

Agenda

Rulemaking Advisory Committee

Workers' Compensation Division Rules
OAR chapter 436, division 055

Certification of Claims Examiners

Type of meeting:	Rulemaking advisory committee
Date, time, & place:	June 13, 2016 1:30 to 4:30 p.m. Room F (basement), Labor and Industries Building, 350 Winter Street NE, Salem, Oregon Teleconference dial-in: 1-213-787-0529 Access code: 9221262#
Facilitators:	Chris Clark and Fred Bruyns, Workers' Compensation Division
1:30 to 1:45	Welcome and introductions; meeting objectives
1:45 to 3:00	Discussion of issues on attached agenda
3:00 to 3:15	Break
3:15 to 4:15	Discussion of issues continued Request for new issues - discussion
4:15 to 4:30	Summing up – next steps – Thank you!

Attached: [Issues document](#)
[OAR 436-055 \(current\)](#)

**DIVISION 055 – CERTIFICATION OF CLAIMS EXAMINERS
ISSUES DOCUMENT
June 13, 2016**

Issue #1: OAR 436-055-0005(6) – Definitions

Issue: The definition of “process claims” in OAR 436-055-0005(6) is different than the definition used in OAR 436-050-0005(19). Should one of the definitions be amended to make the rules more consistent?

Background: 436-055-0005(6) currently states that “process claims” means the receipt, review and payment of compensation for workers’ claims. The definition used in the division 50 rules was very similar until it was expanded in 2012 under AO #12-056. Currently, OAR 436-050-0005(21) states:

“Process claims” is the determination of compensability and management of compensation by an Oregon certified claims examiner. Determining compensability and managing compensation must be done from within this state under ORS 731.475 and this definition. Insurers and self-insured employers may receive claims reports at locations out-of-state as long as claims are forwarded to an Oregon location for processing. The act of making payment may be done from out-of-state as directed from the Oregon place of business.”

The definition was amended in the division 50 rules after a worker’s attorney raised the issue that, in some cases, time-loss payments mailed from processing locations outside of Oregon take an unreasonable amount of time to reach workers. Because division 055 is concerned with the certification of claims examiners, and not claims processing itself, there may be reasons why the division may, or may not, wish for the definitions to align.

For example, under OAR 436-055-0005(7), a temporary claims examiner must have at least two years prior *claims processing experience*. Under the stricter definition of “process claims,” it may be inferred that a temporary claims examiner must have two years prior experience in Oregon, where before they may have worked in any jurisdiction.

Alternatives:

- Amend 436-055-0005(6) to cross reference the definition currently used in division 050.
- Amend 436-055-0005(6) to use similar language to the definition currently used in division 050, but remove the geographic restrictions.
- Make no changes.

Fiscal Impacts, including cost of compliance for small business: No fiscal impact expected.

Recommendations:

Issue #2: OAR 436-055-0008(3) – Administrative Review

Issue: Should WCD remove the provision in OAR 436-055-0008(3)(d) that provides that an administrative order issued in response to a request for administrative review will specify “whether the determination constitutes a final order or whether an aggrieved party may request a hearing?”

Background: OAR 436-055-0008(3) provides for administrative review. Subsection (3)(d) states that in response to a request for administrative review the director will issue an administrative order that, “will specify whether the determination constitutes a final order or whether an aggrieved party may request a hearing...”

The construction of the rule may be read to imply that if the order is final, it cannot be appealed. Under ORS 656.704(2)(a), however, a party is entitled to request a hearing on any matter not concerning a claim, so the rule appears to be in conflict with statute. In addition, under the Administrative Procedures Act, a "final order" means a final agency action expressed in writing, but does not preclude further agency consideration of the subject matter. ORS 183.310(6).

Similar provisions have already been removed from the division 009, 010, 030, 050, and 060 rules because the process for requesting appeal is established in division 001. Deleting OAR 436-055-0008(3)(d) may create more internal consistency throughout the rules.

Alternatives:

- Delete OAR 436-055-0008(3)(d)
- Make no changes

Fiscal Impacts, including cost of compliance for small business: No fiscal impact expected.

Recommendations:

Issue #3: OAR 436-055-0070(6) - Claims Examiner Certification Renewal

Issue: Should OAR 436-055-0070(6) be amended to make it clear that the insurer is responsible for renewing claims examiner certifications?

Background: While section OAR 436-055-0070(1) addresses that claims examiners are to be certified “by the insurer,” the renewal language in (6) does not specify who is responsible. WCD has received questions and requests from customers who have found that it is not clear that the responsibility remains with the insurer.

Alternatives:

- Amend the rule to state that “the insurer may renew certification at any time during the certification period...”
- Make no changes.

Fiscal Impacts, including cost of compliance for small business: No fiscal impact expected.

Recommendations:

Issue #4: OAR 436-055-0070(6) - Claims Examiner Certification Renewal, Independent Medical Examinations training requirements.

Issue: WCD currently requires three hours of training related to interactions with independent medical examination (IME) providers as part of the certification renewal requirements. Should the required number of training hours be reduced?

Background: Under OAR 436-055-0070, to be certified as a claims examiner an individual must pass an examination which demonstrates their familiarity with the workers' compensation statutes and rules, capability to perform claim processing activities, and an understanding of activities related to interactions with IME providers that includes all the components in OAR 436-055-0085(2). The certification must be renewed every three years by verifying that the examiner has completed 24 hours of training, including four hours of training on workers' compensation statutes, rules and case law; and three hours of training related to interactions with IME providers. The remaining 17 hours are dedicated to topics such as medical case management; communication, including ethics and mediation; and claims processing.

The three-hour training requirement was established following passage of SB 311 in 2005, a law based largely on recommendations of a Management-Labor Advisory Committee (MLAC) study on the barriers workers face in the IME process, and the perception that IME providers have bias in favor of insurers. The study found that insurer interference with report outcome, such as asking leading questions and putting inappropriate comments in their letters to IME doctors, was a contributing factor to physician bias that could be addressed, in part, by better training of claims examiners. In response, one provision included in SB 311 was the enactment of ORS 656.780(1)(b), which requires the director to "develop or approve any training curriculum used by insurers, self-insured employers and service companies that is related to interactions with independent medical examination providers required under ORS 656.325."

The MLAC IME subcommittee at that time did not specify the number of hours that should be required under the new statute, leaving it to the division to determine the appropriate amount of training. The division determined that three hours was an appropriate amount of time for claims examiners to remain current in their awareness of what constitutes appropriate interaction with IME providers. WCD received testimony that the three-hour requirement was disproportionate to the scope of the subject matter, and to the percentage of claims that involve IMEs. Because the three hours of training may be spread out over a three year certification period, however, the division determined that it was not unreasonable.

A stakeholder recently petitioned the division to review this issue again. The petition argues that the number of training hours allocated to issues related to interactions with IME providers is excessive, and disproportionate to the number of hours allocated to other training topics covered during the claims examiner certification renewal process. Particularly, in light of subsequent revisions to requirements for IME providers and insurers and continued improvement in worker satisfaction with the IME process, it argues that a one-hour requirement would better reflect the relative importance of IME procedures among the broad range of legal and practical issues an Oregon examiner must stay informed about to fairly and accurately process claims.

As an alternative, another stakeholder suggested WCD require three hours of training relating to interactions with IME providers for the initial certification, but reduce it for renewals. In any case, if the requirement for renewals were to be reduced WCD would also appreciate stakeholder input on how to allocate the two surplus hours of training.

Alternatives:

- Reduce the required number of training hours related to interactions with independent medical examination providers from three to one and:
 - Transfer the surplus two hours to the training requirement on workers' compensation statutes, rules and case law;
 - Transfer the surplus two hours to the general training requirement.
 - Transfer the surplus hours to another area.
- Require three hours of training related to interaction with IME providers for initial certification, and only one for renewals.
- Make no changes

Fiscal Impacts, including cost of compliance for small business: No fiscal impact expected.

Recommendations:

Issue #5: OAR 436-055-0100 - Insurer Duties

Issue: Should OAR 436-055-0100 specify insurers must follow all the criteria listed on the WCD claims examiner certification web page?

Background: OAR 436-055-0100 requires insurers to maintain a list of certified claims examiners, claims examiner trainees and temporary claims examiners, and keep records sufficient to verify their certification and training. The rule does not specify what information those records must contain, but a list of information the insurer's records should include is provided at: <http://www.wcd.oregon.gov/compliance/ioac/cec.html> (see Appendix.) WCD staff members have noted that not including specific criteria in the rule may cause confusion about what records they are required to keep. Making the rule more consistent with program requirements may make it easier for insurers to comply with the rule.

Alternatives:

- Add all or some of the criteria from the web page to OAR 436-055-0100.
- Publish the standards and requirements for claims examiner certification by bulletin and reference it in the rules.
- Make no changes.

Fiscal Impacts, including cost of compliance for small business:

- Insurers are already required to maintain records; this rule should not add costs.
- Making expectation clear in rule may lead to a small reduction in administrative costs related to enforcement.

Recommendations:

Issue #6: OAR 436-055-0100(3) – Insurer Duties

Issue: Should WCD replace the subsections in OAR 436-055-0100(3) which were inadvertently deleted under Administrative Order #05-076?

Background: Two subsections (see below) were deleted from OAR 436-055-0100(3) during the revisions made effective January 1, 2006 by Administrative Order #05-076. OAR 436-055-0100(3)(a) and (b) were removed and were not marked as deletions on the proposed rules we published, or on the permanent rules we filed with the Secretary of State and Legislative Counsel.

There is no evidence that the deletion was intentional: there are no records of internal discussion and it was not discussed at our stakeholder advisory committee meeting. WCD did not receive testimony about the deletion, but because it was not marked, it may not have been noticed at the time. A stakeholder subsequently requested that we replace the omitted subsections, so the rule reads:

- (3) The insurer may issue an initial certification or renewal for any individual pursuant to the standards set in OAR 436-055-0070.
- (a) The insurer shall accept verification by the director of an individual’s certification and continuing education hours accrued as of October 22, 1999, and any acknowledgment of current certification issued by an insurer.
- (b) The insurer shall verify from their own records and those presented by the claims examiner that the requirements for initial certification or renewal have been met. The insurer shall issue an acknowledgment of current certification which states that the claims examiner has met the certification or renewal standards, and renewing the certification for three years.

WCD would also appreciate stakeholder feedback on what revisions, if any should be made to these subsections if they are replaced in the rule. For example, (3)(a) may no longer be relevant to most insurers and may need to be changed.

Alternatives:

- Replace the omitted subsections with appropriate revisions, if any.
- Make no changes

Fiscal Impacts, including cost of compliance for small business: No fiscal impact expected.

Recommendations:

“HOUSEKEEPING” CHANGES

- 1. OAR 436-055-0005(8):** This rule defines “Third party administrators,” HB 2211 (2015) replaced statutory references to “Third party Administrators” with "service companies" making the definition obsolete. Either remove this rule, or amend it to define “service companies.” Also replace the term “third party administrator” with “service company” throughout the rules.

Appendix: Claims examiner certification records required by website.

The following list is published on the WCD claims examiner certification web page at:
<http://www.wcd.oregon.gov/compliance/ioac/cec.html>

- 1) A listing of all certified claims examiners
- 2) Identification of all certified claims examiners, which includes:
 - a. Verifiable documentation of current certification
 - b. Beginning and ending dates of these certifications
- 3) Identification of all temporary claims examiners, including:
 - a. Documentation verifying the 2 year experience requirement
 - b. Dates of employment for the 12 month period (or audit period)
 - c. Name of supervising certified claims examiner
- 4) Identification of all claims examiner trainees, including:
 - a. Dates of employment for the 12 month training period (or audit period)
 - b. Name of supervising certified claims examiner
- 5) Records of qualified training for certified claims examiners, subsequent to most recent certification, including:
 - a. Name of instructor(s)
 - b. Syllabus
 - c. Date(s) of training
 - d. Time(s) of training
 - e. Hours of training
 - f. Type of training (note if related to changes in workers' compensation statutes, administrative rules, case law, and training related to interacting with independent medical examination providers.
- 6) Records supporting initial acknowledgments of certification and renewals issued by the insurer, self-insurer or service companies

**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

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

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

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 that disagrees with a proposed order or proposed assessment of civil penalty of the director issued under ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740. 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 that disagrees with an action or order of the director under these rules, other than as described in section (1), 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.

(3) Any person that disagrees with an action taken 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.

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

(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 hearing under section (2).

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

Statutes implemented: ORS 656.740, 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) 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.

(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.

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

(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 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).

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

(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.

(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.

(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.

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

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

436-055-0100 Insurer Duties

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

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

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.

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

(2) 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