



# Oregon

John A. Kitzhaber, MD, Governor

Department of Consumer and Business Services  
Workers' Compensation Division  
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Dec. 20, 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

Please review the attached documents that include a summary of the proposed rule changes and the projected fiscal impacts.

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

### When is the hearing?

Jan. 23, 2012, 9:00 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](mailto:fred.h.bruyns@state.or.us)  
Phone – 503-947-7717; Fax – 503-947-7514

**The closing date for written comments is Jan. 26, 2012.**

### 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](http://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.

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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**

Rule changes affecting workers' compensation medical fees, medical services, and managed care organizations

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

Jan. 23, 2012	9:00 a.m.*	Room 260 (2 <sup>nd</sup> Flr), Labor & Industries Building 350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing Date	Time	Location	Hearings Officer

\*NOTE: The hearing will begin at 9:00 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through **Jan. 26, 2012**.

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

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** OAR 436-009-0177, 436-015-0075

**AMEND:** OAR 436-009, 436-010-0330, 436-015

**REPEAL:** OAR 436-009-0022, 436-009-0150, 436-009-0250, 436-009-0280, 436-015-0020

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 656.726(4); 656.248; 656.260

Other Auth.:

Stats. Implemented: ORS chapter 656, primarily ORS 656.248 and 656.260

**RULE SUMMARY**

The agency proposes to amend these rules to improve organization, clarity, and consistency, and to eliminate redundancy. More specifically:

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

- Adopt new and update existing medical fee schedules and resources for the payment of health care providers.
- Increase payment for ambulance and dental services. (Please refer to the *Statement of Need and Fiscal Impact*.)
- Increase payment for chiropractic manipulation codes 98940 – 98943. (Please refer to the *Statement of Need and Fiscal Impact*.)
- Clarify that an insurer must *initiate* a dispute before the director if it is challenging the reasonableness of a provider's billing.
- Eliminate multiple-surgery discounts for add-on codes that already have built-in discounts.
- Establish Oregon specific (billing) codes for closing examinations and for closing reports, and set payment criteria.
- Specify that injectable drugs are prescription medications subject to the maximum payment fee schedule under these rules.

- Describe the compensability limitation for physician dispensing of medications (not a new requirement, but repeating the provision in OAR 436-010-0230(6)).
- Increase interpreter mileage reimbursement by reducing the minimum round trip mileage. (Please refer to the *Statement of Need and Fiscal Impact*.)
- Update the requirements for interpreter invoices.
- Amend explanation-of-benefits and related communication requirements applicable to interpreters.
- Specify what an ambulatory surgery center’s surgical procedure fee does not include.
- Clarify billing time frames for ambulatory surgery centers.
- Clarify payment requirements when an ambulatory surgery center performs multiple procedures.
- Require that implantable devices be paid separately to an ambulatory surgery center and not packaged with the surgery charge.
- Describe billing and payment requirements affecting ambulatory surgery centers for durable medical equipment, prosthetic services, orthotic services, and medical supplies.

**The agency proposes to amend OAR chapter 436, division 010, “Medical Services.” The proposed rule 0330:**

- Includes amended citations to a renumbered rule in OAR 436-009.

**The agency proposes to amend OAR chapter 436, division 015, Managed Care Organizations (MCOs). These proposed rules:**

- Modify the MCO certification and plan development process by:
  - Eliminating the requirement for prospective MCOs to “qualify” before applying for certification.
  - Incorporating some of the “qualifying” steps into a single application process.
  - Removing the requirement to show that workers can receive treatment by an MCO physician in cases requiring emergency in-patient hospitalization.
  - Eliminating the requirement that an MCO send to the director a copy of every provider agreement; the MCO may send a standard provider agreement and identify variations.
  - Requiring MCOs to regularly update their MCO panel provider lists.
- Require that if the MCO schedules a medical exam for the worker, the appointment letter must inform the worker if a psychological evaluation is part of the exam and to state the reason for the psychological evaluation.
- Require the MCO to provide written notice and appeal rights when the MCO approves a service (in addition to denials of service).

The agency 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.

Jan. 26, 2012

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

*/s/ Kevin Willingham*

Signature

Kevin Willingham, Deputy Administrator

Printed name

12/15/2011

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

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**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

**Rule changes affecting workers' compensation medical fees, medical services, and managed care organizations**

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

**In the Matter of:** The amendment of

    OAR 436-009, Oregon Medical Fee and Payment Rules

    OAR 436-010, Medical Services

    OAR 436-015, Managed Care Organizations

**Statutory Authority:** ORS 656.726(4); 656.248; 656.260

**Other Authority:**

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

**Need for the Rule(s):** The agency is proposing changes to update the medical fee schedules as required by ORS 656.248, to streamline the certification procedures for managed care organizations, 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 office of the 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:** Unless stated otherwise, references to "insurers" (below) mean workers' compensation insurers and self-insured employers. The following is a list of estimated significant economic impacts on persons and organizations affected by these proposed rule changes.

**Statement of Cost of Compliance:**

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

- a. The agency projects proposed rule changes would have no direct 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 – see below.
- b. Proposed OAR 436-009-0040 would provide increased payment for ambulance services billed using the following health care common procedure coding system (HCPCS) codes: A0425, A0426, A0427, A0428, A0429, A0433, and A0434. Unless otherwise provided by contract or fee discount agreement permitted by OAR 436-009, payment would increase from the current 80% to 90% of the billed amount. The agency projects that this change would increase payments to ambulance providers by approximately \$42,000 per year and increase insurers' costs by this amount. See item e. below.
- c. Proposed OAR 436-009-0040 would provide increased payment for dental services billed using the dental HCPCS codes. Unless otherwise provided by contract or fee discount agreement permitted by OAR 436-009, payment would increase from the current 80% to 90% of the billed amount. The agency projects that this change would increase payments to dentists by approximately \$71,000 per year and increase insurers' costs by this amount. See item e. below.
- d. Proposed changes to appendix B of OAR 436-009 would increase the current maximum allowable payments for chiropractic manipulation current procedural terminology (CPT®) codes 98940 – 98943 by 5%. The agency projects that this change would increase payment to chiropractic physicians by approximately \$191,000 per year and increase insurers' costs by this amount. See item e. below.
- e. The combined costs in b., c., and d. are \$304,000, which represents approximately 0.1% of total medical payments in 2010.
- f. Proposed changes to OAR 436-009 would reduce the minimum round-trip mileage eligible for reimbursement to an interpreter from 60 miles to 15 miles. The agency does not have mileage data it can use to project the fiscal impact of this change, but it would have a small positive economic impact on interpreters and slightly increase insurers' costs.
- g. The agency projects that 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:**

Under the proposed rules, the agency does not project any significant increased cost of compliance for small businesses, but does project increased payments to chiropractic physicians, dentists, interpreter firms, and ambulance service providers as described above. Type of business affected and estimated number:

Chiropractic physicians' practices – approximately 1,100

Dental practices – approximately 2,200

Interpreter firms – approximately 200

Ground ambulance service providers – 188

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

The agency projects no increased costs.

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

The agency projects no increased costs.

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

Representatives of small businesses participated in the stakeholder advisory committee or provided written advice.

**Administrative Rule Advisory Committee consulted?:** Yes

If not, why?:

*/s/ Kevin Willingham*

Signature

Kevin Willingham, Deputy Administrator

Printed name

12/15/2011

Date



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

*Proposed*

**TABLE OF CONTENTS**

**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**

**436-010-0330 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~~ **under** ORS 656.268 and to select a physician ~~in accordance with~~ **under** 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~~ **E**xaminations 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 selected under this rule must be paid by the insurer in accordance with OAR 436-009-0070 ~~(9)(10)~~ to ~~(11)(12)~~.

(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 5/27/10, as Admin. Order 10-053, eff. 7/1/10

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