

DEPARTMENT OF LABOR AND EMPLOYMENT
Division of Workers' Compensation
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WORKERS' COMPENSATION RULES OF PROCEDURE

Rule 11 Division Independent Medical Examination

Table of Contents

11-1	QUALIFICATIONS.....	2
11-2	COMPUTATION OF TIME	2
11-3	DIME PHYSICIAN COMPLIANCE	2
11-4	DIME PROCESS	4
11-5	PAYMENTS/FEES.....	6
11-6	COMMUNICATION WITH A DIME PHYSICIAN	8
11-7	DIME FOLLOW-UP	8
11-8	DIMES FOLLOWING REOPENING	11
11-9	REMOVAL OF A PHYSICIAN FROM THE SELECTION PROCESS	11
11-10	IMMUNITY	11
11-11	DISPUTES.....	11
11-12	INDIGENT CLAIMANT	12

Rule 11 Division Independent Medical Examination

This rule applies to parties and physicians participating in the Division Independent Medical Examination (DIME) program pursuant to the Workers' Compensation Act of Colorado, § 8-40-101, et seq. ("The Act"). When used in this rule, Administrative Law Judge (ALJ) refers to Administrative Law Judges in the Office of Administrative Courts or prehearing Administrative Law Judges employed by the Division of Workers' Compensation.

11-1 QUALIFICATIONS

A physician seeking appointment to the DIME panel pursuant to The Act, shall meet the following qualifications:

- (A) Be licensed with no restrictions by the Colorado Medical Board, the Colorado Dental Board, the Colorado Board of Chiropractic Examiners, or the Colorado Podiatry Board. Physicians licensed by the Colorado Medical Board must be board-certified or board eligible by the American Board of Medical Specialties or the American Osteopathic Association.
- (B) For determination of maximum medical improvement (MMI), have attained at least Level I accreditation and engaged in at least 384 hours of direct patient care (excluding medical/legal evaluation) during the past five calendar years.
- (C) For determination of permanent impairment and MMI, have attained Level II accreditation and either:
 - (1) engaged in at least 384 hours of direct patient care (excluding medical/legal evaluation) during the past calendar year OR
 - (2) engaged in at least 384 hours of direct patient care (excluding medical/legal evaluation) during the previous five years and demonstrated additional competency in the field of disability evaluation through certification by the American Board of Independent Medical Examiners, the International Academy of Independent Medical Evaluators, or equivalent continuing medical education courses.
- (D) A physician who is selected to perform a DIME as a result of an agreement by the parties and who has not been appointed to the DIME panel is not required to apply for appointment; however, such physician shall comply with all other qualifications and rules governing the DIME proceedings.

11-2 COMPUTATION OF TIME

In computing any period of time prescribed or allowed by this rule, the parties shall refer to Rule 1-2. All references to "days" shall mean calendar days unless otherwise stated. All references to "years" shall mean twelve calendar months.

11-3 DIME PHYSICIAN COMPLIANCE

A physician seeking appointment to the DIME panel shall complete the Request for Appointment to the Independent Medical Examination Panel in full, including the required certification. Upon approval of the application, the physician shall:

- (A) Comply with The Act and the Workers' Compensation Rules of Procedure;
- (B) Complete a summary disclosure form;
- (C) Conduct all DIMEs in an objective and impartial manner;
- (D) Decline a request to conduct a DIME only with approval by the Director or an ALJ on the basis of good cause shown;
- (E) Not evaluate the claimant if an actual conflict of interest exists. A conflict of interest includes, but is not limited to, instances where the physician or someone in the physician's office has treated the claimant or performed an Independent Medical Examination (IME) on the claimant. A conflict is presumed to exist when the DIME physician and a physician who previously treated or evaluated the claimant in the course of an IME have a relationship involving a direct or substantial financial interest during the pendency of the DIME.
 - (1) Direct or substantial financial interest is defined as a business ownership interest, a creditor interest in an insolvent business, employment relationship, prospective employment for which negotiations have begun, ownership interest in real or personal property, debtor interest, or being an officer or director in a business.
 - (2) Being members of the same professional association, society, or medical group, sharing office space, or having practiced together in the past are not the types of relationships that will be considered a conflict;
- (F) Not engage in communication regarding the DIME with any person other than Division Staff, except under the following circumstances:
 - (1) The claimant during the DIME;
 - (2) The requesting party to set the appointment;
 - (3) The submitting party when discussing the format of the medical records;
 - (4) The paying party to discuss issues regarding the invoice;
 - (5) The parties negotiating selection of the DIME physician and agreed upon fees pursuant to sections 11-4(A) or 11-7(B). All communications with potential DIME physicians in furtherance of these negotiations shall involve all parties to the claim.
 - (6) By order of the Director, an ALJ or by written agreement of all parties;
- (G) Not become the treating physician for the claimant, unless ordered by the Director or an ALJ, or by written agreement of all parties;
- (H) Not refer the claimant to another physician for treatment or testing unless an essential test is required;
- (I) Not employ invasive diagnostic procedures unless approved by the parties or an ALJ;
- (J) Not substitute any other physician as the DIME physician, unless ordered by the Director or an ALJ, or by written agreement of all parties;

- (K) For each DIME assigned, make all relevant findings regarding MMI, permanent impairment, and apportionment of impairment, unless otherwise ordered by an ALJ.
- (L) Within twenty (20) days of the examination submit to the Division and all parties the original report with all attachments. The twenty (20) day deadline for the insurer to file an admission of liability or request a hearing pursuant to § 8-42-107.2(4)(c), does not begin to run until the DIME Unit has issued a notice to all parties that it has received a sufficient report. The report shall conform to the DIME Report Template.

11-4 DIME PROCESS

- (A) Application and scheduling:
 - (1) Either party disputing a determination of MMI or impairment made by an authorized treating physician in a workers' compensation case must apply for a DIME by filing the Notice and Proposal and Application for a DIME form within thirty (30) days after the date of mailing of the final admission of liability or the date of mailing or physical delivery of the disputed finding or determination, as applicable, pursuant to § 8-42-107.2(2)(a) and (b). The party applying for a DIME pursuant to § 8-42-107(8)(b), shall meet all statutory conditions prior to filing the form. The requesting party may amend the Application for a DIME form only by order of an ALJ or written agreement of all parties.
 - (2) The parties must attempt to negotiate the selection of a physician to conduct the DIME. The requesting party shall propose one or more candidates qualified under section 11-1 on the Notice and Proposal and Application for a DIME form. The Notice of DIME Negotiations form shall be filed within thirty (30) days of the filing of the Notice and Proposal and Application for a DIME.
 - (a) If the parties have agreed on the DIME physician and fee, either party may file the form indicating the name of the physician.
 - (i) The parties and the DIME physician may agree to the fees set forth in 11-5(A)(1) – (3) or to any other fee as provided by 11-5(A)(4). The parties shall indicate the agreed upon fee on the Notice of DIME Negotiations form. The form shall be signed by the DIME physician and all parties to the claim.
 - (ii) If the parties cannot reach agreement regarding the fee with the agreed upon physician, they shall proceed with the selection process set forth in 11-4(A)(3)-(5).
 - (b) If the parties have not agreed on the DIME physician, the insurer shall file the form.
 - (3) The Division will notify the parties in writing of the names and the medical specialties of three physicians or of the agreed-upon physician within five (5) days of receiving the Notice of DIME Negotiations form.
 - (4) Within five (5) business days of issuance of the three-physician list by the Division, a party may request summary disclosures concerning any business, financial, employment, or advisory relationship with the insurer or self-insured employer. Such request shall be submitted by electronic mail to the DIME Unit and copied to the other parties. The parties may use the information provided on

the summary disclosure forms to assist in the decision to strike a physician. The information shall not be used as a basis for the Division to remove a physician from the three-physician list. Physicians who are agreed-upon to perform DIMEs pursuant to § 8-42-107.2(3)(a), are not required to comply with this subsection.

- (5) Within five (5) business days of issuance of the three-physician list by the Division, the requesting party shall strike one name and inform the other party and the Division. The other party then shall have five (5) business days to strike one of the remaining physicians and inform the DIME Unit in writing, with confirmation to the requesting party. If the Division is not notified of the selected physician within ten (10) business days of the issuance of the three-physician list, the Division shall randomly select one name from the remaining physicians.
- (6) The Division shall confirm to the parties in writing the name of the selected or agreed-upon physician.
- (7) If the selected physician is unable to perform the DIME or if a physician is removed from the panel for any reason other than having been struck by a party, the Division shall provide one replacement name to the original list of three physicians, and present that revised list to the parties where each shall strike one name according to the procedures set forth in this section.
- (8) The requesting party shall schedule the DIME with the physician within fourteen (14) days of receiving the DIME physician confirmation. The requesting party shall immediately notify the DIME Unit and the opposing party in writing of the date and time of the examination. Absent good cause as determined by the Director or an ALJ, failure to make the appointment and advise all parties within fourteen (14) days may result in a Director's order to show cause why the DIME process should not be terminated.
- (9) The examination shall be scheduled no earlier than 45 days or later than 75 days after the requesting party receives the notice of the DIME physician confirmation unless otherwise ordered by the Director or an ALJ, or by written agreement of all parties.

(B) Medical Records:

- (1) The medical records packet shall include all records regarding the diagnosis, treatment, and evaluation of the claimant's work-related injury(ies) or disease(s), as well as any relevant pre-existing condition(s), injury(ies), or disease(s), if applicable and available. The party seeking to exclude the above records without agreement of the other parties must request a prehearing conference before an ALJ.
- (2) Surveillance recordings, depositions, vocational rehabilitation reports, non-treating case manager records, prior orders and other records may not be submitted without written agreement of all parties or by order of an ALJ. The party seeking to include the above records without agreement of all other parties must request a prehearing conference before an ALJ.
- (3) The medical records packet shall include a dated cover sheet listing the claimant's name, DIME physician's name, date and time of the appointment, and the Division workers' compensation number. The records shall be in a chronological order, beginning with the earliest record, and tabbed by year. The packet shall not contain duplicate records. The packet also shall include a

chronological index of the records, beginning with the earliest record. The index shall list the date and the provider corresponding to each record.

- (4) Records may be provided electronically by agreement of the parties and the DIME Physician so long as the records otherwise comply with the formatting requirements of this paragraph.
 - (5) The insurer shall serve the claimant with a complete copy of the initial packet no later than fourteen (14) days from the date the Division confirms the selected DIME physician. The claimant shall serve the insurer with any additional relevant records, in the format compliant with this section, no later than ten (10) days after receiving the initial packet. The insurer shall serve the DIME physician with the final packet no later than fourteen (14) days prior to the scheduled examination. At the time the final packet is served on the DIME examiner, the insurer shall provide Claimant with an identical copy of the final packet. If no party has supplemented the initial DIME packet previously exchanged with Claimant, then the insurer shall affirm that fact in the letter to the DIME unit and Claimant. In such an instance, the insurer does not need to reproduce the previously exchanged DIME packet. For purposes of this rule, date of service shall be determined by the verifiable date of delivery.
 - (6) Failure to timely and properly submit records may result in termination or rescheduling of the DIME by the Director, at the cost to the defaulting party. The DIME physician has discretion to proceed with the DIME and impose \$250.00 late records fee on the defaulting party. In addition, other penalties available under these rules and the Act may be determined by the Director. Any disputes regarding the contents of the final medical records packet may be resolved by an ALJ. Disputes regarding responsibility for default may be addressed by the ALJ or the dispute resolution process set forth in Rule 16.
 - (7) Submission of supplemental records requires a prior order by an ALJ finding good cause. Supplemental records shall be prepared pursuant to this section and must be served by any party concurrently to the DIME physician and all other parties no later than seven (7) days prior to the DIME examination.
- (C) The parties may agree to limit the issues to be addressed in the DIME in writing and signed by both parties. The written agreement may use the optional Notice of Agreement to Limit the Scope of the DIME form. The parties must include the agreement in the medical records packet served on the DIME physician, immediately following the chronological index and must provide a copy of the agreement to the DIME Unit.
 - (D) The claimant shall notify the insurer of the necessity for a language interpreter no later than fourteen (14) days before the examination. The insurer shall be responsible for arranging for the services of and paying for such language interpreter. The language interpreter shall be impartial and independent, and have no professional or personal affiliation with any party to the claim or the DIME physician.
 - (E) An order by an ALJ is required to hold the proceedings in abeyance once an appointment has been scheduled. The party filing a motion to hold the proceeding in abeyance shall be considered the defaulting party for purposes of paying all applicable rescheduling or termination fees to the DIME physician.

11-5 PAYMENTS/FEES

- (A) The DIME fee will be determined based upon the length of time elapsed between the

date of injury and the filing of the notice and proposal as well as body regions identified on the DIME application in accordance with the following schedule:

- (1) Less than two years after the date of injury and/or less than three body regions: \$1,000;
- (2) Two or more years but less than five years after the date of injury and/or three or four body regions: \$1,400;
- (3) Five or more years after the date of injury and/or five or more body regions: \$2,000.
- (4) The DIME fees do not apply if the parties have agreed on the DIME physician and fee pursuant to section 11-4(A)(2)(a)(i).

(B) The Division will attach an invoice for the DIME fee to the DIME physician confirmation issued pursuant to section 11-4(A)(6). The selected DIME physician shall receive the fee from the paying party prior to scheduling the examination unless the claimant has filed an indigent application pursuant to section 11-12. If such an application is filed the paying party shall submit the DIME fee within fourteen (14) days of the order on that application or within fourteen (14) days of the final DIME physician selection, whichever is later.

(C) The DIME may only be rescheduled or terminated by the requesting party or by order. The party responsible for the rescheduling shall submit the rescheduling fee, if applicable, to the DIME physician within ten (10) days of the defaulting event. The requesting party shall reschedule the appointment after the physician receives this fee. Rescheduling of the DIME more than once requires a finding of good cause by an ALJ. The DIME rescheduling and termination fees shall be as follows (unless reduced by an ALJ upon a showing of good cause):

(1) Rescheduling fees:

	DIME is rescheduled more than ten (10) days before the scheduled date	DIME is rescheduled ten (10) days or less before the scheduled date	DIME is rescheduled one (1) business day or less prior to the scheduled date
\$1,000 DIME	No fee	\$500	\$1,000
\$1,400 DIME	No fee	\$700	\$1,400
\$2,000 DIME	No fee	\$1,000	\$2,000

(2) Termination fees:

	DIME is terminated more than ten (10) days before the scheduled date	DIME is terminated ten (10) days or less before the scheduled date	DIME is terminated one (1) business day or less prior to the scheduled date
\$1,000 DIME	\$250	\$500	\$1,000
\$1,400 DIME	\$350	\$700	\$1,400
\$2,000 DIME	\$500	\$1,000	\$2,000

- (3) The rescheduling and termination fees shall apply to the agreed-upon DIMEs under section 11-4(A)(2)(a)(i). The fees shall be determined based on the section 11-5(A)(1) – (3) category that would have applied.
 - (4) If the DIME physician reschedules the examination more than two (2) times, the physician shall pay \$250.00 fee to the paying party.
 - (5) The DIME physician shall refund the DIME fee minus the termination fee to the paying party within ten (10) days of receiving the notice of termination.
 - (6) The parties and the DIME physician may use the Notice of Reschedule or Termination form to notify the DIME Unit of any rescheduling, termination, or failure to attend the DIME.
- (D) It is expected that a test essential for an impairment rating to be rendered under the AMA Guides, 3rd Edition (revised) or the Level II accreditation curriculum will have been performed prior to the DIME. Routine tests necessary for a complete DIME should be performed as part of the DIME with no additional cost. If an essential test is non-routine or requires special facilities or equipment, and such test was not previously performed, or was previously performed but the findings are not usable at the time of the DIME, the DIME physician shall notify the DIME Unit, who will notify the parties. The DIME physician will either perform the essential test or refer out the essential test for completion at the insurer's expense unless extraordinary circumstances are determined by an ALJ. A return visit for range of motion validation shall be considered a part of the initial DIME.
 - (E) Services rendered by a DIME physician shall conclude upon acceptance by the Division of the final DIME report.
 - (F) A party who seeks the presence of a DIME physician as a witness at a proceeding for any purpose, by subpoena or otherwise, shall pay the physician pursuant to Rule 18.

11-6 COMMUNICATION WITH A DIME PHYSICIAN

- (A) During the DIME process, there shall be no communication between the parties and the DIME physician except in circumstances allowed under section 11-3(F). The parties shall provide the DIME Unit with copies of any permitted correspondence with the DIME physician. Any violation may result in termination of the DIME.
- (B) After acceptance by the Division of the final DIME report, no communication with the DIME physician shall be allowed by any party or their representative except under the following circumstances: approval by the Director; by written agreement of all parties; by an order of an ALJ; or by deposition or subpoena approved by an ALJ. The parties shall provide the Division with copies of any correspondence with the DIME physician permitted under this section.

11-7 DIME FOLLOW-UP

- (A) If a DIME physician determines that a claimant has not reached MMI and recommends additional treatment, a follow-up DIME examination shall be scheduled with the same DIME physician, unless the physician is unavailable or declines to perform the examination. The insurer shall file the Follow-Up DIME form after the claimant completes all additional recommended treatment.
- (B) The parties shall indicate on the Follow-Up DIME form if the previous DIME physician is

unavailable or declines to perform the follow-up DIME. In that case, the parties also shall indicate whether they have agreed on the new physician and a follow-up fee.

- (1) If the parties have agreed on the new DIME physician, the parties also must agree on a follow-up fee. The parties shall indicate the fee on the Follow-Up DIME form. The form shall be signed by the new DIME physician and all parties to the claim.
- (2) If the parties have not agreed on the new DIME physician and the follow-up fee, the following procedures shall apply:
 - (a) If previous DIME physician was selected pursuant to the procedures set forth in section 11-4(A)(5), the Division shall provide one replacement name to the previous list of three physicians and present that revised list to the parties where each shall strike one name according to the procedures set forth in that section.
 - (b) If the parties have agreed on the previous DIME physician under section 11-4(A)(2)(a)(i) but now wish to proceed under section 11-4(A)(5), the parties shall request a prehearing conference before an ALJ.
- (C) The insurer shall notify in writing the DIME Unit and the other party of the date and time of the follow-up DIME.
- (D) Absent an agreement of the parties and the DIME physician, or an order from an ALJ, the insurer shall pay any additional examination fees. The physician must receive the follow-up examination fee prior to scheduling the examination.
 - (1) Follow-up fees where the exam is scheduled with the original DIME physician shall be as follows:

Filing date of the Follow-Up DIME form	Follow-up evaluation fee
3 months or less after the last evaluation	\$350
Over 3 months but 6 months or less after the last evaluation	\$700
Over 6 months but 12 months or less after the last evaluation	\$1,000
Over 12 months after the last evaluation	\$1,400

- (2) Follow-up fees where the exam is scheduled with a new DIME physician shall be as follows:

Filing date of the Follow-Up DIME form	Follow-up evaluation fee
Less than five years from the date of injury to the Follow-Up DIME form	\$1,400
Five years or more from the date of injury to the Follow-Up DIME form	\$2,000

(E) If the follow-up DIME is rescheduled the party responsible for the rescheduling shall submit the required fee, if applicable, to the DIME physician within ten (10) days of the defaulting event. The requesting party shall reschedule after the physician receives this fee. Rescheduling of the DIME more than once requires a finding of good cause by an ALJ.

(1) Rescheduling fees for a follow-up examination shall be as follows:

	DIME is rescheduled more than ten (10) days before scheduled date	DIME is rescheduled ten (10) days or less before the scheduled date	DIME is rescheduled one (1) business day or less before scheduled date
\$350 Follow-up DIME	No fee	\$350	\$350
\$700 Follow-up DIME	No fee	\$700	\$700
\$1,000 Follow-up DIME	No fee	\$700	\$1,000
\$1,400 Follow-up DIME	No fee	\$700	\$1,400
\$2,000 Follow-up DIME	No fee	\$1,000	\$2,000

(2) Termination fees for a follow-up examination shall be as follows:

	DIME is terminated more than ten (10) days before the scheduled date	DIME is terminated ten (10) days or less before the scheduled date	DIME is terminated one (1) business day or less prior to the scheduled date
\$350 Follow-up DIME	\$350	\$350	\$350
\$700 Follow-up DIME	\$350	\$700	\$700
\$1,000 Follow-up DIME	\$350	\$700	\$1,000
\$1,400 Follow-up DIME	\$350	\$700	\$1,400
\$2,000 Follow-up DIME	\$350	\$1,000	\$2,000

(3) The rescheduling and termination fees shall apply to the agreed-upon follow-up DIMEs under section 11-7(B). The fees shall be determined based on the section 11-7(D) category that would have applied.

(F) If the DIME physician reschedules the follow-up examination more than two (2) times, the physician shall pay \$250.00 fee to the paying party.

(G) The DIME physician shall refund the follow-up examination fee minus the termination fee to the paying party within ten (10) days of receiving the notice of termination.

- (H) The parties and the DIME physician may use the Notice of Reschedule or Termination form to notify the DIME Unit of any rescheduling, termination, or failure to attend the follow-up examination.
- (I) The parties may submit additional medical records prior to the follow-up appointment in accordance with section 11-4(B).

11-8 DIMES FOLLOWING REOPENING

DIMES performed in claims that have been reopened pursuant to §8-43-303 are considered subsequent DIMES and will be treated as new DIMES subject to all DIME procedures in this rule. The party requesting the subsequent DIME shall be considered the requesting party regardless of whether that party requested the original DIME. By filing the application form in a claim where a DIME has been completed previously, the requesting party certifies the claim has been reopened pursuant to §8-43-303.

11-9 REMOVAL OF A PHYSICIAN FROM THE SELECTION PROCESS

- (A) Complaints regarding a DIME physician may be submitted to the Director or the Medical Director. The Director may temporarily inactivate and exclude a physician from the revolving selection process.
- (B) The Director, in consultation with the Medical Director, may permanently remove a physician from the medical review panel on any of the following grounds:
 - (1) A misrepresentation on the application for appointment;
 - (2) Refusal and/or substantial failure to comply or two or more incidents of failure to comply with the provisions of The Act, the Workers' Compensation Rules of Procedure and/or any other relevant statutes;
 - (3) Loss or suspension of Level I and/or Level II accreditation;
 - (4) For good cause as determined by the Director.
- (C) A physician removed under this section may apply to the Director for reinstatement after six months. The reinstatement decision is at the sole discretion of the Director.

11-10 IMMUNITY

Doctors and other individuals involved in the DIME process who have acted within the appropriate scope of their capacity shall be immune from liability in any civil action for any actions undertaken in good faith and in the reasonable belief that the actions were appropriate under the circumstances.

11-11 DISPUTES

Non-compliance with this rule may be addressed through the Dispute Resolution process described in Rule 16-or through any other mechanism of dispute resolution provided for in rule or statute.

11-12 INDIGENT CLAIMANT

- (A) Within 15 days of filing the Notice and Proposal and Application for a Division Independent Medical Examination form, a claimant asserting indigent status shall file an “Application for Indigent Determination (DIME)” form at the Office of Administrative Courts with copies to the other parties and the DIME Unit.
- (B) The DIME process will not be held in abeyance while the indigent application is pending unless so ordered by an ALJ.
- (C) Within eight (8) days after the date of mailing of the Application for Indigent Determination (DIME) form, any other party to the claim may file a response at the Office of Administrative Courts. Any such response shall state with specificity the grounds for objection.
- (D) An ALJ shall issue a written order to all parties within twenty (20) days after the application is filed, a hearing will only be held if a timely submitted response raises disputed questions of material fact or if there is a lack of sufficient information in the written submissions of the parties. Any such hearing shall be held as soon as possible and a ruling shall be issued within thirty (30) days of the date of filing of the indigent application.
- (E) The determination regarding indigence shall be based on the claimant’s financial status on the date the application is filed and any extraordinary circumstances. In ruling on the application, the ALJ shall apply the standards set forth in Rule 18. Extraordinary circumstances exist where the claimant would be deprived of the ability to provide for basic necessities that cannot be deferred, such as food, shelter, clothing, utilities and out of pocket medical costs.
- (F) The costs of the DIME advanced on behalf of the indigent claimant shall be taken as an offset against permanent indemnity benefits following either a final order or approved settlement.