

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Certification of Claims Examiners
Oregon Administrative Rules
Chapter 436, Division 055**

Effective January 1, 2006

TABLE OF CONTENTS

Rule	Page
ORDER OF ADOPTION.....	iii
436-055-0001 Authority for Rules	1
436-055-0002 Purpose of Rules	1
436-055-0003 Applicability of Rules	1
436-055-0005 Definitions	1
436-055-0008 Administrative Review	2
436-055-0070 Certification of Claims Examiners.....	3
436-055-0085 Training for Interactions with Independent Medical Examination Providers.....	4
436-055-0100 Insurer Duties.....	5
436-055-0110 Assessment of Civil Penalties	6
436-055-0120 Service of Orders	6
Certificate and Order for Filing Permanent Administrative Rules.....	7

NOTE: Significant revisions are marked with bold lines in the right margins.

Blank page for two-sided printing.

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

In the Matter of the Amendment of Oregon Administrative Rules)
(OAR):)

	Order No.	
436-010, Medical Services	05-071)
436-015, Managed Care Organizations	05-072)
436-030, Claim Closure and Reconsideration.....	05-073)
436-035, Disability Rating Standards.....	05-074)
436-050, Employer/Insurer Coverage Responsibility ...	05-075)
436-055, Claims Examiner Certification.....	05-076)
436-060, Claims Administration	05-077)
436-105, Employer-at-Injury Program.....	05-078)
436-110, Preferred Worker Program	05-079)
436-120, Vocational Assistance to Injured Workers.....	05-080)

**ORDER OF
ADOPTION**

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436.

On September 15, 2005, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking/Hearing and Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0000, and posted copies to its Web site. The Secretary of State included notice of the public hearing in its October 2005 *Oregon Bulletin*.

On November 1, 2005, a public hearing was held as announced. In addition, the record was held open for written testimony through November 7, 2005. A summary of the public testimony is on file and available for public inspection upon request during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405.

RULE SUMMARY

Substantive amendments affect:

- Hearings on workers' compensation matters currently processed by the Office of Administrative Hearings – moved to the Workers' Compensation Board, for all hearings held on or after January 2, 2006.
- Independent medical examinations (IME)s – including a worker's right to contest the location of the exam and associated increase to 90 days for the insurer to accept or deny the claim if the worker prevails; penalty to worker for failure to attend; penalty to medical provider for failure to forward diagnostic records to the IME provider; requirement (effective 7/1/2006) for the director to develop a list of medical providers who are authorized to perform IMEs and for all IMEs to be scheduled with a physician on the list.
- The reporting and processing of aggravation claims;
- Elective surgery notification;

Order of Adoption
OAR 436-055

- Types of care that are reimbursable after the worker becomes medically stationary (clarification only);
- Requirements that managed care organizations submit copies of their treatment standards and protocols to the director for review and approval;
- Closure notice requirements in fatal claims;
- Required procedures when five years of work history are not available;
- Reduced insurer reporting requirements for claims in which workers have no permanent impairment;
- Permanent total disability – including limitations on benefits if the worker incurs a new injury; criteria for re-examination or reduction; required vocational evaluations and suspension of benefits for failure to attend or non-cooperation; appeals of termination; automatic eligibility for vocational assistance upon termination of permanent total disability (by final order);
- The reconsideration record – video recordings, duplicate records;
- Penalties upon reconsideration – limitations;
- Insurer data reporting necessary for the Workers’ Compensation Division to assess the impact of legislative changes on permanent partial disability awards;
- The effect of a regular work release on awards of work disability and social/vocational factors;
- Requirements to round percentages of impairment – hearing and vision no longer taken to the 100th of a percent;
- Rating of impairment for skin disorders – signs and symptoms need not be present upon examination;
- Insurer’s notice to employer of policy cancellation to include a statement that the guaranty contract will terminate;
- Insurers’ reporting of names or positions of key contacts to the Workers’ Compensation Division;
- The right of self-insured public utilities with assets in excess of \$500 million to obtain excess workers’ compensation insurance coverage from an eligible surplus lines insurer;
- Required training for certified claims examiners on interactions with independent medical exam providers;
- Adjustments – up and down – of insurer claims processing compliance thresholds (affecting penalties);
- The dollar amount employers can pay for medical services on non-disabling claims;
- Requirement (effective 7/1/2006) that Worker Requested Medical Examinations be conducted by a medical provider on the list of authorized independent medical examination providers maintained by the director;
- Increase of certain maximum penalty amounts to the \$2,000 statutory maximum;
- Eligibility for Preferred Worker Program benefits – workers must be authorized to work in the United States;
- Reimbursement from the Workers’ Benefit Fund of permanent total disability (PTD) payments made by the insurer during an appeal of termination of PTD – if the insurer prevails;
- For the purposes of reimbursement of wage subsidies under the Employer-at-Injury Program, allowance for supplemental documentation to clarify information not fully explained by the payroll record;
- Provision for direct assistance to workers under ORS 656.622 to promote re-employment;
- Reimbursement from the Workers’ Benefit Fund of the insurer’s vocational assistance costs incurred after the insurer appeals an administrative order to provide such assistance (if the insurer prevails);
- Deletion of the penalty matrix for three types of violations of the vocational assistance rules;
- Provision for the director to impose a civil penalty for violation of ORS chapter 656, in addition to violation of rules and orders of the director.

FINDINGS

Having reviewed and considered the record and being fully informed, I make the following

**Order of Adoption
OAR 436-055**

findings:

- a) The applicable rulemaking procedures have been followed.
- b) These rules are within the director's authority.
- c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT

- 1) Amendments to OAR chapter 436, as set forth in Exhibit "A", are attached, incorporated by reference, and **adopted on this 5th day of December 2005, to be effective January 1, 2006.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.
- 3) A copy of the amended rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

DATED this 5th day of December 2005.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Under the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 947-7810.

Distribution: WCD-ID, NM, S0, S1, S2, S3, S4, S5, S6, S7, S8

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CERTIFICATION OF CLAIMS EXAMINERS**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 055**

436-055-0001 Authority for Rules

These rules are promulgated under the director's authority pursuant to ORS 656.726 and 656.780.

Stat. Auth.: ORS 656.726(3)(a) and ORS 656.780(1)
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94

436-055-0002 Purpose of Rules

The purpose of these rules is to establish standards for the certification of workers' compensation claims examiners pursuant to ORS Chapter 656.

Stat. Auth.: ORS 656.780(1)
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

436-055-0003 Applicability of Rules

(1) These rules apply to the certification of all workers' compensation claims examiners on or after the effective date of these rules.

(2) The certification of any workers' compensation claims examiner valid on December 31, 1999 shall continue without expiration until December 31, 2000. However, this provision does not shorten any two year certification period.

(3) Any claims examiner certified on October 22, 1999, with a renewal date between October 23, 1999 and December 31, 1999, may present records to the insurer for renewal. The claims examiner's certification period shall be renewed for two years upon verification that the certified claims examiner met the continuing education requirements under the rules in effect on the date renewal was due, however no course taken after October 22, 1999 needs to be certified.

(4) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.780
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

436-055-0005 Definitions

Except where the context requires otherwise, these rules are governed by the following definitions:

(1) "Claims examiner" means anyone who has primary responsibility for decision making or benefit determination in a claim. This includes those who decide compensability of new claims or aggravations, calculate benefits, authorize payments, or who represent employers by direct contact with the department or Board. This definition does not include attorneys representing employers before the department or Board, or those who primarily perform clerical functions.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CERTIFICATION OF CLAIMS EXAMINERS**

(2) "Claims Examiner Trainee" means a person hired by an insurance company, self-insured employer or third party administrator to decide compensability of new claims or aggravations, calculate benefits, or authorize payments, who works under the direct supervision of a certified claims examiner.

(3) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(4) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state ; an assigned claims agent selected by the director under ORS 656.054; an employer certified under ORS 656.430 that meets the qualifications of a self-insured employer under ORS 656.407; or a third party administrator.

(5) "Party" includes anyone listed in ORS 656.005(21) and a third party administrator.

(6) "Process Claims" means the receipt, review and payment of compensation for workers' claims.

(7) "Temporary Claims Examiner" means a person with at least two years of prior claims processing experience hired by an insurance company, self-insured employer or service company to decide compensability of new claims or aggravations, calculate benefits, or authorize payments in Oregon workers' compensation claims, who works under the direct supervision of a certified claims examiner.

(8) "Third party administrator" means a service company who processes claims for an insurer or self-insurer under the conditions prescribed in ORS 731.475(3) and ORS 656.455(1).

Stat. Auth.: ORS 656.726(3)(a)

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91

Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94

Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

436-055-0008 Administrative Review

(1) Any party aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003). The request for hearing must be mailed or delivered to the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(2) Any party aggrieved by an action or order of the director pursuant to these rules, other than as described in section (1), where such action or order qualifies for review by hearing as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). Any party may request a contested case hearing as follows:

(a) The request for hearing must be mailed or delivered to the Administrator of the Workers' Compensation Division within 60 days of the action, the date of mailing, or other service of an order. The request must specify the grounds upon which the action or order is

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CERTIFICATION OF CLAIMS EXAMINERS**

contested.

(b) The hearing shall be conducted by an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

(3) Any person aggrieved by an action taken pursuant to these rules by another person, except as described in sections (1) and (2), may request administrative review by the director as follows:

(a) The request for administrative review must be mailed or delivered to the Administrator of the Workers' Compensation Division within 90 days of the action. The request must specify the grounds upon which the action is contested.

(b) The review will be conducted by the director.

(c) The director will review the relevant information submitted by all parties.

(d) The director will issue an administrative order that specifies whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before an Administrative Law Judge of the Office of Administrative Hearings pursuant to ORS 183.310 and the procedures provided in section (2).

Stat. Auth.: ORS 656.735(5) through (7); ORS 656.745(4); ORS 656.726(4)

Stats. Implemented: ORS 656.740 (section 9, chapter 170, Oregon Laws 2003), ORS 183.310 through 183.550, ORS 656.726

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91

Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

Amended 12/3/03 as WCD Admin. Order 03-073, eff. 1/1/04

436-055-0070 Certification of Claims Examiners

(1) Claims examiners shall be certified by the insurer upon satisfactory completion of an examination which demonstrates the individual's:

(a) Familiarity with the workers' compensation statutes;

(b) Ability to navigate the administrative rules found in this chapter;

(c) Capability to perform claim processing activities; and

(d) For examinations on or after July 1, 2006, understanding of activities related to interactions with independent medical examination providers.

(2) Any person taking an examination may use a copy of ORS Chapter 656 and the Oregon Administrative Rules during the examination.

(3) A passing score on an examination shall be 80 percent or greater.

(4) Any examination completed through dishonest or fraudulent means shall be considered invalid.

(5) Certification will be for a three-year period. The certification date shall be the date of the examination.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CERTIFICATION OF CLAIMS EXAMINERS**

(6) Certification shall be renewed at any time during the certification period by providing verification of completion of 24 hours of training during the current certification period, to include at least:

(a) Four hours of training on the workers' compensation statutes, administrative rules, and case law since the last certification; and

(b) For renewals on or after January 1, 2007, three hours of training related to interactions with independent medical examination providers.

(7) Training may be provided in the form of a seminar, workshop, association meeting, forum, correspondence, video or similar course. It may include any of the following subjects:

(a) Medical case management including, but not be limited to, medical terminology, basic human anatomy and interpreting medical reports.

(b) Communication skills including, but not be limited to, courses in ethics, mediation, negotiation and dealing with angry people.

(c) Instruction dealing specifically with the processing of Oregon workers' compensation claims.

Statutory authority: ORS 656.726

Statutes implemented: ORS 656.780(1)

History: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91

Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94

Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

Amended 12/5/05 as WCD Admin. Order 05-076, eff. 1/1/06

436-055-0085 Training for Interactions with Independent Medical Examination Providers

(1) Any training provided pursuant to 436-055-0070 or OAR 436-055-0100(4) relating to independent medical examination provider interaction must first be approved by the director.

(2) To be approved, a training curriculum must incorporate the following components:

(a) Appropriate and ethical communication with independent medical examination providers;

(b) Insurers' rights and responsibilities;

(c) Injured workers' rights and responsibilities;

(d) Independent medical examination providers' standards of conduct requirement;

(e) IME complaint process and investigations by WCD; and

(f) Training specific to the requirements of ORS 656.325 and OAR 436-010.

(3) Any person may develop training and receive approval by the director by submitting an application in a format prescribed by the director. The application must describe the training content that meets the criteria in section (2) of this rule, and specify the number of training hours for that topic.

(4) The director's approval will remain in effect until the content or number of hours of training change. At that time, the person will be required to resubmit an application that meets

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CERTIFICATION OF CLAIMS EXAMINERS**

the requirements of sections (2) and (3) of this rule.

(5) The division will review an application and notify the applicant of the results within 30 days of receipt of the application. The division will reject incomplete applications.

(6) If an application is rejected or disapproved, the applicant will be notified of the reasons. The application may be resubmitted when the reasons for the rejection or disapproval have been corrected.

(7) The director will maintain a registry of approved training curricula.

Statutory authority: ORS 656.726

Statutes Implemented: Oregon Laws chapter 675, section 3; ORS 656.780(1)

History: Filed 12/5/05 as WCD Admin. Order 05-076, eff. 1/1/06

436-055-0100 Insurer Duties

(1) Insurers shall only employ claims examiners who are certified or that qualify as a claims examiner trainee or a temporary claims examiner.

(a) A claims examiner trainee must work under the direct supervision of a certified claims examiner, and may work for up to 12 months in this status. An individual is limited to one 12-month period as a claims examiner trainee.

(b) A temporary claims examiner must have at least two years prior claims processing experience and work under the direct supervision of a certified claims examiner. An individual may work for up to 90 days in any 12-month period as a temporary claims examiner.

(2) Insurers shall maintain a list of certified claims examiners who are employed by the insurer or who process claims for the insurer, claims examiner trainees and temporary claims examiners, and keep records sufficient to verify their certification and training. The list and records shall be subject to inspection by the director. The director may require submission of such lists and records in lieu of on-site inspection.

(3) Insurers may issue an initial certification or renewal for any individual pursuant to the standards set in OAR 436-055-0070.

(4) Insurers must ensure that training related to interactions with independent medical examination providers is provided for certified claims examiners in their employ.

(5) Insurers shall not misrepresent any information to a worker, employer or the director related to the certifications of its employees.

(6) Within 14 days of the termination of employment or upon receipt of a written request of a certified claims examiner, an insurer shall provide the certified claims examiner a complete copy of all records verifying the most recent acknowledgement of certification and any subsequent training.

(7) Insurers shall retain records verifying the certification and renewal of certified claims examiners who are employed by the insurer or who process claims for the insurer for six years from its most recent acknowledgement of current certification.

Statutory authority: ORS 656.726

Statutes implemented: ORS 656.780(1) and (2)

History: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CERTIFICATION OF CLAIMS EXAMINERS**

Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00
Amended 12/5/05 as WCD Admin. Order 05-076, eff. 1/1/06

436-055-0110 Assessment of Civil Penalties

(1) Pursuant to ORS 656.745 the director may assess a civil penalty against an insurer which fails to comply with these rules.

(2) Pursuant to ORS 656.447 the director may suspend or revoke the authorization of an insurer to issue guaranty contracts if the insurer repeatedly or intentionally fails to comply with these rules or orders of the director issued pursuant to ORS Chapter 656 and these rules.

(3) Pursuant to ORS 656.780 the director may assess a civil penalty against an insurer that fails to maintain or produce certification and training records or that employs anyone other than certified workers' compensation claims examiner to process workers' compensation claims. The insurer shall be subject to a penalty of not more than \$2000 per violation. Each violation, or each day a violation continues, shall be considered a separate violation.

Stat. Auth.: ORS 656.447(1)(a); ORS 656.745(2)(b); ORS 656.780(3)
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

436-055-0120 Service of Orders

(1) When the director imposes a sanction or assesses a penalty under the provisions of OAR 436-055-0110, the order, including a notice of the party's appeal rights, shall be served on the party.

(2) The director shall serve the order by delivering a copy to the party in the manner provided by Oregon Rules of Civil Procedure 7D, or by sending a copy to the party by certified mail with return receipt.

Stat. Auth.: ORS 656.740
Stats. Implemented:
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the
PERMANENT Rule(s) adopted on

December 5, 2005 by the
Date prior to or same as filing date

Department of Consumer and Business Services
Workers' Compensation Division
Agency and Division

OAR chapter 436
Administrative Rules Chapter No.

Fred Bruyns^{FB} (503) 947-7717
Rules Coordinator Telephone

350 Winter Street NE; Salem OR 97301-3879, PO Box 14480, Salem OR 97309-0405
Address

to become effective January 1, 2006 was published in the October 2005 *Oregon Bulletin*.**
Date upon filing or later Month and Year

Amendment of workers' compensation rules affecting injured workers, employers, medical providers, insurers, and
others.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: OAR 436-055-0085, 436-060-0137, 436-060-0510, 436-120-0755

AMEND: OAR

436-010-0005	436-030-0003	436-035-0008	436-035-0420	436-060-0025	436-060-0510 ^{FB}
436-010-0008	436-030-0005	436-035-0009	436-035-0430	436-060-0030	436-105-0500
436-010-0210	436-030-0007	436-035-0011	436-035-0500	436-060-0035	436-110-0002
436-010-0220	436-030-0009	436-035-0012	436-050-0003	436-060-0040	436-110-0005
436-010-0230	436-030-0015	436-035-0016	436-050-0008	436-060-0055	436-110-0310
436-010-0240	436-030-0020	436-035-0017	436-050-0100	436-060-0060	436-110-0326
436-010-0250	436-030-0023	436-035-0019	436-050-0110	436-060-0095	436-110-0327
436-010-0265	436-030-0034	436-035-0110	436-050-0170	436-060-0105	436-110-0335
436-010-0270	436-030-0055	436-035-0190	436-050-0220	436-060-0135	436-110-0337
436-010-0280	436-030-0065	436-035-0230	436-050-0230	436-060-0137 ^{FB}	436-110-0345
436-010-0290	436-030-0115	436-035-0330	436-055-0070	436-060-0140	436-120-0003
436-010-0300	436-030-0155	436-035-0340	436-055-0100	436-060-0147	436-120-0008
436-010-0340	436-030-0165	436-035-0350	436-060-0002	436-060-0150	436-120-0320
436-015-0008	436-030-0175	436-035-0360	436-060-0008	436-060-0155	436-120-0900
436-015-0030	436-030-0185	436-035-0380	436-060-0009	436-060-0180	
436-015-0040	436-030-0575	436-035-0390	436-060-0010	436-060-0190	
436-015-0070	436-030-0580	436-035-0395	436-060-0015	436-060-0200	
436-015-0080	436-035-0005	436-035-0400	436-060-0017	436-060-0500	
436-015-0110	436-035-0007	436-035-0410	436-060-0020		

REPEAL: None

Certificate and Order for Filing Permanent Administrative Rules

ORS 656.726(4)

Statutory Authority

Other Authority

ORS chapter 656, primarily: ORS 656.704, Enrolled House Bill (HB) 2091 – Oregon Laws (OL) 2005, ch. 26; ORS 656.268, Enrolled HB 2404 – OL 2005, ch. 569; ORS 656.273, Enrolled HB 2405 – OL 2005, ch. 50; ORS 656.726, Enrolled HB 2408 – OL 2005, ch. 653; ORS 656.262, Enrolled HB 2718 – OL 2005, ch. 189; Enrolled HB 3318 – OL 2005, ch. 511; ORS 656.262, 656.313, 656.605, 656.622, Enrolled Senate Bill (SB) 119 – OL 2005, ch. 588; ORS 656.268, 656.745, Enrolled SB 172 – OL 2005, ch. 221; ORS 656.325, Enrolled SB 311 – OL 2005, ch. 675; ORS 656.206, 656.268, 656.319, 656.605, 656.319, Enrolled SB 386 – OL 2005, ch.461; ORS 656.260, Enrolled SB 670 – OL 2005, ch. 364

Statutes being Implemented

RULE SUMMARY

Changes directly related to 2005 legislation are marked with asterisks *. Some changes apply only to injuries that occur on or after 1/1/2006. Substantive amendments affect:

- *Hearings on workers' compensation matters currently processed by the Office of Administrative Hearings – moved to the Workers' Compensation Board, for all hearings held on or after January 2, 2006.
- *Independent medical examinations (IME)s – including a worker's right to contest the location of the exam and associated increase to 90 days for the insurer to accept or deny the claim if the worker prevails; penalty to worker for failure to attend; penalty to medical provider for failure to forward diagnostic records to the IME provider; requirement (effective 7/1/2006) for the director to develop a list of medical providers who are authorized to perform IMEs and for all IMEs to be scheduled with a physician on the list.
- *The reporting and processing of aggravation claims;
- Elective surgery notification;
- Types of care that are reimbursable after the worker becomes medically stationary (clarification only);
- *Requirements that managed care organizations submit copies of their treatment standards and protocols to the director for review and approval;
- Closure notice requirements in fatal claims;
- Required procedures when five years of work history are not available;
- Reduced insurer reporting requirements for claims in which workers have no permanent impairment;
- *Permanent total disability – including limitations on benefits if the worker incurs a new injury; criteria for re-examination or reduction; required vocational evaluations and suspension of benefits for failure to attend or non-cooperation; appeals of termination; automatic eligibility for vocational assistance upon termination of permanent total disability (by final order);
- The reconsideration record – video recordings, duplicate records;
- *Penalties upon reconsideration – limitations;
- *Insurer data reporting necessary for the Workers' Compensation Division to assess the impact of legislative changes on permanent partial disability awards;
- *The effect of a regular work release on awards of work disability and social/vocational factors;
- Requirements to round percentages of impairment – hearing and vision no longer taken to the 100th of a percent;
- Rating of impairment for skin disorders – signs and symptoms need not be present upon examination;
- Insurer's notice to employer of policy cancellation to include a statement that the guaranty contract will terminate;
- Insurers' reporting of names or positions of key contacts to the Workers' Compensation Division;
- *The right of self-insured public utilities with assets in excess of \$500 million to obtain excess workers' compensation insurance coverage from an eligible surplus lines insurer;
- *Required training for certified claims examiners on interactions with independent medical exam providers;
- Adjustments – up and down – of insurer claims processing compliance thresholds (affecting penalties);
- *The dollar amount employers can pay for medical services on non-disabling claims;

Certificate and Order for Filing Permanent Administrative Rules

- *Requirement (effective 7/1/2006) that Worker Requested Medical Examinations be conducted by a medical provider on the list of authorized independent medical examination providers maintained by the director;
- Increase of certain maximum penalty amounts to the \$2,000 statutory maximum;
- Eligibility for Preferred Worker Program benefits – workers must be authorized to work in the United States;
- *Reimbursement from the Workers’ Benefit Fund of permanent total disability (PTD) payments made by the insurer during an appeal of termination of PTD – if the insurer prevails;
- For the purposes of reimbursement of wage subsidies under the Employer-at-Injury Program, allowance for supplemental documentation to clarify information not fully explained by the payroll record;
- *Provision for direct assistance to workers under ORS 656.622 to promote re-employment;
- *Reimbursement from the Workers’ Benefit Fund of the insurer’s vocational assistance costs incurred after the insurer appeals an administrative order to provide such assistance (if the insurer prevails);
- Deletion of the penalty matrix for three types of violations of the vocational assistance rules;
- Provision for the director to impose a civil penalty for violation of ORS chapter 656, in addition to violation of rules and orders of the director.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

/s/ John L. Shilts

Authorized Signer

12/5/05

Date

John L. Shilts, Administrator, Workers’ Compensation Division

Printed name

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.
ARC 930-2005