



Oregon

John A. Kitzhaber, MD, Governor

Department of Consumer and Business Services
Workers' Compensation Division
350 Winter Street NE
P.O. Box 14480
Salem, Oregon 97309-0405
1-800-452-0288, 503-947-7810
www.wcd.oregon.gov

Jan. 14, 2011

Regarding Proposed Changes to Workers' Compensation Rules

Comment Period Extended

The last day for written comments is now Jan. 27, 2011.

The Workers' Compensation Division proposes changes to OAR chapter 436, mainly affecting the Oregon Medical Fee and Payment Rules, OAR 436-009, plus several additional rules related to medical services in OAR 436-010 and 436-060.

In order to allow additional time for the public to submit written testimony, the division has extended the comment period through and including Jan. 27, 2011 (formerly Jan. 20).

Otherwise, the *Notice of Proposed Rulemaking Hearing* and *Statement of Need and Fiscal Impact* filed with the Secretary of State on Dec. 15, 2010 remain the same. Copies of these forms and complete text of the proposed rules with marked revisions are available on the division's website: www.wcd.oregon.gov/policy/rules/rules.html#proprules

When is the hearing?

Jan. 18, 2011, 1:30 p.m.

Where is the hearing?

Labor & Industries Building
350 Winter Street NE, Room F, 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 Jan. 27, 2011.

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

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

Questions?

Contact Fred Bruyns, 503-947-7717.



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Theodore R. Kulongoski, Governor

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Dec. 20, 2010

Proposed Changes to Workers' Compensation Rules

The Workers' Compensation Division proposes changes to OAR chapter 436, mainly affecting the Oregon Medical Fee and Payment Rules, OAR 436-009, plus several additional rules related to medical services in OAR 436-010 and 436-060.

Please review the attached documents for more information about proposed rule changes and possible fiscal impacts.

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

- When is the hearing?** Jan. 18, 2011, 1:30 p.m.
- Where is the hearing?** Labor & Industries Building
350 Winter Street NE, Room F (basement),
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:
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The closing date for written comments is Jan. ~~20~~ 27, 2011.

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Questions?

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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

OAD 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

Amendments to rules affecting workers' compensation medical fee schedules and medical services

Hearing date	Time	Location	Hearings Officer
Jan. 18, 2011	1:30 p.m.*	Room F (basement), Labor & Industries Building 350 Winter Street NE, Salem, Oregon	Fred Bruyns

*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 **Jan. 20, 2011**.

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:

AMEND: OAR 436-009; 436-010-0230, 436-010-0265, 436-010-0290; 436-060-0095

REPEAL:

ORS 656.726(4); 656.248; 656.325

Stat. Auth.

Other Authority

ORS chapter 656, primarily ORS 656.248, 656.252, 656.254, and 656.325

Stats. Implemented

RULE SUMMARY

Unless stated otherwise, references to "insurers" mean workers' compensation insurers and self-insured employers.

The agency proposes to amend OAR chapter 436, division 009. These proposed rules address:

- Adoption of updated medical fee schedules and resources for the payment of health care providers
- Data that must be included on hospital inpatient and outpatient bills
- Billing requirements and payment criteria for ambulatory surgery centers
- Health care provider and payer communication regarding medical bills, including explanations of benefits that accompany payments or denials of payment
- Inclusion of certain Healthcare Common Procedure Coding System (HCPCS) level II codes in the maximum allowable payment table (Appendix B)
- Maximum allowable payment when OAR 436-009 does not set a maximum
- Documentation of time spent with a patient when constant attendance is required, affecting physical medicine codes

- Payment for independent medical examinations
- Maximum allowable payment for drugs based on wholesale acquisition cost or average wholesale price
- Procedures and forms required for clinical justifications when health care providers prescribe certain drugs; results of failure by provider to submit timely justification
- Prescription pricing guides to be used by insurers in calculating payment for drugs
- Payment of interpreters when a worker fails to attend a medical appointment required by the insurer or the director

The agency proposes to amend OAR chapter 436, division 010. These proposed rules address:

- Progress reporting by a physical therapist to the worker's attending physician and the insurer
- The type and form of information the insurer must make available to the health care provider to give to the patient at a scheduled independent medical examination
- Procedures for a worker to provide comments to the director about an independent medical examination or to file a complaint
- Training requirements for health care providers to be included on the list of authorized independent medical examination providers

The agency proposes to amend OAR chapter 436, division 060. These proposed rules address:

- The information an insurer must include with the independent medical examination appointment notice it sends to the worker

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

Jan. 20, 2011

Last Day for Public Comment

(Last day to submit written comments to the
Rules Coordinator)

/s/ John L. Shilts

Authorized Signer and Date

Dec. 15, 2010

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

*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-ID, S0, S1, S4, S7, S, U, AT, CE, EG, LU, NM, MR, TT, DC, DO, GR, MD, ND, OT, PY, M1, M2, CI; 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

Amendments to rules affecting workers' compensation medical fee schedules and medical services

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

In the Matter of: The amendment of
OAR 436-009, Oregon Medical Fee and Payment Rules
OAR 436-010, Medical Services
OAR 436-060, Claims Administration

Statutory Authority: ORS 656.726(4); 656.248; 656.325

Other Authority:

Stats. Implemented: ORS chapter 656, primarily ORS 656.248, 656.252, 656.254, and 656.325

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: Unless stated otherwise, references to "insurers" (below) mean workers' compensation insurers and self-insured employers. The following is a list of significant estimated 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 this agency, as described below, and also 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.
- b. Proposed changes to OAR 436-009 affecting maximum allowable payments by CPT® code are based on the relative value units published by the Centers for Medicare & Medicaid Services (CMS). CMS has substantially increased the relative value units overall. CMS also decreased its conversion factor to offset the increased relative value units. The agency has adjusted its maximum allowable payments to reinstate current payment levels, which were substantially increased in July 2010. The agency's objective is to keep overall payments under the Physician Service Categories equivalent to payments under the existing schedule. However, the changes to individual CPT® codes may result in some changes in reimbursements according to the types of services provided by the individual providers.

- c.** Proposed changes to OAR 436-009 should promote communication between health care providers and payers. Insurers would have some initial costs to modify their explanations of benefits that accompany payments or denials of payment. While the changes proposed make it clear that the insurer cannot refer bill inquiries to other companies to answer, the requirement to answer physician questions relating to medical payments has not changed. There should not be any fiscal impact due to the clarification unless the insurer has not complied with the existing law. The agency projects, however, that the overall economic effect of the changes would be slightly positive by expediting appropriate payment and reducing payment disputes.
- d.** Proposed changes to OAR 436-009 would set maximum allowable payments for certain CPT® codes and two HCPCS codes relating to drug testing. The agency projects that this would have no overall positive or negative fiscal impact on providers, because the agency set the price at levels commonly paid; however, providers that have been paid more than the proposed maximum allowable payment for drug testing procedures would experience a decrease in reimbursement for these services.
- e.** Proposed changes to OAR 436-009 would limit payment to 80% of a health care provider's usual fee when the rules don't set a maximum allowable payment for a specific service. This change would decrease reimbursements for those services that are currently paid at the amount charged by the provider. The paid-as-billed codes are extensive (e.g., approximately 10,000 HCPCS codes), and charged regularly by nearly all providers working within the workers' compensation system. The agency projects this change would reduce payments to providers by approximately \$4 million per year, and reduce insurers' costs by a corresponding amount.
- f.** Proposed changes to OAR 436-009 would limit reimbursement for drugs to 110% of wholesale acquisition cost (WAC) or, if the drug has no WAC, to 80% of the average wholesale price. Proposed changes also include procedures and forms required for clinical justifications when health care providers prescribe certain drugs, to promote dispensing of generic and therapeutically equivalent drugs. The agency projects these changes would reduce reimbursements to pharmacies by approximately \$1.9 million per year, and reduce insurers' costs by a corresponding amount. If a health care provider fails to provide the clinical justification, the insurer may reduce the provider's future payments on the claim by the amount the insurer paid for the drug. The agency projects a small administrative cost for providers to complete the clinical justification forms.
- g.** Proposed changes to OAR 436-009 would require insurers to pay interpreters if a worker fails to attend a scheduled appointment that has been ordered by the insurer or the director. The agency projects that this change would have a positive economic impact on interpreters at a corresponding cost to insurers.
- h.** Proposed changes to OAR 436-009 include a fee schedule for ambulatory surgery centers (ASCs) that is more consistent with schedules used by the Centers for Medicare & Medicaid Services (CMS). The agency's objective is to keep overall payments to ASCs equivalent to payments under the existing schedule. However, the CMS model may result in some changes in reimbursements according to the types of services provided by the ASC.
- i.** Proposed changes to OAR 436-010 would require physical therapists to send progress reports to the worker's attending physician and the insurer. The objective is to promote effective treatment and to expedite return to work. The agency projects that this change could reduce or increase payments to therapists to the extent improved communication affects the frequency or duration of care.
- j.** Proposed changes to OAR 436-010 and 436-060 would eliminate the requirement that independent medical examination (IME) providers give workers a survey form, though workers would still receive a brochure explaining procedures to provide comments to the director about an IME and to file a complaint, either by using the agency's website or by telephone. The agency projects that this change would slightly reduce agency costs to process IME data. Insurers and providers will be required to print the brochure from a web-based document, which will add some administrative costs to insurers and providers.
- k.** 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:** Small businesses affected by these rules are primarily medical providers, including suppliers of prosthetics and orthotics, and independent community pharmacies (according to the Oregon Board of Pharmacy, Oregon has approximately 210 independent community pharmacies). Many language interpreters are also small businesses. We estimate approximately 12,000 Oregon 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:** Health care providers would assume a small administrative cost to complete clinical justification forms when prescribing certain drugs. Independent medical examination providers would assume a small administrative cost to print certain informational materials from the agency’s website. Please review additional potential impacts above, especially 1. e. and f.
- c. Equipment, supplies, labor and increased administration required for compliance:**
None anticipated.

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?

The agency asked the committees for advice on the economic impacts of the discussed changes, including impacts on small businesses.

/s/ John L. Shilts

John L. Shilts

Dec. 15, 2010

Signature

Printed name

Date

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



Claims Administration Oregon Administrative Rules Chapter 436, Division 060

Proposed

436-060-0095 Medical Examinations; Suspension of Compensation; and Independent Medical Examination Notice

(1) The division will suspend compensation by order under conditions set forth in this rule. The worker must have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension when the worker refuses or fails to submit to, or otherwise obstructs, an independent medical examination reasonably requested by the insurer or the director under ORS 656.325(1). Compensation will be suspended until the examination has been completed. The conditions of the examination shall be consistent with conditions described in OAR 436-010-0265. Any action of a friend or family member which obstructs the examination shall be considered an obstruction of the examination by the worker for the purpose of this rule. The division may determine whether special circumstances exist that would not warrant suspension of compensation for failure to attend or obstruction of the examination.

(2) The division will consider requests to authorize suspension of benefits on accepted claims, deferred claims and on denied claims in which the worker has appealed the insurer's denial.

(3) A worker must submit to independent medical examinations reasonably requested by the insurer or the director. The insurer may request no more than three separate independent medical examinations for each open period of a claim, except as provided under OAR 436-010. Examinations after the worker's claim is closed are subject to limitations in ORS 656.268(7).

(4) The insurer may contract with a third party to schedule independent medical examinations. If the third party notifies the worker of a scheduled examination on behalf of the insurer, the appointment notice is required to be sent on the insurer's stationery and must conform with the requirements of OAR 436-060-0095(5).

(5) If an examination is scheduled by the insurer or by another party at the request of the insurer, the worker and the worker's attorney shall be simultaneously notified in writing of the scheduled medical examination under ORS 656.331. The notice shall be sent at least 10 days prior to the examination. The notice sent for each appointment, including those which have been rescheduled, must contain the following:

- (a) The name of the examiner or facility;
- (b) A statement of the specific purpose for the examination and, identification of the medical specialties of the examiners;
- (c) The date, time and place of the examination;

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WORKERS' COMPENSATION DIVISION
Proposed CLAIMS ADMINISTRATION Rules

(d) The first and last name of the attending physician or authorized nurse practitioner and verification that the attending physician or authorized nurse practitioner was informed of the examination by, at least, a copy of the appointment notice, or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;

(e) If applicable, confirmation that the director has approved the examination;

(f) That the reasonable cost of public transportation or use of a private vehicle will be reimbursed and that, when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed. A request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance;

(g) That an amount will be paid equivalent to net lost wages for the period during which it is necessary to be absent from work to attend the medical examination if benefits are not received under ORS 656.210(4) during the absence;

(h) That the worker has the right to have an observer present at the examination, but the observer may not be compensated in any way for attending the exam; however, for a psychological examination, the notice must explain that an observer is allowed to be present only if the examination provider approves the presence of an observer; and

(i) The following notice in prominent or bold face type:

“You must attend this examination. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend and do not have a good reason for not attending, or you fail to cooperate with the examination, your workers’ compensation benefits may be suspended in accordance with the workers’ compensation law and rules, ORS 656.325 and OAR 436-060. You may be charged a \$100 penalty if you fail to attend without a good reason or if you fail to notify the insurer before the examination. The penalty is taken out of future benefits.

If you object to the location of this appointment you must contact the Workers’ Compensation Division at 1-800-452-0288 or 503-947-7585 within six business days of the mailing date of this notice. If you have questions about your rights or responsibilities, you may call the Workers’ Compensation Division at 1-800-452-0288 or 503-947-7585 or the Ombudsman for Injured Workers at 1-800-927-1271.”

(6) The insurer must include with each appointment notice it sends to the worker:

(a) A form for requesting reimbursement; **and**

(b) The director’s brochure, Form 440-3923, “Important Information about Independent Medical Exams.”; ~~and~~

(c) Form 440-~~XXXX~~0858, “Worker Independent Medical Exam (IME) Survey.”

(7) Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Services, comply with this rule.

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(8) The request for suspension must be sent to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request must include the following information:

- (a) That the insurer requests suspension of benefits under ORS 656.325 and OAR 436-060-0095;
- (b) The claim status and any accepted or newly claimed conditions;
- (c) What specific actions of the worker prompted the request;
- (d) The dates of any prior independent medical examinations the worker has attended in the current open period of the claim and the names of the examining physicians or facilities, or a statement that there have been no prior examinations, whichever is appropriate;
- (e) A copy of any approvals given by the director for more than three independent medical examinations, or a statement that no approval was necessary, whichever is appropriate;
- (f) Any reasons given by the worker for failing to comply, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;
- (g) The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the exam received by the insurer from the worker or the worker's representative will be sufficient documentation with which to request suspension;
- (h) A copy of the letter required in section (5) and a copy of any written verification received under subsection (8)(g);
- (i) Any other information which supports the request; and
- (j) The following notice in prominent or bold face type:

“Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the mailing date of this request. If the division grants this request, you may lose all or part of your benefits. If your claim has not yet been accepted, your future benefits, if any, will be jeopardized.”

(9) If the division consents to suspend compensation, the suspension shall be effective from the date the worker fails to attend an examination or such other date the division deems appropriate until the date the worker undergoes an examination scheduled by the insurer or director. Any delay in requesting consent for suspension may result in authorization being denied or the date of authorization being modified.

(10) The insurer must assist the worker in meeting requirements necessary for the resumption of compensation payments. When the worker has undergone the independent medical examination, the insurer must verify the worker's participation and reinstate compensation effective the date of the worker's compliance.

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(11) If the worker makes no effort to reinstate compensation in an accepted claim within 60 days of the mailing date of the consent to suspend order, the insurer must close the claim under OAR 436-030-0034(7).

(12) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. Failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(13) The division may also take the following actions concerning the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error.

(c) Reevaluate the necessity of continuing a suspension.

(14) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

Stat. Auth: ORS 656.325, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.325, 656.704, and 656.726(4)

Hist: Amended 6/15/06 as WCD Admin Order 06-056, eff. 7/1/06

Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010

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