

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Certification of Claims Examiners
Oregon Administrative Rules
Chapter 436, Division 055**

Effective July 1, 2006

Revisions are marked as follows:

Deleted text has a "strike-through" style, as in ~~Deleted~~
Added text is bold and underlined, as in **Added**

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HISTORY LINES: These rules include only the most recent "History" lines. A rule's history line shows when the rule was last revised and its effective date. To obtain a "Chapter 436 revision history index," please call the Workers' Compensation Division, (503) 947-7627, or visit the division's Web site: <http://www.wcd.oregon.gov/policy/rules/history.html>

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**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

In the Matter of the Amendment of Oregon Administrative Rules)
(OAR):)

	Order No.	
436-010, Medical Services	06-054)
436-055, Certification of Claims Examiners.....	06-055)
436-060, Claims Administration	06-056)
436-070, Workers' Benefit Fund Assessment.....	06-057)

**ORDER OF
ADOPTION**

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436.

On April 13, 2006, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking/Hearing* and *Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0000, and posted copies to its Web site. The Secretary of State included notice of the public hearing in its May 2006 *Oregon Bulletin*.

On May 22, 2006, a public hearing was held as announced. In addition, the record was held open for written testimony through May 26, 2006. A summary of the public testimony is on file and available for public inspection upon request during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405.

RULE SUMMARY

These rules have been amended to:

- (OAR 436-010-0220) Clarify that referrals to a specialist physician by an attending physician or authorized nurse practitioner must be written. Clarify that the referral includes authority for the specialist physician to provide services and treatment unless the referral includes limitations;
- (OAR 436-010-0230) Clarify that any consent form for attendance by an employer representative at a worker's medical exam must be written in a way that allows the worker to understand it and to overcome language or cultural differences;
- (OAR 436-010-0265):
 - State the criteria for a person to be added to the list of qualified independent medical examination (IME) providers;
 - Describe training requirements for IME providers;
 - State the criteria for removal of an IME provider from the list;
 - Establish the curriculum to be used to train IME providers;
 - Disallow use of IME reports from providers who are not on the director's IME provider list;
 - Eliminate the seven-day time frame for an IME provider to send the examination report to the insurer;
- (OAR 436-010-0265 & 436-060-0095) Require that insurers and IME providers give workers survey forms to report their IME experiences to the Workers' Compensation Division;

Order of Adoption
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- (436-010-0275) Require that the insurer forward information to the appropriate managed care organization if the information was sent to the insurer in error;
- (OAR 436-055-0008) Reflect the requirement, effective January 1, 2006, that hearings on workers' compensation matters previously processed by the Office of Administrative Hearings have been transferred to the Workers' Compensation Board;
- (OAR 436-055-0085) Clarify that specific training for renewal of claims examiner certification can be approved if it covers some, but not necessarily all, of the components listed in OAR 436-055-0085(2);
- (OAR 436-055-0120) Repeal specific requirements affecting service of orders by the director; and
- (OAR 436-070-0020) Clarify the criteria for issuance of a Failure to File Notice or Notice of Audit Findings.

FINDINGS

Having reviewed and considered the record and being fully informed, I make the following findings:

- a) The applicable rulemaking procedures have been followed.
- b) These rules are within the director's authority.
- c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT

- 1) Amendments to OAR chapter 436, as set forth in Exhibit "A", are attached, incorporated by reference, and **adopted on this 15th day of June 2006, to be effective July 1, 2006.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.
- 3) A copy of the amended rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

DATED this 15th day of June 2006.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Under the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 947-7810.

Distribution: WCD-ID, NM, ML, ME, S0, S1, S2, S3, S4, S5, S6, S7, S8

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CERTIFICATION OF CLAIMS EXAMINERS**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 055**

436-055-0001 Authority for Rules

These rules are promulgated under the director's authority pursuant to ORS 656.726 and 656.780.

Stat. Auth.: ORS 656.726(3)(a) and ORS 656.780(1)
Hist: Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94

436-055-0002 Purpose of Rules

The purpose of these rules is to establish standards for the certification of workers' compensation claims examiners pursuant to ORS Chapter 656.

Stat. Auth.: ORS 656.780(1)
Hist: Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

436-055-0003 Applicability of Rules

(1) These rules apply to the certification of all workers' compensation claims examiners on or after the effective date of these rules.

(2) The certification of any workers' compensation claims examiner valid on December 31, 1999 shall continue without expiration until December 31, 2000. However, this provision does not shorten any two year certification period.

(3) Any claims examiner certified on October 22, 1999, with a renewal date between October 23, 1999 and December 31, 1999, may present records to the insurer for renewal. The claims examiner's certification period shall be renewed for two years upon verification that the certified claims examiner met the continuing education requirements under the rules in effect on the date renewal was due, however no course taken after October 22, 1999 needs to be certified.

(4) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.780
Hist: Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

436-055-0005 Definitions

Except where the context requires otherwise, these rules are governed by the following definitions:

(1) "Claims examiner" means anyone who has primary responsibility for decision making or benefit determination in a claim. This includes those who decide compensability of new claims or aggravations, calculate benefits, authorize payments, or who represent employers by direct contact with the department or Board. This definition does not include attorneys representing employers before the department or Board, or those who primarily perform clerical functions.

(2) "Claims Examiner Trainee" means a person hired by an insurance company, self-insured employer or third party administrator to decide compensability of new claims or

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aggravations, calculate benefits, or authorize payments, who works under the direct supervision of a certified claims examiner.

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

(4) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state ; an assigned claims agent selected by the director under ORS 656.054; an employer certified under ORS 656.430 that meets the qualifications of a self-insured employer under ORS 656.407; or a third party administrator.

(5) "Party" includes anyone listed in ORS 656.005(21) and a third party administrator.

(6) "Process Claims" means the receipt, review and payment of compensation for workers' claims.

(7) "Temporary Claims Examiner" means a person with at least two years of prior claims processing experience hired by an insurance company, self-insured employer or service company to decide compensability of new claims or aggravations, calculate benefits, or authorize payments in Oregon workers' compensation claims, who works under the direct supervision of a certified claims examiner.

(8) "Third party administrator" means a service company who processes claims for an insurer or self-insurer under the conditions prescribed in ORS 731.475(3) and ORS 656.455(1).

Stat. Auth.: ORS 656.726(3)(a)

Hist: Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

436-055-0008 Administrative Review

(1) Any party ~~aggrieved by~~ **that disagrees with** a proposed order or proposed assessment of civil penalty of the director issued ~~pursuant to~~ **under** ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (~~section 9, chapter 170, Oregon Laws 2003~~). The request for hearing must be mailed or delivered to the Administrator of the Workers' Compensation Division by the aggrieved person 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.

(2) ~~**Under ORS 656.704(2)**, Any party aggrieved by **that disagrees with** an action or order of the director ~~pursuant to~~ **under** these rules, other than as described in section (1), ~~where such action or order qualifies for review by hearing as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). Any party may request a contested case hearing as follows:~~~~

~~(a) The request for hearing must be mailed or delivered to the Administrator of the Workers' Compensation Division~~ **by filing a hearing request as provided in OAR 436-001-0019** within 60 days of the **mailing date of the order or notice of** action., ~~the date of mailing, or other service of an order. The request must specify the grounds upon which the action or order is contested.~~

~~(b) The hearing shall be conducted by an Administrative Law Judge of the Office of~~

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Administrative Hearings.

~~(e) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order. **OAR 436-001 applies to the hearing.**~~

(3) Any person ~~aggrieved by~~ **that disagrees with** an action taken pursuant to **under** these rules by another person, except as described in sections (1) and (2), may request administrative review by the director as follows:

(a) The request for administrative review must be mailed or delivered to the Administrator of the Workers' Compensation Division within 90 days of the action. The request must specify the grounds upon which the action is contested.

(b) The review will be conducted by the director.

(c) The director will review the relevant information submitted by all parties.

(d) The director will issue an administrative order that specifies whether the determination constitutes a final order or whether an aggrieved party may request a ~~contested case~~ hearing **under** ~~before an Administrative Law Judge of the Office of Administrative Hearings pursuant to ORS 183.310 and the procedures provided in~~ section (2).

Statutory authority: ORS 656.735(5) through (7); ORS 656.745(4); ORS 656.726(4)

Statutes implemented: ORS 656.740(~~section 9, chapter 170, Oregon Laws 2003~~), ORS 183.310 through 183.550, ORS 656.726

History: **Amended 6/15/06 as WCD Admin. Order 06-055, eff. 7/1/06**

436-055-0070 Certification of Claims Examiners

(1) Claims examiners shall be certified by the insurer upon satisfactory completion of an examination which demonstrates the individual's:

(a) Familiarity with the workers' compensation statutes;

(b) Ability to navigate the administrative rules found in this chapter;

(c) Capability to perform claim processing activities; and

(d) ~~For examinations on or after July 1, 2006, u~~Understanding of activities related to interactions with independent medical examination providers **that includes all the components in OAR 436-055-0085(2).**

(2) Any person taking an examination may use a copy of ORS Chapter 656 and the Oregon Administrative Rules during the examination.

(3) A passing score on an examination shall be 80 percent or greater.

(4) Any examination completed through dishonest or fraudulent means shall be considered invalid.

(5) Certification will be for a three-year period. The certification date shall be the date of the examination.

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(6) Certification shall be renewed at any time during the certification period by providing verification of completion of 24 hours of training during the current certification period, to include at least:

(a) Four hours of training on the workers' compensation statutes, administrative rules, and case law since the last certification; and

(b) For renewals on or after January 1, 2007, three hours of training related to interactions with independent medical examination providers **that covers all the components in OAR 436-055-0085(2). The three hours of training may be completed in increments.**

(7) Training may be provided in the form of a seminar, workshop, association meeting, forum, correspondence, video or similar course. It may include any of the following subjects:

(a) Medical case management including, but not be limited to, medical terminology, basic human anatomy and interpreting medical reports.

(b) Communication skills including, but not be limited to, courses in ethics, mediation, negotiation and dealing with angry people.

(c) Instruction dealing specifically with the processing of Oregon workers' compensation claims.

Statutory authority: ORS 656.726

Statutes implemented: ORS 656.780(1)

History: Amended 6/15/06 as WCD Admin. Order 06-055, eff. 7/1/06

436-055-0085 Training for Interactions with Independent Medical Examination Providers

(1) Any training provided pursuant to **under OAR** 436-055-0070 or OAR 436-055-0100(4) relating to independent medical examination provider interaction must first be approved by the director.

(2) To be approved, a training curriculum **for initial certification** must incorporate the following components:

(a) Appropriate and ethical communication with independent medical examination providers;

(b) Insurers' rights and responsibilities;

(c) Injured workers' rights and responsibilities;

(d) Independent medical examination providers' standards of conduct requirement;

(e) IME complaint process and investigations by WCD; and

(f) Training specific to the requirements of ORS 656.325 and OAR 436-010.

(3) To be approved, a training curriculum for renewal of certification must incorporate some or all of the components in (2).

~~(3)~~(4) Any person may develop training and receive approval by the director by submitting an application in a format prescribed by the director. The application must describe

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the training content that meets the criteria in section (2) of this rule, and specify the number of training hours for that topic.

~~(4)~~**(5)** The director's approval will remain in effect until the content or number of hours of training change. At that time, the person will be required to resubmit an application that meets the requirements of sections (2) and **(4) or (3) and (4)** of this rule.

~~(5)~~**(6)** The division will review an application and notify the applicant of the results within 30 days of receipt of the application. The division will reject incomplete applications.

~~(6)~~**(7)** If an application is rejected or disapproved, the applicant will be notified of the reasons. The application may be resubmitted when the reasons for the rejection or disapproval have been corrected.

~~(7)~~**(8)** The director will maintain a registry of approved training curricula.

Statutory authority: ORS 656.726

Statutes Implemented: ~~Oregon Laws chapter 675, section 3;~~ ORS 656.780(1)

History: Amended 6/15/06 as WCD Admin. Order 06-055, eff. 7/1/06

436-055-0100 Insurer Duties

(1) Insurers shall only employ claims examiners who are certified or that qualify as a claims examiner trainee or a temporary claims examiner.

(a) A claims examiner trainee must work under the direct supervision of a certified claims examiner, and may work for up to 12 months in this status. An individual is limited to one 12-month period as a claims examiner trainee.

(b) A temporary claims examiner must have at least two years prior claims processing experience and work under the direct supervision of a certified claims examiner. An individual may work for up to 90 days in any 12-month period as a temporary claims examiner.

(2) Insurers shall maintain a list of certified claims examiners who are employed by the insurer or who process claims for the insurer, claims examiner trainees and temporary claims examiners, and keep records sufficient to verify their certification and training. The list and records shall be subject to inspection by the director. The director may require submission of such lists and records in lieu of on-site inspection.

(3) Insurers may issue an initial certification or renewal for any individual pursuant to the standards set in OAR 436-055-0070.

(4) Insurers must ensure that training related to interactions with independent medical examination providers is provided for certified claims examiners in their employ.

(5) Insurers shall not misrepresent any information to a worker, employer or the director related to the certifications of its employees.

(6) Within 14 days of the termination of employment or upon receipt of a written request of a certified claims examiner, an insurer shall provide the certified claims examiner a complete copy of all records verifying the most recent acknowledgement of certification and any subsequent training.

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(7) Insurers shall retain records verifying the certification and renewal of certified claims examiners who are employed by the insurer or who process claims for the insurer for six years from its most recent acknowledgement of current certification.

Statutory authority: ORS 656.726
Statutes implemented: ORS 656.780(1) and (2)
History: Amended 12/5/05 as WCD Admin. Order 05-076, eff. 1/1/06

436-055-0110 Assessment of Civil Penalties

(1) Pursuant to Under ORS 656.745 the director may assess a civil penalty against an insurer which fails to comply with these rules.

~~(2) Pursuant to ORS 656.447 the director may suspend or revoke the authorization of an insurer to issue guaranty contracts if the insurer repeatedly or intentionally fails to comply with these rules or orders of the director issued pursuant to ORS Chapter 656 and these rules.~~

(3) Pursuant to Under ORS 656.780 the director may assess a civil penalty against an insurer that fails to maintain or produce certification and training records or that employs anyone other than certified workers' compensation claims examiner to process workers' compensation claims. The insurer shall be subject to a penalty of not more than \$2000 per violation. Each violation, or each day a violation continues, shall be considered a separate violation.

Statutory authority: ORS 656.726
Statutes implemented: ORS 656.447(1)(a); ORS 656.745(2)(b); ORS 656.780(3)
History: Amended 6/15/06 as WCD Admin. Order 06-055, eff. 7/1/06

436-055-0120 Service of Orders

~~(1) When the director imposes a sanction or assesses a penalty under the provisions of OAR 436-055-0110, the order, including a notice of the party's appeal rights, shall be served on the party.~~

~~(2) The director shall serve the order by delivering a copy to the party in the manner provided by Oregon Rules of Civil Procedure 7D, or by sending a copy to the party by certified mail with return receipt.~~

Statutory authority: ORS 656.740726
Statutes implemented: ORS 656.740
History: Repealed 6/15/06 as WCD Admin. Order 06-055, eff. 7/1/06

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the
PERMANENT Rule(s) adopted on

June 15, 2006 by the
Date prior to or same as filing date

Department of Consumer and Business Services
Workers' Compensation Division
Agency and Division

OAD chapter 436
Administrative Rules Chapter No.

Fred Bruyns^{FB}
Rules Coordinator

(503) 947-7717
Telephone

350 Winter Street NE; Salem OR 97301-3879, PO Box 14480, Salem OR 97309-0405
Address

to become effective July 1, 2006 Rulemaking Notice was published in the May 2006 *Oregon Bulletin*.**
Date upon filing or later Month and Year

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

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

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

AMEND: OAR

436-010-0005	436-010-0230	436-010-0275	436-055-0070	436-060-0035
436-010-0210	436-010-0240	436-010-0280	436-055-0085	436-060-0095
436-010-0220	436-010-0265	436-055-0008	436-055-0110	436-070-0020

REPEAL: OAR 436-055-0120, 436-070-0020(T)

ORS 656.726(4)

Statutory Authority

Other Authority

ORS chapter 656, primarily: ORS 656.704, Enrolled House Bill (HB) 2091 – Oregon Laws (OL) 2005, ch. 26; ORS 656.325, Enrolled SB 311 – OL 2005, ch. 675

Statutes being Implemented

RULE SUMMARY

These rules have been amended to:

- (OAR 436-010-0220) Clarify that referrals to a specialist physician by an attending physician or authorized nurse practitioner must be written. Clarify that the referral includes authority for the specialist physician to provide services and treatment unless the referral includes limitations;
- (OAR 436-010-0230) Clarify that any consent form for attendance by an employer representative at a worker's medical exam must be written in a way that allows the worker to understand it and to overcome language or cultural differences;
- (OAR 436-010-0265):
 - State the criteria for a person to be added to the list of qualified independent medical examination (IME) providers;
 - Describe training requirements for IME providers;
 - State the criteria for removal of an IME provider from the list;
 - Establish the curriculum to be used to train IME providers;

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- Disallow use of IME reports from providers who are not on the director's IME provider list;
- Eliminate the seven-day time frame for an IME provider to send the examination report to the insurer;
- (OAR 436-010-0265 & 436-060-0095) Require that insurers and IME providers give workers survey forms to report their IME experiences to the Workers' Compensation Division;
- (436-010-0275) Require that the insurer forward information to the appropriate managed care organization if the information was sent to the insurer in error;
- (OAR 436-055-0008) Reflect the requirement, effective January 1, 2006, that hearings on workers' compensation matters previously processed by the Office of Administrative Hearings have been transferred to the Workers' Compensation Board;
- (OAR 436-055-0085) Clarify that specific training for renewal of claims examiner certification can be approved if it covers some, but not necessarily all, of the components listed in OAR 436-055-0085(2);
- (OAR 436-055-0120) Repeal specific requirements affecting service of orders by the director; and
- (OAR 436-070-0020) Clarify the criteria for issuance of a Failure to File Notice or Notice of Audit Findings.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

John L. Shilts

Authorized Signer

6/15/06

Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

**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. ARC 930-2005