



Oregon

John A. Kitzhaber, MD, Governor

Department of Consumer and Business Services
Workers' Compensation Division
350 Winter Street NE
P.O. Box 14480
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www.wcd.oregon.gov

Sept. 21, 2011

Proposed Changes to Workers' Compensation Rules

The Workers' Compensation Division proposes changes to the Oregon Administrative Rules (OAR):

- 436-009, Oregon Medical Fee and Payment Rules
- 436-010, Medical Services
- 436-015, Managed Care Organizations
- 436-030, Claim Closure and Reconsideration

The purpose of the proposed changes is primarily to implement legislation passed by the 2011 Oregon Legislature. Please review the attached documents for more information about proposed rule changes and projected fiscal impacts.

The division welcomes comment on proposed rule changes and has scheduled a public hearing.

When is the hearing? Oct. 24, 2011, 10:00 a.m.

Where is the hearing? Labor & Industries Building, Room 260
350 Winter Street NE, Salem, Oregon 97301

How can I make a comment? Come to the hearing and speak, send written comments, or do both.
Send written comments to:
Fred Bruyns, rules coordinator
Workers' Compensation Division
350 Winter Street NE (for courier or in-person delivery)
PO Box 14480, Salem, OR 97309-0405
Email - fred.h.bruyns@state.or.us
Phone – 503-947-7717; Fax – 503-947-7514

The closing date for written comments is Oct. 27, 2011.

How can I get copies of the proposed rules?

On the Workers' Compensation Division's website –
www.wcd.oregon.gov/policy/rules/rules.html#proprules

Or call 503-947-7717 to get free paper copies

Questions? Contact Fred Bruyns, 503-947-7717.

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

Department of Consumer and Business Services, Workers' Compensation Division	436	
Agency and Division	Administrative Rules Chapter Number	
Fred Bruyns	350 Winter Street NE, PO Box 14480, Salem, OR 97309-0405	503-947-7717
Rules Coordinator	Address	Telephone

RULE CAPTION

Medical fee schedule; managing care; attending physicians; delay of reconsideration of claim closure pending settlement
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Oct. 24, 2011	10:00 a.m.*	Room 260 Labor & Industries Building 350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing Date	Time	Location	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 **Oct. 27, 2011**.

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

AMEND: OAR 436-009-0080, 436-010-0210, 436-010-0230, 436-010-0280, 436-015-0008, 436-030-0003, 436-030-0036, 436-030-0145, 436-030-0165

Stat. Auth.: ORS 656.726(4), 656.248, 656.260, 656.268

Other Auth.:

Stats. Implemented: ORS chapter 656, primarily 656.005(12) [OL 2011, ch. 117, HB 2743], 656.245, 656.248, 656.260 [OL 2011, ch. 98, HB 2093], 656.268 [OL 2011, ch. 99, HB 2094]

RULE SUMMARY

NOTE: "Insurer" in this summary includes self-insured employers. The agency proposes to amend OAR chapter 436 to improve organization, clarity and consistency, and to eliminate obsolete information. More specifically:

The agency proposes to amend OAR chapter 436, division 009, "Oregon Medical Fee and Payment Rules," limited to rule 0080, affecting payment for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). These proposed rules: Establish maximum payments for DMEPOS Healthcare Common Procedure Coding System (HCPCS) codes published by the Centers for Medicare and Medicaid Services. These codes are commonly used by health care providers and payers. The rule also lists maximum percentages for services and items that have no HCPCS codes, and for equipment that is used or rented.

The agency proposes to amend OAR chapter 436, division 010, "Medical Services." These proposed rules: Implement House Bill 2743 by including podiatric physicians and surgeons among those health care providers who may serve as attending physicians, without limitation, in the workers' compensation system. In addition, the agency proposes to correct the term, "lumbar spondylosis," to "lumbar spondylolysis" (upon advice from the Medical Advisory Committee).

The agency proposes to amend OAR chapter 436, division 015, "Managed Care Organizations." These proposed rules: Implement House Bill 2093 by referring to civil penalties and to cease and desist orders that may be issued under ORS 656.260(20).

The agency proposes to amend OAR chapter 436, division 030, "Claim Closure and Reconsideration." These proposed rules: Implement House Bill 2094 by describing the process for the director to delay the reconsideration proceeding and toll the reconsideration timeline for up to 45 days when both parties request the delay for settlement negotiations. The proposed rules also more fully describe the arbiter selection process, including options for participation by the parties in the selection, and align rule with statute regarding the effective suspension date if a worker fails to attend or cooperate with a medical arbiter examination.

Notice of Proposed Rulemaking Hearing

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The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Address questions or requests for paper copies of the rules to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7514; e-mail fred.h.bruyns@state.or.us. Proposed rules are available on the Workers' Compensation Division's website: <http://wcd.oregon.gov/policy/rules/rules.html#proprules>

Oct. 27, 2011

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

/s/ John L. Shilts

John L. Shilts

Sept. 15, 2011

Signature

Printed name

Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Distribution: WCD-S0, S1, S3, S4, S, U, AT, CE, EG, LU, NM, CI, MR, TT, DC, DO, GR, MD, ND, OT, PY, M1, M2, E-mail lists; and legislators under ORS 183.335(15)

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

436

Agency and Division

Administrative Rules Chapter Number

Medical fee schedule; managing care; attending physicians; delay of reconsideration of claim closure pending settlement

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

In the Matter of: Amendment of OAR:

- 436-009, Oregon Medical Fee and Payment Rules
- 436-010, Medical Services
- 436-015, Managed Care Organizations
- 436-030, Claim Closure and Reconsideration

Statutory Authority: ORS 656.726(4), 656.248, 656.260, 656.268

Other Authority:

Stats. Implemented: ORS chapter 656, primarily 656.005(12) [OL 2011, ch. 117, HB 2743], 656.245, 656.248, 656.260 [OL 2011, ch. 98, HB 2093], 656.268 [OL 2011, ch. 99, HB 2094]

Need for the Rule(s): Rule amendments are needed: to implement legislation passed by the 2011 Legislature; to provide a fee schedule with commonly used billing codes for durable medical equipment, prosthetics, orthotics, and supplies; to remove obsolete information; and to align rules with standard practices and Oregon statutes.

Documents Relied Upon, and where they are available: The agency relied on advisory committee meeting records and written advice from stakeholders and customers, as well as Enrolled House Bills 2093, 2094, and 2743. These records are available for public inspection in the Workers' Compensation Division of the Department of Consumer and Business Services, 350 Winter Street NE, Salem, Oregon 97301, upon request and between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please call 503-947-7717 to request copies.

Fiscal and Economic Impact: The agency projects the following impacts:

Proposed changes to OAR 436-009 will establish a fee schedule for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). The agency projects that adoption of the DMEPOS schedule should not have a large impact on any of the affected service providers, and overall payments for these services should remain approximately the same as under the current rule. However, with adoption of a standard code set and a payment rate at 110% of the rate currently paid by the Centers for Medicare and Medicaid Services, payments to individual providers and provider types may increase or decrease slightly as follows:

- "A" codes are mainly supplies that are billed by medical service providers and DME providers. The agency projects a small increase in payments to these providers.
- "E" codes mainly affect DME providers. The agency projects a very small increase in payments to these providers, though the impact is less significant than for the "A" codes.
- "K" codes are temporary codes and difficult to assign to a specific provider group. Providers who bill "K" codes might see a slight decrease in payments. However, these codes represent a very small percentage of payments and the effect on any provider group should be minimal.
- "L" codes are mainly used for prosthetics and orthotics, and these providers might see a very slight decrease in payments.
- "V" codes are mainly vision services and represent a very small portion of the DMEPOS services. Providers billing V codes might experience a very slight decrease in payments.

Services under the proposed rule that are not listed in the DMEPOS schedule will be paid at 80% of the provider's usual fee unless otherwise provided by contract. This could result in up to a 20% reduction in payment for unlisted services, but the impact on providers will depend on the number of unlisted services they provide. (Medical supplies are subject to the 80% ceiling under the current rule.)

Proposed changes to OAR 436-010 will implement House Bill 2743. The agency projects a small positive effect on podiatric physicians and surgeons, because these providers will be authorized to serve as attending physicians without limitation in the workers' compensation system. Increased use of podiatric care will likely be offset by decreased use of other forms of care, and therefore may have a small negative impact on other providers.

Statement of Need and Fiscal Impact

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Proposed changes to OAR 436-015 will implement House Bill 2093. The agency does not project a significant economic impact due to these rule amendments.

Proposed changes to OAR 436-030 will implement House Bill 2094. The agency does not project a significant economic impact due to delays in reconsideration during settlement negotiations.

Except as described above, the agency projects no significant negative or positive economic impact of the proposed rule changes on any party. However, the agency invites public testimony on potential impacts.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

- The agency projects no significant cost of compliance for state agencies, including SAIF Corporation, or units of local government.
- The agency projects no significant cost of compliance to the public, except as described under “Fiscal and Economic Impact” above.

2. Cost of compliance effect on small business (ORS 183.336):

- Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:
 - The types of small businesses potentially affected by proposed rule changes are primarily health care providers, specifically providers of durable medical equipment, orthotic and prosthetic services, and medical supplies. The agency does not have an exact count of these providers, though available data suggests fewer than 250 unique business entities are operating in Oregon. The agency also does not have data showing how many workers are employed by each provider, but based on discussions with the advisory committee members, probably a substantial percentage of the providers would be defined as small businesses under OAR 183.310.
- Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
 - The agency projects no significant economic impact.
- Equipment, supplies, labor and increased administration required for compliance:
 - The agency projects no significant economic impact.

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

- Several health care providers, representing the interests of providers of durable medical equipment, orthotic and prosthetic services, and medical supplies, participated in a rulemaking advisory committee – see more below.

Administrative Rule Advisory Committee consulted?:

Yes – regarding OAR 436-009-0080, on Aug. 4, 2011. No* – regarding OAR 436-010, 436-015, and 436-030.

If not, why? *Because proposed changes to OAR 436-010, 436-015, and 436-030 are mostly limited to what is required to implement 2011 legislation, the agency was uncertain about the value of an advisory committee meeting or public interest. The agency issued a “request for advice; possible formation of advisory committee” to approximately 2,700 people. One person asked to meet with the agency, and this was done via teleconference.

/s/ John L. Shilts

John L. Shilts

Sept. 15, 2011

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
Proposed OREGON MEDICAL FEE AND PAYMENT RULES



Oregon Medical Fee and Payment Rules
Oregon Administrative Rules
Chapter 436, Division 009

Proposed

NOTE: Revisions are marked as follows:

Deleted text has a "strike-through" style, as in

~~Deleted~~

Added text is bold and underlined, as in

Added

436-009-0080 Durable Medical Equipment, Prosthetics, Orthotics, and Medical Supplies (DMEPOS)

(1) Durable medical equipment (DME) is equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use, could normally be rented and used by successive patients, is appropriate for use in the home, and not generally useful to a person in the absence of an illness or injury. For example: Transcutaneous Electrical Nerve Stimulation (TENS), MicroCurrent Electrical Nerve Stimulation (MENS), home traction devices, heating pads, reusable hot/cold packs, etc. ~~Unless otherwise provided by contract, fees for durable medical equipment shall be paid as follows:~~

~~(a) The insurer shall pay for the purchase of all compensable DME that are ordered and approved by the physician, at 85 percent of the manufacturer's suggested retail price (MSRP). If no MSRP is available or the provider can demonstrate that 85 percent of the MSRP is less than 140 percent of the actual cost to the provider, the insurer must pay the provider 140 percent of the actual cost to the provider for the item as documented on a receipt of sale.~~

~~(b) The DME provider is entitled to payment for any labor and reasonable expenses directly related to any subsequent modifications other than those performed at the time of purchase, or repairs. A subsequent modification is one done other than as a part of the initial set-up at the time of purchase. The insurer shall pay for labor at the provider's usual rate.~~

~~(c) The provider may offer a service agreement at an additional cost.~~

~~(d) Rental of all compensable DME shall be billed at the provider's usual rate. Within 90 days of the beginning of the rental, the insurer may purchase the DME or device at the fee provided in this rule, with a credit for rental paid up to 2 months.~~

(2) A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. For example: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc. ~~Unless otherwise provided by contract, the insurer must pay for a prosthetic the lesser of:~~

~~(a) The provider's usual rate; or~~

~~(b) 140 percent of the actual cost to the provider for the item as documented on a receipt~~

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Proposed OREGON MEDICAL FEE AND PAYMENT RULES

of sale.

~~(3)(a) Testing for hearing aids must be done by a licensed audiologist or an otolaryngologist.~~

~~(b) Based on current technology, the preferred types of hearing aids for most workers are programmable BTE, ITE, and CIC multi channel. Any other types of hearing aids needed for medical conditions will be considered based on justification from the attending physician or authorized nurse practitioner.~~

~~(c) Without approval from the insurer or director, the payment for hearing aids may not exceed \$5000 for a pair of hearing aids, or \$2500 for a single hearing aid.~~

~~(43) An orthosis is an orthopedic appliance or apparatus used to support, align, prevent or correct deformities, or to improve the function of a moveable body part. For example: brace, splint, shoe insert or modification, etc. Unless otherwise provided by contract, the insurer must pay for an orthosis the lesser of:~~

~~(a) The provider's usual rate; or~~

~~(b) 140 percent of the actual cost to the provider for the item as documented on a receipt of sale.~~

~~(54) Medical supplies are materials that may be reused multiple times by the same person, but a single supply is not intended to be used by more than one person, including, but not limited to incontinent pads, catheters, bandages, elastic stockings, irrigating kits, sheets, and bags. Unless otherwise provided by contract, the insurer must pay 80 percent of the provider's usual rate for medical supplies.~~

(5) Unless otherwise provided by contract, insurers must pay for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) according to the following table:

<u>If DMEPOS is:</u>	<u>And HCPCS is:</u>	<u>Then payment amount is:</u>	
<u>New</u>	<u>Listed in Appendix E</u>	<u>The lesser of</u>	<u>Amount in Appendix E; or</u>
			<u>Provider's usual fee</u>
	<u>Not listed in Appendix E</u>	<u>80% of provider's usual fee</u>	
<u>Used</u>	<u>Listed in Appendix E</u>	<u>The lesser of</u>	<u>75% of amount in Appendix E;</u>
			<u>or</u>
	<u>Not listed in Appendix E</u>	<u>80% of provider's usual fee</u>	
<u>Rented</u> <u>(monthly)</u>	<u>Listed in Appendix E</u>	<u>The lesser of</u>	<u>10% of amount in Appendix E;</u>
			<u>or</u>
	<u>Not listed in Appendix E</u>	<u>80% of provider's usual fee</u>	

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(6) Unless otherwise provided by contract, after a rental period of 13 months, the item is considered purchased if the insurer so chooses.

(7) For items purchased, unless otherwise provided by contract:

(a) The provider is entitled to payment for any labor and reasonable expenses directly related to any subsequent modifications other than those performed at the time of purchase or repairs. The insurer must pay for labor at the provider's usual rate; or

(b) The provider may offer a service agreement at an additional cost.

(8)(a) Testing for hearing aids must be done by a licensed audiologist or an otolaryngologist.

(b) Based on current technology, the preferred types of hearing aids for most workers are programmable behind the ear (BTE), in the ear (ITE), and completely in the canal (CIC) multi channel. Any other types of hearing aids needed for medical conditions will be considered based on justification from the attending physician or authorized nurse practitioner.

(c) Notwithstanding section (5), without approval from the insurer or director, the payment for hearing aids may not exceed \$5000 for a pair of hearing aids, or \$2500 for a single hearing aid.

~~(69)~~ The worker may select the service provider, except for claims enrolled in a managed care organization (MCO) when service providers are specified by the MCO contract.

~~(710)~~ Except as provided in subsection ~~(28)~~(c) of this rule, this rule does not apply to a worker's direct purchase of DME and ~~medical~~ supplies, and does not limit a worker's right to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

~~(811)~~ DME, **prosthetics, orthotics, and** ~~medical supplies and other devices~~ dispensed by a hospital (inpatient or outpatient) ~~shall~~ **must** be billed and paid according to OAR 436-009-0020.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248
Hist: Amended 5/22/07 as WCD Admin. Order 07-051, eff. 7/1/07
Amended 12/15/08 as Admin. Order 08-063, eff. 1/1/09
Amended 3/1/11 as Admin. Order 11-050, eff. 4/1/11
Amended 6/30/11 as Admin. Order 11-054, eff. 7/5/11 (temp)
Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

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Appendices B through ~~D~~E

Oregon Workers' Compensation Maximum Allowable Payment Amounts

The Workers' Compensation Division no longer adopts the Federal Register that publishes Centers for Medicare and Medicaid Services' (CMS) relative value units (RVUs). The division publishes the following Appendices to the division 009 of chapter 436.

Appendix B (Physician Fee Schedule) containing the maximum allowable payment amounts for services provided by medical service providers.
[Effective April 1, 2011]

Appendix C (ambulatory surgery center fee schedule amounts for surgical procedures), containing the maximum allowable payment amounts for surgical procedures including packaged procedures. [Effective April 1, 2012]

Appendix D (ambulatory surgery center fee schedule amounts for ancillary services) containing the maximum allowable payment amounts for ancillary services integral to the surgical procedure. [Effective April 1, 2012]

[Appendix E \(Durable medical equipment, prosthetics, orthotics, and supplies \(DMEPOS\)\) containing the maximum allowable payment amounts for durable medical equipment, prosthetics, orthotics, and supplies. \[Effective January 1, 2012\]](#)

Note: If the above links do not connect you to the department's website, click:

<http://www.cbs.state.or.us/external/wcd/policy/rules/disclaimer.html>

If you have questions, call the Medical Section, 503-947-7606.

The five character codes included in the Oregon Workers' Compensation Maximum Allowable Payment Tables are obtained from Current Procedural Terminology (CPT), copyright 2010 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures.

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Link to the Maximum Allowable Payment Tables: <http://www.cbs.state.or.us/wcd/policy/rules/disclaimer.html>

Or, contact the division for a paper copy, 503-947-7717.