

April 25, 2024

DANEKA KARMA
POLICY ANALYST/RULES COORDINATOR
WORKERS' COMPENSATION DIVISION
DEPT. OF CONSUMER & BUSINESS SERVICES
350 WINTER ST. NE
SALEM, OR 97312

Re: Written comments regarding WCD's rulemaking hearing on OAR 436-060

Dear Ms. Karma,

SAIF Corporation thanks the Workers' Compensation Division (WCD) for the opportunity to provide written comments related to the proposed changes to OAR 436-060, Claims Administration. SAIF offers the following written comments for the division's consideration. For issues not specifically raised below, SAIF has no questions or concerns.

OAR 436-060-0010(1)(c)

The proposed change would require an employer to provide a worker with Form 3283 when the worker files a claim and is evaluated by an onsite provider to assess the nature and extent of the worker's injury. As written, an employer would not have to provide Form 3283 to a worker who filed a claim for workers' compensation benefits but was not evaluated by an onsite provider. SAIF's understanding at the time of the advisory meeting was to add another situation in which the employer is required to provide Form 3283 to a worker. SAIF suggests WCD amend the rule by replacing "and" with "or" in OAR 426-060-0010(1)(c)(A).

In addition, OAR 436-060-0010(1)(c)(B) refers to an evaluation by an on-site provider. It is unclear who may qualify as an on-site provider as the term is undefined and ambiguous. This may lead to confusion by employers as to whether they are required to provide Form 3283 if a worker is evaluated by an individual who is not a licensed medical provider such as an employee with basic first aid/CPR training. SAIF suggests clarifying the rule by changing on-site provider to on-site licensed medical provider.

OAR 436-060-0010(1)(c)(B) also requires the worker to inform the employer that the worker was injured while working in addition to an evaluation by an onsite provider. SAIF suggests modifying the language to be consistent with other rules that address the employer's duties when they have notice or knowledge of a work injury. SAIF proposes the following language:

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“The worker is evaluated by an onsite licensed medical provider to assess the nature or extent of a work injury and the employer has notice or knowledge of a work injury.”

OAR 436-060-0150(4)(b)

As written, SAIF understands that any “written documentation” of the worker’s payroll schedule would satisfy this requirement including documentation of the payroll schedule by email, payroll records, and/or memorializing a conversation with the employer regarding the payroll schedule. Flexibility in what is required as “written documentation” would allow insurers to better support policyholders who may need additional assistance in obtaining and providing their payroll records. In addition, if there is a delay in receiving the payroll records, SAIF prefers to issue time loss payments on the employer’s payroll schedule from the outset rather than change the payment schedule once the payroll records are received. This would ensure a consistent pay schedule for workers and the insurer and avoid confusion due to changes in the time loss payment schedule.

OAR 436-060-0180(7)

SAIF urges WCD to reconsider the reduction of the time period for an insurer to provide written clarification to the director regarding the status of a claim or intent of a denial. Due to varying complexity of the claim and, at times, the limited information available to the insurer, the current rule provides a reasonable time period for insurers to respond. During the advisory meeting, there were cases noted where the insurer’s response time was greater than the 14 day average. Reducing the response period to align with the average, removes the insurer’s flexibility to timely respond in complicated cases where the insurer requires more than 14 days to gather additional information and respond to the request.

As always, SAIF appreciates the WCD’s engagement and commitment to the rulemaking process as well as its collaborative approach. Thank you for your consideration of SAIF’s comments as the division proceeds with its review of the issues raised.

Sincerely,

/s/ Elaine Schooler
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