

Agenda

Rulemaking Advisory Committee

Workers' Compensation Division Rules
OAR chapter 436, division 010, rule 0265
Independent Medical Exams (IMEs) and Worker
Requested Medical Exams (WRMEs)

Type of meeting:	Rulemaking advisory committee
Date, time, & place:	Nov. 13, 2018, 8:30 a.m., Pacific Standard Time Room F (basement), Labor and Industries Building, 350 Winter Street NE, Salem, Oregon Please join my meeting from your computer, tablet or smartphone. https://global.gotomeeting.com/join/698824261 You can also dial in using your phone. United States (Toll Free): 1 877 309 2073 Access Code: 698-824-261 First GoToMeeting? Do a quick system check: https://link.gotomeeting.com/system-check
Facilitators:	Fred Bruyns and Myra Aichlmayr, Workers' Compensation Division
8:30 to 8:40	Welcome and introductions; meeting objectives
8:40 to 10:00	Discussion of issues
10:00 to 10:15	Break
10:15 to 10:55	Discussion of issues continued – New issues?
10:55 to 11:00	Summing up – next steps – thank you!

Attached: [Issues document](#)
[Draft rule](#)

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Oregon Administrative Rules Revision
Chapter 436, Division 010, Rule 0265
For Rulemaking Advisory Committee Meeting

Nov. 13, 2018, 8:30 a.m., Room B, Labor & Industries Building, Salem

Issue #1

Rule: OAR 436-010-0265 Appendix C
Independent Medical Examination Standards. As developed by the Independent Medical Examination Association.

Issue: The current Independent Medical Examination (IME) standards, appendix C, use broad terms that are vague and open to interpretation. This causes uncertainty for IME providers as to the division's expectations of them.

Background:

ORS 656.328 requires the division to adopt by rule standards of professional conduct for providers performing IMEs if the appropriate health professional regulatory board has not adopted standards pertaining to IMEs. Statute provides that the rules adopted by the director 'may be' consistent with the guidelines published by the Independent Medical Examination Association (IMEA) in effect on June 4, 2007. On December 4, 2007, the division did adopt the IMEA's standards, and they have remained in effect, without change, since that time.

During the 2015 legislative session, the Workers' Compensation Management-Labor Advisory Committee (MLAC) created an IME subcommittee to review IME issues and to provide recommendations to the Legislature. In the report, the subcommittee agreed that the current process could be improved, particularly, "...there should be more focus on improving worker and provider interactions..." On January 17, 2017 the full MLAC voted to accept the subcommittee report and recommendations, including, "The department should review and seek comments on the rules relating to IME provider certification, ethics standards, and training requirements." The full text of the Independent Medical Examination Report can be found at <https://services.oregon.gov/DCBS/mlac/Documents/2016/1-18-16-mlac-ime-fnl-rpt.pdf>.

In 2017, of 28 complaints received by the division regarding IMEs, 13 alleged unprofessional and disrespectful behavior (e.g. rude, cut workers off while talking, talked down to workers, not listening) by the IME provider. In 2016, of the 27 complaints received, 14 alleged unprofessional and disrespectful behavior. In discussing the allegations of a complaint with an IME provider, the division found that the current IME standards are not interpreted the same by all IME providers and require additional explanation. The division's intent is to provide clear standards for IME providers that would not require additional explanation, are easy to understand and comply with and which will improve the interaction between the IME provider and the worker.

Options:

- Revise the IME standards, appendix C, with suggested rewritten language below:

**Independent Medical Examination (IME)
Requirements and Standards of Professional Conduct
Appendix C**

- 1. IME providers must maintain effective communication, which includes but is not limited to:**
 - a. Taking steps to avoid personal conflicts during the IME and to the extent they arise, an IME provider must be prepared to address the conflict in a professional and constructive manner and adapt to situations by changing strategy or communication style when appropriate.
 - b. Maintaining the confidentiality of the parties involved in the exam subject to applicable laws.
 - c. Allowing the worker to express themselves fully without unnecessary interruption. If the IME provider needs more information after a worker has answered a question, the IME provider must rephrase the question and explain why they are asking again.
- 2. IME providers must conduct an objective and impartial examination, which includes but is not limited to:**
 - a. Conducting the IME without any preconceived notions or premature conclusions.
 - b. Not sharing personal feelings or personal opinions.
 - c. Remaining objective and impartial, both in reporting and during the examination.
 - d. Basing findings and opinions only on established medical fact, practice, and theory, and not on an accepted fee for services.
 - e. Recusing themselves prior to the IME if there is any sort of pre-existing conflict, whether apparent or actual.
 - f. Being fair, truthful, and forthright in interactions with the worker and insurers whether through written documentation or oral communication.
- 3. IME providers must maintain dignity and respect for the parties involved, which includes but is not limited to:**
 - a. Treating the worker with dignity and respect and listening attentively.
 - b. Giving the worker appropriate empathy for pain, discomfort, and anxiety.
 - c. Using an appropriate tone and being aware of the worker's demeanor and body language when conducting the IME.
 - d. Being courteous and polite to the worker.
 - e. Being respectful of the worker's scheduled time for the IME and minimizing the necessary preparation for the IME while the worker waits.
 - f. Refraining from making disparaging or insulting comments to the worker about any party to the claim.
 - g. Refraining from criticizing or degrading the worker about their behavior or the history they provide.
 - h. Respecting a worker's answer of no, if the IME provider asks for permission to allow someone other than a scribe or chaperone to sit in on the IME without further questioning or encouraging a worker to provide permission.

- 4. Before the IME starts, the IME provider must:**
 - a. Identify him or her self to the worker as an IME provider;
 - b. Verify the worker's identity;
 - c. Tell the worker who requested the IME;
 - d. Tell the worker that a physician-patient relationship will not be sought or established;
 - e. Tell the worker that any information provided during the IME will be documented in a report;
 - f. Let the worker know that the IME provider cannot share opinions with them but will document findings in the report;
 - g. Explain the procedures that will be used during the IME;
 - h. Tell the worker that he or she may terminate a procedure if the worker feels the activity is beyond his or her physical capacity or when pain occurs; and
 - i. Ask the worker if he or she has any questions about the IME process.
- 5. During the IME, the IME provider must:**
 - a. Ensure the worker has privacy to disrobe;
 - b. Sufficiently examine the conditions being evaluated to answer the requesting party's questions; and
 - c. Let the worker know when the exam has concluded, and ask if the worker wants to provide more information or has questions.

- Adopt changes to the IME standards, appendix C, with language other than outlined above.
- Other?

Fiscal Impacts, including cost of compliance for small business:

Recommendation:

Issue #2

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME).

Issue: There is nothing in rule that describes or defines where an IME can be performed or what would be an appropriate setting.

Background: OAR 436-010-0265(1) (b) states “The provider will determine the conditions under which the IME will be conducted.”

The division questions whether the “conditions under which the IME will be conducted” would allow for a setting, such as a hotel room or setting not primarily used to conduct exams.

Workers are required to attend an IME and may be penalized if they do not. Conducting an IME in a hotel room or other location not primarily used to conduct exams can place the worker in a situation of undue stress and can be seen as less than professional or respectful to the worker.

The division is focused on improving worker and IME provider interactions. In order to be respectful to the worker the IME should be performed in a professional setting that is primarily used for conducting exams which is safe and secure and allows privacy for the worker.

The division wants to make sure our expectations are clearly stated in the administrative rules. The division recognizes that some rural areas may lack a clinic setting, and a hotel may be preferable over the worker traveling a great distance; however, using a hotel should be a last resort. Adding the suggested language in the first bullet under “options” below gives the rule more clarity.

Options:

- Add the following language to 436-010-0265(1) (b) reorg 436-010-0265(1) (e) “The IME should be performed in a professional setting that is primarily used for conducting exams. In the event the IME is not performed in a professional setting that is primarily used for conducting exams, the IME location should be a safe and secure environment, including a private place for the worker to disrobe, and allow for confidentiality.”
- Add language other than outlined above.
- Other.

Fiscal Impacts, including cost of compliance for small business:

Recommendation:

Issue #3

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME).

Issue: It is not clear in OAR 436-010-0265 who is responsible to make the determination of “good standing,”- either the medical provider’s regulatory board or the division.

Background:

Currently OAR 436-010-0265(2)(a)(A) states “To be on the director’s list to perform IMEs or WRMEs a medical service provider must complete the online application at www.oregonwcdoc.info, hold a current license, be in good standing with the provider’s regulatory board...”

The division determines whether the provider has met all the requirements in order to be added to the director’s list of authorized IME providers. The determination of “good standing”- is not defined by the provider’s regulatory boards. While the term “good standing”- may have been used by licensing and regulatory boards in the past, most do not use this term as it relates to the status of the licensee. The intent of the rule was to allow the division to make a determination of “good standing”. By adding the suggested language below it will add clarity as to what the division means by “good standing”- as it relates to adding a provider to the director’s IME provider list.

Options:

- Amend current OAR 436-010-0265(2)(a)(A) (reorg 436-010-0265(2)(b)(C)) to include that to be placed on the director’s list of authorized IME provider, a medical provider must:
 - (C) Be in good standing as determined by the division. For the purpose of this paragraph, the division determines good standing to mean the provider is not currently, or within the past two years been subject to, a disciplinary action or stipulated agreement with the provider’s regulatory licensing board that the division determines to be detrimental to performing IMEs; and
- Add language other than outlined above.
- Other.

Fiscal Impacts, including cost of compliance for small business:

Recommendation:

Issue #4

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME)

Issue: OAR 436-010-0265(2) (a) (A) (ii) and 436-010-0265(3) allow for an outside vendor to provide director-approved IME training as long as the curriculum includes the topics in the rule and Appendix B. Topics in Appendix B are vague or obsolete it is unclear where the information would be found.

Background:

ORS 656.328 states the director shall adopt by rule educational materials for providers participating in the workers' compensation system and conducting independent medical examinations required under ORS 656.325, in consultation with the advisory committee on medical care of the Workers' Compensation Division of the Department of Consumer and Business Services, the Workers' Compensation Management-Labor Advisory Committee and affected interest groups. While the division promulgated rules to allow for outside training, ORS 656.328 doesn't contain a provision requiring the division to allow for outside training.

436-010-0265(2)(a) states medical service providers can perform IMEs, WRMEs, or both once they complete a director-approved training and are placed on the director's list of authorized IME providers. Initially the rule required three hours of in-class training, which the director and a small number of approved entities provided in order to compile the director's list of authorized IME providers for insurers to choose from. Eventually, the three hour in-class training was video recorded. The provider would request the DVD from the director in order to complete the required three hour training. The three hour training requirement was removed from rule on 04/01/2011. At this time the director published a *Training Guide to Performing IMEs* which is available online and allows the provider to complete the training requirement at a time convenient to them. In 2016 the division decided to no longer use the training DVD. Also, the two known entities approved to provide IME training were contacted, and one was no longer in business, and the other directed providers to the director's publication online. Since 2010 there have been no requests to approve IME provider training curriculum. The director's *Training Guide to Performing IMEs* available online is up-to-date and the only approved training available to providers who want to be placed on the director's list of authorized IME providers.

During the 2015 legislative session, the Workers' Compensation Management-Labor Advisory Committee (MLAC) created an IME subcommittee to review IME issues and to provide recommendations to the Legislature. In the report, the subcommittee agreed that the current process could be improved, particularly, "...there should be more focus on improving worker and provider interactions..." On January 17, 2017, the full MLAC voted to accept the subcommittee report and recommendations, including, "The department should review and seek comments on the rules relating to IME provider certification, ethics standards, and training requirements." The full text of the Independent Medical Examination Report can be found at <https://services.oregon.gov/DCBS/mlac/Documents/2016/1-18-16-mlac-ime-fnl-rpt.pdf>. There are currently 797 authorized IME providers on the director's list of authorized IME providers. In the last year there were approximately 104 medical providers who used the

director's *Training Guide to Performing IMEs* in order to become an authorized IME provider. WCD's online training is provided at no cost to providers. The director's goal is to review the *Training Guide to Performing IMEs* regularly to ensure it is up-to-date, relevant, provides information to improve worker and provider interactions, and provide comprehensive information as well as clear expectations of IME providers. The director's *Training Guide to Performing IMEs* was updated September 2017.

Removing the requirement in rule to allow outside entities to provide IME training will not create barriers to potential providers wishing to obtain IME provider training.

Options:

- Remove reference to the director-approved training regarding IMEs in 436-010-0265 and replace with the director's *Training Guide to Performing IMEs*;

Remove Appendix B.

Remove 436-010-0265(3) IME Training.

- Continue to allow an outside vendor to provide initial IME training to providers wanting to become an IME provider, as long as it is approved by the director. Remove the curriculum requirements and Appendix B.
- Other.

Fiscal Impacts, including cost of compliance for small business:

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Recommendation

Issue #5

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME).

Issue: OAR 436-010-0265(2)(C) states in part, "... a provider may be sanctioned or removed from the director's list of authorized IME providers after the director finds that the provider..." ORS 656.328(2) does not grant the director authority to sanction, only that the director may exclude the IME provider from the list.

Background:

ORS 656.328(2) gives the director the authority to exclude an IME provider from the director's list of authorized IME providers; however, it does not give the director the authority to sanction. OAR 436-010-0265(2)(a)(C) goes further than the statute allows.

While the division may be able to sanction a medical provider for violating a workers' compensation law or rule as provided under separate statutes (ORS 656.254 and 656.327), the division has no statutory authority to sanction an IME provider under current 436-010-0265(2)(a)(C) subparagraphs (i), (ii), (iii), or (v):

(C) A provider may be sanctioned or removed from the director's list of authorized IME providers after the director finds that the provider:

- (i) Violated the standards of either the professional conduct for performing IMEs adopted by the provider's regulatory board or the independent medical examination standards published in Appendix C;
- (ii) Has a current restriction on his or her license or is under a current disciplinary action from their professional regulatory board;
- (iii) Has entered into a voluntary agreement with his or her regulatory board that the director determines is detrimental to performing IMEs;
- (iv) Violated workers' compensation laws or rules; or
- (v) Has failed to complete training required by the director.

Options:

- Remove the word 'sanction' from OAR 436-010-0265(2)(a)(C).
- Other.

Fiscal Impacts, including cost of compliance for small business:

Recommendation:

Issue #6

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME).

Issue: A medical service provider on the director’s list of authorized IME providers is subject to the reporting requirements under ORS 656.254, specifically as it relates to reporting having performed an invasive procedure (Form 3227). Currently, rule language is not explicit that an IME provider may be sanctioned for failure to comply with ORS 656.254, and the reporting of an invasive procedure under OAR 436-010-0265.

Background:

The director can only sanction a medical provider for a rule violation if the medical provider is providing treatment according to ORS 656.327 or has violated reporting requirements under ORS 656.254. The current rule language under 436-010-0265(2)(a)(C)(iv) states a provider may be sanctioned or removed from the director’s list of authorized IME providers after the director finds the provider violated workers’ compensation laws or rules

An IME provider may perform an invasive procedure as part of the IME in which they are required to follow OAR 436-010-0265(6) and are subject to sanction under OAR 436-010-0340. The invasive procedure form 3227 instructs the provider to make copies of form 3227 for the worker and to send the original to the insurer. The director considers the invasive procedure rule in 436-010-0265(6) a reporting requirement by the IME medical provider. ORS 656.254(2) states the director shall establish sanctions for the enforcement of medical reporting requirements. The current language in 436-010-0340(1) is limited to ORS 656.254(1).

Options:

- Remove language in 436-010-0265(2)(a)(C)(iv) “Violated workers’ compensation laws or rules” **and;**

Add the following language to 436-010-0265(6)(a); “The IME provider must make a copy of the form for the worker and send the original to the insurer.” **and;**

Add the following to 436-010-0265(6)(b) “An IME provider may be sanctioned under 436-010-0340(1) for failing to follow 436-010-0265(6)(a).” **and;**

Change 436-010-0340(1) reference to ORS 656.254(1) to reference ORS 656.254.

- Add language other than outlined above
- Other:

Fiscal Impacts, including cost of compliance for small business:

Recommendation:

Issue #7

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME).

Issue: OAR 436-010-0265 does not detail the process for investigating and reviewing IME complaints as required by ORS 656.328(3)(b).

Background:

ORS 656.328(3)(b) requires the director to adopt by rule a process for investigating and reviewing complaints about IMEs that includes, but is not limited to, standards for referring complaints to the appropriate health professional regulatory board. Current OAR 436-010-0265(2)(a)(C) states when a provider may be removed from the director's list of authorized IME providers and their appeal rights; however, the process for investigating and reviewing complaints is not provided.

Options:

- Add the following suggested new language to 436-010-0265:

(3) IME complaint process.

- (a)** A complaint about an IME may be sent to the director for investigation.
- (b)** IME complaints are reviewed to determine the appropriate action under the director's jurisdiction.
- (c)** IME complaints are investigated by the division to determine if there is a violation of one or more of the professional standards of conduct or workers' compensation laws or rules.
- (d)** The division may contact the IME provider regarding the allegations and request:
 - (A)** A written response regarding the allegations;
 - (B)** A copy of the IME report;
 - (C)** Contact information for scribes, chaperones, or other people attending the IME at the IME provider's request; or
 - (D)** A copy of a video or audio recording of the IME, if the IME was recorded.
- (e)** If a response to requested information under subsection (d) is not received within 14 days from the date of the letter, the division may make a decision based on available information.
- (f)** The division may contact any person who may have information or view any documentation or items regarding the IME complaint.
- (g)** The division will notify the IME provider and the complainant in writing of the outcome of the IME investigation.

(h) When investigating a new complaint regarding an IME provider, the division will review all complaints received in the past two years, excluding complaints where the director found no violation, to determine if there is a pattern of behavior involving the IME provider. If the director sees a pattern of behavior, the director may take additional action, up to and including removal from the director's list of authorized IME providers.

(i) An order issued by the director to remove an IME provider from the director's list of authorized IME providers will include a notice of appeal rights under OAR 436-010-0019.

- Add language detailing the process for investigation and review, other than outlined above.
- Other.

**Fiscal Impacts, including cost of compliance for small business:
Recommendation:**

Rulemaking advisory committee meeting
Nov. 13, 2018

Issue #8

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME).

Issue: OAR 436-010-0265(3) (c) includes language that pertains to training requirements for claims examiners, which is governed by OAR 436-055.

Background: OAR 436-055 governs the initial certification, renewal and training requirements for claims examiners. Individuals who want to know the requirements for becoming a certified claims examiner, and current certified claims examiners who want to know the training requirements for renewal will refer to OAR 436-055. The requirements for training regarding interactions with IME providers is located in 436-055-0085.

Options:

- Remove language in 436-010-0265(3)(c) “Insurer claims examiners must be trained and certified in accordance with OAR 436-055 regarding appropriate interactions with IME medical service providers.”
- Other:

Fiscal Impacts, including cost of compliance for small business:

Recommendation:

Issue #9

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME).

Issue: The language in OAR 436-010-0265(5) does not explicitly state that the IME provider can ask the observer to leave and continue the IME or end the IME if the observer interferes or obstructs the IME.

Background: Current rule language states a worker must sign a form indicating they would like an observer present and acknowledging they understand that an observer must not participate in or obstruct the exam; and the IME provider is responsible to “verify” the worker signed the form. “The Observer Form” states “If my observer interferes with the exam, the IME provider may stop the exam, which could affect my benefits.” The rule does not explicitly state the IME provider can ask the observer to leave and continue the IME or end the IME if the observer interferes or obstructs.

There is no option but to end the IME if the observer interferes or obstructs the IME. By allowing the IME provider to ask the observer to leave the IME, the IME could continue with the worker’s consent without the observer. By adding language to OAR 436-010-0265(6)(c), the division is providing clear direction that the IME provider may ask the observer to leave and continue the IME or end the IME.

Options:

- Add language OAR 436-010-0265(5) “If the observer interferes or obstructs the IME the IME provider may ask the observer to leave and continue the exam with the worker’s consent or end the IME.”
- Other:

Fiscal Impacts, including cost of compliance for small business:

Recommendation:

Issue #10

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME).

Issue: There is no time frame in rule for when the IME provider should provide the IME report to the insurer.

Background: There is no timeframe in rule for when the IME provider must send the IME report to the insurer. The division has received only one complaint regarding an untimely IME report sent to the insurer. The division would like feedback from stakeholders about whether a time frame is needed.

Options:

- Revise language under OAR 436-010-0265(10) to include “timely” before report as following:
 - (a) After the IME is completed, the IME provider must send the insurer a timely report that includes, but is not limited to the following:
- Add a specific time frame when the IME provider must send the report (e.g. within 14 days, 21 days).
- Other:

Fiscal Impacts, including cost of compliance for small business:

Recommendation:

Issue #11

Rule: OAR 436-010-0265 Independent Medical Examination (IME) and Worker Requested Medical Exam (WRME).

Issue: Rule states that the director may sanction an IME provider for providing any false statement in the IME report. The division does not have authority to sanction an IME provider for any false statements.

Background:

The current language in OAR 436-010-0265(10) (a)(B) states in part “that the IME provider must sign a statement at the end of the report acknowledging that any false statements may result in sanctions by the director...” ORS 656.328 only grants the director authority to exclude an IME provider from the authorized IME provider list, not to sanction a provider.

As it relates to investigating IME complaints, the director examines whether the IME provider conducted the exam in the manner required by the IME standards related to the interaction between the IME provider and the worker. The director does not determine the validity of a medical opinion. Unlike an Administrative Law Judge at hearing, the director does not review an IME provider’s qualifications or weigh the medical probability of their opinion.

If a worker disagrees with information contained in an IME report, the worker can submit a rebuttal to their claims examiner. If the insurer issued a denial of compensability based on the IME report, the worker may request a hearing and may be eligible for a Worker Requested Medical Examination, ORS 656.325(1).

Options:

- Revise language under 436-010-0265(10) to remove the reference to sanctioning a provider for providing false statements in the IME report. Would now read as follows:
 - (a) After the IME is completed, the IME provider must send the insurer a timely report that includes, but is not limited to the following:
 - (A) Clear and accurate documentation of all tests performed;
 - (B) Who performed the IME;
 - (C) Who dictated the report;
 - (D) A signed quality assurance statement acknowledging that to the best of the IME provider’s ability all statements contained in the report are true and accurate; and
 - (E) A copy of the observer Form 3923A, the invasive procedure Form 3227, or both, if applicable.

- Other:

Fiscal Impacts, including cost of compliance for small business:

Rulemaking advisory committee meeting
Nov. 13, 2018

Recommendation:

Reorganizing rule language in 436-010-0265

Move 436-010-0265(1) (a) language “A medical service provider must not unreasonably interfere with the right of the insurer to obtain an IME by a physician of the insurer’s choice.” to reorg 436-010-0265(1) (h). Helps with readability.

Move 436-010-0265(1) (a) language “The insurer must choose the medical services providers from the director’s list of authorized IME providers found at www.oregonwcdoc.info.” to reorg 436-010-0265(1) (d). Helps with readability.

Moved current 436-010-0265(2) (b) language “If a provider is not on the director’s list of authorized IME providers at the time of the IME, the insurer may not use the IME report and the report may not be used in any subsequent proceedings.” to reorg 436-010-0265(1) (d). Helps with readability.

Move 436-010-0265(5) (c) language “A person receiving any compensation for attending the IME may not be a worker’s observer. The worker’s attorney or any representative of the worker’s attorney may not be an observer” to 436-010-0265(5) (b). Helps with readability.

Moved language in Appendix C (7) “Provide the requesting party a timely report that contains findings of fact and conclusions based on medical probabilities for which the physician is qualified to express an opinion.” to 436-010-0265(10) (refer to **issue #10.**)

Housekeeping

1. Use “IMEs” instead of “Exams.”
2. Replace “days excluding weekends and legal holidays” with “business days.”
3. Clarify “14 days to respond” to “14 days from the date received to respond.”
4. Replace “the Workers’ Compensation Division” with “the division.”

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436-010-0265 Independent Medical Exams (IMEs) and Worker Requested Medical Exams (WRMEs)

(1) General.

(a) ~~Except as provided in section (12) of this rule, "An independent medical exam"~~ (IME) means any medical exam (including a physical capacity or work capacity evaluation or consultation that includes an exam) that is requested by the insurer under ORS 656.325, ~~except as provided in section (12) of this rule.~~ A ~~"worker-requested medical exam"~~ (WRME) is an exam available to a worker under ORS 656.325. An IME or WRME is completed by a medical service provider other than the worker's attending physician or authorized nurse practitioner.

(b) The insurer may obtain three IMEs for each opening of the claim ~~without authorization by the director.~~ These ~~IME exams~~ may be obtained before or after claim closure. For the purpose of determining the number of IMEs, any IME scheduled but not completed does not count ~~as one of the three IMEs as a statutory IME.~~ A claim for aggravation, Board's Own Motion, or reopening of a claim when the worker becomes enrolled or actively engaged in training ~~under according OAR 436-120 (Vocational Assistance to Injured Workers) to rules adopted under ORS 656.340 and 656.726~~ allows a new series of three IMEs. ~~Refer to section (12) of this rule for requests for additional IMEs.~~

(c) ~~The IME may be conducted by one or more providers of different specialties, generally performed at one location. If the providers are not at one location, the IME must be at locations reasonably convenient to the worker. IMEs completed within a 72-hour period count as one IME.~~

(d) ~~A medical service provider must not unreasonably interfere with the right of the insurer to obtain an IME by a physician of the insurer's choice. The insurer must choose the medical service provider from the director's list of authorized IME providers online at www.oregonwcdoc.info. If a provider is not on the director's list of authorized IME providers at the time of the IME, the insurer may not use the IME report and the report may not be used in any subsequent proceedings.~~

~~(d) The insurer must choose the medical service providers from the director's list of authorized IME providers under ORS 656.328. The IME may be conducted by one or more providers of different specialties, generally done at one location and completed within a 72-hour period. If the providers are not at one location, the IME must be completed within a 72-hour period and at locations reasonably convenient to the worker.~~

(e) ~~The provider will determine the conditions under which the exam-IME will be conducted. The IME should be performed in a professional setting that is primarily used for conducting exams. In the event the IME is not performed in a professional setting that is primarily used for conducting exams, the IME location should be a safe and secure environment, including a private place for the worker to disrobe, and allow for confidentiality.~~

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Commented [MKA2]: Moved from (1) (a) Reorg

Commented [MKA3]: Moved from (2)(b) Reorg

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~~(f)~~(e) IMEs must be scheduled at times and intervals reasonably convenient to the worker and must not delay or interrupt medical treatment ~~of that~~ the worker has may have scheduled.

~~(g)~~(d) ~~When the insurer requires a worker to attend an IME,~~ the insurer must comply with the notification and reimbursement requirements found in under OAR 436-009-0025 and 436-060-0095.

~~(h)~~ A medical service provider must not unreasonably interfere with the right of the insurer to obtain an IME by a medical service provider ~~physician~~ of the insurer's choice.

~~(e)~~(i) A medical provider who unreasonably fails to provide diagnostic records for an IME under OAR 436-010-0240 may be assessed a penalty under ORS 656.325.

~~(j)~~(f) The worker may complete an online survey at www.wcdimesurvey.info or make a complaint about the IME on the Workers' Compensation Division's website. If the worker does not have access to the Internet, the worker may call the Workers' Compensation Division at 503-947-7606/800-452-0288.

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(2) IME and WRME Provider Authorization and Removal.

(a) Medical service providers can perform IMEs, WRMEs, or both once they complete a director approved training and ~~are placed~~ on the director's list of authorized IME providers.

(b)

~~(A)~~ To be on the director's list of authorized IME providers to perform IMEs or WRMEs, a medical service provider must:

~~(A)~~ ~~e~~ Complete the online application at www.oregonwcdoc.info;

~~(B)~~ ~~h~~ Hold a current license with his or her professional regulatory licensing board;

~~(C)~~ ~~b~~ Be in good standing as determined by the division. For the purpose of this paragraph, the division determines good standing to mean the provider is not currently, or within the past two years been subject to, a disciplinary action or stipulated agreement with the provider's regulatory licensing board that the division determines to be detrimental to performing IMEs, and must have; and

~~(D)~~ ~~i~~ Complete Reviewed the director's Training Guide to Performing IME's training materials provided or approved by the director found at www.oregonwcdoc.info. or; ~~or~~

~~(ii)~~ ~~Completed a director approved training course regarding IMEs. The training curriculum must include all topics listed in Appendix D.~~

~~(c)~~(B) By submitting the application to the director/division, the medical service provider agrees to abide by:

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(A~~i~~) The standards of professional conduct for performing IME~~s~~ adopted by the provider's regulatory [licensing](#) board or [the IME standards of professional conduct](#) published in Appendix C if the provider's regulatory [licensing](#) board does not have standards [of professional conduct for performing IMEs](#); and

(B~~ii~~) All relevant workers' compensation laws and rules.

(d)(~~e~~) A provider may be ~~sanctioned or~~ removed from the director's list of authorized IME providers after the director finds that the provider:

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ORS 656.328(2) only allows removal.

(A~~i~~) Violated the standards of either the professional conduct for performing IMEs adopted by the provider's regulatory [licensing](#) board or the ~~IME independent medical examination~~ standards published in Appendix C [if the provider's regulatory licensing board does not have standards](#);

(B~~ii~~) Has a current restriction on his or her license or is under a current disciplinary ~~action~~ [with from their his or her](#) professional regulatory [licensing](#) board; ~~or~~

(C~~iii~~) Has entered into a voluntary agreement with his or her regulatory [licensing](#) board that the director determines is detrimental to performing IMEs.

[\(e\) A provider may appeal the director's decision to remove him or her from the director's list within 60 days of the mailing date of the order under ORS 656.704\(2\) and OAR 436-001-0019.](#)

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~~(iv) Violated workers' compensation laws or rules; or~~

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~~(v) Has failed to complete training required by the director.~~

~~(D) A provider may appeal the director's decision to exclude or remove the provider from the director's list within 60 days under ORS 656.704(2) and OAR 436-001-0019.~~

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~~(b) If a provider is not on the director's list of authorized IME providers at the time of the IME, the insurer may not use the IME report and the report may not be used in any subsequent proceedings.~~

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(3) IME complaint process.

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[\(a\) A complaint about an IME may be sent to the director for investigation.](#)

[\(b\) IME complaints are reviewed to determine the appropriate action under the director's jurisdiction.](#)

[\(c\) IME complaints are investigated by the division to determine if there is a violation of one or more of the standards of professional conduct or workers' compensation laws or rules.](#)

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(d) The division may contact the IME provider regarding the allegations and request:

(A) A written response regarding the allegations;

(B) A copy of the IME report;

(C) Contact information for scribes, chaperones, or other people attending the IME at the IME provider's request; or

(D) A copy of a video or audio recordings of the IME, if the IME was recorded.

(e) If a response to requested information under subsection (d) is not received within 14 days from the date of the letter, the division may make a decision based on available information.

(f) The division may contact any person who may have information or view any documentation or items regarding the IME or complaint.

(g) The division will notify the IME provider and complainant in writing of the outcome of the IME investigation.

(h) When investigating a new complaint regarding an IME provider, the division will review all complaints received in the past two years, excluding complaints where the director found no violation, to determine if there is a pattern of behavior involving the IME provider. If the director sees a pattern of behavior, the director may take additional action, up to and including removal from the director's list of authorized IME providers.

(i) An order issued by the director to remove an IME provider from the director's list of authorized IME providers will include a notice of appeal rights under OAR 436-001-0019.

(3) IME Training:

(a) The IME provider training curriculum must be approved by the director before the training is given. Any party may submit a curriculum to the director for approval. The curriculum must include:

(A) A training outline,

(B) Goals,

(C) Objectives,

(D) The method of training, and

(E) All topics addressed in Appendix B.

(b) Within 21 days of the IME training, the training vendor must send the director the

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~~date of the training and a list of all medical providers who completed the training, including names and license numbers.~~

~~(c) Insurer claims examiners must be trained and certified in accordance with OAR 436-055 regarding appropriate interactions with IME medical service providers.~~

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(4) IME Related Forms.

(a) When scheduling an IME, the insurer must ensure the ~~medical service~~IME provider has:

- (A) [Form 3923](#), "Important Information about Independent Medical Exams," available to the worker before the exam; and
- (B) [Form 3227](#), "Invasive Medical Procedure Authorization," if applicable.

(b) The IME provider must make [Form 3923](#) with the attached observer Form [3923A](#) available to the worker.

(5) IME Observer.

(a) A worker may choose to have an observer present during the IME, ~~however, an observer may not participate in or obstruct the IME.~~ An observer is not allowed ~~to be present during~~ a psychological examination unless the ~~examining IME~~ provider approves ~~the presence of the observer.~~

~~(b) The worker's observer cannot be paid to attend the IME. IME The worker's attorney or any representative of the worker's attorney may not be an observer.~~

~~(c) If the observer interferes or obstructs the IME the IME provider may ask the observer to leave and continue the exam with the worker's consent or end the IME.~~

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~~(d)(b) The If the worker chooses to have an observer present, must sign [Form 3923A](#), "IME Observer Form," acknowledging that the worker understands the IME provider may ask sensitive questions during the exam in the presence of the observer. An observer must not participate in or obstruct the exam. If the worker does not sign [Form 3923A](#), the provider may exclude the observer. The IME provider must verify that the worker signed [Form 3923A](#) the "IME Observer Form" acknowledging that the worker understands:~~

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- (A) The IME provider may ask sensitive questions during the exam in the presence of the observer;
- (B) If the observer interferes with the exam, the IME provider may stop the exam, which could affect the worker's benefits; and
- (C) The observer must not be paid to attend the exam.

~~(c) A person receiving any compensation for attending the exam may not be a worker's observer. The worker's attorney or any representative of the worker's attorney may not be an observer.~~

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(6) Invasive Procedure.

(a) For the purposes of this rule, an invasive procedure is one that breaks the skin or penetrates, pierces, or enters the body using a surgical or exploratory procedure (e.g., by a needle, tube, scope, or scalpel). If an IME provider intends to perform an invasive procedure, the provider must explain to the worker the risks involved in the procedure and the worker's right to refuse the procedure. The worker must check the applicable box on [Form 3227](#), "Invasive Medical Procedure Authorization," either agreeing to the procedure or declining the procedure and sign the form. The IME provider must make a copy of the signed Form 3227 for the worker and send the original to the insurer.

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(b) An IME provider may be sanctioned under 436-010-0340(1) for failing to follow subsection (a) of this rule.

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(7) Recording the IME exam.

With the IME provider's approval, the worker may use a video camera or other ~~recorder~~device to record the ~~exam~~IME.

(8) Objection to the IME Location.

When a worker objects to the location of an IME, the worker may request review before the director within six business days of the mailing date of the appointment notice.

(a) The request may be made in-person, by telephone, fax, email, or mail.

(b) The director may facilitate an agreement between the parties regarding the location.

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(c) If necessary, the director will conduct an expedited review and issue an order regarding the reasonableness of the location.

(d) The director will determine if travel is medically contraindicated or unreasonable because:

- (A) The travel exceeds limitations imposed by the attending physician, authorized nurse practitioner, or any medical conditions;
- (B) Alternative methods of travel will not overcome the limitations; or
- (C) The travel would impose undue hardship for the worker that outweighs the right of the insurer to select an IME location of its choice.

(9) Failure to Attend an IME.

If the worker fails to attend an IME and does not notify the insurer before the date of the ~~exam~~IME or does not have sufficient reason for not attending the ~~exam~~IME, the director may impose a monetary penalty against the worker for failure to attend.

(10) IME Report.

(a) ~~Upon completion of~~After the ~~exam~~IME is completed, the IME provider must send the insurer a

~~(A) a~~ timely report that includes, but is not limited to, the following: ~~Send the insurer a~~

(A) Clear and accurate documentation of all tests performed;

(B) Who performed the IME; copy of the report and, if applicable, the observer Form 3923A, the invasive procedure Form 3227, or both.

(C) Who dictated the report; Sign a statement at the end of the report acknowledging that any false statements may result in sanctions by the director and verifying:

(D) A signed quality assurance statement acknowledging that to the best of the IME provider's ability all statements contained in the report are true and accurate; and Who performed the exam;

(E) A copy of the observer Form 3923A, the invasive procedure Form 3227, or both, if applicable. Who dictated the report; and

(iii) The accuracy of the report content.

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(b) The insurer must forward a copy of the signed report to the attending physician or authorized nurse practitioner within three business days, ~~excluding weekends and legal holidays~~, of the insurer's receipt of the report.

(11) Request for Additional IME exams.

(a) When the insurer has obtained the three IMEs allowed under section (1) of this rule~~this rule and wants to require the worker to attend an additional IME~~, the insurer must ~~first~~ request authorization from the director ~~for an additional IME before scheduling the worker for an additional IME~~. An insurer that fails to request authorization from the director may be assessed a civil penalty.

(b) The process for requesting authorization is:

~~(A)~~ The insurer must submit a request for authorization to the director for an additional IME by using Form 2333, "Insurer's Request for Director Approval of an Additional Independent Medical Examination." The insurer must send a copy of the request to the worker and the worker's attorney, if ~~any~~represented, ~~and~~

(c)

~~(B)~~ The director will review the request and determine if additional information from the insurer or the worker ~~is~~ is needed~~ecessary~~.

(iA) Upon receiving a written request for additional information from the director, the parties have 14 days to respond.

(iiB) If the parties do not provide the requested information ~~within the timeframes in paragraph (A)~~, the director will issue an order approving or disapproving the request based on available information.

~~(bd)~~ The director when making a determination whether to approve or deny the request for an additional IME, ~~the director may consider, but is not limited to, will consider, but is not limited to,~~ will consider, but is not limited to, whether:

(A) An IME involving the same discipline(s) or review of the same condition has been completed within the past six months;

(B) There has been a significant change in the worker's condition;

(C) There is a new condition or compensable aspect introduced to the claim;

(D) There is a conflict of medical opinions about a worker's medical treatment, medical services, impairment, stationary status, or other issues critical to claim processing or benefits;

(E) The IME is requested to establish preponderance for medically stationary

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status;

(F) The IME is medically harmful to the worker; or

(G) The IME requested is for a condition for which the worker has sought treatment or services, or the condition has been included in the compensable claim.

~~(ee)~~ Any party who disagrees with the director's order to approve or disapprove a request for an additional IME may request a hearing by the Hearings Division ~~of the Workers' Compensation Board~~ under ORS 656.283 and OAR chapter 438.

(12) Other Exams – Not Considered IMEs.

The following exams are not considered IMEs and do not require approval as outlined in section (11) of this rule:

(a) An exam, including a closing exam, requested by the worker's attending physician or authorized nurse practitioner;

(b) An exam requested by the director;

(c) An elective surgery consultation requested under OAR 436-010-0250(3);

(d) An exam of a permanently totally disabled worker required under ORS 656.206(5);

(e) A closing exam that has been arranged by the insurer at the attending physician's or authorized nurse practitioner's request; and

(f) An exam requested by the managed care organization (MCO) for the purpose of clarifying or refining a plan for continuing medical services as provided under the MCO's contract.

Stat. Auth: ORS 656.726(4)

Stat. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260, 656.264, 656.328

Hist: Amended 8/20/15 as Admin. Order 15-060, eff. 10/1/15

Amended 3/7/16 as Admin. Order 16-051, eff. 4/1/16

See also the *Index to Rule History*: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.