AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

WAC 296-23-302 Definitions. Approved independent medical examination (IME) provider - A 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 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 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 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 by the department containing department policy and information to assist ((~~doctors~~)) 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 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 04-04-029, filed 1/27/04, effective 3/1/04)

WAC 296-23-317 What qualifications must a provider meet to ((~~receive~~)) become an approved independent medical examination (IME) provider and be assigned an IME provider number? In order to ensure ((~~high quality~~)) that independent medical examinations((~~, the department shall only approve an IME provider number for persons~~)) are of the highest quality and propriety, examiners, firms, partnerships, corporations, or other legal entities ((~~that~~)) must apply and meet the following ((~~qualification~~)) requirements for department approval:

(1) ((~~Providers who wish to bill or get paid for independent medical examinations or related services must apply for and receive an IME provider number. Issuance of an IME provider number does not guarantee IME referrals.~~

~~(2) Providers must have and maintain a current license to practice in the state in which they conduct IMEs and meet at least~~

~~one of the two following requirements:~~

~~(a) Board certification in their medical specialty; or~~

~~(b) A minimum of an average of eight hours per week over the past two years of direct patient care in their medical specialty (excluding IMEs).~~

~~(3)~~)) For all examiner applicants:

(a) Have a current, unrestricted, and active professional license to practice in this state 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.

(ii) If any restriction once existed against the applicant's license, 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) 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) 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 or independent medical provider.

(i) 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.

(ii) 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) If an applicant has any pending action in any jurisdiction, the department will not process the application until the matter has been resolved.

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

(e) Other requirements:

(i) Providers must comply with all federal and state laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.

(ii) Providers must 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:

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

(iii) Providers must review and sign the IME report and attest to its accuracy.

(iv) Providers must achieve a passing score on the *Medical Examiners' Handbook* test prior to initial application and every three years thereafter.

(v) Providers must meet one of the following two criteria:

(A) Providers must document a minimum of three hundred eighty-four hours of patient related services (excluding independent medical examinations) per calendar year; or

(B) Providers may 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. This training would focus on improving the provider's skills in completing IMEs or staying current in the provider's specialty. Topics include but are not limited to:

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

(vi) Providers must conduct examinations in a facility designed as a professional office suitable for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the site is for medical services. The site must not be residential, commercial, educational or retail in nature. The site must be clean, sanitary and provide adequate access, climate control, light, space, and equipment. The site 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.

(vii) Providers must 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.

(viii) Providers will 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 provider wishes to resume performing IMEs, they must reapply and meet current requirements.

(ix) Providers must keep the department informed and updated with any new information.

(x) In order to maintain an active IME provider number, providers must reapply every three years. For the current IME providers to be in compliance with the new rule, they must reapply in the first year. Each provider will be notified by mail sixty days prior to their application due date.

(2) Additional examiner requirements:

(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 be within five years of obtaining board certification.

(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) Chiropractic physician (DC) applicants must be a chiropractic consultant for the department for at least two years.

(c) Podiatric physician (DPM) applicants must: Have a current board certification in his or her specialty; or have completed a residency and be within five years of obtaining board certification.

(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.

(d) Dentist (doctor of dental science/doctor of dental medicine) (DDS/DMD) applicants must:

(i) Hold current certification in their specialty; or

(ii) Have two years of postdoctoral clinical experience, and complete at least one year of postdoctoral training in a program approved by the American Dental Association Commission on Dental Accreditation (CODA).

Only providers 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
((~~Not in~~)) Outside Washington	Yes	Yes	Yes	No	Yes

((~~(4) A provider licensed to practice chiropractic in Washington must also meet all the following requirements:~~

~~(a) Be a chiropractic consultant for the department for at least two years;~~

~~(b) Take an impairment rating course approved by the department; and~~

~~(c) Attend the department's chiropractic consultant and examiners' seminar during the twenty-four months prior to~~

~~application.~~

~~(5) Business requirements:~~

~~(a) Providers must conduct independent medical examinations only in a professional office suitable for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the examination site is for medical services; not residential, commercial, educational or retail in nature. The site must have, at a minimum, adequate access, climate control, light, space and equipment to provide for the comfort and safety of the injured/ill worker and provide the privacy necessary for workers to discuss their medical issues.~~

~~(b) Providers must comply with all federal and state laws, regulations and other requirements with regard to business operations, including specific requirements for business operations for the provision of medical services.~~

~~(c) Providers must have a private disrobing area and adequate provision of examination gowns.~~

~~(d) Providers must have telephone answering capability during regular business hours, Monday through Friday, in order to facilitate scheduling of independent medical 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.~~

~~(e) In order to be assigned an IME provider number, an IME firm, partnership, corporation or other legal entity must have a medical director. The medical director must be a licensed provider and be responsible to provide oversight on the quality of independent medical examinations, impairment ratings and reports.~~))

(3) All other provider applicants that derive income from independent medical examinations must:

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

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

(c) Have no previous action taken by any federal or state agency for any business previously owned or operated.

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

(e) In order to be assigned an IME provider number, an IME firm, partnership, corporation or other legal entity, have a medical director. The medical director must be a licensed provider, 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.

(f) Conduct examinations in a facility designed as a professional office suitable for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the site is for medical services. The site must not be residential, commercial, educational or retail in nature. The site

must be clean, sanitary and provide adequate access, climate control, light, space, and equipment. The site 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.

(g) 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 the office is open on Saturday, telephone access must be available.

(h) 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.

(i) 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.

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

(k) In order to maintain an active IME provider number, the provider must reapply every three years.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

WAC 296-23-337 ((~~What factors does~~)) For what reasons shall the department's medical director ((~~consider in suspending~~)) or designee suspend or ((~~terminating~~)) terminate approval of an independent medical examination (IME) ((~~provider number~~)) examiner or firm? ((~~The department's medical director may consider several factors in suspending or terminating an IME provider number. Examples include, but are not limited to:~~

~~(1) Complaints about the provider;~~

~~(2) Disciplinary proceedings or actions;~~

~~(3) Proceedings in any court dealing with the provider's professional conduct, quality of care and criminal actions;~~

~~(4) Ability to effectively convey and substantiate medical opinions and conclusions concerning workers;~~

~~(5) Untimely reports;~~

~~(6) Substandard quality of reports or failure to comply with current department policy on report contents;~~

~~(7) Unavailability or lack of willingness to responsibly communicate with the department or self-insurer;~~

~~(8) Unavailability or lack of willingness to testify on behalf of the department or self-insurer, worker, or employer;~~

~~(9) 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;~~

~~(10) Failure to continue to maintain the criteria to be an IME provider;~~

~~(11) Misrepresentation of information provided to the department;~~

~~(12) Failure to inform the department of changes affecting the provider's status as an IME provider;~~

~~(13) Failure to comply with the department's orders, statutes, rules, or policies; and~~

~~(14) Failure to accept the department fee schedule rate for testimony or independent medical examinations.~~)) In order to ensure high quality independent medical examinations (IMEs), the department's medical director or designee shall terminate, suspend or inactivate approval of examiners, firms, partnerships, corporations, or other legal entities in the situations described below. When an IME examiner or other entity is terminated or suspended, they may not perform IMEs for the department.

(1) AUTOMATIC TERMINATION OF EXAMINERS. The department's medical director or designee shall 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 patients' 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.

(2) AUTOMATIC SUSPENSION FOR REVIEW. The department's medical director or designee shall suspend approval of examiners in situations listed below. The department will initiate the review within ninety days of notification. The results of the review will determine if further action is necessary, which may include termination.

(a) The examiner has failed to meet all qualifications for approval as an IME provider.

(b) The examiner's license 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 patients' 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) AUTOMATIC TERMINATION OF NONEXAMINER IME PROVIDERS. The department's medical director or designee shall terminate approval of firms, partnerships, corporations, or other legal entities that derive income from independent medical examinations in situations when they fail to meet all requirements for approval as an IME provider, including failing to reapply every three years.

(4) AUTOMATIC SUSPENSION OF NONEXAMINER IME PROVIDERS. The department's medical director or designee shall suspend approval of firms, partnerships, corporations, or other legal entities that derive income from independent medical examinations in situations listed below. The department will review the matter to determine if further action is necessary, which may include termination.

(a) The provider has failed to meet all qualifications for approval as an IME provider.

(b) The provider has committed perjury or falsified documents provided to the department or insurer.

(c) The provider's behavior has placed patients' safety or well-being at risk.

(5) NONAUTOMATIC TERMINATIONS AND SUSPENSIONS. In addition to automatic terminations and suspensions described in subsections (1) through (4) of this section, the department's medical director or designee shall consider any of the following factors in determining a change in status for all providers. These status changes include temporarily unavailable, suspension or termination of the approval to conduct IMEs.

These factors include, but are not limited to:

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

(b) Other disciplinary proceedings or actions not listed in subsections (1) through (4) 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 (1) through (4) of this section.

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

(e) Untimely reports.

(f) Unavailable or unwilling to responsibly communicate with the department.

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

(h) Failure to cooperate with all 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 ordered by the board to complete testimony.

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

(j) 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.

(k) Failure to maintain the criteria to be an IME provider.

(l) Misrepresentation of information provided to the department.

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

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

(o) Failure to accept the department fee schedule rate for independent medical examinations.

(p) Any pending action in any jurisdiction.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

WAC 296-23-387 What are the responsibilities of an independent medical examination (IME) provider regarding testimony? IME providers must make themselves reasonably available to testify at the board of industrial insurance appeals (board) or by deposition. Reasonably available to all parties means cooperating in the timely scheduling of the pretestimony conference and testimony and being available to testify during business hours (7:00 a.m. to 6:00 p.m.) as ordered by the judge and within the dates ordered by the board to complete testimony, unless a different time is needed and agreed upon by all parties. In signing the application to be an independent medical examination provider, the provider agrees to perform examinations and be available to testify and to answer questions about the medical facts of the case at rates established under the authority of Washington industrial insurance law. The department may fine the firm and/or examiner up to five hundred dollars per violation for

failure to comply with these requirements, whether the failure was intentional or not.

In addition, failure to comply with ((~~this~~)) these requirements may result in suspension or termination of the IME provider number.