

## CHANGING DIMES: WORKERS' COMPENSATION DIVISION IME RULE SEEING SIGNIFICANT UPDATES IN THE NEW YEAR

A key issue in a workers' compensation claim is the determination of maximum medical improvement ("MMI"). MMI is assessed by the treating physician and is the point in time when the claimant's condition has become stable with no further treatment expected to improve their condition. Historically, one of the parties would often disagree with the treating physician's MMI finding. This led to more protracted and costly proceedings.

The Division Independent Medical Exam ("DIME") Program was enacted to minimize litigation arising out of a party's dispute with the treating physician's MMI or impairment finding. A DIME is performed by an independent physician assigned to the claim. The doctor reviews the medical records, performs a physical exam of the injured worker, and writes a narrative report summarizing their MMI and impairment findings. The DIME physician's findings on MMI and impairment are binding and can only be overcome by clear and convincing evidence. In place since 1991, the DIME procedure is outlined in Rule 11 of the Colorado Workers' Compensation Rules of Procedure.

On January 1, 2019, the DIME rule will see a significant overhaul, with the changes effective on that date. One of the primary updates to the Rule is an increase in the DIME physician fee. The increased DIME fee is designed to encourage additional physicians to participate in the program and to fairly compensate the physicians for their time. Depending on how many years the claim has been open and how many "body regions" are involved, the DIME fee will range from \$1,000 to \$2,000 as outlined below:

Less than 2 years after the date of injury and/or less than 3 body regions	\$1,000
More than 2 years but less than 5 years after the date of injury and/or 3-4 body regions	\$1,400
More than 5 years after the date of injury and/or 5 or more body regions	\$2,000

There are six identified body region categories: 1) upper extremity; 2) lower extremity; 3) spine; 4) ear, nose, throat; 5) psychological, TBI; and 6) "other," including skin, respiratory, and cardiovascular disorders. The parties must identify the body regions involved in a claim on the Notice and Proposal and Application for a Division IME, which is now the form that will begin the DIME process, combining what used to be separate forms. Additionally, starting January 1, 2019, the parties must pay the DIME fee *before* setting the DIME appointment.

The fees for rescheduling, terminating, or requesting a follow-up DIME have also been increased. The amount of the increase will depend on when the requested action is made. For example, different fees will apply for a rescheduling request made more than 10 days before the appointment, less than 10 but more than 1 day before the appointment, or less than 1 day prior to the scheduled appointment. The fee schedule for rescheduling, terminating, or requesting a follow-up DIME is available for reference on the Division of Workers' Compensation website.

The new Rule also provides increased opportunities for collaboration between the parties. By agreement, the parties can select the DIME physician and the fee to be paid. Under the old rule, the party requesting the DIME would propose three physicians, and if the other party objected a DIME panel would be issued. Agreeing to the DIME fee was not allowed. Now, allowing the parties latitude to select the physician and fee may increase the options for selecting a doctor. For example, some physician specialists will not abide by the workers' compensation fees. Allowing the parties to agree to a fee, even if it is higher, to secure a specialist with the proper expertise, may lead to a higher-quality DIME that is more tailored to the specifics of the claim. Note that the physician must consent to the proposed fee.

The parties can also collaborate by agreeing to limit the issues for consideration by the DIME physician. They can limit by issue (MMI or impairment), or by body part. A specific form authored by each party, the Notice of Agreement to Limit the Scope of the DIME, must be submitted for this limitation to have legal effect. This form is submitted with the medical records packet to the DIME physician.

The medical records packet is also seeing changes. The parties will no longer separately issue records to the DIME physician. Starting in January, the parties will have strict deadlines for working together to finalize one medical records packet. The insurer must submit a proposed packet to the claimant no later than 14 days after the DIME confirmation date. The claimant has 10 days after receipt to return the packet with any proposed changes. The parties may continue to negotiate, but a final packet must be submitted by the insurer to the DIME no later than 14 days prior to the DIME appointment.

With the Rule update, the Division of Workers' Compensation aims to more fairly compensate DIME physicians for their time and to increase the efficiency of the DIME process. The former is accomplished by the increased fee. Whether the latter occurs via improved efficiency remains to be seen, and is something all interested parties should track as the changes go into effect. Getting up to speed on these changes to the fees, forms, and deadlines will require some investment by respondents on the front end, but such investment likely will prove critical to avoiding oversight fees from the Division of Workers' Compensation.

To access a copy of the DIME rules effective January 1, 2019, please [click here](#).

If you have any questions about this update, please contact Megan Coulter, [coulterm@hallevans.com](mailto:coulterm@hallevans.com) or Paul Popovic, [popovicp@hallevans.com](mailto:popovicp@hallevans.com).

