



# Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services  
Workers' Compensation Division  
350 Winter St. NE  
PO Box 14480  
Salem, OR 97309-0405  
1-800-452-0288 or 503-947-7810  
[www.wcd.oregon.gov](http://www.wcd.oregon.gov)

March 15, 2010

## Proposed Changes to Workers' Compensation Rules

The Workers' Compensation Division proposes changes to OAR chapter 436, affecting medical billing and payment, and including a fee schedule and procedures for interpreters who assist at medical examinations. Please review the attached documents for more information about proposed changes and possible fiscal impacts.

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

### When is the hearing?

April 21, 2010, 1:30 p.m.

### Where is the hearing?

Labor & Industries Building  
350 Winter Street NE, Room 260,  
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  
E-mail – [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us)  
Phone – 503 947-7717; Fax – 503- 947-7514

**The closing date for written comments is April 27, 2010.**

### How can I get copies of the proposed rules?

On the Workers' Compensation Division's Web site –

[www.wcd.oregon.gov/policy/rules/rules.html#proprules](http://www.wcd.oregon.gov/policy/rules/rules.html#proprules)

Or call 503-947-7627 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.

Dept of Consumer and Business Services (DCBS),

Workers' Compensation Division

OAR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

PO Box 14480, Salem, OR 97309-0405;

503-947- 7717

Fred Bruyns

350 Winter Street NE, Rm 27, Salem, OR 97301-3879

Fax 503-947-7514

Rules Coordinator

Address

Telephone

**RULE CAPTION**

**Proposed rules affecting workers' compensation medical treatment and fees**

|                |            |                                                                                                      |                  |
|----------------|------------|------------------------------------------------------------------------------------------------------|------------------|
| April 21, 2010 | 1:30 p.m.* | Room 260 (2 <sup>nd</sup> Floor, Labor & Industries Building)<br>350 Winter Street NE, Salem, Oregon | Fred Bruyns      |
| Hearing date   | Time       | Location                                                                                             | Hearings Officer |

**\*NOTE: The hearing will begin at 1:30 p.m. and end when all present who wish to testify have done so.  
Written testimony will be accepted through April 27, 2010.**

**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:** OAR 436-010-0225

**AMEND:** OAR 436-009; and 436-010-0330, 436-015-0090

ORS 656.726(4)

Stat. Auth.

Other Authority

ORS chapter 656, primarily ORS 656.245, 656.248, 656.260

Stats. Implemented

**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 redundancy. In addition:

**The agency proposes to amend OAR chapter 436, division 009, "Oregon Medical Fee and Payment Rules."**

**These proposed rules address:** Adoption of updated medical fee schedules and resources for the payment of health care providers; adoption of new fee schedules showing maximum allowable payments for CPT® and Oregon Specific Codes – thus eliminating the need to calculate the maximum allowable payment (using the Medicare Resource-Based Relative Value Scale and the Oregon Conversion Factors); time frames for appeals of disputed services or fees; changes in the dollar values of the conversion factors; changes in payment rates for physical and work capacity evaluations; adoption of a new fee schedule and procedures for language interpreters who assist at medical examinations; assignment of additional CPT® codes to the Medicare groups for payment of ambulatory surgical centers (ASCs); fee schedules for payment to ASCs for implants; revised notices that must accompany medical bill payments and denials of payments; and minimum patient contact times for physical capacity and work capacity examinations.

**The agency proposes to amend OAR chapter 436, division 010, "Medical Services." These proposed rules**

**address:** The rights of a worker to choose any person to provide interpreter services to communicate with a medical provider.

**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 503-947-7514; e-mail [fred.h.bruyns@state.or.us](mailto: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 telephone 503-947-7627 or fax 503-947-7630.

April 27, 2010

Last Day for Public Comment

/s/ John L. Shilts

Authorized Signer and Date

3-12-2010

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.

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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

OAR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

**Rule Caption:** Proposed rules affecting workers' compensation medical treatment and fees

|                                               |   |
|-----------------------------------------------|---|
| In the Matter of                              | ) |
| The Amendment of OAR:                         | ) |
| 436-009, Oregon Medical Fee and Payment Rules | ) |
| 436-010, Medical Services                     | ) |
| 436-015, Managed Care Organizations           | ) |

**Statutory Authority:** ORS 656.726(4)

**Other Authority:**

**Stats. Implemented:** ORS chapter 656, primarily ORS 656.245, 656.248, 656.260

**Need for the Rule(s):** The agency is proposing changes to update the medical fee schedules as required by ORS 656.248, and to make other changes consistent with the director's responsibilities under ORS 656.726(4).

**Documents Relied Upon, and where they are available:** Advisory committee meeting records and written advice from advisory committee members.

These records are available for public inspection in the Administrator's Office, Workers' Compensation Division of the Department of Consumer and Business Services, 350 Winter Street NE, Salem, Oregon 97301-3879, 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, including Statement of Cost of Compliance:** References to "insurers" in the summary below includes "self-insured employers." The following is a list of significant estimated fiscal/economic impacts on persons and organizations affected by proposed changes to OAR chapter 436.

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

**Regarding proposed amendments to the service category conversion factors –**

- The agency projects proposed rule changes will have no effect on state agencies, with the exception of the State Accident Insurance Fund (SAIF) Corporation, and no effect on units of local government. The fiscal effect on SAIF Corporation is included with the impacts on workers' compensation insurers listed below.
- The agency projects that the proposed fee schedule will increase overall medical payments to physicians and other health care providers by 2.80 to 4.34 percent, though the impact for individual providers will vary according to the types of services provided and whether providers' fees exceed current fee schedule maximums. This estimated increase accounts for changes in the Medicare relative value units, the proposed reimbursement rates, and natural inflationary factors. Chiropractic and Osteopathic physicians are the two primary provider groups that bill using the Medicine service category (conversion factor). "Medicine" is the only conversion factor with a proposed decrease. However, an analysis of utilization trends demonstrates that neither provider group should experience an overall decrease in reimbursements. It is expected the increases in the conversion factors for other service categories should offset any decrease experienced under the Medicine service category.
- The agency projects increased payments overall for physical and work capacity evaluations (PCEs and WCEs). While first level PCEs will be paid at a somewhat lower rate, providers doing second level PCEs and WCEs will be paid substantially more.
- The agency projects an increase in overall medical payments by workers' compensation insurers of 2.80 to 4.34 percent. The increase represents less than one percent of total workers' compensation system costs.
- The agency projects that increasing payments to health care providers will increase or at least maintain providers' willingness to treat workers who are injured on the job. Access to health care promotes faster patient

recovery and expedites return to work. The agency estimates that proposed changes to the conversion factors should have a slightly positive economic impact on Oregon injured workers.

**Regarding adoption of a new fee schedule and procedures for language interpreters who assist at medical examinations –**

- Most insurers voluntarily pay for interpreter services at medical examinations, but there is no consistent industry fee. Based on available data, the agency is unable to accurately determine whether insurers will experience a fiscal impact due to the proposed interpreter fee. The agency estimates that setting a maximum payment at \$60.00 per hour, disallowing a minimum time allotment, and placing limits on mileage will likely maintain current system costs.
- Similarly, the overall fiscal impact on interpreters should be minimal. However, the effect will vary for individual interpreters, depending upon whether interpreters have been billing above or below the proposed maximum fee.

**Regarding additional proposed rule changes:**

- The agency estimates that additional proposed changes, to the extent these promote clarity and reduce medical billing disputes, will have a slightly positive fiscal impact overall. Otherwise, additional proposed rule changes should not have significant economic impacts on any persons or businesses, including small businesses.

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

**a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:**

Small businesses affected by these rules are primarily medical providers and language interpreters. Based on available data, we estimate approximately 12,000 health care providers are small businesses, as defined in ORS 183.310(10). We do not have data showing how many small interpreter firms operate in Oregon, but estimate there are at least two hundred firms meeting the “small business” definition.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

**Reporting:** The proposed rule changes would require interpreters to report specific information on invoices they submit to insurers.

**Record-keeping:** The proposed rule changes would require interpreters to keep track of client data for the purpose of billing insurers for services.

**Other administrative activities and costs of professional services:** The proposed rule changes should create no additional administrative or professional services costs for small businesses.

**c. Equipment, supplies, labor and increased administration required for compliance:**

**Equipment:** The proposed rule changes do not require the purchase of equipment to achieve compliance.

**Supplies:** The proposed rule changes do not require the purchase of supplies to achieve compliance.

**Labor:** The proposed rule changes do not require increased labor costs to achieve compliance.

**Administration:** The proposed rule changes do not require increased administrative costs to achieve compliance.

**How were small businesses involved in the development of this rule?** Representatives from small businesses – health care providers and interpreters – participated on the rulemaking advisory committee.

**Administrative Rule Advisory Committee consulted?** Yes. The advisory committee met on 1/15/2010.

*/s/ John L. Shilts*

*3-12-2010*

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION

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**Medical Services**  
**Oregon Administrative Rules**  
**Chapter 436, Division 010**

**Proposed**

**NOTE:** Amendments are marked as follows:

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

~~Deleted~~

Added text is bold and underlined, as in

**Added**

**436-010-0225**      **Choosing a Person to Provide Interpreter Services**

**A worker may choose a person to communicate with a medical provider when the worker and the medical provider speak different languages, including sign language. The worker may choose a family member, a friend, an employee of the medical provider, or someone who provides interpreter services as a profession. The medical provider may disapprove of the worker's choice at anytime the medical provider feels the interpreter services are not improving communication with the worker, or feels the interpretation is not complete or accurate.**

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245

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

**436-010-0330**      **Medical Arbiters and Panels of Physicians**

(1) In consultation with the Workers' Compensation Management-Labor Advisory Committee under ORS 656.790, the director will establish and maintain a list of physicians to be used as follows:

(a) To appoint a medical arbiter or a panel of medical arbiters in accordance with ORS 656.268 and to select a physician in accordance with ORS 656.325 (1)(b).

(b) To appoint an appropriate physician or a panel of physicians to review medical treatment or medical services disputes under ORS 656.245 and ORS 656.327.

(2) Arbiters, panels of arbiters, physicians, and panels of physicians will be selected by the director.

(3) When a worker is required to attend an examination under this rule the director will provide notice of the examination to the worker and all affected parties. The notice will inform all parties of the time, date, location and purpose of the examination. Such examinations will be at a place reasonably convenient to the worker, if possible.

(4) The arbiters, the panels of arbiters, the physicians and the panels of physicians

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**  
**WORKERS' COMPENSATION DIVISION**

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selected under this rule must be paid by the insurer in accordance with OAR 436-009-0070~~(10)~~**(9)** to ~~(12)~~**(11)**.

(5) The insurer must pay the worker for all necessary related services in accordance with ORS 656.325(1).

**Stat. Auth:** ORS 656.726(4)

**Stats. Implemented:** ORS 656.268, 656.325, 656.327

**Hist:** Amended 6/12/08 as WCD Admin. Order 08-052, eff. 6/30/08

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