



Oregon

John A. Kitzhaber, MD, Governor

Department of Consumer and Business Services
Workers' Compensation Division
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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.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals

Notice of Proposed Rulemaking Hearing

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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
Agency and Division

436

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):

- a. 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.
- b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
- The agency projects no significant economic impact.
- c. 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

Signature

John L. Shilts

Printed name

Sept. 15, 2011

Date

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



Managed Care Organizations Oregon Administrative Rules Chapter 436, Division 015

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

436-015-0008 Administrative Review

(1) Any party may request that the director provide voluntary mediation after a request for administrative review or hearing is filed. The request must be in writing. When a dispute is resolved by agreement of the parties to the **director's** satisfaction ~~of the director~~, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, administrative review shall continue.

(2) Administrative review before the director: The process for administrative review of such matters shall be as follows:

(a) Any party that disagrees with an action taken by an MCO pursuant to these rules must first use the **MCO's** dispute resolution process ~~of the MCO~~. If the party does not appeal the MCO's decision, in writing and within 30 days of the mailing date of the decision, the party will lose all rights to further appeal the decision.

(b) The aggrieved party shall file a written request for administrative review with the administrator of the Workers' Compensation Division within 60 days of the date the MCO issues a final decision under the MCO's dispute resolution process. If a party has been denied access to an MCO dispute resolution process because the complaint or dispute was not included in the MCO's dispute resolution process or because the MCO's dispute resolution process was not completed for reasons beyond a party's control, the party may request administrative review within 60 days of the failure of the MCO to issue a decision. The request must specify the grounds upon which the action is contested.

(c) The director shall create a documentary record sufficient for judicial review. The director may require and allow the parties to submit such input and information appropriate to complete the review.

(d) The director shall review the relevant information and issue an order. The order shall specify that it will become final and not subject to further review unless a written request for hearing is filed with the administrator within 30 days of the mailing date of the order.

(3) Hearings before an administrative law judge: Any party who disagrees with an order under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order. OAR 436-001 applies to the hearing.

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
Proposed MANAGED CARE ORGANIZATIONS Rules

In the review of orders issued pursuant to ORS 656.260(14) and (16), no new medical evidence or issues shall be admitted at hearing. In these reviews, administrative orders may be modified at hearing only if the administrative order is not supported by substantial evidence in the record or reflects an error of law. The dispute may be remanded to the MCO for further evidence taking, correction, or other necessary action if the administrative law judge or director determines the record has been improperly, incompletely, or otherwise insufficiently developed.

(4) Contested case hearings of sanctions and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of civil penalty issued by the director pursuant to ORS 656.745, **or to a civil penalty or cease and desist order issued under ORS 656.260(20)**, may request a hearing by the Hearings Division of the Workers' Compensation Board as follows:

(a) The party shall file a written request for a hearing with the administrator of the Workers' Compensation Division within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An administrative law judge from the Hearings Division, acting on behalf of the director, shall conduct the hearing in accordance with ORS 656.740 and ORS chapter 183.

(5) Hearings on the suspension or revocation of an MCO's certification:

(a) At a hearing on a notice of intent to suspend issued pursuant to OAR 436-015-0080(2), the MCO must show cause why it should be permitted to continue to provide services under these rules.

(A) If the director determines that the acts or omissions of the MCO justify suspension of the MCO's certification, the director may issue an order suspending the MCO for a period of time up to a maximum of one year or may initiate revocation proceedings pursuant to OAR 436-015-0080(5). If the director determines that the acts or omissions of the MCO do not justify suspension, the director shall issue an order withdrawing the notice.

(B) If the MCO disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(C) OAR 436-001 applies to the hearing.

(b) A revocation issued pursuant to OAR 436-015-0080(5) shall become effective within 10 days after service of such notice upon the MCO unless within such period of time the MCO corrects the grounds for revocation to the satisfaction of the director or files a written request for hearing with the administrator of the Workers' Compensation Division.

(A) If the MCO appeals, the administrator shall set a date for a hearing and shall give the MCO at least ten days notice of the time and place of the hearing. At hearing, the MCO shall show cause why it should be permitted to continue to provide services under these rules.

(B) Within thirty days after the hearing, the director shall issue an order affirming or withdrawing the revocation.

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
Proposed MANAGED CARE ORGANIZATIONS Rules

(C) If the MCO disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(D) OAR 436-001 applies to the hearing.

(c) An emergency revocation issued pursuant to OAR 436-015-0080(7) is effective immediately. The MCO must file a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 183.310 thru 550; ~~and~~ ORS 656.260; and 656.726(4)

Stats. Implemented: ORS 656.260

Hist: Amended 12/1/05 as Admin. Order 05-072, eff. 1/1/06

Amended xx/xx/xx as Admin. Order 11-xxx, eff. xx/xx/xx