FOR DISCUSSION PURPOSES ONLY

IME Advisory Committee

SURVEY: Draft Summary Recommendations

NEW YORK STATE OF OPPORTUNITY. Workers' Compensation Board

There are four specific areas that WCL 137(12) directs the IME Advisory Committee to address:

- Ensuring fairness
- Ensuring the highest medical quality
- Improving methods of combatting fraud
- Feasibility of new methods of assignment

The subjects of this survey are the key focal areas encountered during the IME Study and proceedings of the IME Advisory Committee.

DIRECTIONS: Listed below each key focus area are one or more draft recommendations based on areas of facilitated committee discussion.

1) Please review each focus area and the listed potential draft recommendations. Please note whether you agree or disagree with each draft recommendation. In addition, you may set forth other recommendations or provide comments.
2) Your responses, recommendations and comments will be compiled and shared with all Committee members.

PLEASE NOTE: The draft recommendations were drafted for the sole purpose of identifying points of consensus among the Committee members and do not reflect any opinion, preference or direction of the Workers' Compensation Board.

I. Volume, Distribution, Availability		
A. Volume and Distribution of IME providers *The IME study revealed that there were 4,270 providers authorized to perform IMEs as of February 2019. 72% of the total IMEs were performed by just 2.5% of the eligible authorized IME providers. The majority of IME providers (71%) performed between 1-5 IMEs comprising only about 1% of the total IMEs. The remainder of IME providers (26%) performed between 6-1000 IMEs comprising 24% by volume of IMEs. There are regional disparities as well, with some up-state sectors having few, if any, local IME providers. What recommendations, if any, would you support regarding sufficient and broad availability and distribution of providers, statewide?*		
Potential recommendations:	**AGREE?**	**DISAGREE?**
1. Day caps: Cap number of IMEs any one provider can do in a single day		
2. Annual minimums: For most common specialties, such as orthopedics, require a minimum number of IMEs per year to retain IME authorization		
3. Status quo – no change recommended		
4. Other recommendation set forth:		

B. Availability of Provider Specialties

The study revealed that orthopedic surgeons performed about 80% of all IME exams.
What recommendations, if any, would you support regarding sufficient and broad availability and distribution of specialty providers, statewide.

Potential recommendations:	AGREE?	DISAGREE?
1. Allow telemedicine to be used for IMEs; possibly for some types and not others		
2. Status quo – no change recommended		
3. Other recommendation set forth:		

C. Method of selection and assignment

The statute requires consideration of, "the feasibility of new methods of assigning independent medical examinations, such as through rotating providers or panels, statewide networks, or other arrangements

Potential recommendations:	AGREE?	DISAGREE?
1. Rotating Panels: Board establishes rotating panels of three IME providers, and both parties (or Board if claimant is not represented by counsel) either agree, or each party is entitled to de-select one name from panel. In event of any dispute, Board or network will select. • WCB administered • Network administered		
2. Rotating Providers: The Board or network is responsible for assigning an authorized IME to perform the exam or records review. • WCB administered • Network administered		
3. Status quo – no change recommended		
4. Other recommendation set forth:		

D. IME Provider Types

The 2019-2020 Executive Budget included the Expanded Provider Law, which adds Nurse Practitioners, Licensed Clinical Social Workers, and Acupuncturists to the list of those who can obtain authorization to treat injured workers. The law does not allow the new providers to perform IMEs.

Potential recommendations:	AGREE?	DISAGREE?
1. Partial Parity for NPs and LCSWs: Allow NPs, and LCSWs to perform IMEs in cases where the claimant has treated with an NP or LCSW, i.e. the "apples to apples" approach.		
2. Full Parity for NPs and LCSWs: Allow a party to retain an NP or LCSW as an IME, even where claimant did not treat with an NP or LCSW for the at-work injury.		
3. Status quo: no change recommended		
4. Other recommendation set forth:		

II. Provider Requirements:		
A. Active Treatment: *The study revealed that 90% of IME providers both treated injured workers and performed IME exams during the study period. For high volume providers, 40% of IME providers both treat and perform IME exams. About 47% of IME providers perform IME exams only.*		
Potential recommendations:	**AGREE?**	**DISAGREE?**
1. Actively treat: Require all IME providers to also have an authorization to treat injured workers, and to treat a minimum number of injured workers in any given year. This would bar retirees from performing IMEs for the most part. • Could be limited to certain specialties • Could be limited to exams only, not records reviews		
2. Status quo: no change recommended		
3. Other recommendation set forth:		
B. Education and Training: *Also, while all IME providers have certain Continuing Education requirements as part of their SED licensure, the Board does not require, or provide, any particular amount or type of Continuing Education credits*		
Potential recommendations:	**AGREE?**	**DISAGREE?**
1. Continuing Education and Training: Require the Board to provide directly, or through a Continuing Education vendor or entity, for Continuing Education and training on key topics within a specialty, and as related directly to workers' compensation.		
2. Status quo: no change recommended		
3. Other recommendation set forth:		

III. Examination and Reporting Requirements

A. <u>Timing of notice for exam, filing, and service requirements:</u>

- *Notice of the IME exam must be provided at least 7 days in advance [137(7)]*
- *Where exam is for pre-authorization per 13-d(5), thus due within 30 days of pre-auth request, 7-day notice may be waived per 300.2(d)(1).*
- *Report must be filed within 10 business days (in state) or 20 business days (out of state) [300.2(d)(14)]*
- *Request for Information must be submitted to the board within 10 days of receipt and responses must be submitted to the board within 10 days of response, by practitioner [137(1)(b) and (c)]*
- *All IME reports must be filed in the same day and in the same manner upon the Board, carrier, attending physicians [by regulation, that is any treating provider within last 6 months], claimant's counsel, and claimant [137(1)(a)]*

Potential recommendations:	AGREE?	DISAGREE?
1. <u>End 'Same Day/Same Manner':</u> Allow the IME practitioner or entity to upload the report to the Board electronically and serve parties in differing manners: by paper mail to the claimant, and via electronic means to all others.		
2. <u>Notice Waiver:</u> Allow claimants to waive 7-day notice provisions, if desired, in any case		
3. <u>Filing Waiver:</u> Allow claimants to waive 10/20 day filing requirements, if desired, in any case		
4. <u>Modify 10/20 regulatory filing requirements by case type:</u> Provide longer time frame for provision of filing of IME report, except where specifically directed by Board. That is, in circumstances where time is of the essence, such as controverted claims, treatment requests, and a directed permanency report, the Board would set timing protocols based on exact case and issue type. Otherwise, the IME report could be filed within a longer time frame, such as 30 or 45 days.		

5. Modify Request for Information filing: Allow the practitioner to send the RFI and response to RFI together with the filed IME-4, thus eliminating a separate IME-3 form. This requires changing the statute so that the obligation to file the request for information on its own would be eliminated, and the information therein would be filed along with the IME-4.		
6. Status quo: no change recommended		
7. Other recommendation set forth:		
B. Volume of IME forms currently required by the Board		
Potential recommendations:	**AGREE?**	**DISAGREE?**
1. Change IME form(s) - Specify IME forms and proposed changes		
2. Replace IME forms with modernized online electronic filing process		
3. Status quo: no change recommended		

4. Other recommendation set forth:		

C. Evidentiary considerations: Preclusion

By regulation 300.2(d)(12), a report that "does not substantially comply" with WCL 137 and the regulation "shall not be admissible as evidence", i.e. is subject to preclusion. The preclusion rate is low statewide, ranging between 0.35% and 2%, but concerns over the timing, filing, service, and reporting rules remain.

Potential recommendations:	AGREE?	DISAGREE?
1. Provide greater discretion on precludable issues: By regulation, allow the Board to excuse minor delays on filing and service, such that ' substantial compliance' would be based on totality of circumstances.		
2. Status quo: no change recommended		
3. Other recommendation set forth:		

D. Evidentiary considerations: Records Review

Records reviews are generally perceived as less reliable as evidence than in-person examinations. Yet, due to the restrictive timing in C4-Auth cases, obtaining an IME can be challenging. Along those same lines, failure to respond, even if it results in an Order of the Chair, tends to delay care, and could still end up in a dispute over the bill.

Potential recommendations:	AGREE?	DISAGREE?
1. C4-Auth cases – evidentiary value of records review, and elimination of legal disputes: a conflicting opinion is required for all contested C4-Auths. State by regulation that such medical may be a records review or an in-person examination, and that it shall not be viewed as having lesser value merely because it is a records review. With this, indicate that failure to respond to a properly filed C4-Auth relative to an established site constitutes a waiver of all legal defenses to the bill.		

2. Status quo: no change recommended		
3. Other recommendation set forth:		

E. Videotaping

The IME provider, with the Notice, must advice the claimant of an intent to videotape the examination, and must advise the claimant of their right to tape or otherwise record the examination [137(7)]. The IME provider may not refuse to conduct the exam because the claimant intends to videotape or record the exam [300.2(d)(7)]. The examiner, and the claimant, may not interfere with the conduct of the exam [300.2(d)(7)].

Potential recommendations:	AGREE?	DISAGREE?
1. More robust notification: Require the claimant to advise the examiner, or IME entity, or carrier, in advance of the exam that he/she intends to videotape or record the exam.		
2. Require videotaping: Require all IME exams to be video-taped, with a certification of non-alteration, and stored by the carrier or IME entity in the event the tape is requested by the claimant or the WCLJ.		
3. Status quo: no change recommended		
4. Other recommendation set forth:		

IV. Fees

A. No shows/Cancellations

- The study revealed an average no-show rate of 9.6% and a cancellation rate of 19.8% among the District offices. The no-show rates vary by individual provider between 1.7% and 17%, and the cancellation rates vary between 2.3% and 21%. The landscape of payments for no-shows varies widely (between $0 and more than $250 with an average of about $204) amongst IME entities and carriers, and is a broadly unregulated area.
- Refusal by the claimant to submit to an IME bars the claimant from recovering compensation for any period during which he or she has refused to submit to such examination" [WCL 13-a(4)(b); 300.2(d)(11)]. There is no stoppage of payments if the Board finds the refusal to be reasonable. While neither the statute or regulation specifies how many no-shows it takes to yield a 'refusal to appear' issue, typically it is two no-shows.
- There is also a specific no-show rule for variance IMEs, specifying that failure to appear at the IME without reasonable cause is a basis to deny the variance.[324.3(b)(2)(ii)(b)]

Potential recommendations:	AGREE?	DISAGREE?
1. Fees: Set a fee for the carrier to pay in the event of a no-show, or a claimant cancellation. This could be either: • Standard fee • Fee structure based on various factors, including whether first or repeated no-show/cancellation, geographical location, specialty area, and whether exam is rescheduled or not.		
2. Consequences: • Specify in the regulation the number of no-shows, and/ or the circumstances of the no-shows, that would warrant barring payments, if the WCLJ finds that the refusal was unreasonable. • Specify in the regulation that the cost of the IME for a no-show could be borne by the claimant is the refusal was unreasonable.		
3. Status quo: no change recommended		
4. Other recommendation set forth:		

B. Payment/Fee structure

While 137(3)(b) states that fees for IMEs are pursuant to the medical fee schedule, the practical meaning of that is that IME fees per fee schedule are considered 'BR' or "By Report". In other words, all fees for IMEs are set by contract between the carrier, IME entity, and provider. Claimant IMEs are either paid out-of-pocket, or submitted for reimbursement if the claimant's treating physician refused to, or is unable to, evaluate the claimant

Potential recommendations:	AGREE?	DISAGREE?
1. Set Fee Schedule: the Board could be directed to set an actual schedule of fees, based on exam type, and other factors such as uniqueness of sub-specialty, difficulty of obtaining an IME, geography, and others		
2. Network bases fees: If networks administer the selection and rotation of IME providers, they could be directed by the Board to follow certain fee structures.		
3. Status quo: no change recommended		
4. Other recommendation set forth:		

V. IME Entities		
A. *IME entities must register with the Board to provide the back-office services on the scheduling and reporting of IMEs. The requirements for registration are set forth in 300.2(e). While the Chair always has the right to request further information from an IME entity "for purposes of ensuring compliance with" the law [300.2(e)(3)], the Board does not have standardized annual reporting requirements. An entity must re-register every three years and can be de-registered by the Board.*		
Potential recommendations:	**AGREE?**	**DISAGREE?**
1. Annual reporting: Mandate annual reporting requirements that delve into areas of cost, scheduling, subject areas, IME provider volume and quality, geographic breakdown, compliance with regulatory schema, etc.		
2. URAC: Require all IME Entities to have URAC accreditation.		
3. Status quo: no change recommended		
4. Other recommendation set forth:		

VI. Fraud prevention	
A. *The statute mandates that the IME Advisory Committee address "improving methods of combatting fraud."*	
1. Please set forth any potential recommendations:	

VII. Injured Worker Experience

A. Reasonable Distances for IMEs

There are currently no regulations for distance that an injured worker may be required to travel for an IME. "Reasonable distance" regulations are in place for the diagnostic testing network, as follows: "Reasonable distance" means within twenty-five miles of the injured or ill worker's residence or place of employment except for the following localities: within the City of New York within five miles of the injured or ill worker's residence or place of employment; within the Cities of Albany, Buffalo, Niagara Falls, Rochester, Schenectady, Syracuse, Troy, and Yonkers within ten miles of the injured or ill worker's residence or place of employment; and within the Counties of Nassau, Rockland, Suffolk, and Westchester within fifteen miles of the injured or ill worker's residence or place of employment. However, if there are no facilities or providers who perform diagnostic examinations and tests within such distances from the injured or ill worker's residence or place of employment, then "reasonable distance" means the distance between the injured or ill worker's residence or place of employment and the nearest facility or provider. In no event should travel time to the facility or provider who performs diagnostic examinations and tests exceed one hour.

Potential recommendations:	AGREE?	DISAGREE?
1. All IME exams should be within a reasonable distance of the injured worker. What would be the reasonable distance?		
2. Status quo: no change recommended		
3. Other recommendation set forth:		

B. Wait Times for IMEs

There are currently no regulations that address the injured worker wait time for an IME.

Potential recommendations:	AGREE?	DISAGREE?
1. Regulate wait times for an IME (assuming injured worker arrives on time). Provide specific timeframes.		
2. Status quo: no change recommended		
3. Other recommendation set forth:		