



Oregon HB 2581 proposes sweeping changes to insurers' IME rights and claimants' WRME entitlements

By Ned A. Arenberg • May 26, 2015

The Oregon legislature is currently considering whether to severely limit insurers' right to obtain Independent Medical Examinations ("IME") in workers' compensation matters. In turn, the same legislation would significantly increase claimants' right to obtain an additional independent medical opinion in addition to their entitled Worker Requested Medical Examination ("WRME"), all at the insurer's expense.

HB 2581, introduced on January 12, 2015, proposes major amendments to ORS 656.325 and ORS 656.328.

Currently, under ORS 656.325(1)(b), insurers are entitled to, and workers are required to attend, a total of three IMEs during each open period of a claim. HB 2581 attempts to limit this entitlement to one such IME. This would have an extreme impact on claim processing. With workers' compensation claims becoming increasingly complex, claims involving, for example, combined conditions, multiple new or omitted condition claims, or injuries or diseases involving multiple body parts, will be increasingly difficult to process.

Consider the challenge of a claim with multiple diagnoses crossing over different medical disciplines. For example, a claim might include a disc herniation, traumatic brain injury, post-traumatic headaches and a cervical strain. This would call into question opinions from multiple doctors – a neurologist, an orthopedist, perhaps even a neuropsychologist. HB 2581 leaves insurers one chance to schedule the panel—and panels may be more frequently needed in the future vs. having the current freedom of scheduling multiple IME visits. Without a panel, the insurer may have to judge the merits from a single doctor who may lack the necessary expertise.

HB 2581 also provides claimants with the opportunity for a second independent medical opinion in addition to a WRME. Currently, ORS 656.328 grants injured workers the right to a WRME examination, with a doctor selected by the director, if: (1) a denial is based on an IME and (2) the attending physician does not concur with the report. HB 2581 grants claimants or their attorney the right to choose the physician for the WRME exam. It also entitles claimants to a subsequent "random external file review" by a provider selected by the director if the WRME examiner does not agree with the insurer's IME report.

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The entire concept behind the WRME was to be a "tie breaker" of sorts, at the insurer's expense, if the attending physician did not agree with an IME. HB 2581 appears to tip the scales in favor of injured workers' attorneys. While the insurer will be left with a single IME, the claimant will be entitled to a WRME, a "random record review" and the opinion of the treating doctors.

Without the benefit of more than one IME, coupled with multiple IMEs available to the injured worker at the insurer's expense, this bill would clearly result in an inequitable impact on insurers and third party administrators.

If you have any questions about this bill, or about the current statutes and rules involving IMEs or WRMEs, please don't hesitate to contact Ned Arenberg or any Oregon practice attorney here at Reinisch Wilson Weier PC. ■

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