

RULE 11 TABLE OF CHANGES

Rule	Proposed Rule	Current Rule
11	Clarifies that, when used in Rule 11, an 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	<p>Amends the qualifications for appointment to the DIME panel as follows:</p> <p>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) <i>during the past five calendar years</i> (emphasis added).</p> <p>For determination of permanent impairment and MMI, have attained Level II accreditation and either:</p> <p>(1) engaged in at least 384 hours of direct patient care (excluding medical/legal evaluation) during the past calendar year OR</p> <p>(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.</p>	<p>The current rule requires physicians determining MMI to have 384 hours <i>per year</i> of direct patient care, in addition to Level I accreditation.</p> <p>The current rule requires physicians determining permanent impairment and MMI to attain Level II accreditation and either have 384 hours <i>per year</i> of direct patient care or demonstrate additional competency in the field of disability evaluation through certification by the American Board of Independent Medical Examiners or the American Academy of Disability Evaluation Physicians.</p>

11-2	<p>Clarifies that, in computing any period of time prescribed or allowed by Rule 11, 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.</p>	
11-3 (currently 11-2)	<p>Requires DIME physicians to complete a summary disclosure form concerning relationships with insurers and/or self-insured employers, Form WC 179.</p> <p>Explicitly refers to Form WC 76 (Request for Appointment to the Independent Medical Examination Panel) that a physician seeking appointment to the DIME panel shall complete.</p> <p>Adds exceptions allowing physicians to communicate with the submitting party or its counsel when discussing the format of the medical records and the paying party or its counsel to discuss issues regarding the invoice</p> <p>Clarifies that the twenty (20) days deadline for the insurer to file an admission of liability or request a hearing pursuant to § 8-42-107.2(4)(c), C.R.S., does not begin to run until the DIME Unit has issued a notice to all parties that it has received the sufficient report. The report shall conform to the DIME Report Template.</p>	<p>The current rule only requires physicians to submit Form WC 179 if requested by the parties, although a physician may pre-submit the form to be kept on file by the DIME Unit.</p> <p>Moves the requirement for DIME physicians to refund the fees after cancellation to Rules 11-5 and 11-7 and the requirement regarding scheduling of the DIME to Rule 11-4.</p>

11-4 (currently 11-3)	<i>Application Process</i>	
	<p>Revises the application process to require the requesting party to apply for a DIME by filing the [single] 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.</p> <p>Explicitly states that 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.</p> <p>Adds the requirement that the requesting party may amend the Application for a DIME form only by written agreement of all parties or an order of an ALJ.</p>	
	<i>Strike Process</i>	
	<p>Shortens the time for the requesting party to strike one physician from the three-physician list from 7 business days to 5 business days of the issuance of the list. The request for a summary disclosure would no longer toll that deadline. Also shortens the time for the Division to randomly select one name from the three-physician list if it is not notified of the selected physician from 15 business days to 10 business days of issuance of the list.</p>	

<i>Scheduling the DIME</i>	
<p>The requesting party shall schedule the DIME with the physician within fourteen (14) days after receiving notice of the DIME physician confirmation. Unless otherwise approved by the parties or the Division, 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. 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 the Director's order to show cause why the DIME process should not be terminated.</p>	<p>Under the current rule, the requesting party shall schedule the DIME within 5 business days after receiving notice of the DIME physician confirmation. The appointment occurs no earlier than 35 calendar days nor later than 50 calendar days from the telephone call requesting an appointment.</p>
<i>Medical Records</i>	
<p>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.</p> <p>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</p>	<p><u>Submission of Medical Records:</u> The insurer shall concurrently provide to the IME physician and all other parties, a complete copy of all medical records in their possession pertaining to the subject injury, postmarked or hand-delivered no fewer than fourteen (14) calendar days prior to the IME examination. If the insurer or its representative fails to timely submit medical records to the designated IME physician, the claimant may request the Division cancel the IME; or the claimant may submit all medical records he/she has available no later than ten (10) calendar days prior to the IME examination; or as otherwise arranged by the Division with the IME physician. This rule does not prohibit the rescheduling of the IME. The defaulting party may supplement the records pursuant to section 11-3(L).</p>

<p>other parties must request a prehearing conference before an ALJ.</p> <p>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 packet shall include a chronological index of the records, beginning with the earliest record. The index shall list the date, the provider, and category(ies) if applicable, to each record. The records shall be in a chronological order, beginning with the earliest record. Unless otherwise agreed to by the parties and the DIME physician the start of each record shall be visibly color-coded and tabbed or bookmarked as follows:</p> <ul style="list-style-type: none"> • Diagnostic Testing, yellow; • Surgery, green; • Psychological, blue; • Maximum Medical Improvement/Impairment Rating, pink; • All Independent Medical Examination(s), orange; • Prior Injury, red. <p>Records not falling into one of the seven categories shall not be color-coded and tabbed.</p> <p>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.</p>	<p><u>Form/Content of Medical Records Package:</u> Pertinent medical records shall include all medical reports and medical records reflecting the diagnosis and treatment of the claimant's work-related injury, and shall include available medical records regarding relevant pre-existing condition(s) or work-related injury(ies). The medical file shall be two-hole punched at the top center of each page and clipped at the top with paper fasteners. A dated cover sheet shall be included listing the claimant's name, IME physician's name, date and time of the appointment, and the workers' compensation number. The medical file shall be in chronological order and tabbed by year. It shall include a written summary of medical providers with the range of dates of treatment. Medical records not meeting these requirements shall be resubmitted to the IME physician and all other parties in the correct format within three (3) business days of notification by the Division. Failure to timely and properly resubmit such records may result in cancellation of the IME by the Director, at the cost of the submitting party. Penalties otherwise available under these rules and the Act may be determined by the Director.</p> <p>Medical bills, adjustor notes, surveillance tapes, admissions, denials, vocational rehabilitation reports, non-treating case manager records or commentaries to the IME physician shall not be submitted without written agreement of all parties, order of an administrative law judge, or prior permission of the Division.</p> <p><u>Submission of Supplemental Medical Records:</u> Supplemental medical records shall be prepared according to section 11-3(K), above, and may be mailed or hand-delivered by any party concurrently to the IME physician and all other parties no later than seven (7) calendar days prior to the IME examination.</p>
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	<p>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 section 11-4(F), 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. For purposes of this rule, date of service shall be determined by the verifiable date of delivery.</p> <p>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. 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 dispute resolution process set forth in Rule 16-13.</p> <p>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.</p>	<p><u>Depositions:</u> Medical depositions may be submitted as part of the medical records package only by written agreement of all parties or pursuant to an order issued by the director or an administrative law judge. The IME physician shall be reimbursed for time spent reviewing medical depositions at the rate set forth in Rule 18, Testimony Fees. The party submitting the medical deposition shall be responsible for payment of the additional fees.</p>
<p><i>Limiting Scope of the DIME</i></p>		
	<p>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</p>	<p>The parties may agree to limit the issues addressed in an IME exam. Such agreement shall be in writing, signed by both parties, and provided to the IME unit no later than five (5) days prior to the IME appointment date. An opinion from an IME examiner concerning MMI, impairment or apportionment in a</p>

	physician, immediately following the chronological index and must provide a copy of the agreement to the DIME Unit.	case in which the parties agreed to limit such issue, is not entitled to any weight before an administrative law judge.
	<i>Language Interpreter</i>	
	Revises the language regarding interpreter so that the insurer is responsible for arranging for the services of and paying for the interpreter.	The current rule states that the paying party shall be responsible for arranging for the services of and paying for a language interpreter.
	<i>Abeyance</i>	
	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.	If a party files a motion involving a pending IME proceeding, the moving party shall provide a copy of the motion directly to the Division's IME Unit. The IME proceeding shall be held in abeyance until the Division IME Unit is notified of the disposition as provided in this rule. When the motion is disposed of by written order or other means, the moving party shall provide a copy of the order or other dispositive document to the Division's IME Unit.
11-5 (currently 11-4)	<i>Payment</i>	
	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) More than two years but less than five years after the date of injury and/or three or four body regions:	The physician performing the IME shall receive from the requesting party a fee of \$675 at least 10 calendar days prior to the scheduled examination. If the fee is not timely received the fee for the IME shall be \$775. If the record review is unusually extensive or complex or involves multiple body parts and requires longer than an hour for review, the physician shall contact the Division and request additional payment. This request should be made no later than three calendar days prior to the IME examination. The Division will transmit the request to the requesting party. If the requesting party declines to pay,

	<p>\$1,400;</p> <p>(3) More than five years after the date of injury and/or five or more body regions: \$2,000.</p> <p><i>Eliminates the \$675 DIME fee, the \$100 late payment fee, additional record review fees, fees for time spent reviewing medical depositions included in the medical records packet (current Rule 11-3(M)), and fees for return visits for range of motion validation (current Rule 11-7).</i></p> <p>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.</p> <p>Allows for a determination of extraordinary circumstances by an ALJ when the insurer would not be required to pay for a test essential for an impairment rating to be rendered.</p>	<p>the IME physician shall complete the IME process to the best of his/her ability without expending the additional time on record review. If additional file review charges are approved, the physician shall bill at the rate set forth in Rule 18-6(G)(3). The same process described in this paragraph shall apply with regard to any clinical or diagnostic testing requested by physicians performing IMEs.</p> <p>If an Administrative Law Judge determines that the claimant is indigent, the insurer shall advance payment for the cost of the IME. Such a payment must be made to the doctor no later than ten (10) days prior to the date of the scheduled IME appointment. See current Rule 11-11(B)(2).</p>
<p><i>Rescheduling/Termination/Cancellation</i></p>		
	<p>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.</p>	<p>An IME examination may be canceled only by the requesting party, or the Division, no later than three (3) business days prior to the examination. The non-canceling party may contact the Division to determine whether the IME may be rescheduled. If the IME is not timely canceled or the claimant fails to keep the IME appointment, or the medical records are not submitted in a timely manner, the IME physician shall be entitled to retain</p>

	Explicitly lists rescheduling and termination fees, deadlines, and other requirements in section 11-5(C).	\$250.00 from the total fee when the IME was requested by the defaulting party. If the fee has not yet been paid, or the party responsible for untimely cancellation is not the requesting party, the physician shall be entitled to collect from the defaulting party a \$250.00 cancellation/penalty fee. The insurer may be entitled to offset the cancellation fee against any future permanent or temporary benefits if the claimant fails to appear for the IME examination without good cause as determined by the Director or an administrative law judge.
Current 11-5	Deletes the rule (multiple impairment rating IMEs).	Only one IME impairment rating per case shall be administered by the Division's IME Section, pursuant to §8-42-107 (8), C.R.S., unless otherwise directed by written agreement of the parties, by order of an administrative law judge or the Director, or by request of the originally designated impairment rating IME physician.
11-6	No substantive changes other than a reference to exceptions discussed in section 11-3(F).	
11-7 and 11-8 (currently 11-7)	<p>Explicitly distinguish, on one hand, between "follow-up DIMEs," where a DIME physician previously determined a claimant has not reached MMI and recommended additional treatment and, on the other hand, "subsequent DIMEs," which are performed in claims where there has been a previous MMI finding and a reopening pursuant to § 8-43-303.</p> <p>Delete the language applicable to return visits for range of motion validations. The new rules consider such visits to be part of the original DIME.</p>	

Key Differences Between These Two Types of DIMEs:

	<p><i>Does the original DIME physician or a new physician perform the DIME?</i></p> <p>A follow-up DIME examination shall be scheduled with the original DIME physician, unless he or she is unavailable or the parties agree to a new DIME physician. If the original physician declines or is unable to perform the DIME, 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 section 11-4(D). On the other hand, the DIME Unit will process a subsequent DIME as a new DIME. The parties have the right to select a new physician per section 11-4 but may agree to the original one.</p> <p><i>Who is the requesting and paying party?</i></p> <p>The insurer shall pay the follow-up examination fees, absent an agreement of the parties and the DIME physician or an order by an ALJ. The physician must receive the follow-up examination fee prior to scheduling the examination. On the other hand, the party requesting a subsequent DIME shall be considered the requesting party as to that DIME regardless of whether that party also has requested the original DIME. Therefore, the party requesting a subsequent DIME will pay for that DIME.</p> <p><i>What are the fees and applicable requirements?</i></p> <p>See Rule 11-7 for the follow-up DIME fees, as well as the corresponding rescheduling and termination fees and requirements. If a new physician is necessary for the follow-up DIME or the follow up DIME takes place more than one year after the original DIME, the insurer shall pay the full DIME fee in accordance with Rule 11-5. See Rule 11-5 for the subsequent DIME fees as well as the corresponding rescheduling and termination fees and requirements.</p>	
<p>11-9 (currently 11-8)</p>	<p>No substantive changes.</p>	
<p>11-10 (currently 11-9)</p>	<p>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.</p>	<p>Pursuant to § 8-43-502(6), C.R.S., members of the medical review panel and any person acting as a consultant, witness, or complainant shall be immune from liability in any civil action brought against said person for acts occurring while the person was acting as a panel member, consultant, witness, or complainant, respectively, if such person was acting in good faith within the scope of the respective capacity, made a reasonable effort to obtain the facts of the matter as to which</p>

		action was taken, and acted in the reasonable belief that the action taken by such person was warranted by the facts. This immunity is necessary to ensure the purposes of the DIME are met and participating physicians can exercise their professional knowledge, skills, and judgment.
11-11 (currently 11-10)	Adds an explicit reference to the Dispute Resolution process. Non-compliance with Rule 11 may be addressed through the Dispute Resolution process described in Rule 16-13 or through any other mechanism of dispute resolution provided for in rule or statute.	
11-12 (currently 11-11)	<p>Amends the deadline for filing the Application for Indigent Determination to within 15 days of filing the Notice and Proposal and Application for a Division Independent Medical Examination form.</p> <p>Adds a requirement for the party filing indigence application to provide a copy the DIME Unit.</p> <p>States the DIME process will not be held in abeyance while the indigent application is pending, absent an order from the ALJ.</p> <p>States that the indigence standards are set forth in Rule 18-9.</p> <p>Moves the payment requirements to Rule 11-5.</p>	<p>The current rule sets the deadline for filing the Application for Indigent Determination to 20 days following the submission of the Notice and Proposal to Select an Independent Medical Examiner.</p> <p>The current rule also states the DIME process will not be held in abeyance during that time, but has an exception that a DIME physician will not be selected until an indigence determination is made.</p>
Current 11-12	Deletes table of diagnoses or medical conditions.	