



**Testimony In Opposition to HB 2581**  
Management Labor Advisory Committee  
March 20, 2015

**Board of Directors**

*ExamWorks*  
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Good morning members of the Management Labor Advisory Committee. For the record my name is Hasina Squires and I appear before you today on behalf of the Independent Medical Examination Association (IMEA) in opposition to House Bill 2581. IMEA was formed a decade ago in response to legislative proposals contemplated during the 2005 legislative session to further regulate the Independent Medical Examination industry. The IMEA is committed to promoting high quality medical input throughout the state. Our six member companies are Oregon businesses who facilitate independent medical exams (IMEs). Our facilities individually recruit and retain physicians who are authorized by the State of Oregon to perform IMEs.

*Integrity Medical Evaluations*  
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**CURRENT STATUTE**

*impartial*  
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Under the current law governing independent medical examinations, an insurer is allowed to send a worker to three separate independent medical examinations (IMEs). Upon approval from the Director of WCD additional IMEs can be scheduled. The Department is required to maintain a list of providers that are authorized to perform IMEs. A worker is also allowed to request a separate medical examination, which is paid for by the insurer, called a worker requested medical examination (WRME). A worker may request a WRME only 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. Currently, a WRME physician is randomly selected by the Director from the approved list of IME providers.

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**HB 2581**

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Under House Bill 2581, the number of IMEs an insurer may request without Director approval is reduced from three to one. In addition, when a worker requests a WRME, the worker or the worker's representative selects the WRME physician from the director's approved list. Lastly, House Bill 2581 establishes a new process of a "single random external file review" when the opinions of the insurer's IME physician and the worker's WRME physician do not concur.

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**REASONS FOR OPPOSITION TO HB 2581**

At the outset, it should be noted that the limit on three insurer-requested IMEs was established in 1987 as a balance to the workers' limit of choosing three attending physicians without insurer or director approval. House Bill 2581 will undo that balance and reduce the insurer's ability to obtain its own medical opinion when a worker changes attending physicians. Fundamental fairness in the system is mandated under ORS 656.012(2)(b). We believe this bill contradicts that statutory mandate

While House Bill 2581 maintains the ability to request additional IMEs, the bill overlooks the fact that an insurer only has 60 days to either accept or deny a claim. There would not be sufficient time to obtain Director approval, schedule an IME far enough out to allow the required 10-day notice to the worker, obtain the IME report and then evaluate it within the 60 day limit. In addition, under the existing system, treating physicians are often asked to comment on IME's before an accept/deny decision is made. House Bill 2581 would essentially eliminate this opportunity whenever more than one IME is obtained prior to the compensability decision being made. This delay in obtaining necessary medical input would be compounded by the fact that it would likely take WCD additional time to evaluate whether to grant the additional IME in the first place. And since it is predictable that there will be 2000 or more requests per year for additional IMEs, the burden on WCD and the time it will take WCD reviewers to evaluate requests, is significant. If insurers cannot timely accept or deny claims, this will inevitably result in insurers choosing to violate the 60 day window in favor of not making a decision without adequate medical input. This would in turn increase litigation over allegations of unreasonable delay, and likewise increase the time it takes to provide injured workers appropriate medical treatment to which they are otherwise entitled.

HB 2581 does not contemplate the relatively common occurrence wherein an initial IME physician identifies the potential presence of conditions outside his/her expertise. In such situations, the need for a second IME with an expert in a different area is not known until the time of the first IME report being received. Given the 60 day timeline, it is predictable that all of these situations would result in the second IME being authorized by WCD, but the reports coming in "late." Again, the result will be delays in the timely processing of claims, with a corresponding increase in litigation.

Under the current law, a worker can get a WRME only when approved by the director. Under this process, the director ensures that the worker meets the reasonable conditions precedent in the law before an additional IME is allowed. By eliminating the Director's approval component, workers may end up responsible for the cost of the WRME in situations where the statutory conditions are found to have not been met. This would not only make it more difficult for WRME physicians to be compensated in a timely fashion, but would also create the specter of an unnecessary financial burden on injured workers.

Additionally, under HB 2581, it is unclear how WCD can assure that randomly selected physicians used to conduct the "tie-breaking" file review are qualified to analyze the specific medical issues in a given case. The Director-approved IME list currently contains approximately 700 physicians of varying specialties. Physician specialties include orthopedic surgery, general surgery, psychologists, neurologists, internal medicine, dentistry, chiropractic, etc. If a reviewing physician is truly chosen at random as contemplated under HB 2581, there is the likelihood that a chiropractor may end up evaluating a neurologic disorder, or be asked to address a surgical question. Furthermore, even if the physicians were divided by specialty and then randomly chosen, it is also predictable that some of the chosen physicians will not specialize in the particular body part under scrutiny. For example, while there are a number of orthopedic surgeons on the "list", some of those focus specifically on hand or foot injuries, or spine conditions. In addition, it is unclear what weight would be given to the report generated as a "tie-breaker." To the extent such reports are arbitrarily given great weight, this would run

contrary to the longstanding law in Oregon to the effect that the opinions that are the best reasoned get the most weight.

In the context of a typical workers' compensation claim, IME or WRME providers are often called upon to provide input on a number of issues beyond compensability. Under HB 2581, a claim will be referred for a single random external file review whenever the IME and WRME physicians do not concur. However, it is unclear what is meant by "do not concur." For instance, an IME and WRME physician may concur regarding the compensability of a claim but may disagree on whether the worker is medically stationary or able to return to their job at injury. Furthermore, the physicians can also disagree on a particular diagnosis or an interpretation of an imaging study, but will this disagreement warrant a random file review? And who is to say whether there is disagreement in the first place?

Simply put, HB 2581 does not contribute to improving the IME system in Oregon. Instead, it would create a massive burden on WCD, requiring it to unnecessarily consider thousands of IME requests each year. It would also inevitably result in delays on initial accept/deny decision-making, and thereby delay the provision of necessary care to injured workers. Lastly, it would also inevitably lead to increased, and unnecessary, litigation, the very thing the Legislature has been attempting to reduce over the last 20+ years.

Thank you for the opportunity to testify in opposition House Bill 2581, I would be happy to answer any questions the committee has.