Date: February 4, 2015

HB 2581

SUBJECT: Establishes process for random external file review in certain workers' compensation claims. Limits independent medical examination requests in workers' compensation claim to one request by employer or self-insured employer and one request by worker. Authorizes Director of Department of Consumer and Business Services to adopt rules concerning random external file reviews.
SPONSOR: Representative Barnhart

Existing Law:

- Allows an insurer to send a worker to three separate independent medical examinations (IMEs). The director may approve additional IMEs upon request by the insurer.
- Requires the department to maintain a list of providers that are authorized to perform IMEs.
- 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 department's IME provider list, and requires the insurer to pay for the examination.

This bill:

- Reduces the number of IMEs an insurer may request without director approval from three to one.
- Modifies the process of selecting a physician for a WRME by allowing the worker or the worker's representative to select a physician from the IME provider list.
- 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.

Analysis:

1. The limit of three insurer-requested examinations was established in 1987 as a balance to the workers' limit of choosing three attending physicians without insurer or director approval.
2. Insurers have 60 days to accept or deny a workers' compensation claim. Under this bill, when the insurer requires more than one IME to determine compensability of a claim, the insurer would need to receive director approval for an additional IME prior to claim acceptance. This may create delays which could make it difficult for insurers to timely accept or deny claims.
3. The number of requests to the director for additional IMEs (above the allowed three) has ranged from four to fourteen a year over the last five years. This bill will significantly increase the number of requests to the director for approval of additional IMEs. With full

insurer compliance, based on the department's understanding of current claims processing practices, and information the department has collected about IMEs, we estimate that there will be approximately 2000 requests per year for additional IMEs. The department would have a fiscal impact associated with this change due to increased staffing needs.

4. Over the past five years, requests for WRMEs ranged from 111 to 165 requests per year. The current law requires the director to select a physician for a WRME, allowing the director to ensure the worker meets the statutory criteria to request a WRME (denied claim, timely hearing request, etc.). By removing the director from the WRME process, this bill could result in some workers being responsible for the cost of the exam when the statutory requirements were not met.
5. When the opinions of the insurer's IME physician and the worker's WRME physician do not concur, the claim must be referred to the director for a single random file review by a provider randomly selected from the department's IME provider list. The department will have to develop a new process for the selection process of a random external file reviewer. It may also be necessary for the department to develop a process that would identify the providers on the IME provider list, who are willing to perform random external file reviews.
6. The applicability clause provides that the bill applies to claims filed on or after the effective date of the act (Jan. 1, 2016). The applicability clause creates two separate processes based on when the claim is filed. Claims filed before the effective date are entitled to three IMEs before getting the director's approval, while claims filed after the effective date are entitled to one IME without the director's approval. This will likely cause confusion for the industry, and will also require the department to maintain two separate processes for a number of years.

Questions and/or suggested amendments:

1. The bill provides that if the opinion of the WRME physician does not concur with the opinion of the IME physician, the claim must be referred to the director for a random external file review. Who determines whether the opinions of the WRME physician and the IME physician concur? Who is responsible for referring the claim to the director?
2. On page 3, lines 32-34, the bill adds the sentence, "Each provider authorized to provide medical services under this chapter who meets the requirements adopted under subsection (3) of this section shall be included on the list unless the provider has been excluded under subsection (2) of this section" to ORS 656.328(1). The intent of this language is not clear. Does this mean that a provider who is on the list maintained under ORS 656.328(1), must perform a random external file review if selected by the director?
3. The bill does not make clear what the external file reviewer is evaluating. Is the review intended to analyze only the difference between the insurer's and worker's exams? Is the review intended to be an entirely separate opinion of the entire medical file? Some clarification is likely needed to insure the sponsor's intent is met, and to avoid disputes at hearings on compensability about the purpose and scope of the review.
4. It is not clear whether the randomly selected provider used to conduct the single random external file review must be qualified to analyze the file. For example, if it was a true random

selection process, there may be some concern about having a podiatrist evaluate a hand injury.

5. Currently, all providers who are on the IME list maintained by the director under ORS 656.3228(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 bill whether any provider on the IME list would have to commit him- or herself to perform random external file reviews or whether they can choose not to perform random external file reviews.
6. The bill does not specify who would pay for the external file review. It would be helpful to clarify the sponsor's intent on this matter.

Fiscal Impact to DCBS: The number of requests to the director for additional IMEs has ranged from four to 14 a year for the last five years. This bill will significantly increase the number of requests to the director for approval of additional IMEs. We estimate that, with statutory compliance by insurers, the number of additional IME requests would gradually increase and reach a plateau of about 500 per quarter by 2018. This would eventually require five full time equivalent positions, public service representative 4 (PSR 4), and one part time position, office specialist 2 (OS 2), to accommodate this new workload. Since HB 2581 applies only to claims filed on or after January 1, 2016, we expect the number of additional IME requests to increase gradually, so the staffing impact would be phased in over 18-24 months.

Other Economic Impact: There may be an increase in workers being financially responsible for WRMEs because the director would no longer be able to ensure that workers meet statutory requirements for being entitled to a WRME. Insurers may experience additional claims processing costs to request additional IMEs. If insurers are to pay for external file reviews, they will incur additional costs for payment of those file reviews.

Support: Unknown

Opposition: Unknown

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