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, “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. 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. The insurer may obtain three IMEs for each opening of the claim. These 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 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 according to rules adopted under ORS 656.340 and 656.726 allows a new series of three IMEs. 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 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.

(b) The provider will determine the conditions under which the exam will be conducted.

(c) IMEs must be at times and intervals reasonably convenient to the worker and must not delay or interrupt treatment of the worker.

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

(e) 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.

(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.

(2) IME/WRME Authorization.

(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.

(A) 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, and must have:

(i) Reviewed IME training materials provided or approved by the director found at www.oregonwcdoc.info; or

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

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

(i) The standards of professional conduct for performing IMEs adopted by the provider’s regulatory board or standards published in Appendix C if the provider’s regulatory board does not have standards; and

(ii) All relevant workers’ compensation laws and rules.

(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.
(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.

(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.

(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 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.

(4) IME Related Forms.

(a) When scheduling an IME, the insurer must ensure the medical service 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 in a psychological examination unless the examining provider approves the presence of the observer.

(b) The worker 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 the “IME Observer Form” acknowledging that the worker understands:

(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.

(6) Invasive Procedure.

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.

(7) Record the Exam.

With the IME provider’s approval, the worker may use a video camera or other recorder
(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 location.

(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 or does not have sufficient reason for not attending the exam, the director may impose a monetary penalty against the worker for failure to attend.

(10) IME Report.

(a) Upon completion of the exam, the IME provider must:

   (A) Send the insurer a copy of the report and, if applicable, the observer Form 3923A, the invasive procedure Form 3227, or both.

   (B) Sign a statement at the end of the report acknowledging that any false statements may result in sanctions by the director and verifying:
(i) Who performed the exam;
(ii) Who dictated the report; and
(iii) The accuracy of the report content.

(b) The insurer must forward a copy of the signed report to the attending physician or authorized nurse practitioner within 72 hours of the insurer’s receipt of the report.

11) Request for Additional Exams.

(a) When the insurer has obtained the three IMEs allowed under this rule and wants to require the worker to attend an additional IME, the insurer must first request authorization from the director. Insurers that fail to request authorization from the director may be assessed a civil penalty. The process for requesting authorization is:

(A) The insurer must submit a request for authorization to the director 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; and

(B) The director will review the request and determine if additional information from the insurer or the worker is necessary. Upon receiving a written request for additional information from the director, the parties have 14 days to respond. If the parties do not provide the requested information, the director will issue an order approving or disapproving the request based on available information.

(b) To determine whether to approve or deny the request for an additional IME, the director may 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 status.

(F) The IME is medically harmful to the worker.

(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.

(c) Any party who disagrees with the director’s order approving or disapproving 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
Hist: Amended 3/1/11 as Admin. Order 11-051, eff. 4/1/11
Amended 3/11/13 as WCD Admin. Order 13-052, eff. 4/1/13
Amended 8/20/15 as Admin. Order 15-060, eff. 10/1/15
Appendix B

Independent Medical Examination (IME)

Medical Service Provider
Training Curriculum Requirements

A. Overview
WCD will provide the overview portion of the curriculum to vendors for use in their approved training program.

1. Why the IME training is required.
   a) The Workers' Compensation Management-Labor Advisory Committee requested a study after hearing anecdotal injured worker complaints.
   b) The Workers' Compensation Division (WCD) study found there was perceived bias in the IME system.
   c) There was no process to handle complaints about IMEs.
   d) There was concern about IME report quality.
   e) The 2005 Legislature passed Senate Bill 311 unanimously.

2. Workers’ compensation system:
   a) Public policy: workers’ compensation law [ORS 656.012 (2)] identifies four objectives:
      1) Provide, regardless of fault, sure, prompt and complete medical treatment for injured workers, and fair, adequate, and reasonable income benefits to injured workers and their dependents.
      2) Provide a fair and just administrative system for delivery of medical and financial benefits to injured workers that reduces litigation and eliminates the adversary nature of the compensation proceedings, to the greatest extent possible.
      3) Restore the injured worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable.
      4) Encourage maximum employer implementation of accident study, analysis and prevention programs to reduce the economic loss and human suffering caused by industrial accidents.

      Additional items to discuss:
      - Exclusive remedy.
      - The Legislature found that common law is expensive without proportionate benefit.
      - No fault versus tort.
      - The economy and the costs of injuries.

   b) Causation of work related injuries.
      - Is the injury work related?
      - What are pre-existing conditions?
      - What is major contributing cause?
c) The IME provider role
   - Unbiased, neutral third-party
   - Independent

d) The difference between IMEs and
   - Worker Requested Medical Exams (Causation)
   - Arbiter Exams (Reconsideration)
   - Physician Reviews (Medical disputes)

B. Provider Code of Professional Conduct
   IME providers must follow a professional standard or guidelines of conduct while
   performing IMEs. The guidelines must be:
   1. The guidelines adopted by the appropriate health professional regulatory board, OR
   2. The “Guidelines of Conduct” published in Appendix C, if the appropriate regulatory board
      hasn’t adopted standards for professional conduct regarding IMEs.

C. Report writing
   1. The statement of accuracy must be in compliance with OAR 436-010-0265.
   2. Report content: what comprises a good IME report?

D. Communication
   What is appropriate communication between claims examiners and medical providers?

E. Training specific to the requirements of ORS 656.325, OAR 436-010, and 436-060
   concerning:
   1. Observers
   2. Recording of exams
   3. Invasive procedures
   4. Sanctions and civil penalties
   5. Worker penalties and suspension
   6. Exam location disputes
   7. Forms
   8. Complaints.

F. Sanctions of providers, up to and including removal from the list:
   1. Provider has restrictions on its license or current disciplinary actions from its health
      professional regulatory board.
   2. Provider has entered into a voluntary agreement with the licensing board that the director has
      determined to be detrimental to performing IMEs.
   3. Provider has violated the standards of professional conduct for IMEs.
   4. Provider has violated workers’ compensation laws or rules.
   5. Provider has failed to attend training required by the director.
G. If the director removes a provider's name from the director's list, providers may appeal.

H. Workers’ Compensation Division’s complaint process:
   1. Use of injured workers surveys about IMEs
   2. Complaints received by the Workers’ Compensation Division.

I. Impairment findings: The purpose of measuring impairment is vital to accurately report return-to-work status using job description, job analysis, work capacities, video of the job at injury being performed, etc.

J. Other necessary information as determined by the director.
Appendix C

Independent Medical Examination Standards
As developed by the Independent Medical Examination Association

1. Communicate honestly with the parties involved in the examination.
2. Conduct the examination with dignity and respect for the parties involved.
3. Identify yourself to the examinee as an independent examining physician.
4. Verify the examinee’s identity.
5. Discuss the following with the examinee before beginning the examination:
   a. Remind the examinee of the party who requested the examination.
   b. Explain to the examinee that a physician-patient relationship will not be sought or established.
   c. Tell the examinee the information provided during the examination will be documented in a report.
   d. Review the procedures that will be used during the examination.
   e. Advise the examinee a procedure may be terminated if the examinee feels the activity is beyond the examinee’s physical capacities or when pain occurs.
   f. Answer the examinee’s questions about the examination process.
6. During the examination:
   a. Ensure the examinee has privacy to disrobe.
   b. Avoid personal opinions or disparaging comments about the parties involved in the examination.
   c. Examine the condition being evaluated sufficient to answer the requesting party’s questions.
   d. Let the examinee know when the examination has concluded, and ask if the examinee has questions or wants to provide additional information.
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.
8. Maintain the confidentiality of the parties involved in the examination subject to applicable laws.
9. At no time provide a favorable opinion based solely or in part upon an accepted fee for service.