounding the rules for when and how employers can obtain Independent Medical Examinations (IMEs) in Washington workers' compensation claims. In 2020, various iterations of IME updates were proposed and discussed, with final versions enacted effective January 1, 2021. In 2021, additional restraints were proposed and discussed in the legislature, but not enacted (for now). Now that the dust has settled, here are the five main things claims examiners need to know.

1. IME Location: *There are concrete changes on where you can schedule an IME.*

Before and after the January 1, 2021 changes, IME law said that IMEs must be in a "reasonably convenient" location. See RCW 51.32.110; RCW 51.36.070. However, effective January 1, 2021, [RCW 51.36.070](#) defines "reasonably convenient" as a place where residents in the worker's community would normally travel to seek medical care for the same specialty as the IME examiner. The Washington State Department of Labor and Industries (Department) now has a "reasonably convenient location" tool ([LNI RCL tool](#)) where you can type in the worker's location and it will populate where you can schedule an IME with various specialties. *Example:*

Provider Specialty	RCL	Enter Worker's Location:
ALLERGY	King	Aberdeen
ANESTHESIOLOGY	Pierce	
CARDIOVASCULAR (INTERNAL)	Thurston	
CHIROPRACTOR	Grays Harbor	
DENTISTS	Grays Harbor	
DERMATOLOGY	Grays Harbor	

2. No-Show Fee: *There are concrete changes on when you can assess a no-show fee.*

Before the January 1, 2021 changes to IME law, no statute (RCW) addressed no-show fees related to a worker's refusal to attend an IME. However, under regulation [WAC 296-14-410](#), employers would/could reduce time loss to

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recover this fee if the worker did not have “good cause” for failing to attend. Effective January 1, 2021, [RCW 51.32.110](#) states that employers cannot assess a no-show fee against a worker if the worker gives five or more days’ notice that he/she/they will not attend the IME – eliminating the “good cause” requirement for avoiding the no-show fee if workers give sufficient notice that they will not attend. (It does not appear that the Department has updated WAC 296-14-410 to be consistent with RCW 51.32.110, but the RCW will almost certainly control).

3. When and Why: *The new law gets specific about when and why you can obtain an IME.*

Before the January 1, 2021 changes to IME law, the only constraints on when and why employers could schedule an IME were that IMEs were set from “time to time” and to resolve “any medical issue.” However, the January 1, 2021 changes eliminated the “time to time” and “any medical issue” language, and instead [RCW 51.36.070](#) states IMEs may only be scheduled 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 restrictions. Additionally, [RCW 51.08.121](#) defines “new medical issue” as 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.

We are still waiting to see the impact of these changes. In some ways, these “when and why” updates are consistent with when and why employers got IMEs before January 1, 2021, and it might be argued that these changes are more about codifying what was already done, versus making big changes. However, the “new medical issue” constraint is somewhat different from prior law, and it appears that the Department is open to assessing penalties against employers for failure to follow any changes that these new rules impose. As case law and Department adjudications develop, we will continue to keep you apprised of how the Department and The Board of Industrial Insurance Appeals (Board) are interpreting these rules, and any associated changes you need to make to your procedures.

4. Logistics: *There are policy changes to how you document the purpose of an IME and communicate about the IME.*

The Department has published new policies related to the IME rules: [Interim Policy 13.05](#) and [Interim Policy 13.07](#). Please read the entirety of the policies to ensure that you are following the Department’s preferences (and thus minimizing your risks of penalties for failure to comply). Some important highlights are:

- The employer must send the IME notice to the worker and the worker’s

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representative (Policy 13.05, point 6).

- The purpose of the IME must be documented in the claim file. (Policy 13.05, point 6).
- The employer must send the IME report to the attending provider, worker, and the worker's representative [deadline unstated] (Policy 13.05, point 9).

5. 2021 legislative session: Additional IME rules proposed during the 2021 legislative session were not enacted (for now).

Last year, the 2020 legislative session established an IME working group to address IME issues including: reducing the number of IMEs, whether the Department should schedule self-insured IMEs, whether IME providers should be randomly selected, etc. After the working group met, the Department issued a report to the legislature in late 2020, with final recommendations including: (1) rulemaking to define "case progress;" (2) investing in better IMEs by updating the fee schedule, including higher rates for in-state providers; (3) encouraging consultations; and (4) rulemaking to determine when the Department could place an IME on hold.

In the 2021 legislative session, the workers' bar, with support from labor and some legislators, introduced a bill that went far beyond the Department's report, proposing additional IME constraints including:

- (1) Deleting an appeal and case progress as reasons to get an IME;
- (2) Limiting employers to only one IME each for claim allowance, PPD rating, and reopening;
- (3) Requiring 28 days' notice of an IME and Department adjudication of IME disputes;
- (4) Giving workers the choice to record an IME and have someone else attend the IME; and
- (5) Limiting experts at the Board so that parties can only call one expert from any specialty, except the attending provider, unless more would assist the trier of fact.

That bill would have made significant changes to employer's ability to schedule IMEs and litigate disputes – but was ultimately not enacted. However, we expect that the workers' bar will continue to push for this type of law in future legislative sessions. You can keep up-to-date with proposed rule changes by joining the [Washington Self-Insurers Association](#), asking employer representatives to meet with legislators, being a part of the discussion with your defense team, supervisors and others, or contacting the author at shawnaf@rwwcomplaw.com.

In sum, effective January 1, 2021, there are some changes to the where,

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when, why, and how you can schedule an IME, but possibly bigger changes on the horizon. As always, if you have questions regarding how to implement the law on your claims, please feel free to contact the attorneys at Reinisch Wilson Weier PC. ■

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