

# Agenda

## Rulemaking Advisory Committee

Workers' Compensation Division Rules  
OAR chapter 436, division 050  
Employer/Insurer Coverage Responsibility

<b>Type of meeting:</b>	Rulemaking advisory committee
<b>Date, time, &amp; place:</b>	10/1/15      10:30 to Noon, Room 260 (insurers' claim processing and record-keeping)  Meeting is in the Labor and Industries Building, 350 Winter Street NE, Salem, Oregon Dial-in information: 213-787-0529   Access code: 9221262#
<b>Facilitator:</b>	Fred Bruyns, Workers' Compensation Division
<b>Steps:</b>	Welcome and introductions; meeting objectives Request for new issues – discussion of new issues Discussion of issues on agenda Summing up – next steps – thank you!

### Attachments:

- [Issues document](#)
- [OAR 436-050-060 and 0110](#)

**DIVISION 050 – RULES ADDRESSING INSURERS  
ISSUES DOCUMENT  
SEPTEMBER 22, 2015**

**ISSUE #1 – OAR 436-050-0060 - “Transition from Guaranty Contract Filings to Policy-Based Proof of Coverages”**

**Issue:** Given Oregon’s transition six years ago from required guaranty contract filing by insurers to policy-based, electronic proof of coverage reporting, should this rule now be deleted from the Division 050 rules?

**Background:** In July 2009, the Workers’ Compensation Division (WCD) transitioned from its historical reliance on guaranty contracts filed by insurers to electronic proof of coverage (POC) reporting based on policies in force for Oregon employers, as the basis for establishing required workers’ compensation coverage. As part of that transition, the rule provided that any “active” guaranty contract still on file with the director on or after July 1, 2010 would no longer serve as proof of coverage for any employer. 050-0060 was intended to provide direction to insurers before, during, and shortly after the 2009 transition about how the new POC filings would replace prior guaranty contracts. OAR 436-162, “Electronic Data Interchange; Proof of Coverage,” now provides the requirements for insurer POC transactions. Those rules also direct insurers to contact the director regarding coverage predating the July 2009 transition for which they aren’t able to make EDI filings. It no longer appears that there is a reason to retain this rule.

**Alternatives:**

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**Fiscal Impacts, including cost of compliance for small business:**

**Recommendations:**

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**ISSUE #2 – OAR 436-050-0110(1) – “Notice of Insurer’s Place of Business in State; Coverage Records Insurer Must Keep in Oregon”**

**Issue:** Should this rule be amended to clarify that an insurer may not have more than eight claims “processors” at any one time? Or, alternately, to define what qualifies as a “location?”

**Background:** This rule requires insurers to maintain at least one Oregon location where its claims are processed and records are maintained. It also states that an insurer may not have more than eight locations at any one time, mirroring a 1975 statute’s use of the word “location.” Specifically, ORS 731.475 originally established a limit of one processing location per insurer. The 1989 Legislature, however, increased the allowed number to eight claims processing locations for insurers. At that time, Oregon was one of only three states with a

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single-processor limit and the intent in allowing multiple locations was to facilitate increased competition (potentially improving system-wide claims processing performance and reducing insurance costs) and acknowledge the business realities of processing claims for national clients.

The eight-location limit imposed by the legislature addressed the division's testimony that workers need to easily find out who is processing their claims and WCD's concerns about auditing and regulating an unlimited number of locations, while still allowing insurers some flexibility in using different servicing companies. WCD provided testimony that the eight locations could be made up of that many different service companies with one location each, that many locations for just one service company, or a combination of both. [In all such cases, though, if an insurer is self-administering some of its claims, that counts as one of the allowed processing locations.]

WCD is increasingly addressing situations with insurers exceeding their allowed number of processing locations. Some even use different (unrelated) processors located in the same building and attempt to count those as one "location." These practices aren't consistent with the intent of the 1989 law. The rule could be improved by clarifying what constitutes a location, as it relates to the number of allowed processors.

**Alternatives:**

- Amend the rule to define "location," as it relates to the allowed number of locations.
- Amend the rule to replace "location" with "different service company responsible for processing..." language (or something along those lines).
- Clarify that if an insurer self-administers (processes) any of its claims that site is included in its allowed number of processing locations.
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**Fiscal Impacts, including cost of compliance for small business:**

**Recommendations:**

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**ISSUE #3 – OAR 436-050-0110(1), (4), and (5) - "Notice of Insurer's Place of Business in State; Coverage Records Insurer Must Keep in Oregon"**

**Issue:** Should these rules be amended to require the insurer to provide email contact information to the director?

**Background:** These rules currently require insurers to provide "location, mailing address, telephone number, and any other contact information" of the Oregon location where claims are processed and records maintained, and similar information for each service company it uses. This information is also required when there are changes in the business location or contact information. A significant amount of contact between WCD and insurers and their service companies occurs by email. Communication between the division and insurers would be

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facilitated by requiring all insurers to provide the director email contact information along with address and phone information. 050-0110 currently requires insurers to provide contact information for “a designated person or position” who can assure payment of penalties and resolve collections issues, respond to policy and proof of coverage filing inquiries, and respond to claims processing inquiries. Since specific staff may come and go, it would be helpful for WCD to have “central” email contact information that is tied to a position or team. However, the division is interested in hearing from stakeholders about feasible alternatives.

**Alternatives:**

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**Fiscal Impacts, including cost of compliance for small business:**

**Recommendations:**

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**ISSUE #4 – OAR 436-050-0110(3) - “Notice of Insurer’s Place of Business in State; Coverage Records Insurer Must Keep in Oregon”**

**Issue:** Given the problems identified by the division when reviewing insurers’ service agreements with their service companies, this rule needs to plainly state that prior to using a service company, an insurer must receive approval from the division.

**Background:** The current rule states that “prior to using the service company in Oregon” the insurer must file a copy of the service agreement with the director “for approval.” This language is unclear that the agreement must be approved by the division prior to the insurer using the service company to process claims. The rule provides several requirements for those agreements, including that the agreements may only be between the insurer and the service company, must provide the service company power of attorney, and may “contain only those provisions for workers’ compensation activities that are allowed in Oregon.” In recent years, however, the division has increasingly addressed service agreements involving third parties, entities not authorized to do business in Oregon, lacking power of attorney, referencing other states throughout the document, and containing provisions addressing claims processing activities that are prohibited in Oregon. It is important that the division approve the service agreement prior to a service company processing claims, to ensure the requirements of 050-0110(3) are met.

**Alternatives:**

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**Fiscal Impacts, including cost of compliance for small business:**

**Recommendations:**

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**ISSUE #5 – OAR 436-050-0110(5) - “Notice of Insurer’s Place of Business in State; Coverage Records Insurer Must Keep in Oregon”**

**Issue:** Should this rule require insurers to notify the estate of a deceased worker or the beneficiaries of changes in its claims processing locations, service companies, or self-administration?

**Background:** When an insurer changes claims processing locations, service companies, or self-administration status, this rule requires that it notify workers with open or active claims, their attorneys, and attending physicians of the new contact information, at least 10 days before the change. Among the changes made for fatality claims based on the Management-Labor Advisory Committee’s 2009 review of death benefits, insurers, self-insured employers, and their service companies were required to send the worker’s copy of the claim acceptance/denial letter and Notice of Closure to the worker’s estate. This year’s SB 371 also addressed the right of beneficiaries to request reconsideration of a claim closure. Because representatives for a deceased worker’s estate and beneficiaries may have processing or benefit questions and certain appeal rights, it seems reasonable that the estate (perhaps only until the claim closure is final) and any beneficiaries still receiving benefits be included in the parties that must receive prior notice of changes in a self-insured’ processing location or entity.

**Alternatives:**

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**Fiscal Impacts, including cost of compliance for small business:**

**Recommendations:**

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**ISSUE #6 – OAR 436-050-0110(5) - “Notice of Insurer’s Place of Business in State; Coverage Records Insurer Must Keep in Oregon”**

**Issue:** This rule should be amended to clarify:

- a) the information the director must receive when an insurer changes its claims processing location(s), service companies, or self-administration;
- b) that the insurer must provide any additional information requested by the director; and
- c) failure to provide the director advance notice of claims transfers or the required information may result in civil penalties.

**Background:** When an insurer changes claims processing locations, service companies, or self-administration status, it must notify the director at least 10 days before the change occurs. The current rule requires that notice to include contact information for the sending and receiving claims processors, verification of whether closed claims will be transferred, and a list of transferred claims that includes the insurer, employer, and claimant names, date of injury, and sending processor's claim numbers. However, when all of an insurer's claims are moved from one processing location to another, the department is able to make the related updates in its data systems without needing all of that claim-specific information. In these instances, the rule creates an unnecessary reporting burden for insurers. It is only when a portion of an insurer's claims are moving to another location that claim-specific information is necessary to ensure WCD has accurate information about the various parties responsible for specific claims.

Also, depending on the circumstances of the pending transfer, the director may need additional information. For example, sometimes WCD learns that an insurer's statement that "all" claims are being moved actually means "all open claims" and it may be necessary to request information about where closed or denied claims will be maintained, how the insurer is delineating "open" from "closed," etc. It would be helpful for the division and stakeholders to discuss the information that should be required in notices of claim transfers, and the types of follow-up information that might be requested by the director.

When insurers don't provide the required advance notice of changes in claims processing locations or self-administration status, it can cause problems for workers, medical providers, and the division, potentially delaying benefits, treatment, and dispute resolution. While ORS 656.745 provides the director general authority for assessing civil penalties, WCD suggests that this rule also state that failure to provide the required advance notice and information may result in the assessment of civil penalties.

**Alternatives:**

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**Fiscal Impacts, including cost of compliance for small business:**

**Recommendations:**

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**436-050-0060 Transition from Guaranty Contract Filings to Policy-Based Proof of Coverages**

(1) Proof of coverage reporting requirements are prescribed by OAR 436-162.

(2) An active guaranty contract on file with the director on or after July 1, 2009 meets the Oregon proof of coverage requirement until it is replaced by a proof of coverage filing for renewal or new coverage effective on or after July 1, 2009, or until canceled under ORS 656.423 or 656.427. Active guaranty contracts on file with the director will not serve as proof of coverage on or after July 1, 2010.

(3) Filings for policies with a coverage effective date before July 1, 2009 create, endorse, cancel, or reinstate a guaranty contract. Filings for policies with a coverage effective date on or after July 1, 2009 establish, endorse, cancel, or reinstate proof of coverage filings.

(4) A guaranty contract in effect on or after July 1, 2009 is canceled the earliest of:

(a) The employer obtaining other Oregon workers' compensation coverage and causing the insurer to make a coverage filing with the director;

(b) The employer providing the insurer 30 days written notice of cancellation; or

(c) The insurer mailing notice of cancellation to the employer at least 45 days prior to the cancellation effective date, 90 days notice if the cancellation is based on an insurer's decision not to offer insurance to employers with a specific premium category, or 10 days notice if the cancellation is based on nonpayment of premium.

**Stat. Auth:** ORS 656.704 and 656.726(4)

**Stats. Implemented:** ORS 656.419, 656.427

**Hist:** Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04  
Amended 9/17/08 as WCD Admin. Order 08-061, eff. 7/1/09

**436-050-0110 Notice of Insurer's Place of Business in State; Coverage Records Insurer Must Keep in Oregon**

(1) Every insurer that is authorized to issue workers' compensation coverage to subject employers as required by ORS chapter 656 must give the director notice of the location, mailing address, telephone number, and any other contact information in this state where the insurer processes claims and keeps written records of claims and proof of coverage as required by ORS 731.475. The insurer may not have more than eight locations at any one time where claims are processed or records are maintained. While the insurer may have more than one location in this state, the information provided to the director must reasonably lead an inquirer to a person who can respond to inquiries as to workers' compensation insurance policy, claim filing, and claims processing location information and to access an in-state Oregon certified claims examiner who can respond within a reasonable time to specific claims processing inquiries. A response time of 48 hours or less, not including weekends or legal holidays, would satisfy a reasonable expectation.

(2) Notice under section (1) of this rule must be filed with the director within 30 days after the insurer becomes authorized and starts writing workers' compensation insurance

policies for Oregon subject employers, and must also include contact information for:

(a) A designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director; and

(b) A designated person or position within the company who can respond to workers' compensation policy and proof of coverage filing inquiries.

(3) If an insurer elects to use a service company to satisfy the purposes of ORS 731.475 with respect to all or any portion of its business, the insurer must, prior to using the service company in Oregon, file with the director a copy of the agreement between the insurer and each company for approval, and must give the director notice of the location and mailing address of each service company. The service agreement must:

(a) Be between the underwriting insurer and a service company that is incorporated in or authorized to do business in Oregon, and must not be between any other third parties;

(b) Identify the insurer by company name, or if multiple insurers related by ownership, by the name of the group if it includes all affiliates;

(c) Identify the service company by name;

(d) Grant the service company a power of attorney to act for the insurer in workers' compensation claims proceedings under ORS chapter 656; and,

(e) Contain only those provisions for workers' compensation activities that are allowed in Oregon.

(4) If the insurer's or its service company's place of business or contact information will change, the insurer must notify the director of the new location, mailing address, telephone number, and any other contact information at least 30 days before the effective date of the change.

(5) When an insurer changes claims processing locations, service companies, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor. The insurer must also provide at least 10 days prior notice to the director of which claims will be transferred. The notice to the director must include:

(a) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed;

(b) Verification of whether the claims to be transferred include closed claims; and

(c) A listing of the claims being transferred that identifies the underwriting insurer, employer, claimant name, date of injury, and sending processor's claim number.

(6) For the purpose of this rule, those activities conducted at designated in-state location(s) and by the authorized representative(s) of the insurer must include, but need not be limited to:

- (a) Processing and keeping complete records of claims for compensation;
- (b) Responding to specific claims processing inquiries;
- (c) Keeping records of payments of compensation;
- (d) Keeping records, including records of claims processed by prior service companies, in a written form, not necessarily original form, and making those records available upon request; and
- (e) Accommodating periodic in-state audits by the director.

(7) Records every insurer is required to keep in this state include all the written records of the insurer that show its insured employers have complied with ORS 656.017, including the records described by OAR 436-050-0120.

**Stat. Auth:** ORS 731.475, 656.704, and 656.726(4)

**Stats. Implemented:** ORS 731.475

**Hist:** Amended 9/17/08 as WCD Admin. Order 08-061, eff. 7/1/09

Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13