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Testimony In Opposition to SB 701
Management Labor Advisory Committee
March 20, 2015

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 Senate Bill 701. 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.

As it relates to the Oregon's workers' compensation system, ORS 656.012 outlines the system's overriding legislative goals to include providing:

- *"...sure, prompt and complete medical treatment for injured workers..."; and*
- *"...a fair and just administrative system for delivery of medical and financial benefits to injured workers...."*

The IMEA believes that Senate Bill 701 undermines both of these goals and we ask MLAC to reject this measure.

IME Background

The law governing IMEs has evolved over many years. Since the 1980s the statutes have consistently recognized that it was important to allow injured workers, the extent feasible, to select their treating providers. For that reason over these many years injured workers have always had the right to select their first three treating physicians without interference from an outside party. Consistent with the legislative mandate to achieve fairness in the system, insurers/employers have always had the right to three independent medical examinations with providers of their choice. Each party gets three providers of their choice. After the limit is reached, the Worker's Compensation Division (WCD) is authorized to oversee the process for injured workers and for insurers/employers who want to exceed the threshold limit (requests for more than three IMEs are very rare). The system is based on balance and fairness for each party—three for each side.

IME Process

IME physicians provide input as to what is and is not work related by dealing with medical/legal issues that in Oregon are uniquely complex. IME providers must therefore be trained and certified in these medical/legal complexities before they are allowed to perform independent examinations. There are over 700 providers on

WCD's certified provider list. Opinions from IME providers often provide treating providers with valuable input as to what is and is not the best and most beneficial treatment option. IMEs can be costly—the more specialized and complicated the treatment issues and options are, the more costly it becomes to get input from the most qualified providers available. Just as injured workers are entitled to trust their treating providers and their recommendations for care, employers/insurers are currently entitled to have that same level of trust in the providers who assist in the oversight of a claim. Again there is a balance that exists between an injured worker's ability to select their treating provider and an employer/insurer's ability to choose a qualified individual to complete the independent medical exam.

2005 IME Reform

Improvements have been made over time in the IME system. For example, Senate Bill 311's (2005) provisions increased the quality of IMEs by:

1. Requiring health care providers to be authorized by the Director of WCD to conduct IMEs for workers' compensation claims in Oregon.
    - In order to be authorized providers must complete a WCD approved training program and agree to abide by a code of conduct.
2. Requiring a Quality Assurance statement at the end of the IME report.
3. Providing the Director of WCD the authority to investigate complaints and exclude a health care provider for violation of standards of professional conduct.

Current IME System

IMEA believes the existing system contains statutory and market-driven controls that promote quality in the IME process. The current system is essentially merit based. The law gives persuasive weight to those opinions that are the most well-reasoned. Although 700 IME providers are currently permitted to conduct IMEs not all of these providers are sought after individuals. As an Association, we reward competent individuals with well-reasoned reports by taking advantage of their skills and engaging their services. The natural result of this practice is that IME physicians who provide the best-reasoned opinions get more work than those who do not.

Senate Bill 701 would eliminate the existing system's market-driven merit based incentive. Identifying IME providers randomly eliminates the ability of the employer/insurer to choose to pay the most qualified individual/specialist in a given field. As a result, an injured worker and the involved treating providers may not get the necessary specialized input that could significantly contribute to a positive medical outcome. IMEs that are randomly selected will remove the quality incentives that exist in a merit based system. We believe the provisions of Senate Bill 701 could result in cursory and conclusory reports that will not benefit any of the involved parties. The current system promotes a thoughtful work product and the changes proposed under the provisions of Senate Bill 701 will lead to unfair and poor quality results for employer/insurers and injured workers.

Random Selection Is Not A Model System

Random selection of providers is currently an option for injured workers and they rarely take advantage of it. The existing law requires that an injured worker be seen by an IME physician

trained and certified by the WCD. If a claim is denied in whole or in part based on an IME, and the injured worker and the treating provider disagree with the conclusions in an IME, the current system provides the worker with the option to request a separate medical examination. This type of examination is called a worker-requested medical examination (WRME) and it is paid for by the employer/insurer. If a WRME is requested, the WCD Director randomly selects a physician from the same approved-provider IME list utilized by employer/insurers. Therefore, the availability of a random IME—the concept SB 701 seeks to mandate for all IMEs—is already built into the existing law as a potential check and balance directed towards "fairness." However, WRME's rarely take place. We believe the reason is because experienced attorneys who represent workers know that rolling the dice on the quality of medical input resulting from a random IME selection process is risky. And that risk is rarely worth it when the alternative is the availability to choose the best IME physician and hire that person directly. We believe the lack of the utilization of WRME's translates to the fact that randomly selected IME providers result in a strong likelihood of a poor quality report. Injured worker's attorneys reject the WRME option in favor of arranging exams, at their own expense, with providers they trust to provide meaningful input.

Oregon requires that when evaluating medical evidence in a contested case, the Workers' Compensation Board and appellate courts must rely on those medical opinions that are well-reasoned and based on complete information. Medical opinions that are conclusory, inconsistent, or based on an incomplete or inaccurate history are unpersuasive as a matter of law. This principle rings especially true for physicians who perform IMEs. While the opinions of treating physicians are often given deference in light of their opportunity to observe and evaluate a worker on numerous occasions, IME physicians are never accorded automatic deference. The weight given to IME opinions is based entirely on the quality of analysis underlying the opinions. Therefore, it is particularly important that the opinions of IME providers be well-reasoned and based on complete and accurate information. Employer/insurers and attorneys representing claimants gain experience over time as to which providers generate well-reasoned and high quality opinions. Those providers naturally become highly sought after. As mentioned earlier, this merit based system works to the benefit of all parties. Merit will quickly be become a distant memory if a random selection process is implemented.

CONCLUSION

In order to achieve the goal of providing quality medical care to ensure injured workers recover and return to work as soon as possible, the system should encourage the use of the most highly qualified IME providers. Under the current law, employer/insurers are able to select a physician who is not only the most highly qualified physician for that specific type of medical condition, but also the physician who is best able to provide a well-reasoned report. In contrast, under the provisions of Senate Bill 701 a randomly selected physician may not be a specialist in the area of medicine particular to that specific claim. One can imagine a scenario where an orthopedic surgeon who specializes in spinal injuries ends up examining a worker with foot or wrist injuries. In addition, a worker in eastern Oregon could end up being sent to an IME on the Oregon Coast.

A decrease in the quality of IME reports is also likely to result in increased litigation. Under the current rules, an IME report must be sent to the attending physician within 72 hours of receipt of the report. When an attending physician agrees with an IME report, litigation is less likely. But,

for good reason, attending physicians are not nearly as likely to agree with reports that lack adequate foundation or explanation. So an increase in disagreement can be anticipated to result from the likely degradation in report quality that would result from random selection of IME providers. In contrast, if an IME examiner has explained his or her opinion well and it makes sense to the attending physician, the attending physician is more likely to agree which will make subsequent litigation less likely.

High quality medical input is good for both the injured worker and the employer/insurer. IMEA believes the current system promotes this type of quality. Senate Bill 701 would be a step backward for a sound and functioning system that will result in arbitrary decision-making, unnecessary disputes, and delays in the provision of care and benefits. We believe Senate Bill 701 will negatively impact Oregon's outstanding workers' compensation system and we urge the committee to reject this measure.

Thank you for the opportunity to testify in opposition to Senate Bill 701, I would be happy to answer any questions the committee has.