

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

**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?** (~~In order~~) 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) (~~For all~~) Examiners (~~applicants~~) must:

(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 provider or independent medical (~~provider~~) examiner.

(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))~~ Have no pending action in any jurisdiction ~~((7))~~. 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, and local laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.

~~((ii) Providers must))~~ (f) 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))~~ (g) 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))~~ (h) 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))~~ (i) 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))~~ (j) 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)) examiner wishes to resume performing IMEs, they must reapply and meet current requirements.

~~((ix) Providers must))~~ (k) 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.

~~((x) In order to maintain an active IME provider number, providers must))~~ (l) Reapply every three years in order to maintain an active IME provider number. ((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.))

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

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

(m) Achieve a passing score on the *Medical Examiners' Handbook* test prior to initial application and every three years thereafter.

(2) ((Additional examiner)) 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 ((be)) become board certified within five years of ((obtaining board certification)) 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.

~~((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 have at least two years of clinical experience after licensure, and:~~

~~(i) Hold current certification in their specialty; or~~

~~(ii) Have ~~((two))~~ one year ~~((s))~~ 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); 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. 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.~~

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

	<b>Doctors licensed to practice:</b>				
<b>Examiner is:</b>	<b>Medicine &amp; surgery</b>	<b>Osteopathic medicine &amp; surgery</b>	<b>Podiatric medicine &amp; surgery</b>	<b>Chiropractic</b>	<b>Dentistry</b>
<b>In Washington</b>	Yes	Yes	Yes	Yes	Yes
<b>Outside Washington</b>	Yes	Yes	Yes	No	Yes

~~((3) All other provider applicants))~~ (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.

(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 ((and)), 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.

~~((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))~~ (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:

- 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 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))~~ (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 ((the office)) an exam site 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)) firm or the department may inactivate their IME provider number or numbers. If an IME provider number has been inactivated and the ((provider)) firm wishes to resume ((performing IMEs)) related services, they must reapply and meet current requirements.

(k) ~~((In order to maintain an active IME provider number, the provider must))~~ 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, all IME firms must reapply.

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

(m) Have 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.

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

**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?** ((In order)) To ensure high quality independent medical examinations (IMEs), the department's medical director or designee ((shall)) may, in the situations described below, terminate, suspend, or inactivate approval of examiners((~~or~~)) or firms((~~or~~)) (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)) 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 ((OF EXAMINERS))**. The department's medical director or designee ((shall)) 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((~~or~~)) 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)) 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.

(2) **AUTOMATIC SUSPENSION ((FOR REVIEW))**. The department's medical director or designee ((shall)) may suspend approval of examiners in situations including, but not limited to, the following listed below. The department will initiate ((the)) 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 ((all qualifications)) or maintain the requirements for approval as an IME ((provider)) examiner.

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

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

(h) 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) Untimely reports.

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

(k) Misrepresentation of information provided to the

department.

(l) Failure to inform the department of changes or actions that may affect the approval status as an IME examiner.

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

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

(o) Any pending action in any jurisdiction.

**FOR FIRMS:**

(4) AUTOMATIC TERMINATION ((OF NONEXAMINER IME PROVIDERS)). The department's medical director or designee ((shall)) may 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)) when they fail to reapply every three years.

((+4)) (5) AUTOMATIC SUSPENSION ((OF NONEXAMINER IME PROVIDERS)). The department's medical director or designee ((shall)) may suspend approval of firms((, partnerships, corporations, or other legal entities that derive income from independent medical examinations)) 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 ((provider has failed to)) firm no longer meets ((all qualifications)) requirements for approval as an IME provider.

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

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

((+5) NONAUTOMATIC TERMINATIONS AND SUSPENSIONS.) (6) OTHER FIRM ACTIONS. In addition to automatic terminations and suspensions described in subsections ((+1) through) (4) and (5) of this section, the department's medical director or designee ((shall)) may consider any of the following factors in determining a change in status for ((all providers)) firms. These status changes include temporarily unavailable, suspension or termination of the approval to ((conduct) provide IME ((s)) related services.

These factors include, but are not limited to:

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

(b) Other disciplinary proceedings or actions not listed in subsections ((+1) through) (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 ((+1) through) (4) and (5) 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))~~ (e) Unavailable or unwilling to ~~((responsibly))~~ communicate with the department in a timely manner.
- ~~((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))~~ (f) Misrepresentation of information provided to the department.
- ~~((m))~~ (g) Failure to inform the department of changes affecting the ~~((provider's))~~ firm's status as an IME provider.
- ~~((n))~~ (h) Failure to comply with the department's orders, statutes, rules, or policies.
- ~~((o))~~ (i) Failure to accept the department fee schedule rate for independent medical examinations and services.
- ~~((p))~~ (j) Any pending action in any jurisdiction.