

The following draft is provided to the IME Advisory Committee for discussion purposes. This draft should not be viewed as a recommendation by the Workers' Compensation Board.

1. 300.2(d)(1) – Expand to include ability to waive in all instances not just in C-4Auth instances.

Regulatory Changes:

300.2(d)(1):

(d) *Procedures for notice, conduct and reporting of independent medical examinations.*

(1) Notice. The claimant shall receive notice of the scheduled independent medical examination at least seven business days prior to the date of such examination. The notice shall be printed on the form prescribed by the Chair for such purpose, which shall include all information required thereon, as set forth under Workers' Compensation Law Section 137. A copy of such notice shall be sent to the Board on the same day it is sent to the claimant. Where the claimant asserts that notice of the examination was not received at least seven business days prior to the date of the examination and upon request by the Board, the party scheduling such examination shall provide proof in the form of an affidavit, or a business record that meets requirements for admissibility under Civil Practice Law and Rules [Rule] Section 4518 that the notice was posted by United States mail at least 12 business days prior to the date of the examination or deposited into the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery at least eight business days prior to the date of the examination. [In the event that an independent medical examination is required for the purpose of determining authorization for special services for specialist consultations, surgery, physical or occupational therapy, imaging studies or special diagnostic or laboratory tests in accordance with Workers' Compensation Law Section 13-a (5), and a delay in authorization for such special services would result in a worsening of the claimant's condition or irreparable harm, and the examination can be scheduled less than 12 business days from the date of the request for the examination, the] A represented claimant may, by written consent waive the requirement of seven business days' notice of the examination. However, in case of such a waiver by the represented claimant of seven business days' notice of the examination, [for purposes of scheduling an examination for authorization of such special services,] a notice of the examination must be sent to the represented claimant as soon as possible after the scheduling of the examination in the same manner as otherwise required for notices of examinations under Workers' Compensation Law Section 137 and this Part. In no event may the right to such notice be waived pursuant to an employment agreement or a collective bargaining agreement. If a claimant requests that an examination be rescheduled, and the examination is rescheduled less than seven business days after the request, the notice required under Section 137 need not be received seven business days prior to the examination, but must be sent to the claimant as soon as possible in the same manner as required for the original notice under said section and this section. A copy of such notice shall be sent to the Board on the same day it is sent to the claimant. Upon request by the Board, the party scheduling such examination shall provide proof in the form of an affidavit, or a business record that meets the requirements for admissibility

under Civil Practice Law and Rules [Rule] Section 4518 that the notice was mailed as soon as possible.

Statutory change: Not required as above does not conflict with WCL § 137 as written. There is no waiver language in WCL § 137.

2. 300.2(d)(14) - 10/20 days waiver or substantial compliance

Regulatory Changes:

300.2(d)(12). No waiver of claimant's rights. Except as otherwise provided, a claimant may not waive any of the rights provided under Workers' Compensation Law Section 137 in relation to independent medical examinations. A report of an examination that does not substantially comply with the requirements of Workers' Compensation Law Section 137 and this section, shall not be admissible as evidence for any of the purposes described in paragraph (b)(4) of this section in a workers' compensation proceeding, unless the party raising an objection to the admissibility of the report does not raise such objection in a timely manner. Except for a waiver or consent that is expressly authorized by the Workers' Compensation Law or this section or by a Workers' Compensation Law J[j]udge, and is knowingly executed by the claimant, no agreement between an employee and employer, or employee and carrier shall be binding upon the Board; nor shall any such agreement in any way excuse compliance with said Section 137 or this section. In no event shall a collective bargaining agreement be binding upon the Board or excuse compliance with respect to said Section 137 or this section; nor shall a claimant be required or permitted to waive any of the requirements of Section 137 or this section pursuant to such agreement.

300.2(d)(14). A written report of an independent medical examination, duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 business days after the independent medical examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 business days after the independent medical examination. A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law. Notwithstanding the provision of subparagraph 12, when there is not exact compliance with the 10 business days or 20 business days filing requirement set forth herein, the board may in its discretion, for good cause shown and in the interest of justice, accept substantial compliance with this requirement as full compliance therewith, or a represented claimant, carrier or third-party administrator may, by written consent, waive this requirement.

Statutory changes: Not Required to WCL § 137 as 10/20 business days is strictly a regulatory requirement.