

OAR 436-055

Certification of Claims Examiners

Effective January 1, 2000

Administrative Order 99-063

**Oregon Department of Consumer and Business Services
Workers' Compensation Division**

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**OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 055**

CERTIFICATION OF CLAIMS EXAMINERS

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**OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CERTIFICATION OF CLAIMS EXAMINERS, ORDER NUMBER 99-063**

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

CERTIFICATION OF CLAIMS EXAMINERS

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

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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.

(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. The request for hearing must be mailed to the administrator of the Workers' Compensation Division within 60 days of receipt by the aggrieved party of notice of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

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(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 before the director 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 before the director as follows:

(a) The request for hearing must be mailed 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 contested.

(b) The hearing shall be conducted by the director.

(c) Any order in a contested case issued by a designee of the director is a proposed order 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 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 shall be conducted by the director.

(c) The director shall 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 the director 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(3)
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

436-055-0010 Access to Division Certification Records

Stat. Auth.: ORS 192.430
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Repealed 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

436-055-0020 Initial Certification Program Requirements

Stat. Auth.: ORS 656.780(1)
Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Repealed 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

436-055-0030 Continuing Education Programs

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
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436-055-0040 Application for Certification of Program and/or Continuing Education

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

436-055-0050 Loss of Certification of Program and/or Continuing Education

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

436-055-0060 Fees

Stat. Auth.: ORS 656.780(4)

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Repealed 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

436-055-0070 Certification of Claims Examiners

(1) Claims examiners shall be certified by the insurer upon satisfactor[il]y completion of an examination which demonstrates the individual's familiarity with the workers' compensation statutes, ability to navigate the administrative rules found in this chapter, and capability to perform claim processing activities.

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

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

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

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

(3) A certification shall be renewed at any time during the certification period by providing verification that 24 hours of training has been completed within the current certification period. At least 4 of the 24 hours of training shall be related to changes in workers' compensation statutes, administrative rules, and case law since the last certification.

(4) 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.

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

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

436-055-0080 Examinations

Stat. Auth.: ORS 656.780(1)

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91
Repealed 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

436-055-0090 Loss of Individual Certification

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

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

(a) The insurer shall accept verification by the director of an individual's certification and continuing education hours accrued as of October 22, 1999, and any acknowledgment of current certification issued by an insurer.

(b) The insurer shall verify from their own records and those presented by the claims examiner that the requirements for initial certification or renewal have been met. The insurer shall issue an acknowledgment of current certification which states that the claims examiner has met the certification or renewal standards, and renewing the certification for three years.

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

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

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(6) The insurer 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 acknowledgment of current certification.

Stat. Auth.: ORS 656.780(1) and (2)

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

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

STATEMENT OF NEED AND FISCAL IMPACT

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

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

OAR CHAPTER 436-055
Administrative Rules Chapter Number

In the Matter of)	Statutory Authority,
)	Statutes Implemented,
OAR 436-055, Certification of)	Statement of Need,
Claims Examiners)	Principal Documents Relied Upon,
)	Statement of Fiscal Impact

Statutory Authority: ORS 656.704(2), 656.726(3)

Other Authority: Attorney General's Model Rules of Procedure

Statutes Implemented: ORS 656.704, 656.726, 656.780

Need for the Rule(s): Pursuant to 1999 Or Laws c.418 (SB 221), the Workers' Compensation Division (WCD) must by rule adopt standards for the certification of claims examiners. The responsibility for administering the certification of claims examiners is transferred to insurers, self-insured employers, and third party administrators. Further, insurers, self-insured employers, and third part administrators must maintain records of certification and training of their workers' compensation claims examiners. In addition, the 1999 law amends ORS 656.780 to authorize WCD to impose a civil penalty against any insurer, self-insured employer, and third party administrator who fails to maintain records of certifications and training of their workers' compensation examiners, and for employing an individual to process workers' compensation claims who is not a certified claims examiner.

Documents Relied Upon: ORS Chapter 656

Fiscal and Economic Impact: The economic impact on Oregon subject workers and Oregon subject employers will be minimal

Administrative Rule Advisory Committee consulted: Yes

s/b Deborah Lincoln, 10/15/99

Authorized Signer and Date