

SB 701

SUBJECT: Modifies process for independent medical examinations of injured workers to provide for random selection of qualified physicians to conduct independent medical examinations in workers' compensation claims.

SPONSOR: Senator Beyer

Existing Law:

- Requires the director of Department of Consumer and Business Services (DCBS) to establish and maintain a list of providers that are authorized to perform independent medical examinations (IMEs) requested by the insurer or director (IME list).
- Allows an insurer to send a worker to three IMEs by a physician selected by the insurer. The insurer must choose a physician from the IME list.
- Allows the director to send the worker to a medical examination and choose the physician from the IME list.
- Allows a worker to request a separate medical examination called a worker-requested medical examination (WRME) when: 1) the worker's claim is denied based on an IME; 2) the worker's attending physician did not concur with the IME; and 3) the worker has made a timely request for hearing.
- Provides that the director selects the WRME physician from the IME list.

This concept:

- Requires that, when an insurer wishes to send the worker for an IME, the director select a physician at random from the IME list.
- Requires that, when director wishes to send the worker for a medical examination, the director select a physician at random from the IME list.
- Requires that, when a worker requests a WRME, the director select a physician at random from the IME list.
- Requires the director to establish, by rule, a process for the random selection of a physician from the IME list to perform medical examinations at the request of the insurer, director, or worker.

Analysis:

1. Independent medical examinations are used by insurers to determine compensability of a workers' compensation claim or to identify permanent disability. The law allows the insurer to send a worker to three exams; any exam requested thereafter must be approved by the DCBS director. The department gets very few requests to approve additional IMEs above the allowed three. Based on billing and payment data reported by insurers to the department, we

estimate that insurers schedule over 8000 IMEs per year. Under this bill, the director may have to select approximately 30 physicians for insurer IMEs per day.

2. The director's IME list is made up of approximately 700 physicians of various specialties, such as orthopedic surgery, internal medicine, dentistry, chiropractic, etc. Currently, when an insurer or the director chooses an IME or WRME physician, they have the opportunity to select a physician of the specialty most appropriate for conditions to be evaluated. A truly randomly selected physician may not be suited to evaluate a workers condition.
3. When insurers or the director choose physicians from the IME list, they try to select a physician located reasonably convenient to the worker. A randomly selected physician may result in increased travel time for workers. Some physicians on the IME list are even located outside the state of Oregon. The law also allows a worker to dispute or appeal the location of the examination. It is possible the random selection process may increase the number of disputes due to location.
4. Not all physicians on the IME list may be able or willing to perform an examination in a reasonable timeframe. An insurer has a time limit of 60 days to accept or deny a claim; a delay in IME processes may impact their decision making.

Questions and/or suggested amendments:

1. On page 5, line 18, the concept deletes the word "independent." However, in other places, e.g. on lines 21/22 of the same page, "independent" is not deleted. It is not clear, why "independent" was deleted on line 18.
2. It is not clear whether a randomly selected physician used to conduct the exam must be of the specialty best suited to evaluate the worker. For example, if it was a true random selection process, there may be some concern about having a podiatrist evaluate a hand injury, or a dentist evaluate a worker with a low back injury.
3. It is not clear whether this concept would allow the director to consider whether the exam is reasonably convenient for the worker when randomly selecting a physician.
4. It is not clear whether the director would just select and IME physician and the insurer does the scheduling, or whether the director would do the selecting of and scheduling with a physician.
5. Currently, if an insurer wishes that the worker submit to a fourth (or more) IME, the insurer needs director approval. It is not clear whether, when selecting an IME physician, the director must also determine if the insurer had three or more IMEs.
6. Currently, all providers who are on the IME list maintained by the director under ORS 656.328(1), indicated at the time of their application to be added to the list, whether they are willing to do IMEs, WRMEs, or both. It is not clear from this concept whether any physician on the IME list would have to commit him- or herself to perform IMEs and WRMEs if randomly chosen by the director.

Fiscal Impact to DCBS: The department currently maintains a list of IME physicians. If the director selects IME physicians truly at random, it is not anticipated that this bill will impact duties or workload of the staff that maintains the list. Based on billing and payment data reported by insurers to the department, we estimate that insurers schedule over 8,000 IMEs per year. The

department expects that under this bill, the selection process of IME physicians will be similar to the current process in place when the director selects physicians for medical arbiter exams. Based on that experience we expect that the department will need 3 full time public service representative 4 (PSR 4) positions. The positions would be starting December 1, 2015, to allow a one month training period before the bill takes effect on January 1, 2016. This estimate assumes that the director will have a system in place for semi-automating selection of appropriate physicians at random, that the director will only select the physician but not schedule the appointment, and that the director will not routinely have to verify whether the insurer is entitled to an additional IME. If any of these other tasks is expected as a result of the bill, additional staff will be required to handle the workload. Funding these positions to absorb the increased work load on the agency would add an expense to the Premium Assessment Operating Account estimated at \$265,557 for 2015-2017 and \$335,062 for 2017-2019.

Other Economic Impact: There may be an increase in costs for travel and lodging if the worker is required to travel further for an IME. Insurers may have contracted fee arrangements with a variety of IME providers and choose, if appropriate, a contracted physician for IMEs. Randomly selected physicians may lead to more IMEs performed by physicians who do not have contracted fee arrangements with an insurer, thus leading to increased costs to the insurer.

Support: Unknown

Opposition: Unknown

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