

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



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

Effective Jan. 1, 2017

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NOTE: Significant revisions are marked with lines in the right margins.

**Historical rules are available for each division of chapter 436 – see:
<http://wcd.oregon.gov/laws/Pages/current-rules.aspx>.**

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

**OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 055**

436-055-0001 Authority for Rules [Repealed]

Statutory authority: ORS 656.726; ORS 656.780
Hist: Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94
Repealed 11/8/16 as WCD Admin. Order 16-052, eff. 1/1/17

436-055-0002 Purpose of Rules [Repealed]

Statutory authority: ORS 656.780(1)
Hist: Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00
Repealed 11/8/16 as WCD Admin. Order 16-052, eff. 1/1/17

436-055-0003 Applicability and Purpose**(1) Applicability.**

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

(2) Purpose.

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

(3) Director's discretion.

The director may waive any procedural rule as justice requires, unless otherwise obligated by statute.

Statutory authority: ORS 656.726; ORS 656.780
Statutes implemented: ORS 656.780
Hist: Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00
Amended 11/8/16 as WCD Admin. Order 16-052, eff. 1/1/17

436-055-0005 Definitions

Except where the context requires otherwise, the definitions under ORS 656.005 and the following apply to OAR 436-055-0008 to 436-055-0110:

- (1) **"Claims examiner"** means anyone who has primary responsibility for decision making or benefit determination in a claim.
- (2) **"Director"** means the director of the Department of Consumer and Business Services or the director's designee.
- (3) **"Hearings Division"** means the Hearings Division of the Workers' Compensation Board.
- (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 service company that processes claims for an insurer or self-insured employer under the conditions prescribed in ORS 731.475(3) and ORS 656.455(1).

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(5) **“Party”** means a claimant for compensation, the employer of the worker at the time of injury, the insurer of the employer, or the insurer’s service company, if any.

(6) **“Process claims”** means the determination of compensability and management of workers’ compensation claims.

Statutory authority: ORS 656.726
Statutes implemented: ORS 656.780
Hist: Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00
Amended 11/8/16 as WCD Admin. Order 16-052, eff. 1/1/17

436-055-0008 Administrative Review and Contested Cases

(1) Requests for hearings on sanctions and civil penalties.

Any party that disagrees with a proposed order, or proposed assessment of civil penalty issued by the director under these rules, may request a hearing by the Hearings Division under ORS 656.740. To request a hearing, the party must:

- (a) Mail or deliver a written request to the Workers' Compensation Division within 60 days of the mailing date of the proposed order or assessment; and
- (b) Specify, in the request, the reasons why the party disagrees with the proposed order or assessment.

(2) Requests for administrative review.

Any party that disagrees with an action taken under these rules may request an administrative review of the action by the director. To request administrative review, the party must:

- (a) Mail or deliver a written request for review to the Workers' Compensation Division within 90 days of the action; and
- (b) Specify, in the request, the reasons why the party disagrees with the action.

(3) Requests for hearing on any other action or order of the director.

Any party that disagrees with an action or order of the director, except as described in section (1) of this rule, may request a hearing 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. OAR 436-001 applies to the hearing.

Statutory authority: ORS 656.704; 656.726; 656.745
Statutes implemented: ORS 656.704; 656.740
History: Amended 6/15/06 as WCD Admin. Order 06-055, eff. 7/1/06
Amended 11/8/16 as WCD Admin. Order 16-052, eff. 1/1/17

436-055-0070 Certification of Claims Examiners

(1) Claims examiner test.

To become an Oregon certified claims examiner, an individual must complete a test that demonstrates the individual’s competency in claims processing activities, subject to the following:

- (a) The test must include questions that demonstrate the individual’s:

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- (A) Familiarity with ORS chapter 656;
 - (B) Ability to navigate OAR chapter 436;
 - (C) Ability to perform claims processing activities; and
 - (D) Understanding of all of the components in OAR 436-055-0085(1); and
- (b) The individual may use a copy of ORS chapter 656 and OAR chapter 436 during the testing period.

(2) Initial certification.

An insurer may certify an individual as an Oregon certified claims examiner upon verification of the individual's satisfactory completion of the test under section (1) of this rule. The certification will remain in effect for three years from the date of the test. As used in this section, "satisfactory completion" means:

- (a) The individual received a score of at least 80 percent on the test; and
- (b) The test was not completed through dishonest or fraudulent means.

(3) Renewal of certification.

An insurer may renew a claims examiner's certification upon verification that the claims examiner has completed 24 hours of training within the past three years. The 24 hours of training must include:

- (a) At least six hours of training on ORS chapter 656, OAR chapter 436, and relevant case law;
- (b) At least one hour of training related to interactions with independent medical examination providers that has been approved under OAR 436-055-0085(1); and
- (c) Additional training that covers any of the following subjects:
 - (A) Medical case management including, but not be limited to, medical terminology, basic human anatomy and the interpretation of medical reports;
 - (B) Communication skills including, but not be limited to, courses in ethics, mediation, negotiation and conflict management; or
 - (C) Claims processing skills relevant to Oregon workers' compensation claims.

(4) Expired certification.

An insurer may renew a claims examiner's certification that expired within the past 12 months if the individual meets the requirements of section (3) of this rule. An insurer may recertify a claims examiner who has not held current certification in the past 12 months under section (2) of this rule.

(5) Acknowledgement of certification issued by another insurer.

If an individual provides an insurer with documentation of current certification issued by another insurer, the insurer receiving the documentation may:

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- (a) Issue an acknowledgement of the certification stating that the individual has met the requirements for initial certification or renewal, if the documentation is sufficient to verify that the individual has met the requirements for initial certification or renewal; or
- (b) Require the individual to recertify under section (2) of this rule, if the documentation is not sufficient to verify that the individual has met the certification requirements.

Statutory authority: ORS 656.726, 656.780

Statutes implemented: ORS 656.780

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

Amended 11/8/16 as WCD Admin. Order 16-052, eff. 1/1/17

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

(1) Director approval of training curricula.

Any training relating to interactions with independent medical examination (IME) providers must follow a curriculum that has been approved by the director. Curricula must include at least some of the following components:

- (a) Appropriate and ethical communication with IME providers;
- (b) Insurers' rights and responsibilities;
- (c) Injured workers' rights and responsibilities;
- (d) IME providers' standards of conduct requirement;
- (e) IME complaint process and investigations by the Workers' Compensation Division;
or
- (f) The requirements of ORS 656.325 and OAR 436-010.

(2) Request for approval.

Any person may develop a training curriculum and request approval from the director under this section.

- (a) The request for approval must:
 - (A) Be made in writing;
 - (B) Describe how the training content relates to the components in section (1) of this rule; and
 - (C) Specify the total number of training hours to be provided.
- (b) The director will approve or deny the request and notify the person of the decision within 30 days of receipt of the request.
 - (A) If the request is approved, the curriculum will be valid until the content or number of hours of training change, at which time a new request for approval must be submitted.

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(B) If the request is denied, the director will notify the person of the reasons for denial. The person may resubmit the request when the reasons for denial have been addressed.

(3) Registry of approved curricula.

The director will maintain a registry of approved training curricula.

Statutory authority: ORS 656.726
Statutes Implemented: ORS 656.780
History: Amended 6/15/06 as WCD Admin. Order 06-055, eff. 7/1/06
Amended 11/8/16 as WCD Admin. Order 16-052, eff. 1/1/17

436-055-0100 Insurer Duties

(1) Insurer's responsibility to employ certified or qualified examiners.

An insurer may only employ Oregon certified claims examiners to process claims. An Oregon certified claims examiner must have primary responsibility for all activities related to the determination of compensability and management of a claim including, but not limited to, calculating benefits and authorizing payments to workers.

(2) Claims examiner trainees and temporary claims examiners.

Notwithstanding section (1), an insurer may employ a claims examiner trainee or a temporary claims examiner who is not certified to assist with claims processing activities, subject to the following:

- (a) A "claims examiner trainee" is an individual hired by an insurer to assist with claims processing activities who has no previous experience as an Oregon certified claims examiner, or who did not have current Oregon claims examiner certification in the 12 months before the date of hire. An individual may only work as a claims examiner trainee for up to 12 months in any five-year period;
- (b) A "temporary claims examiner" is an individual hired by an insurer to assist with claims processing activities who has at least two years of prior experience as an Oregon certified claims examiner. An individual may only work as a temporary claims examiner for up to 90 days in any 12-month period;
- (c) The claims examiner trainee or temporary claims examiner must work under the direct supervision of a certified claims examiner; and
- (d) The claims examiner trainee or temporary claims examiner may not represent the insurer in communications with the director or the Workers' Compensation Board.

(3) Responsibility for training.

An insurer must ensure that training required under these rules, including training related to interactions with independent medical examination providers, is provided for any claims examiners it employs. No provision of these rules is intended to prevent an insurer from providing training to its employees beyond the requirements of these rules.

(4) Records.

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An insurer must keep records sufficient to verify the certification and training of all certified claims examiners, temporary claims examiners, and claims examiner trainees it employs to process claims.

(a) The records must include:

(A) The names of all certified claims examiners, claims examiner trainees and temporary claims examiners, currently employed by the insurer;

(B) The names of the certified claims examiners supervising any claims examiner trainee or temporary claims examiner currently employed by the insurer;

(C) The date of certification and date of expiration of certification for each certified claims examiner;

(D) The dates of employment of any temporary claims examiner who has been employed by the insurer within the past 24 months;

(E) The dates of employment of any claims examiner trainee who has been employed by the insurer within the past five years;

(F) Documentation of any qualified trainings completed by each certified claims examiner during the most recent period of certification, including:

(i) The names of the instructors providing the training;

(ii) The syllabi;

(iii) The dates of training; and

(iv) The number of training hours completed for each component under OAR 436-055-0070(3); and

(G) Documentation provided to the insurer to support any acknowledgment of an initial certification or renewal issued by another insurer.

(b) Upon the director's request, the insurer must make the records available for inspection or review.

(c) The insurer must provide a claims examiner with a complete copy of all records verifying the most recent certification and any subsequent training completed by the claims examiner within 14 days of the termination of the claims examiner's employment, or upon receipt of a written request.

(d) The insurer must retain records used to verify the certification and renewal of any certified claims examiner it employs for six years from the date of the most recent certification or renewal.

(5) Civil penalties.

An insurer that fails to comply with the requirements of this rule, or misrepresents information related to the certification of any of its employees to a worker, employer, or the director may be subject to a civil penalty under OAR 436-055-0110.

Statutory authority: ORS 656.726, 656.780

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Statutes implemented: ORS 656.780
History: Amended 12/5/05 as WCD Admin. Order 05-076, eff. 1/1/06
Amended 11/8/16 as WCD Admin. Order 16-052, eff. 1/1/17

436-055-0110 Assessment of Civil Penalties

(1) Penalties for failure to comply with statutes, rules and orders.

The director may assess a civil penalty against an insurer that fails to comply with these rules under ORS 656.745.

(2) Penalties for failure to comply with ORS 656.780.

The director may assess a civil penalty against an insurer that fails to maintain or produce certification and training records as required by these rules, or that employs anyone other than an Oregon certified claims examiner to process claims.

(3) Penalty amounts.

No civil penalty will exceed \$2,000 for each violation, or \$10,000 in aggregate for all violations within a three-month period. Each violation, or each day a violation continues, will be considered a separate violation.

Statutory authority: ORS 656.726; 656.780
Statutes implemented: ORS 656.745; 656.780
History: Amended 6/15/06 as WCD Admin. Order 06-055, eff. 7/1/06
Amended 11/8/16 as WCD Admin. Order 16-052, eff. 1/1/17

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

In the Matter of the Amendment of Oregon Administrative)	
Rules (OAR):)	ORDER OF
436-055, Certification of Claims Examiners)	ADOPTION
)	No. 16-052

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 procedures in ORS 183.335, amends OAR chapter 436, division 055.

On July 13, 2016, 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 436-001-0009, and posted copies to its website. The Secretary of State included notice of the public hearing in its August, 2016 *Oregon Bulletin*. On Aug. 23, 2016, a public hearing was held as announced. The record remained open for written testimony through Aug. 29, 2016.

SUMMARY OF RULE AMENDMENTS

The agency has amended OAR 436-055, "Certification of Claims Examiners" to:

- Repeal obsolete or redundant rules, and to delete obsolete, redundant, or erroneous rule text;
- Revise, reorganize, and consolidate rules to enhance clarity, ease of reading, and consistency;
- Revise definitions, including the definition of "process claims";
- Clarify the insurer's responsibilities related to renewal of claims examiner certification;
- Reduce the required number of training hours related to interactions with independent medical examination providers for renewal of claims examiner certification from three hours to one hour;
- Increase the required number of training hours related to rules, statutes, and case law for renewal of claims examiner certification from four hours to six hours;
- Include some record-keeping requirements currently published on an agency website;
- Insert rule wording inadvertently deleted during previous rulemaking, while removing obsolete elements;
- Clarify an insurer's responsibility to issue certificates, acknowledge certifications from other insurers, and verify documentation that requirements have been met;
- Clarify the roles and qualifications of a claims examiner trainee and a temporary claims examiner;
- Allow a person who has not been certified for more than one year to be hired as a trainee;

Order of Adoption
OAR chapter 436, division 055

- Allow a person whose certification has lapsed for one year or less to renew certification if training requirements have been met; and
- Clarify that nothing in the rules precludes an insurer from providing additional training.

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, division 055 are adopted as administrative order No. 16-052 on this **8th day of November, 2016, to be effective Jan. 1, 2017.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.
- 3) A copy of the adopted 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 8th day of November, 2016.

/s/ Louis Savage

Louis Savage, 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, 503-947-7810.

Distribution: Workers' Compensation Division e-mail distribution lists, including advisory committee members and testers

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

FILED
11-9-16 9:12 AM
ARCHIVES DIVISION
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the
Department of Consumer and Business Services, Workers' Compensation Division 436
Agency and Division Administrative Rules Chapter Number
Fred Bruyns (503) 947-7717
Rules Coordinator Telephone
PO Box 14480, Salem, OR 97309-0405
Address

To become effective 01/01/2017 Rulemaking Notice was published in the August 2016 Oregon Bulletin.

RULE CAPTION

Training, certification, and employment of claims examiners

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

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

436-055-0003, 436-055-0005, 436-055-0008, 436-055-0070, 436-055-0085, 436-055-0100, 436-055-0110

REPEAL:

436-055-0001, 436-055-0002

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

656.726, 656.780

Other Authority:

Statutes Implemented:

656.780

RULE SUMMARY

The agency has amended OAR 436-055, "Certification of Claims Examiners" to:

- Repeal obsolete or redundant rules, and to delete obsolete, redundant, or erroneous rule text;
- Revise, reorganize, and consolidate rules to enhance clarity, ease of reading, and consistency;
- Revise definitions, including the definition of "process claims";
- Clarify the insurer's responsibilities related to renewal of claims examiner certification;
- Reduce the required number of training hours related to interactions with independent medical examination providers for renewal of claims examiner certification from three hours to one hour;
- Increase the required number of training hours related to rules, statutes, and case law for renewal of claims examiner certification from four hours to six hours;
- Include some record-keeping requirements currently published on an agency website;
- Insert rule wording inadvertently deleted during previous rulemaking, while removing obsolete elements;
- Clarify an insurer's responsibility to issue certificates, acknowledge certifications from other insurers, and verify documentation that requirements have been met;
- Clarify the roles and qualifications of a claims examiner trainee and a temporary claims examiner;
- Allow a person who has not been certified for more than one year to be hired as a trainee;
- Allow a person whose certification has lapsed for one year or less to renew certification if training requirements have been met; and
- Clarify that nothing in the rules precludes an insurer from providing additional training.

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Rules Coordinator Name Email Address