

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 160**

ELECTRONIC DATA INTERCHANGE

PROPOSED

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The proposed amendment to the rules was announced in the Secretary of State's *Oregon Bulletin* dated October 1, 2005. On November 1, 2005, a public rulemaking hearing was held as announced at 10:30 a.m. in Room 260 of the Labor and Industries Building, 350 Winter Street NE, Salem, Oregon 97301-3879. Fred Bruyns, from the Workers' Compensation Division, acted as hearing officer. Business Support Services audio-recorded the hearing and created a written transcript. The record was held open for written comment through November 7, 2005.

The division received no public testimony on the proposed changes to OAR 436-160, and did not make any of the proposed changes permanent.

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

Dept of Consumer and Business Services, Workers' Compensation Division	OAR CHAPTER 436
Agency and Division	Administrative Rules Chapter Number
Fred Bruyns	(503) 947- 7717 Fax (503) 947-7581
Rules Coordinator	Telephone
PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879	
Address	

	Room 260 (2 nd Floor, Labor & Industries Building)		
November 1, 2005	10:30 a.m.*	350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing date	Time	Location	Hearings Officer

***NOTE: The hearing will begin at 10:30 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through November 7, 2005.**

**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 436-055-0085, 436-060-0137, 436-060-0510, 436-120-0755

AMEND: OAR 436-010; OAR 436-060; and

436-015-0008	436-030-0023	436-035-0008	436-035-0360	436-050-0170	436-110-0337
436-015-0030	436-030-0034	436-035-0009	436-035-0380	436-050-0220	436-110-0345
436-015-0040	436-030-0055	436-035-0011	436-035-0390	436-050-0230	436-120-0003
436-015-0070	436-030-0065	436-035-0012	436-035-0395	436-055-0070	436-120-0008
436-015-0080	436-030-0115	436-035-0016	436-035-0400	436-055-0100	436-120-0320
436-015-0110	436-030-0155	436-035-0017	436-035-0410	436-105-0003	436-120-0900
436-030-0002	436-030-0165	436-035-0019	436-035-0420	436-105-0500	436-160-0003
436-030-0003	436-030-0175	436-035-0110	436-035-0430	436-110-0002	436-160-0005
436-030-0005	436-030-0185	436-035-0190	436-035-0500	436-110-0005	
436-030-0007	436-030-0575	436-035-0230	436-050-0003	436-110-0310	
436-030-0009	436-030-0580	436-035-0330	436-050-0008	436-110-0326	
436-030-0015	436-035-0005	436-035-0340	436-050-0100	436-110-0327	
436-030-0020	436-035-0007	436-035-0350	436-050-0110	436-110-0335	

REPEAL: None

ORS 656.726(4)
 Stat. Auth.

Other Authority
 ORS chapter 656, primarily: ORS 656.704, Enrolled House Bill (HB) 2091 – Oregon Laws (OL) 2005, ch. 26; ORS 656.268, Enrolled HB 2404 – OL 2005, ch. 569; ORS 656.273, Enrolled HB 2405 – OL 2005, ch. 50; ORS 656.726, Enrolled HB 2408 – OL 2005, ch. 653; ORS 656.262, Enrolled HB 2718 – OL 2005, ch. 189; Enrolled HB 3318 – OL 2005, ch. 511; ORS 656.262, 656.313, 656.605, 656.622, Enrolled Senate Bill (SB) 119 – OL 2005, ch. 588; ORS 656.268, 656.745, Enrolled SB 172 – OL 2005, ch. 221; ORS 656.325, Enrolled SB 311 – OL 2005, ch. 675; ORS 656.206, .656.268, 656.319, 656.605, 656.319, Enrolled SB 386 – OL 2005, ch.461; ORS 656.260, Enrolled SB 670 – OL 2005, ch. 364

Stats. Implemented

Notice of Proposed Rulemaking Hearing

RULE SUMMARY

Proposed amendment of workers' compensation rules affecting injured workers, employers, medical providers, insurers, and others.

Changes directly related to 2005 legislation are marked with asterisks *. Some changes apply only to injuries that occur on or after 1/1/2006. Proposed substantive amendments affect:

- *Hearings on workers' compensation matters currently processed by the Office of Administrative Hearings – moved to the Workers' Compensation Board, for all hearings held on or after January 2, 2006.
- *Independent medical examinations (IME)s – including a worker's right to contest the location of the exam and associated increase to 90 days for the insurer to accept or deny the claim if the worker prevails; penalty to worker for failure to attend; penalty to medical provider for failure to forward diagnostic records to the IME provider; requirement (effective 7/1/2006) for the director to develop a list of medical providers who are authorized to perform IMEs and for all IMEs to be scheduled with a physician on the list.
- *The reporting and processing of aggravation claims;
- Elective surgery notification;
- Types of care that are reimbursable after the worker becomes medically stationary (clarification only);
- *Requirements that managed care organizations submit copies of their treatment standards and protocols to the director for review and approval;
- Closure notice requirements in fatal claims;
- Reduced insurer reporting requirements for claims in which workers have no permanent impairment;
- *Permanent total disability – including limitations on benefits if the worker incurs a new injury; criteria for re-examination or reduction; required vocational evaluations and suspension of benefits for failure to attend or non-cooperation; appeals of termination; automatic eligibility for vocational assistance upon termination of permanent total disability (by final order);
- The reconsideration record – video recordings, duplicate records;
- *Penalties upon reconsideration – limitations;
- *Insurer data reporting necessary for the Workers' Compensation Division to assess the impact of legislative changes on permanent partial disability awards;
- *The effect of a regular work release on awards of work disability and social/vocational factors;
- Requirements to round percentages of impairment – hearing and vision no longer taken to the 100th of a percent;
- Rating of impairment for skin disorders – signs and symptoms need not be present upon examination;
- Insurer's notice to employer of policy cancellation to include a statement that the guaranty contract will terminate;
- Insurers' reporting of names or positions of key contacts to the Workers' Compensation Division;
- *The right of self-insured public utilities with assets in excess of \$500 million to obtain excess workers' compensation insurance coverage from an eligible surplus lines insurer;
- *Required training for certified claims examiners on interactions with independent medical exam providers;
- Adjustments – up and down – of insurer claims processing compliance thresholds (affecting penalties);
- *The dollar amount employers can pay for medical services on non-disabling claims;
- *Requirement (effective 7/1/2006) that Worker Requested Medical Examinations be conducted by a medical provider on the list of authorized independent medical examination providers maintained by the director;
- Increase of certain maximum penalty amounts to the \$2,000 statutory maximum;
- Eligibility for Preferred Worker Program benefits – workers must be authorized to work in the United States;
- *Reimbursement from the Workers' Benefit Fund of permanent total disability (PTD) payments made by the insurer during an appeal of termination of PTD – if the insurer prevails;
- For the purposes of reimbursement of wage subsidies under the Employer-at-Injury Program, allowance for supplemental documentation to clarify information not fully explained by the payroll record;
- *Provision for direct assistance to workers under ORS 656.622 to promote re-employment;
- *Reimbursement from the Workers' Benefit Fund of the insurer's vocational assistance costs incurred after the insurer appeals an administrative order to provide such assistance (if the insurer prevails);
- Deletion of the penalty matrix for three types of violations of the vocational assistance rules;

Notice of Proposed Rulemaking Hearing

- Requirement that insurers submit the legal name of the employer (not a “doing business as” name, etc.), whether reporting by paper or electronically;
- Provision for the director to impose a civil penalty for violation of ORS chapter 656, in addition to violation of rules and orders of the director.

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 503-947-7581; 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> or from WCD Publications, 503-947-7627 or fax 503-947-7630.

November 7, 2005
Last Day for Public Comment

/s/ John L. Shilts 9/15/05
Authorized Signer and Date

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

In the Matter of)	
The Amendment of OAR:)	
436-010, Medical Services)	
436-015, Managed Care Organizations)	Statutory Authority,
436-030, Claim Closure and Reconsideration)	Statutes Implemented,
436-035, Disability Rating Standards)	Statement of Need,
436-050, Employer/Insurer Coverage Responsibility)	Principal Documents Relied Upon,
436-055, Claims Examiner Certification)	Statement of Fiscal Impact
436-060, Claims Administration)	
436-105, Employer-at-Injury Program)	
436-110, Preferred Worker Program)	
436-120, Vocational Assistance to Injured Workers)	
436-160, Electronic Data Interchange)	

Statutory Authority: ORS 656.726(4)

Other Authority:

Statutes Implemented: ORS chapter 656, primarily: ORS 656.704, Enrolled House Bill (HB) 2091 – Oregon Laws (OL) 2005, ch. 26; ORS 656.268, Enrolled HB 2404 – OL 2005, ch. 569; ORS 656.273, Enrolled HB 2405 – OL 2005, ch. 50; ORS 656.726, Enrolled HB 2408 – OL 2005, ch. 653; ORS 656.262, Enrolled HB 2718 – OL 2005, ch. 189; Enrolled HB 3318 – OL 2005, ch. 511; ORS 656.262, 656.313, 656.605, 656.622, Enrolled Senate Bill (SB) 119 – OL 2005, ch. 588; ORS 656.268, 656.745, Enrolled SB 172 – OL 2005, ch. 221; ORS 656.325, Enrolled SB 311 – OL 2005, ch. 675; ORS 656.206, .656.268, 656.319, 656.605, 656.319, Enrolled SB 386 – OL 2005, ch.461; ORS 656.260, Enrolled SB 670 – OL 2005, ch. 364

Need for the Rule(s): These proposed rule changes implement changes to Oregon laws. Some additional changes are proposed to clarify and simplify existing rules.

Documents Relied Upon: Enrolled House and Senate Bills listed next to “Statutes Implemented”; rulemaking advisory committee meeting records. These records are available for public inspection in the Administrator’s Office, Workers’ Compensation Division, 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: This statement of fiscal impact does not address those impacts associated with the House and Senate Bills implemented by these rules, except to the extent proposed rule changes may modify the impact of the law, as when the law gives the director the discretion to set penalty amounts.

Regarding: Transfer of hearings from the Office of Administrative Hearings to the Workers’ Compensation Board: Proposed rules related to passage of HB 2091 do not substantially alter the actions required of the parties to a hearing, and should not have any significant economic impact on any persons or businesses, including small businesses.

Regarding: Penalties to insurer upon reconsideration of the claim closure: Proposed rules related to passage of HB 2404 should have no effect in addition to any effect caused by the law change.

Regarding: Reporting and processing of aggravation claims: Proposed rules related to passage of HB 2405 should have no effect in addition to any effect caused by the law change.

Regarding: Regular work release and the relevance of social vocational factors and impact on awards for work disability: Proposed rules related to passage of HB 2408 should have no effect in addition to any effect caused by the law change.

Statement of Need and Fiscal Impact

Regarding: Allowing self-insured public utilities to obtain excess workers' compensation insurance coverage from eligible surplus lines insurers: Proposed rules related to passage of HB 2718 should have no effect in addition to any effect caused by the law change.

Regarding: Allowing employers to pay up to \$1500 for medical services on non-disabling claims (for dates of injury on or after 1/1/2006): Proposed rules related to passage of HB 3318 should have no effect in addition to any effect caused by the law change.

Regarding: Providing direct assistance to workers under ORS 656.622 to promote re-employment; and reimbursement from the Workers' Benefit Fund of the insurer's vocational assistance costs during an appeal of an administrative order to provide such assistance (if the insurer prevails): Proposed rules related to passage of SB 119 should have no effect in addition to any effect caused by the law change.

Regarding: The director's authority to impose a civil penalty for violation of ORS chapter 656 (not just violations related to rules and orders of the director): Proposed rules related to passage of SB 172 have no immediate effect, but should facilitate a reduction in future rulemaking and elimination of some rules that repeat statutory wording.

Regarding: Changes to requirements for independent medical examinations (IME)s –

1) The penalty amount to the worker for failure to attend an IME was not set by statute. The rules propose \$100. Independent medical examination firms have indicated a 10% to 20% no-show rate, though these may include non-workers' compensation cases, where failure to attend has fewer consequences. We estimate a 15% no-show rate: 15% times 15,000 (estimated annual IMEs) = 2,250 no-shows. The \$100 penalty may only be applied if the worker is not receiving time-loss payments. We have no data on the percentage of no-shows who are receiving time-loss. However, if we assume as many as 50% are not, the potential fiscal impact would be $2,250/2 \times \$100 = \$112,500$. This is a theoretical impact on injured workers, as the penalty may only be recovered from future benefits, if any. It is probable that no more than \$50,000 per year will be recovered. This would be a negative fiscal impact to affected workers and a positive impact for insurers, though insurers would have associated administrative costs in recovering this money. The purpose of the penalty is improved attendance at the IMEs. To the extent this is achieved, claim processing will be expedited, IME providers will lose fewer dollars due to no-shows, and overall system costs will be lowered.

2) The penalty amount to a medical provider for failure to forward diagnostic records to the IME provider was not set by statute. The rules propose \$100. We do not have data on the number of providers who unreasonably fail to provide diagnostic records. We estimate a maximum of 5%. 5% of 15,000 IMEs annually $\times \$100 = \$75,000$. This would be a negative fiscal impact to affected medical providers. Again, to the extent the penalty promotes compliance, IME examinations will be more effective and certain diagnostic procedures will not be repeated. To the extent this is achieved, overall system costs will be lowered.

3) In order to implement SB 311 and the recommendations of the Management-Labor Advisory Committee, the rules require some new notices and forms. We estimate that the IME notice and related materials the insurer sends to the worker will rise to greater than 1 oz (but less than 2 oz). This would raise the cost of each mail piece by \$0.23. $15,000 \text{ IMEs} \times \$0.23 = \$3,450$. Paperwork requirements for medical providers may add about \$1 per appointment to providers' costs, or about \$15,000 per year system wide.

4) Additional Proposed rules related to passage of SB 311 should have no effect in addition to any effect caused by the law change.

Regarding: Permanent total disability: Proposed rules related to passage of SB 386 should have no effect in addition to any effect caused by the law change.

Regarding: Requirements that managed care organizations submit copies of their treatment standards and protocols to the director for review and approval: Proposed rules related to passage of SB 670 should have no effect in addition to any effect caused by the law change.

Regarding: Reporting and notice requirements

1) Reduced reporting requirements at closure for workers who have no permanent impairment and reduced notification requirements for elective surgery: These changes should have a small positive impact on insurers and medical providers.

2) Requiring insurers to remove duplicates from the record submitted for reconsideration of claim closures: This change will increase labor costs for insurers to review their files. The exact dollar amount cannot be estimated, because insurers have very different record management systems. If the average insurer cost was \$5 per claim, the overall cost to insurers would be somewhat less than \$25,000 per year. However, insurers and the Workers' Compensation Division should gain processing efficiency by having a more compact file, so the system as a whole

Statement of Need and Fiscal Impact

may see a net cost reduction; requiring insurers to include guaranty contract termination language on their policy cancellation letters will raise costs for those insurers who do not do this currently. Because this is an Oregon-specific requirement, this affects national carriers who may have standard letters for many states. The set-up costs will be significant; however, insurers who fail to include proper notice of termination can be held liable for future claims by the “covered” employer, and we estimate that such claims costs would be greater than the costs of modifying policy cancellation letters.

Regarding: Changes to penalty amounts and compliance thresholds: Increasing the maximum penalty to the statutory maximum allows the director to address particularly egregious or frequent violations. The net effect on the parties in the workers’ compensation system should be minor or possibly zero. The purpose of penalties is to encourage compliance with the law. To the extent this is achieved, penalties may decline and the net effect would be positive. The same can be said of thresholds. The Workers’ Compensation Division published an industry notice dated June 1, 2006 announcing that the thresholds would change, thus allowing insurers time to adjust processes to meet certain time frames. The focus is on timely acceptance or denial of claims and payment of benefits, so these thresholds will be 90% (effectively an increase – the 95% threshold in OAR 436-060-0140 was not applied), while reporting of claim information to the division will be held to a lower standard, 80% (a decrease). We cannot project the net fiscal impact because we cannot anticipate the compliance rate, but it is likely that insurers will see some increased penalties in the near term.

Regarding: Additional proposed changes: We estimate that additional changes will not have any significant economic impact on any persons or businesses, including small businesses.

Administrative Rule Advisory Committee consulted: Yes, 8/25/05, 8/26/05, 8/30/05 (two meetings), & 8/31/05

/s/ John L. Shilts

9/15/05

Signature and Date

John L. Shilts, Administrator, Workers’ Compensation Division

Printed name

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

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
PROPOSED ELECTRONIC DATA INTERCHANGE**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 160**

General Provisions

436-160-0003 Applicability of Rules

(1) These rules apply to workers' compensation related transactions filed with the director via electronic data interchange on or after January 1, [2004]**2006**.

(2) The director may, unless otherwise obligated by statute, waive any procedural rules in this rule division as justice so requires.

Stat. Authority: ORS 656.726(4)

Stat. Implemented: ORS 656.726(4)

Hist: Adopted 3/17/03 as Admin. Order 03-052, eff 4/1/03

Amended 12/3/03 as Admin. Order 03-064, eff. 1/1/04

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

436-160-0005 General Definitions

For the purpose of these rules, unless it conflicts with statute or rule:

(1) "Conditional data element" means an element that becomes mandatory under certain conditions. Once mandatory, a conditional data element will cause a rejection of the transaction if the data element is omitted or submitted in a format not capable of being processed by the division's information processing system.

(2) "Director" means the Director of the Department of Consumer and Business Services or the director's designee for the matter.

(3) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(4) "Electronic Data Interchange" or "EDI" means a computer to computer exchange of information in a standardized electronic format.

(5) "Electronic Record" means information created, generated, sent, communicated, received, or stored by electronic means.

(6) "Employer Name" means the legal name of the employer.

([6]7) "FEIN" means the federal employer identification number or other federal reporting number used by the insurer, insured, or employer for federal tax reporting purposes.

([7]8) "Header record" means the record that precedes each transmission for the purpose of identifying a sender, the date and time of the transmission, and the transaction set within the transmission.

([8]9) "IAIABC" means the International Association of Industrial Accident Boards and Commissions, a professional trade association comprised of state workers' compensation regulators and insurance representatives (www.iaiaabc.org).

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
PROPOSED ELECTRONIC DATA INTERCHANGE

([9]**10**) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

([10]**11**) "Industry code" means the code which indicates the nature of the employer's business, which is contained in the Standard Industrial Classification (SIC) manual published by the Federal Office of Management and Budget, or in the North American Industrial Classification System (NAICS) published by the U.S. Census Bureau.

([11]**12**) "Insurer" means workers' compensation insurance carrier providing coverage to an employer, or a self-insured employer.

([12]**13**) "Mandatory data element" means an element that will cause a rejection of a transaction if the data element is omitted or submitted in a format not capable of being processed by the division's information processing system.

([13]**14**) "Optional data element" means an element that an insurer should report to the director if the information is available to the insurer. Optional data elements will not cause a rejection if missing or invalid.

([14]**15**) "Proof of coverage" means an electronic record or set of records identifying an insurer as providing workers' compensation coverage for a specific employer.

([15]**16**) "Record" means electronic record.

([16]**17**) "Sender" means the person or entity reporting electronic data interchange transactions to the division. Sender may include vendors or insurers.

([17]**18**) "Trading partner agreement" means the agreement entered into pursuant to OAR 436-160-0020 between the director and an insurer to conduct transactions via EDI.

([18]**19**) "Trailer record" means the record that designates the end of a transmission and provides a count of transactions contained within the transmission, not including the header and trailer records.

([19]**20**) "Transaction" means a set of EDI records, defined according to standards in OAR 436-160-0004.

([20]**21**) "Transmission" means a defined set of transactions, including both header and trailer records to be sent to the division or sender via EDI.

([21]**22**) "Vendor" means an agent identified in a trading partner agreement to submit transmissions to the division on behalf of an insurer. Vendors may include service companies, third party administrators, and managing general agents.

Stat. Authority: ORS 656.264 and ORS 656.726(4)

Stat. Implemented: ORS 84.004 and ORS 656.264

Hist: Adopted 3/17/03 as Admin. Order 03-052, eff 4/1/03

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