

**DIVISION 010 – Medical Services
DIVISION 060 – Claims Administration
Rulemaking advisory committee meeting
Room F, Labor & Industries Building**

**Related to House Bill 3114 (2015)
Aug. 25, 2015, 9 a.m.**

Committee members attending:

Chris Baasten, The Hartford
Jennifer Flood, Ombudsman for Injured Workers
Jaye Fraser, SAIF Corporation
Dave Nesseler-Cass, Moda Health
Jordan Snyder, S | D | A | O
Lisa Trussell, Health Net
Sean Warren, SAIF Corporation

Agency staff members attending:

Barb Belcher
Fred Bruyns
Cara Filsinger
Gail Gage
Nanci Johnston
Juerg Kunz
Troy Painter
Mary Schwabe

Fred welcomed the committee members, requested input on fiscal impacts of potential rule changes discussed, and asked members to present any new issues before the committee considered the prepared agenda.

Meeting minutes have been entered below in italicized text. The following is not a transcript, and some comments have been paraphrased for brevity.

ISSUE: OAR 436-010-0270, and possibly other Division 010 rules

Issue: Does this rule addressing insurers' required notices to an injured worker and other parties regarding medical services need to be amended to implement provisions of HB 3114? If not, are there any other Division 010 rules that should be amended to implement this new law?

Background: Under current law, a worker must provide the employer notice of a work-related injury within 90 days of the accident. Certain exceptions allow that notice up to one year after the accident if the employer had knowledge of the injury or death, the worker died within 180 day of the accident, or the worker or beneficiaries establish good cause for not providing notice within 90 days. Where a worker provides timely notice of a workers' compensation claim and also has a health insurance plan, HB 4104 in 2014 addressed the medical services the health insurer is required to provide during the 60-day period the workers' compensation insurer is

determining whether to accept or deny the claim. That bill also addressed the insurers' respective responsibilities for medical service costs after either claim acceptance or denial by the workers' compensation insurer.

HB 3114, effective January 1, 2016, addresses the situation where a worker has not filed a workers' compensation claim but has submitted a related claim to the health benefit plan and the plan rejects that claim as work-related. In this instance, the new law gives the worker 90 days from the date of the health plan's denial to then file a workers' compensation claim. The "clock" starts from the health benefit plan's action, creating an additional exception to the usual notice requirements in ORS 656.265. If the worker does file a workers' compensation claim and the insurer denies it, HB 3114 requires the workers' compensation insurer to notify the health benefit plan of the denial. The health benefit plan is then required to process the claim for payment subject to its plan's terms and conditions.

None of the division's administrative rules address the timeframes for providing notice of a work-related injury or death, because the statute (ORS 656.265) is so specific. It seems, then, that the additional exception provided by HB 3114 – after the denial of a claim first filed with the health benefit plan – will be similarly clear in the revised law. In the Division 060 (Claims Processing) rules, OAR 436-060-0140(11) already requires a workers' compensation insurer to send notices to the worker's health insurer(s) when compensability of any portion of a claim for medical services is denied. These notices must be sent to the health insurer when sent to the worker, within 14 days of receiving bills from medical providers not previously notified of the denial, or within 60 days of the date when claim compensability has been finally determined or claim disposition made. Thus, for the cases that HB 3114 addresses, if a worker files a workers' compensation claim within 90 days of the health insurer's denial and the workers' compensation insurer subsequently denies the claim, it is already required to provide the health benefit plan the denial notices required under HB 3114.

However, the division is interested in hearing from insurers, self-insured employers, service companies, worker representatives, health insurers, and other parties about whether:

- The current rule, 010-0270, is sufficient as written (because of the existing Division 060 rule requiring denial notices be sent to the health benefit plan), or if it should be amended to address HB 3114 provisions; or
- There are any other Division 010 rules that should be amended to address HB 3114's provisions.

Note: Division 060 (Claims Processing) rules, and specifically OAR 436-060-0140, are also being opened for rulemaking to determine if amendments are needed to address HB 3114's provisions.

Notes:

09:22, Fred Bruyns: Is there any feeling that we don't need an administrative rule? Do you all think the statute is clear, as amended by the bill?

09:40, Jaye Fraser: I think that during the MLAC hearings and the hearings of the Business and Labor Committee, SAIF's biggest concern was initially the bill gave the worker a full year after

denial of a claim. The 90 days is more palatable. The only concern we had was that “claim” in health insurance and “claim” in workers’ compensation are different animals. In looking at the statute I think the plain meaning of the words and where they fit in the statute should be okay. Only time will tell. I’m not sure drafting a rule at this point is going to fix potential problems. We didn’t think there needed to be a change in the statute. We thought the statute already provided an out for the worker.

10:43, Fred Bruyns: But it is something for us to be looking out for – that confusion over the meaning of “claim.”

ISSUE: OAR 436-060-0140, and possibly other Division 060 rules

Issue: Does this rule regarding insurers’ provision of claim denial notices to the worker’s health insurer(s) need to be amended to implement provisions of HB 3114? If not, are there any other Division 060 rules that should be amended to implement this new law?

Background: Under current law, a worker must provide the employer notice of a work-related injury within 90 days of the accident. Certain exceptions allow that notice up to one year after the accident if the employer had knowledge of the injury or death, the worker died within 180 day of the accident, or the worker or beneficiaries establish good cause for not providing notice within 90 days. Where a worker provides timely notice of a workers’ compensation claim and also has a health insurance plan, HB 4104 in 2014 addressed the medical services the health insurer is required to provide during the 60-day period the workers’ compensation insurer is determining whether to accept or deny the claim. That bill also addressed the insurers’ respective responsibilities for medical service costs after either claim acceptance or denial by the workers’ compensation insurer.

HB 3114, effective January 1, 2016, addresses the situation where a worker has not filed a workers’ compensation claim but has submitted a related claim to the health benefit plan and the plan rejects that claim as work-related. In this instance, the new law gives the worker 90 days from the date of the health plan’s denial to then file a workers’ compensation claim. The “clock” starts from the health benefit plan’s action, creating an additional exception to the usual notice requirements in ORS 656.265. If the worker does file a workers’ compensation claim and the insurer denies it, HB 3114 requires the workers’ compensation insurer to notify the health benefit plan of the denial. The health benefit plan is then required to process the claim for payment subject to its plan’s terms and conditions.

None of the division’s administrative rules address the timeframes for providing notice of a work-related injury or death, because the statute (ORS 656.265) is so specific and the Division 060 rules focus primarily on the claims processing requirements once notice of a claim has been provided. It seems, then, that the additional exception provided by HB 3114 – after the denial of a claim first filed with the health benefit plan – will be similarly clear in the revised law. It also doesn’t appear that OAR 436-060-0140(11) needs to be amended, because this rule already requires a workers’ compensation insurer to send notices to the worker’s health insurer(s) when compensability of any portion of a claim for medical services is denied. These notices must be sent to the health insurer when sent to the worker, within 14 days of receiving bills from medical providers not previously notified of the denial, or within 60 days of the date when claim

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compensability has been finally determined or claim disposition made. Thus, for the cases that HB 3114 addresses, if a worker files a workers' compensation claim within 90 days of the health insurer's denial and the workers' compensation insurer subsequently denies the claim, it is already required to provide the health benefit plan the denial notices required under HB 3114.

However, the division is interested in hearing from insurers, self-insured employers, service companies, worker representatives, health insurers, and other parties about whether:

- The current rule, 060-0140(11), is sufficient as written or should be amended to address HB 3114 provisions; or
- There are any other Division 060 rules that should be amended to address HB 3114's provisions.

Note: Division 010 (Medical Services) rules, and specifically OAR 436-010-0270, are also being opened for rulemaking to determine if amendments are needed to address HB 3114's provisions.

Notes:

14:20, Fred Bruyns: Your thoughts on whether this rule is sufficient, that it reflects the new law, anticipated the new law in a way.

14:35, Jaye Fraser: It says what you are supposed to do.

14:53, Lisa Trussell: From my perspective it is clear from the statute.

14:58, Jaye Fraser: I think section (11) [in rule 0140] is really very clear that you are talking about billings. I do worry that we'll end up with a bill submitted to the health insurer that comes to us and we deny the bill – and then, are we denying the bill or the whole claim? If we deny the whole claim, is that enough to stop this section from being effective as the worker submits additional bills to the health insurer? But that is the worst case scenario.

15:46, Lisa Trussell: If that scenario occurs, there will be another bill in 2016.

15:58, Fred Bruyns: Jaye, I think, and I'll defer to some people around the table who know a lot more about the claims administration rules than I do, that section (11) in rule 0140 is not just about billings. It is about any – like just a denial letter – I assume a copy of the denial is supposed to be sent to the providers. Is that a correct assumption?

16:16, Sean Warren: That is correct. That is what we are doing in practice:

16:22, Fred Bruyns: That is the only issues that we had. This is our last opportunity for awhile to talk about this bill. If you think of anything related to House Bill 3114 send an email to me and I'll make sure that it gets to the people who are going to work on things. As it stands now and based upon the input we've had from the committee, I think our inclination would be not to make any rules. ... We would let you know if anything changed. Thank you for coming.

17:57: Meeting ended.