

AMENDATORY SECTION (Amending WSR 09-24-085, filed 11/30/09, effective 3/1/10)

WAC 296-23-302 Definitions. Approved independent medical examination (IME) provider - A licensed doctor or firm whose credentials are approved to conduct an independent medical examination, rating evaluation, or provide IME associated services including but not limited to file preparation, scheduling of examinations and processing billing. An approved IME provider is assigned a unique provider number.

Department - For the purpose of this section, department means the department of labor and industries industrial insurance workers' compensation state fund and self-insured programs.

Direct patient care - For the purpose of meeting the qualifications of an independent medical examination (IME) provider, direct patient care means face-to-face contact with the patient for the purpose of evaluation and management of care that includes, but is not limited to:

- History taking and review of systems;
- Physical examination;
- Medical decision making;
- Coordination of care with other providers and agencies.

This does not include time spent in independent medical examinations.

Impairment rating examination - An examination to determine whether or not the injured/ill worker has any permanent impairment(s) as a result of the industrial injury or illness after the worker has reached maximum medical improvement. An impairment rating may be conducted by a qualified attending provider, a medical consultant, or an approved examiner. An impairment rating may be a component of an IME.

Independent medical examination (IME) - An objective medical-legal examination requested (by the department or self-insurer) to establish medical ~~((facts))~~ findings, opinions, and conclusions about a worker's physical condition. These examinations may only be conducted by department-approved examiners.

Independent medical examination (IME) provider - A firm, partnership, corporation, or individual licensed doctor (examiner) who has been approved and given an independent medical examination (IME) provider number by the department to perform IMEs.

Medical director - A licensed doctor and approved IME examiner in the firm, partnership, corporation or other legal entity responsible to provide oversight on quality of independent medical examinations, impairment ratings and reports.

Medical Examiners' Handbook - A handbook ~~((distributed))~~ developed by the department containing department policy and information to assist providers who perform independent medical

examinations and impairment rating examinations.

Patient related services - Patient related services are defined as one or more of the following professional activities:

- Direct patient care;
- Locum tenens;
- Clinical consultations for treating/attending doctors;
- Clinical ((~~or classroom~~)) instruction of medical, osteopathic, dental, podiatry, or chiropractic students and/or residents;
- On-call emergency services;
- Volunteer clinician providing direct patient care services in his or her specialty((~~+~~
- ~~Participation in clinically based peer review or quality review activities~~)).

Provider number - A unique number(s) assigned to a provider by the department of labor and industries. The number identifies the provider and is linked to a tax identification number that has been designated by the provider for payment purposes. A provider may have more than one provider number assigned by the department.

Suspension - A department action during which the provider is approved by the department but not available to accept referrals.

Temporarily unavailable - Provider is approved by the department but is temporarily unavailable to accept referrals. Temporarily unavailable applies at the provider's request for personal reasons or by the department as part of an administrative action. Provider remains unavailable until the issue is resolved.

Termination - The permanent removal of a provider from the list of approved IME examiners. All IME provider numbers assigned to the examiner are inactivated.

AMENDATORY SECTION (Amending WSR 11-01-069, filed 12/10/10, effective 1/10/11)

WAC 296-23-317 What qualifications must a provider meet to become an approved independent medical examination (IME) provider and be assigned an IME provider number? To ensure that independent medical examinations are of the highest quality and propriety, examiners and firms (partnerships, corporations, or other legal entities) that derive income from independent medical exams must apply and meet the following requirements for department approval:

(1) Examiners must:

(a) ((~~Have a current, unrestricted, and active professional license to practice in this state~~)) Submit an accurate and complete IME provider application, including any required supporting documentation and sign without modification, an IME provider agreement with the department.

(b) Be currently licensed, certified, accredited or registered according to Washington state laws and rules or in any other

jurisdiction where the applicant would conduct an examination.

~~(i) ((Unrestricted is defined as not currently having a temporary or permanent probation, suspension, revocation or any other limitation of any kind placed on a professional license or privilege to practice by any court, board, or administrative agency in any jurisdiction.))~~ The license, registration or certification must be free of any restrictions, limitations, or conditions relating to the provider's acts, omissions, or conduct.

~~(ii)~~ The applicant must not have surrendered, voluntarily or involuntarily his or her professional state license or Drug Enforcement Administration (DEA) registration in any state while under investigation or due to findings resulting from the provider's acts, omissions, or conduct. The department may grant an exception for any restriction, limitation, or condition deemed by the department to be minor or clerical in nature or for a case where the restriction, limitation, or condition has been removed.

~~(iii)~~ If any restriction once existed against the applicant's license, registration, or certification, the department must automatically deny the application if the applicant's record has not been clear for at least five years. If after five years the record has been cleared, then the department exclusively reserves the right to grant or deny the application based on the nature of the prior restriction.

~~((iii))~~ (iv) Exception to the five-year limit may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

~~((iv))~~ (c) Not have had clinical admitting and management privileges denied, limited, or terminated for quality of care issues.

(i) If an applicant has any pending action on their privilege to practice by any court, board, or administrative agency, or by any health care institution such as a hospital in any jurisdiction, the department exclusively reserves the right to grant or deny the application based upon the nature of the action.

~~((b) Have no final action by the department to suspend or revoke a previously assigned provider number as a treating provider or independent medical examiner.~~

~~(i))~~ (ii) If the applicant has any criminal history, history of a violation of statutes or rules by any administrative agency, court or board in any jurisdiction, the department must automatically deny the application if such history exists within five years of the application. If such history exists but is older than five years, then the department exclusively reserves the right to grant or deny the application based upon the nature of the history.

~~((iii))~~ (iii) Exception to the five-year limit may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

~~((c))~~ (d) Have no final action by the department to suspend or revoke a previously assigned provider number as a treating provider or independent medical examiner.

(e) Have no pending civil or administrative action in any jurisdiction that affects the ability or fitness to practice

medicine. The department will not process the application until the matter has been resolved.

~~((d))~~ (f) Have not been excluded, expelled, terminated, or suspended from any federally or state funded health care programs including, but not limited to, medicare or medicaid programs based on cause or quality of care issues.

(g) Have no significant malpractice claims or professional liability claims (based on severity, recency, frequency, or repetition).

(h) Have not been denied approval, or removed, from the provider network as defined in WAC 296-20-01010.

(i) Attest that all information submitted on the application or credentialing materials is true and accurate and must sign under penalty of perjury.

~~((e))~~ (j) Comply with all federal, state, and local laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.

~~((f))~~ (k) Adhere to the independent medical examination standards of conduct, and all other laws, rules, and policies. These include but are not limited to the following:

- IME provider application agreement;
- Medical Aid Rules and Fee Schedules (MARFS);
- Payment policies;
- Medical Examiners' Handbook.

~~((g))~~ (l) Review and sign the IME report and attest to its accuracy.

~~((h))~~ (m) Conduct examinations in a facility (~~designed~~) primarily designated as a professional office (~~suitable~~) for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the (~~site~~) facility is for medical services. The (~~site~~) facility must not be residential, commercial, educational or retail in nature. The (~~site~~) facility must be clean, sanitary and provide adequate access, climate control, light, space, and equipment. The (~~site~~) facility must provide for the comfort and safety of the worker and for the privacy necessary to conduct examinations and discuss medical issues. Providers must have a private disrobing area and adequate provision of examination gowns if disrobing is required.

~~((i))~~ (n) Have telephone answering capability during regular business hours, Monday through Friday, in order to facilitate scheduling of independent examinations and means for workers to contact the provider regarding their scheduled examination. If the office is open on Saturday, telephone access must be available.

~~((j))~~ (o) Agree that either they or the department may inactivate their IME provider number or numbers. If an IME provider number has been inactivated and the examiner wishes to resume performing IMEs, they must reapply and meet current requirements.

~~((k))~~ (p) Agree to keep the department informed and updated with any new information regarding changes or actions that may affect their status as an IME examiner.

~~((l))~~ (q) Reapply every three years in order to maintain an

active IME provider number.

(i) In the first year of the new rule, effective March 1, ~~((2010))~~ 2013, all current examiners must reapply.

(ii) Examiners may have until March 1, 2014, to comply with the new continuing education (CE) documentation requirement.

~~((iii))~~ (iii) Examiners will be notified by mail sixty days prior to their renewal application due date.

~~((m))~~ (r) Achieve a passing score on the *Medical Examiners' Handbook* test prior to initial application and ~~((every three years thereafter))~~ when renewal is due or required.

(2) Requirements for specific examiner specialties:

(a) Medical physician and surgeon (MD) or osteopathic physician and surgeon (DO) applicants must: Hold a current board certification in their specialty; or have completed a residency and become board certified within five years of completing the residency.

(i) Residency must be in a program approved by the American College of Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or equivalent approving body.

(ii) Fellowships will not be accepted in lieu of accredited residency training though they may be used to determine examination specialty qualifications.

(b) Podiatric physician (DPM) applicants must: Have a current board certification in their specialty or have completed a residency and become board certified within five years of completing the residency.

(i) Complete a residency program approved by the American Podiatric Medical Association (APMA).

(ii) Fellowships will not be accepted in lieu of accredited residency training though they may be used to determine examination specialty qualifications.

(c) Chiropractic physician (DC) applicants must be a chiropractic consultant for the department for at least two years and attend the department's chiropractic IME seminar in the twenty-four months before initial application.

(d) Dentist (doctor of dental science/doctor of dental medicine) (DDS/DMD) applicants must have at least two years of clinical experience after licensure, and:

(i) Hold current certification in their specialty; or

(ii) Have one year of postdoctoral training in a program approved by the American Dental Association Commission on Dental Accreditation (CODA); or

(iii) Be a general dentist.

(3) All examiners must meet ~~((one of the following two criteria:~~

~~(a) Document a minimum of three hundred eighty-four hours of patient related services (excluding independent medical examinations) per calendar year; or~~

~~(b) Complete a minimum of twelve continuing medical education (CME) units of department approved education and training per year or a total of thirty-six CMEs in three years.)~~ the continuing education (CE) requirement for their respective state licensure. Washington state CE requirements are shown in the table below.

	Doctors licensed to practice:				
	Medicine & surgery	Osteopathic medicine & surgery	Podiatric medicine & surgery	Chiropractic	Dentistry
Required continuing education hours:	<u>50 hours per year or 200 hours in 4 years</u>	<u>50 hours per year or 150 hours in 3 years</u>	<u>25 hours per year or 50 hours every 2 years</u>	<u>25 hours per year</u>	<u>21 hours per year</u>

Applicants must submit documentation of CE hours with their initial application and when renewal is due or required. This training ((would)) must focus on ((improving the provider's skills in completing IMEs or staying current in the)) subject areas relevant to the provider's specialty or skills required to complete IMEs. ((Topics include, but are not limited to:

- Report writing;
- Providing testimony;
- Standards of practice;
- Medical ethics;
- Patient care;
- Impairment rating.)

Exception: The requirement to submit CE documentation will be waived for applicants who provide documentation of a minimum of seven hundred sixty-eight hours of patient related services (excluding independent medical examinations) per calendar year.

Only examiners in the following practice specialties who meet all other requirements may perform IMEs:

	Doctors licensed to practice:				
Examiner is:	Medicine & surgery	Osteopathic medicine & surgery	Podiatric medicine & surgery	Chiropractic	Dentistry
In Washington	Yes	Yes	Yes	Yes	Yes
Outside Washington	Yes	Yes	Yes	No	Yes

(4) IME firms (partnerships, corporations or other legal entities) that derive income from independent medical examinations must:

(a) Have a medical director. The medical director must be a licensed medical physician and surgeon (MD) or ((an)) osteopathic physician and surgeon (DO), be responsible to provide oversight on the quality of independent medical examinations, impairment ratings and reports, and be available to resolve any issue that department staff may bring to the medical director's attention.

(i) IME firms conducting exams in Washington state must have a medical director who has a Washington state medical license.

(ii) The medical director must be an approved independent medical examiner.

(b) Have no previous business or audit action by the department to suspend or revoke an assigned provider number.

(c) Have no previous action taken by any federal or state

agency for any business previously owned or operated.

(d) Facilitate scheduling of providers both for the examination and for any required follow up, including amendments to the report, subsequent reports, or for any testimony required. If the provider fails to participate in scheduling or otherwise causes an undue expense to the department, whether intentionally or not, the department may fine the provider up to five hundred dollars per violation.

(e) Attest that all information submitted on the application is true and accurate and must sign under penalty of perjury.

(f) Comply with all federal, state, and local laws, regulations, and other requirements with regard to business operations including specific requirements for any business operations for the provision of medical services.

(g) Adhere to the independent medical examination standards of conduct, and all other laws, rules, and policies. These include, but are not limited to, the following:

- IME provider application agreement;
- *Medical Aid Rules and Fee Schedules (MARFS)*;
- Payment policies;
- *Medical Examiners' Handbook*.

(h) Ensure that examinations are conducted in a facility (~~designed~~) primarily designated as a professional office (~~suitable~~) for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the (~~site~~) facility is for medical services. The (~~site~~) facility must not be residential, commercial, educational or retail in nature. The (~~site~~) facility must be clean, sanitary and provide adequate access, climate control, light, space, and equipment. The (~~site~~) facility must provide for the comfort and safety of the worker and for the privacy necessary to conduct examinations and discuss medical issues. Providers must have a private disrobing area and adequate provision of examination gowns if disrobing is required.

(i) Have telephone answering capability during regular business hours, Monday through Friday, in order to schedule independent medical examinations and communicate with workers about scheduled examinations. If an exam site is open on Saturday, telephone access must be available.

(j) Agree that either the firm or the department may inactivate their IME provider number or numbers. If an IME provider number has been inactivated and the firm wishes to resume related services, they must reapply and meet current requirements.

(k) Agree to keep the department informed and updated with any new information such as exam site or administrative office locations, phone numbers or contact information.

(l) Reapply every three years in order to maintain an active IME provider number.

(i) In the first year of the new rule, effective March 1, (~~2010~~) 2013, all IME firms must reapply.

(ii) Firms will be notified by mail sixty days prior to their renewal application due date.

(m) Have their medical director and a representative from

their quality assurance (QA) staff achieve a passing score on the *Medical Examiners' Handbook* test prior to initial application and ~~((every three years thereafter))~~ when renewal is due or required.

AMENDATORY SECTION (Amending WSR 11-01-069, filed 12/10/10, effective 1/10/11)

WAC 296-23-337 For what reasons shall the department's medical director or designee suspend or terminate approval of an independent medical examination (IME) examiner or firm? To ensure high quality independent medical examinations (IMEs), the department's medical director or designee may, in the situations described below, terminate, suspend, or inactivate approval of examiners or firms (partnerships, corporations, or other legal entities) that derive income from IMEs. IME providers must have an active provider account number to perform IMEs or provide IME related services.

FOR EXAMINERS:

(1) **AUTOMATIC TERMINATION.** The department's medical director or designee may terminate approval of examiners in situations including, but not limited to, the following:

(a) Their license has been revoked in any jurisdiction.

(b) A final order or stipulation to informal disposition has been issued against the examiner by a state authority in any jurisdiction including, but not limited to, the Washington state department of health, when such charges involve conduct or behavior as defined in chapter 18.130 RCW, Uniform Disciplinary Act. These include, but are not limited to:

(i) Sexually inappropriate conduct, behavior or language.

(ii) Behavior that puts a patient's safety or well-being at risk.

(c) The examiner has committed perjury or falsified documents provided to the department or insurer.

(d) The examiner has a criminal felony history in any jurisdiction.

(e) The examiner has failed to reapply every three years or when required.

(2) **AUTOMATIC SUSPENSION.** The department's medical director or designee may suspend approval of examiners in situations including, but not limited to, the following listed below. The department will initiate a review within ninety days of notification. The results of the review will determine if further action is necessary, which may include termination of approval status.

(a) The examiner has failed to meet or maintain the requirements for approval as an IME examiner.

(b) The examiner's license or Drug Enforcement Administration (DEA) registration has been restricted in any jurisdiction. Exceptions may be granted for any restriction or offense deemed by

the department to be of a minor or clerical nature.

(c) The examiner has lost hospital privileges for cause.

(d) A statement of charges has been filed against the examiner by a state authority in any jurisdiction, including, but not limited to the Washington state department of health, when such charges involve conduct or behavior as defined in chapter 18.130 RCW, Uniform Disciplinary Act. These include, but are not limited to:

(i) Sexually inappropriate conduct, behavior or language.

(ii) Behavior that puts a patient's safety or well-being at risk.

(e) The examiner has any pending or history of criminal charges or violation of statutes or rules by any administrative agency, court or board in any jurisdiction.

(3) **OTHER EXAMINER ACTIONS.** In addition to automatic terminations and suspensions described in subsections (1) and (2) of this section, the department's medical director or designee may consider any of the following factors in determining a change in status for examiners. These status changes include temporarily unavailable, suspension or termination of the approval to conduct IMEs.

These factors include, but are not limited to:

(a) Substandard quality of reports, failure to comply with current department policy on report contents, or inability to effectively convey and substantiate medical findings, opinions, and conclusions, concerning workers.

(b) Unavailable or unwilling to testify on behalf of the department, worker, or employer.

(c) Failure to cooperate with attorneys representing a party in industrial insurance litigation at the board of industrial insurance appeals (board) by not cooperating in a timely manner to schedule preparatory activities and/or testimony during business hours and within the dates and locations ordered by the board to complete testimony.

~~(d) ((Inability to support examination and report findings in any legal proceeding as evidenced by board decisions finding the testimony less credible.~~

~~(e))~~ Failure to stay current in the area of specialty and in the areas of impairment rating, performance of IMEs, industrial injury and occupational disease/illness, industrial insurance statutes, regulations and policies.

~~((f))~~ (e) Substantiated complaints or pattern of complaints about the provider.

~~((g))~~ (f) Other disciplinary proceedings or actions not listed in subsections (1) and (2) of this section.

~~((h))~~ (g) Other proceedings in any court dealing with the provider's professional conduct, quality of care or criminal actions not listed in subsections (1) and (2) of this section.

~~((i))~~ (h) Untimely reports.

~~((j))~~ (i) Unavailable or unwilling to communicate with the department in a timely manner.

~~((k))~~ (j) Misrepresentation of information provided to the department.

~~((l))~~ (k) Failure to inform the department of changes or

actions that may affect the approval status as an IME examiner.

~~((m))~~ (l) Failure to comply with the department's orders, statutes, rules, or policies.

~~((n))~~ (m) Failure to accept the department fee schedule rate for independent medical examinations, testimony, or other IME related services.

~~((o))~~ (n) Any pending action in any jurisdiction.

FOR FIRMS:

(4) **AUTOMATIC TERMINATION.** The department's medical director or designee may terminate approval of firms when they fail to reapply every three years.

(5) **AUTOMATIC SUSPENSION.** The department's medical director or designee may suspend approval of firms in situations including, but not limited to, those listed below. The department will review the matter to determine if further action is necessary, which may include termination of approval status.

(a) The firm no longer meets requirements for approval as an IME provider.

(b) The firm's representative has committed perjury or falsified documents provided to the department or insurer.

(c) A firm representative's behavior has placed a patient's safety or well-being at risk.

(6) **OTHER FIRM ACTIONS.** In addition to automatic terminations and suspensions described in subsections (4) and (5) of this section, the department's medical director or designee may consider any of the following factors in determining a change in status for firms. These status changes include temporarily unavailable, suspension or termination of the approval to provide IME related services.

These factors include, but are not limited to:

(a) Substantiated complaints or pattern of complaints about the firm.

(b) Other disciplinary proceedings or actions not listed in subsections (4) and (5) of this section.

(c) Other proceedings in any court dealing with the provider's professional conduct, quality of care or criminal actions not listed in subsections (4) and (5) of this section.

(d) Untimely reports.

(e) Unavailable or unwilling to communicate with the department in a timely manner.

(f) Misrepresentation of information provided to the department.

(g) Failure to inform the department of changes affecting the firm's status as an IME provider.

(h) Failure to comply with the department's orders, statutes, rules, or policies.

(i) Failure to accept the department fee schedule rate for independent medical examinations and services.

(j) Any pending action in any jurisdiction.