

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



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

TABLE OF CONTENTS

Rule	Page
NOTICE OF PROPOSED RULEMAKING HEARING	ii
STATEMENT OF NEED AND FISCAL IMPACT	iv
436-055-0008 Administrative Review.....	1
436-055-0070 Certification of Claims Examiners	2
436-055-0085 Training for Interactions with Independent Medical Examination Providers	3
436-055-0110 Assessment of Civil Penalties	3
436-055-0120 Service of Orders.....	4

Proposed revisions are marked as follows:

Deleted text has a "strike-through" style, as in ~~Deleted~~
Added text is bold and underlined, as in **Added**

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

Dept of Consumer and Business Services, Workers' Compensation Division	OAR CHAPTER 436
<hr/> Agency and Division	<hr/> Administrative Rules Chapter Number
Fred Bruyns	(503) 947- 7717 Fax (503) 947-7581
<hr/> Rules Coordinator	<hr/> Telephone
<hr/> PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879	
<hr/> Address	

RULE CAPTION

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

		Room 260 (2 nd Floor, Labor & Industries Building)	
May 22, 2006	10:00 a.m.*	350 Winter Street NE, Salem, Oregon	Fred Bruyns
<hr/> Hearing date	<hr/> Time	<hr/> Location	<hr/> Hearings Officer

***NOTE: The hearing will begin at 10:00 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through May 26, 2006.**

**The site of the hearing is accessible for individuals with mobility impairments.
Auxiliary aids for persons with disabilities are available upon advance request.**

RULEMAKING ACTION

ADOPT: None

AMEND: OAR

436-010-0005	436-010-0230	436-010-0275	436-055-0070	436-060-0035
436-010-0210	436-010-0240	436-010-0280	436-055-0085	436-060-0095
436-010-0220	436-010-0265	436-055-0008	436-055-0110	436-070-0020

REPEAL: 436-055-0120

ORS 656.726(4)

Stat. Auth.

Other Authority
ORS chapter 656, primarily: ORS 656.704, Enrolled House Bill (HB) 2091 – Oregon Laws (OL) 2005, ch. 26;
ORS 656.325, Enrolled SB 311 – OL 2005, ch. 675

Stats. Implemented

RULE SUMMARY

Proposed substantive amendments affect:

- (OAR 436-010-0220) Referrals to a specialist physician by an attending physician or authorized nurse practitioner – the authority of the specialist physician to provide services and treatment without specific authorization by the attending physician or nurse practitioner (specialist physician is defined in OAR 436-010-0005(38));
- (OAR 436-010-0230) Informed consent for attendance by an employer representative at a worker's medical exam – requirement that the consent form be written in a way that enables the worker to understand it; the worker has the right to refuse such attendance;
- (OAR 436-010-0230) Reimbursement for medications dispensed by physicians and authorized nurse practitioners – removal of the 10-day supply limitation;

Notice of Proposed Rule Making Hearing

Page 2

- (OAR 436-010-0265) Independent medical examinations (IMEs) – criteria for addition to the list of qualified physicians; exemptions; criteria for removal from list; training curriculum requirements;
- (OAR 436-010-0265) IMEs - consequences for failing to use a qualified provider from the director’s list or obtaining more than three examinations without the director’s approval;
- (OAR 436-010-0265) Seven-day time frame for IME provider to send examination report to the insurer – elimination of time frame;
- (OAR 436-010-0265 & 436-060-0095) Survey of injured worker’s IME experience – requirements that the insurer send an IME survey form: (1) to the worker with the appointment notice and (2) to the IME provider with the invasive procedure authorization form; requirement that the IME provider give a survey form to the worker to complete after the examination; the survey to be a postage-paid (by the State of Oregon) self-mailer, for delivery to the Workers’ Compensation Division;
- (436-010-0275) Insurer-managed care organization (MCO) communication – requirement that the insurer pass along information to the MCO if the information was sent to the insurer in error;
- (OAR 436-055-0008) Hearings on workers’ compensation matters currently processed by the Office of Administrative Hearings – transfer to the Workers’ Compensation Board.
- (OAR 436-055-0085) Training for renewal of claims examiner certification - for director approval, a training curriculum does not need to cover all of the components listed in OAR 436-055-0085(2);
- (OAR 436-070-0020, making some temporary changes permanent) Failure to File Notice or Notice of Audit Findings – criteria for issuance of a Failure to File Notice or Notice of Audit Findings.

Request for public comment: The Workers’ Compensation Division requests public comment on whether other options should be considered for achieving the rules’ substantive goals while reducing the negative economic impact of the rules on business.

Address questions to:

Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers’ Compensation Division’s Web site:

<http://wcd.oregon.gov/policy/rules/rules.html#proprules>

or from WCD Publications, 503-947-7627 or fax 503-947-7630.

May 26, 2006
Last Day for Public Comment

John L. Shilts
Authorized Signer and Date

4-13-06

John L. Shilts, Administrator, Workers’ Compensation Division
Printed name

*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.

Distribution:

WCD-ID, S, T, U, AT, CE, EG, IA, LU, MC, NM, CI, ML, ME, MR, DC, DO, GR, MD, ND, OT, PA, PY, S0, S1, S2, S4, S7

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

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

OAR CHAPTER 436
Administrative Rules Chapter Number

In the Matter of
The Amendment of OAR:)
436-010, Medical Services)
436-055, Certification of Claims Examiners)
436-060, Claims Administration)
436-070, Workers' Benefit Fund Assessment)

Rule Caption:

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

Statutory Authority: ORS 656.726(4)

Other Authority:

Statutes Implemented: ORS chapter 656, primarily: ORS 656.704, Enrolled House Bill (HB) 2091 – Oregon Laws (OL) 2005, ch. 26; ORS 656.325, Enrolled SB 311 – OL 2005, ch. 675

Need for the Rule(s): The majority of the proposed rule changes are for implementation of 2005 legislation, especially Senate Bill 311, affecting independent medical examinations. Section 5 of SB 311 becomes operative on July 1, 2006. The agency proposes additional changes based on recommendations from customers and stakeholders, experience with disputed issues, and the goals of regulatory streamlining.

Documents Relied Upon, and where they are available: "Issues" documents as presented to stakeholder advisory committees; advisory committee meeting minutes; written advisory committee input in response to the agency's request for input on potential amendments.

Fiscal and Economic Impact, including Statement of Cost of Compliance: (References to "insurer" in this analysis mean the workers' compensation insurer or self-insured employer; "agency" means the Department of Consumer and Business Services and the Workers' Compensation Division; "workers' compensation system" means the agency, employers, injured workers, insurers, medical providers, vocational providers, and others in any way involved in or affected by workers' compensation laws and rules.)

The following is a list of significant changes and their estimated fiscal and economic impact on persons and organizations affected by proposed changes to chapter 436:

- **(OAR 436-010-0220) Referrals to a specialist physician by an attending physician or authorized nurse practitioner – the authority of the specialist physician to provide services and treatment without specific authorization by the attending physician or nurse practitioner**

The proposed rule change does not affect common industry practices. However, some recently disputed cases reflect uncertainty about the authority of specialist physicians. The agency projects this clarification will not have a significant fiscal impact for insurers or for medical providers. To the extent this clarification prevents an acceleration of litigation, it will avert an increase in litigation costs within the workers' compensation system.

- **(OAR 436-010-0230) Informed consent for attendance by an employer representative at a worker's medical exam – requirement that the consent form be written in a way that enables the worker to understand it; the worker has the right to refuse such attendance**

The proposed rule change does not affect common industry practices. Most insurers recognize and take steps to overcome language and cultural barriers.

The agency projects that this rule change is cost-neutral. Any increased costs associated with this rule change should be offset by enhanced efficiency in claims handling and reduced litigation.

- **(OAR 436-010-0230) Reimbursement for medications dispensed by physicians and authorized nurse practitioners – removal of the 10-day supply limitation**

The agency projects that the proposed rule change will have a minor negative fiscal impact on Oregon pharmacists and a minor (equivalent) positive impact on Oregon physicians and nurse practitioners. At a 2003 Pharmacy Fee Advisory Task Force meeting, a pharmacy representative estimated that workers' compensation pharmacy represented about 1% of total pharmacy in Oregon. According to expert advice from members of the rulemaking advisory committee, probably only a small number of medical providers will choose to dispense medications, and then generally limit dispensing to a few drugs for inflammation and pain control. **Therefore, the agency projects** the extent of any impact to be less than 1/10th of one percent of pharmacy sales.

Insurers who use pharmacy benefit managers (PBMs) may incur some increased costs due to physician dispensing, to the extent their PBMs bill at less than 88% of the average wholesale price under OAR 436-009-0090. **The agency projects** that such impact will be minor, but cannot project specific costs because we do not know how much physician dispensing will occur and whether affected workers will (later in the claim) use the PBM services offered.

The proposed rule change will reduce out-of-pocket expenses for injured workers who obtain medications directly from their physicians. Reportedly, some workers do not fill their prescriptions at pharmacies because they cannot afford to pay for the drugs out-of-pocket. Lack of appropriate medication affects treatment outcomes. To the extent the proposed change will encourage early treatment, it should improve outcomes and reduce overall medical and claim costs for insurers.

The agency projects that the proposed change will have a small positive fiscal and economic impact on the workers' compensation system as a whole.

- **(OAR 436-010-0265) Independent medical examinations (IMEs) – criteria for addition to the list of qualified physicians; exemptions; criteria for removal from list; training curriculum requirements**

ORS 656.325, as revised by Enrolled Senate Bill 311 (2005), requires the director to develop training requirements and educational materials for IME providers. Private companies and the agency will provide training required for a provider to be added to the director's list of authorized IME providers. The cost for training now available is \$0 to \$325, though the higher dollar amount is for a two-day educational conference*, of which IME training is just one component. In 2004, the agency identified 407 IME providers for the purpose of a survey, but the true number of IME providers for Oregon workers is likely closer to 500. If the average cost of initial training is \$100, the dollar cost to providers will be approximately \$50,000. In addition, providers will have to take about four hours away from their practices, though some training is offered in the evening or on videotape. At \$100 per hour for time away, the cost for 500 IME providers would be \$100 x 4 hours x 500 = \$200,000. The agency will require continuing education for IME providers, but the time and extent of such training will vary depending on whether relevant laws and rules are changed. The options for continuing education will be less costly and less demanding on time away from medical practice, in part because pre-recorded and possibly web-based training will be available. The annual cost of continuing education should be less than \$50,000.

*The May 2006 educational conference will be presented by the Workers' Compensation Division and the International Workers' Compensation Foundation, a nonprofit corporation dedicated to workers' compensation

Statement of Need and Fiscal Impact

Page 3

research and education. 19 providers have registered as of 3/27/06. Prior to 4/1/06, the cost is \$225. After 3/31/06, the cost is \$275. Late registration cost is \$325.

The agency projects direct and indirect dollar cost to IME providers for initial IME training of approximately \$250,000 during the first year, and no more than \$50,000 per year in subsequent years. With the exception of the educational conference, the agency will not charge for training. Other training providers to date are themselves Oregon medical providers or associations of providers; for these trainers the fiscal impact may be positive, depending on the trainer's cost of providing the training.

The agency projected in its analysis of Senate Bill 311 (when SB 311 was being considered by the Oregon Legislature) increased agency costs for administration of IME programs of \$525,608 for the 2005-07 biennium and \$635,090 for the 2007-09 biennium.

- **(OAR 436-010-0265) Independent medical examinations (IMEs) - consequences for failing to use a qualified provider from the director's list or obtaining more than three examinations without the director's approval**

The proposed rule changes will raise costs for insurers that do not comply with statutory limitations on independent medical examinations, because:

- a) In some cases, the claims processor may not be allowed to use an IME report to make decisions about the claim. However, the fiscal impact is limited, because the IME report may be used unless someone objects to its use and the director then finds that the insurer violated ORS 656.325(1).
- b) DCBS may issue civil penalties to insurers who violate ORS 656.325(1). ORS 656.745 provides for penalties up to \$2,000 per violation and up to \$10,000 in aggregate for a three-month period.

The agency projects that the increased costs for Oregon insurers who do not comply with ORS 656.325 will be offset by:

- a) Use of trained and authorized IME providers, with improved IME reports;
- b) Increased compliance with statutory IME limits.

- **(OAR 436-010-0265) Seven-day time frame for IME provider to send examination report to the insurer – elimination of the time frame**

The agency is rarely asked to enforce the existing time frame. Market forces will favor IME providers who report examination results to insurers within reasonable time frames.

The agency projects that this proposed rule change will have no fiscal or economic impact on any party.

- **(OAR 436-010-0265 & 436-060-0095) Survey of injured worker's IME experience – requirements that the insurer send an IME survey form: (1) to the worker with the appointment notice and (2) to the IME provider with the invasive procedure authorization form; requirement that the IME provider give a survey form to the worker to complete after the examination; the survey to be a postage-paid (by the State of Oregon) self-mailer, for delivery to the Workers' Compensation Division**

The agency will bear the costs of printing the survey and distribution to insurers and medical providers upon request. We estimate agency costs to be no more than \$5,000 annually.

Insurers must include the survey with each appointment notice (for the worker) and with each invasive procedure authorization form (for the medical provider). Based on information obtained from insurers and agency testing of mailing weights, inclusion of the survey with the appointment notice will sometimes increase mailing weight to greater than 1 oz (but less than 2 oz), depending on whether the appointment notice is printed on one or two sheets of paper. Some insurers may be able to hold mailings to one ounce by printing the appointment notice on one sheet of paper, front and back. However, the survey will potentially increase the cost of each mail piece by \$0.24 (the same postage increase whether regular or certified mail). 15,000 (estimated annual) IMEs x \$0.24 = \$3,600 annually

Statement of Need and Fiscal Impact

Page 4

We estimate a handling cost of \$0.25 per examination for insurers and an equal amount for IME providers. This would entail a cost to insurers of \$0.25 x 15,000 (estimated annual) IMEs = \$3,750 annually and a cost to IME providers of \$3,750 annually.

The agency projects that the proposed rule changes would increase postage and handling costs for insurers and medical providers by approximately \$11,100.

A key purpose of the survey is to gather data needed to monitor the effects of legislative reform. In addition, because the worker’s evaluation of his or her IME experience will be mailed to the agency, use of the IME survey form may promote improvements in the quality of IMEs. Improvements could offset some or all of the survey costs by improving cooperation with the IME process and reducing litigation.

The agency projects that this proposed rule change would increase costs for insurers and medical providers by no more than the amounts listed above, and that the net economic impact to the workers’ compensation system may be neutral or positive.

- **(436-010-0275) Insurer-managed care organization (MCO) communication – requirement that the insurer pass along information to the MCO if the information was sent to the insurer in error**

The agency projects that this proposed rule change will not have a significant fiscal impact on any party.

- **(OAR 436-055-0008) Hearings on workers’ compensation matters currently processed by the Office of Administrative Hearings – transfer to the Workers’ Compensation Board**

Proposed rules do not substantially alter the actions required of the parties to a hearing.

The agency projects that this proposed rule change will not have a significant fiscal impact on any party.

- **(OAR 436-055-0085) Training for renewal of claims examiner certification - for director approval, a training curriculum does not need to cover all of the components listed in OAR 436-055-0085(2)**

The agency projects that this proposed rule change will have a small positive fiscal impact on companies that provide training to claims examiners and to insurers who provide training in-house.

- **(OAR 436-070-0020, making some temporary changes permanent) Failure to File Notice or Notice of Audit Findings – criteria for issuance of a Failure to File Notice or Notice of Audit Findings**

The proposed change is important for the efficient administration of the Workers’ Benefit Fund assessments collection program.

The agency projects that this proposed rule change will not have a significant fiscal impact on any party.

- **The agency estimates that additional proposed rule changes will not have any significant fiscal or economic impact on any persons or businesses, including small businesses.**

Cost of compliance effect on small businesses:

Identify the types of businesses and industries with small businesses subject to the proposed rule:

Medical providers who perform IMEs for Oregon injured workers.

Estimated number of small businesses subject to the proposed rule:

The agency does not have an exact count of medical providers in Oregon. Our data system only includes medical providers required to carry workers' compensation insurance and thus excludes sole proprietors who do not elect to be covered. However, based on available information, we estimate the number of small medical providers exceeds 8,200.

Describe the projected reporting, record-keeping and other administrative activities required for compliance with the proposed rule, including costs of professional services

Record-keeping: The proposed rule changes do not impose record-keeping requirements. However, although the revised IME laws and related rules do not specify how medical offices are to keep track of staff who are authorized to provide IMEs, most offices will maintain records in order to monitor their own compliance with ORS 656.325(1). The agency will publish a list of authorized IME providers to its Web site.

Reporting: The proposed changes will require reporting of IME training attendance to the agency. The agency will use this information to verify completion of the training required for providers to be added to the director's list of authorized providers under ORS 656.325(1).

Administrative activities: The proposed changes would increase administrative activities related to handling of the IME survey, as well as the use of professional services in the form of IME training necessary to be added to the list of authorized IME providers under ORS 656.325(1).

Identify the equipment, supplies, labor and increased administration required for compliance with the proposed rule:

Equipment: The proposed rule changes do not require equipment purchases or modifications.

Supplies: The proposed rule changes do not require increased purchase of supplies.

Labor: The proposed rule changes affect labor costs indirectly, by requiring medical providers to obtain IME training, and such training may require time away from the medical practice.

Increased administration: The proposed rule changes may result in some increased costs for administration in medical offices, primarily in order to monitor staff compliance with IME training requirements.

How were small businesses involved in the development of this rule?

Representatives from small businesses participated in the stakeholder advisory committee. Small businesses affected by these rules are primarily medical providers.

Reduction of economic impact on small businesses:

After considering advice from the rulemaking advisory committees and the available data, the agency finds no basis to say that these impacts would be "significantly adverse" (under ORS 183.540), but we invite public testimony on the probable extent of the impacts.

Administrative Rule Advisory Committee consulted:

Yes. The agency met with committees on February 24, 2006 and March 3, 2006 to discuss potential changes to OAR 436-010, 436-055, and 436-060. The agency conducted a telephone, e-mail, and facsimile survey of an advisory committee for OAR 436-070 during March 2006.

John L. Shilts

4-13-06

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

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

436-055-0008 Administrative Review

(1) Any party aggrieved by that disagrees with a proposed order or proposed assessment of civil penalty of the director issued pursuant to under 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) Under ORS 656.704(2), ~~Any party aggrieved by that disagrees with~~ an action or order of the director pursuant to under 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 by filing a hearing request as provided in OAR 436-001-0019 within 60 days of the mailing date of the order or notice of action, the date of mailing, or other service of an order. The request must specify the grounds upon which the action or order is 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. OAR 436-001 applies to the hearing.~~

(3) Any person aggrieved by that disagrees with an action taken pursuant to under 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~~ under ~~before an Administrative Law Judge of the Office of Administrative Hearings pursuant to ORS 183.310 and the procedures provided in section (2).~~

Statutory authority: ORS 656.735(5) through (7); ORS 656.745(4); ORS 656.726(4)

Statutes implemented: ORS 656.740(section 9, chapter 170, Oregon Laws 2003), ORS 183.310 through 183.550, ORS 656.726

History: 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

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

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

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, u~~Understanding of activities related to interactions with independent medical examination providers **that includes all the components in OAR 436-055-0085(2).**

(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.

(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 **that covers all the components in OAR 436-055-0085(2).**

(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

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

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

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

(1) Any training provided pursuant to under 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 for initial certification 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) To be approved, a training curriculum for renewal of certification must incorporate some or all of the components in (2).

~~(3)~~(4) 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)~~(5) 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 the requirements of sections (2) ~~and~~ or (3) ~~and~~ (4) of this rule.

~~(5)~~(6) 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)~~(7) 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)~~(8) 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

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-055-0110 Assessment of Civil Penalties

(1) Pursuant to Under 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~~

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

~~these rules or orders of the director issued pursuant to ORS Chapter 656 and these rules.~~

(3) Pursuant to **Under** 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.

Statutory authority: ORS 656.726

Statutes implemented: ORS 656.447(1)(a); ORS 656.745(2)(b); ORS 656.780(3)

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 xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

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.~~

Statutory authority: ~~ORS 656.740~~**726**

Statutes implemented: **ORS 656.740**

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

Repealed xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx