

of any such care or treatment, for an injury covered by the Act, the Director, OWCP, through the district directors having jurisdiction, shall have the power to evaluate such questions by appointing one or more especially qualified physicians to examine the employee, or in the case of death to make such inquiry as may be appropriate to the facts and circumstances of the case. The physician or physicians, including appropriate consultants, should report their findings with respect to the questions raised as expeditiously as possible. Upon receipt of such report, action appropriate therewith shall be taken.

§ 702.409 Evaluation of medical questions; results disputed.

Any party who is dissatisfied with such report may request a review or re-examination of the employee by one or more different physicians employed by or selected by the Director, and such review or reexamination shall be granted unless it is found that it is clearly unwarranted. Such review shall be completed within 2 weeks from the date ordered unless it is impossible to complete the review and render a report thereon within such time period. Upon receipt of the report of this additional review and reexamination, such action as may be appropriate shall forthwith be taken.

§ 702.410 Duties of employees with respect to special examinations.

(a) For any special examination required of an employee by §§ 702.408 and 702.409, the employee shall submit to such examination at such place as is designated in the order to report, but the place so selected shall be reasonably convenient for the employee.

(b) Where an employee fails to submit to an examination required by §§ 702.408 and 702.409, the district director or administrative law judge may order that no compensation otherwise payable shall be paid for any period during which the employee refuses to submit to such examination unless circumstances justified the refusal.

(c) Where an employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the em-

ployer, the district director or administrative law judge may by order suspend the payment of further compensation during such time as the refusal continues. Except that refusal to submit to medical treatment because of adherence to the tenets of a recognized church or religious denomination as described in § 702.401(b) shall not cause the suspension of compensation.

[42 FR 45303, Sept. 9, 1977, as amended at 50 FR 402, Jan. 3, 1985; 51 FR 4286, Feb. 3, 1986]

§ 702.411 Special examinations; nature of impartiality of specialists.

(a) The special examinations required by § 702.408 shall be accomplished in a manner designed to preclude prejudgment by the impartial examiner. No physician previously connected with the case shall be present, nor may any other physician selected by the employer, carrier, or employee be present. The impartial examiner may be made aware, by any party or by the OWCP, of the opinions, reports, or conclusions of any prior examining physician with respect to the nature and extent of the impairment, its cause, or its effect upon the wage-earning capacity of the injured employee, if the district director determines that, for good cause, such opinions, reports, or conclusions shall be made available. Upon request, any party shall be given a copy of all materials made available to the impartial examiner.

(b) The impartiality of the specialists shall not be considered to have been compromised if the district director deems it advisable to, and does, apprise the specialist by memorandum of those undisputed facts pertaining to the nature of the employee's employment, of the nature of the injury, of the post-injury employment activity, if any, and of any other facts which are not disputed and are deemed pertinent to the type of injury and/or the type of examination being conducted.

(c) No physician selected to perform impartial examinations shall be, or shall have been for a period of 2 years prior to the examination, an employee of an insurance carrier or self-insured employer, or who has accepted or participated in any fee from an insurance

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carrier or self-insured employer, unless the parties in interest agree thereto.

[38 FR 26861, Sept. 26, 1973, as amended at 42 FR 45303, Sept. 9, 1977]

§ 702.412 Special examinations; costs chargeable to employer or carrier.

(a) The Director or his designee ordering the special examination shall have the power, in the exercise of his discretion, to charge the cost of the examination or review to the employer, to the insurance carrier, or to the special fund established by section 44 of the Act, 33 U.S.C. 944.

(b) The Director or his designee may also order the employer or the insurance carrier to provide the employee with the services of an attendant, where the district director considers such services necessary, because the employee is totally blind, has lost the use of both hands, or both feet or is paralyzed and unable to walk, or because of other disability making the employee so helpless as to require constant attendance in the discretion of the district director. Fees payable for such services shall be in accord with the provisions of § 702.413.

[42 FR 45303, Sept. 9, 1977]

§ 702.413 Fees for medical services; prevailing community charges.

All fees charged by medical care providers for persons covered by this Act shall be limited to such charges for the same or similar care (including supplies) as prevails in the community in which the medical care provider is located and shall not exceed the customary charges of the medical care provider for the same or similar services. Where a dispute arises concerning the amount of a medical bill, the Director shall determine the prevailing community rate using the OWCP Medical Fee Schedule (as described in 20 CFR 10.411) to the extent appropriate, and where not appropriate, may use other state or federal fee schedules. The opinion of the Director that a charge by a medical care provider disputed under the provisions of section 702.414 exceeds the charge which prevails in the community in which said medical care provider is located shall constitute sufficient evidence to war-

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rant further proceedings pursuant to section 702.414 and to permit the Director to direct the claimant to select another medical provider for care to the claimant.

[60 FR 51348, Oct. 2, 1995]

§ 702.414 Fees for medical services; unresolved disputes on prevailing charges.

(a) The Director may, upon written complaint of an interested party, or upon the Director's own initiative, investigate any medical care provider or any fee for medical treatment, services, or supplies that appears to exceed prevailing community charges for similar treatment, services or supplies or the provider's customary charges. The OWCP medical fee schedule (see section 702.413) shall be used by the Director, where appropriate, to determine the prevailing community charges for a medical procedure by a physician or hospital (to the extent such procedure is covered by the OWCP fee schedule). The Director's investigation may initially be conducted informally through contact of the medical care provider by the district director. If this informal investigation is unsuccessful further proceedings may be undertaken. These proceedings may include, but not be limited to: an informal conference involving all interested parties; agency interrogatories to the pertinent medical care provider; and issuance of subpoenas duces tecum for documents having a bearing on the dispute.

(1) A claim by the provider that the OWCP fee schedule does not represent the prevailing community rate will be considered only where the following circumstances are presented:

(i) where the actual procedure performed was incorrectly identified by medical procedure code;

(ii) that the presence of a severe or concomitant medical condition made treatment especially difficult;

(iii) the provider possessed unusual qualifications (board certification in a specialty is not sufficient evidence in itself of unusual qualifications); or

(iv) the provider or service is not one covered by the OWCP fee schedule as described by 20 CFR 10.411(d)(1).

(2) The circumstances listed in paragraph (a)(1) of this section are the only