

Agenda

Rulemaking Advisory Committee

Workers' Compensation Division Rules
OAR chapter 436, division 009, rule 0110, Interpreters

Type of meeting:	Rulemaking advisory committee
Date, time, & place:	June 21, 2016, 9:00 a.m. to Noon, Pacific Daylight Time Room F (basement), Labor and Industries Building, 350 Winter Street NE, Salem, Oregon Teleconference: 1-213-787-0529 Access code: 9221262#
Facilitator:	Fred Bruyns, Workers' Compensation Division
9:00 to 9:10	Welcome and introductions; meeting objectives
9:10 to 10:30	Discussion of issues
10:30 to 10:45	Break
10:45 to 11:45	Discussion of issues continued New issues?
11:45 to 11:55	Summing up – next steps – thank you!

Attached: [Issues document](#)

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**Oregon Administrative Rule Revision
Chapter 436, Division 009, Rule 0110**

Issue # 1

Rule: OAR 436-009-0110(7)(c)

(c) The insurer must pay the interpreter within:

- (A) 14 days of the date of claim acceptance or any action causing the service to be payable, or 45 days of receiving the invoice, whichever is later; or
- (B) 45 days of receiving the invoice for an exam required by the insurer or director.

Issue: Should the timeframe insurers have to pay interpreters be changed?

Background: Currently the requirements for insurers to pay interpreters are the same as when paying medical providers for services related to the compensable condition(s). Insurers are only required to pay medical bills related to the compensable condition(s). Interpreter invoices generally do not include supporting documentation to determine if the underlying medical service is compensable. Therefore, the insurer generally waits for chart notes from the medical provider before paying interpreter bills.

A stakeholder suggested that the timeframe be reduced to 14 days of receiving the invoice and that payment to interpreters should not depend on the medical provider's bills and chart notes.

Options:

- Change the timeframe insurers have to pay interpreters.
- No change.
- Other?

Fiscal Impacts, including cost of compliance for small business:

Recommendations:

**Oregon Administrative Rule Revision
Chapter 436, Division 009, Rule 0110**

Issue # 2

Rule: OAR 436-009-0110(6)

(a) Unless otherwise provided by contract, insurers must pay the lesser of the maximum allowable payment amount or the interpreter’s usual fee.

(b) Insurers must use the following table to calculate the maximum allowable payment for interpreters:

For:	The maximum payment is:
Interpreter services of an hour or less	\$60.00
American sign language (ASL) interpreter services of an hour or less	\$70.00
Interpreter services of more than one hour	\$15.00 per 15-minute increment; a 15-minute increment is considered a time period of at least eight minutes and no more than 22 minutes.
American sign language (ASL) interpreter services of more than one hour	\$17.50 per 15-minute increment; a 15-minute increment is considered a time period of at least eight minutes and no more than 22 minutes.
Mileage of less than 15 miles round trip	No payment allowed
Mileage of 15 or more miles round trip	The private vehicle mileage rate published in Bulletin 112
An examination required by the director or insurer that the patient fails to attend or when the provider cancels or reschedules	\$60.00 no-show fee plus payment for mileage if 15 or more miles round trip
An interpreter who is the only person in Oregon able to interpret a specific language	The amount billed for interpreter services and mileage

Issue: Should WCD raise the maximum payment for interpreter services?

Background: The interpreter rate has been the same since 2010 and was established through stakeholder advisory meetings.

A stakeholder suggested that WCD raise the current \$60 hourly rate. A stakeholder said, “The \$60-hour rate is nice, but it seems you were intending that as an interpreter fee. In reality, it is what the language companies get paid, and a portion of that gets to the interpreter.” * * * [allow] “companies to charge an administrative fee but still pay them an honorable rate.”

Options:

- Raise the maximum payment for interpreter services.

- Consider an administrative fee in addition to the maximum payment amount.
- No change.
- Other?

Fiscal Impacts, including cost of compliance for small business:

Recommendations:

**Oregon Administrative Rule Revision
Chapter 436, Division 009, Rule 0110**

Issue # 3

Rule: OAR 436-009-0110(6)(b)

Interpreter services of an hour or less are paid at a maximum amount of \$60.

Issue: Should the minimum payment amount for interpreter services be based on a two hour minimum instead of a one hour minimum?

Background: A stakeholder said, “The workers’ compensation fee schedule should include a two hour minimum, which is standard practice in most states in the United States, and has been for many years. This is the practice in the Courts, and is the standard negotiating starting point in any interpreting session. This is because it automatically accounts for drive time for close distances, helping with paperwork and incidental issues before the appointment, etc. This way, an interpreter feels that the non-billable time spent at the appointment is accounted for in many cases, since most medical appointments are one hour long, but interpreters also spend another hour in travel time.”

Options:

- Base the minimum payment amount for interpreter services on a two hour minimum instead of a one hour minimum.
- No change.
- Other?

Fiscal Impacts, including cost of compliance for small business:

Recommendations:

**Oregon Administrative Rule Revision
Chapter 436, Division 009, Rule 0110**

Issue # 4

Rule: OAR 436-009-0110 (new)

Issue: Should WCD require interpreters to be certified when providing interpreter services for Oregon workers?

Background: Currently, the worker has the right to choose the interpreter, including a family member which is in line with a worker’s right to choose a medical provider. There’s no requirement that interpreters are certified or qualified.

A stakeholder said, “HB 2419 and Title VI of the 1964 Civil Rights Act require providers to ensure qualified interpreters provide services at medical exams. “Under ORS 413.552¹, all medical appointments with persons of limited English proficiency in Oregon must be interpreted by Certified or Qualified interpreters whenever possible. * * * [the rules to define] “whenever possible” as requiring that all applicable interpreters listed in the OHA public directory have been contacted and have declined the assignment, calling Certified interpreters first, and then Qualified interpreters, and all applicable Oregon Court interpreters in the same geographic area have also been contacted and have declined the assignment; only then may an unqualified interpreter be accepted. * * * If no Certified or Qualified interpreter is available, able or willing to serve, the doctor may appoint an interpreter who is not qualified, but only if this unqualified interpreter has passed the oral proficiency interviews at the level required to apply for Medical Interpreting Certification with the National Board of Certification for Medical Interpreters (Advanced Mid level on the ACTFL scale) in both languages.” “Language companies sometimes self-certify their own contractors, and create a “company certification”. * * * If you will accept company certification, the way the company certification * * * should be equivalent to the Oregon standards. In other words, they might as well be Oregon certified.”

¹ **413.552 Legislative findings and policy on health care interpreters.** (1) The Legislative Assembly finds that persons with limited English proficiency, or who communicate in sign language, are often unable to interact effectively with health care providers. Because of language differences, persons with limited English proficiency, or who communicate in sign language, are often excluded from health care services, experience delays or denials of health care services or receive health care services based on inaccurate or incomplete information.

(2) The Legislative Assembly further finds that the lack of competent health care interpreters among health care providers impedes the free flow of communication between the health care provider and patient, preventing clear and accurate communication and the development of empathy, confidence and mutual trust that is essential for an effective relationship between health care provider and patient.

(3) It is the policy of the Legislative Assembly to require the use of certified health care interpreters or qualified health care interpreters whenever possible to ensure the accurate and adequate provision of health care to persons with limited English proficiency and to persons who communicate in sign language.

(4) It is the policy of the Legislative Assembly that health care for persons with limited English proficiency be provided according to the guidelines established under the policy statement issued August 30, 2000, by the U.S. Department of Health and Human Services, Office for Civil Rights, entitled, “Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency,” and the 1978 Patient’s Bill of Rights. [Formerly 409.617; 2015 c.318 §2]

Options:

- Require interpreters to be certified when providing interpreter services for Oregon workers.
- Establish a separate fee schedule for certified interpreters.
- No change.
- Other?

Fiscal Impacts, including cost of compliance for small business:

Recommendations:

**Oregon Administrative Rule Revision
Chapter 436, Division 009, Rule 0110**

Issue # 5

Rule: OAR 436-009-0110(1)

(1) Choosing an Interpreter.

A patient may choose a person to communicate with a medical provider when the patient and the medical provider speak different languages, including sign language. The patient may choose a family member, a friend, an employee of the medical provider, or an interpreter. The medical provider may disapprove of the patient's choice at any time the medical provider feels the interpreter services are not improving communication with the patient, or feels the interpretation is not complete or accurate.

Issue: Should family members and medical provider's employees be allowed to provide interpreter services for workers?

Background: Currently, the rule allows the worker to choose anyone to provide interpreter services. However, the medical provider may disapprove of the worker's choice if the provider feels the interpreter services are not improving communication with the worker.

Regarding family members, a stakeholder said, "In order to maintain confidentiality and impartiality, family members and friends may not interpret. When all local options for qualified interpreters have been exhausted, remote interpreting options may be pursued to maintain the impartiality of the interpreting, as long as the remote interpreter meets the qualifications described herein [rules] and documentation is submitted to prove this."

Regarding provider's office staff, a stakeholder said, "A medical provider's employee may not interpret unless this employee is a Certified or Qualified healthcare interpreter. * * * Because of potential conflict of interest and impartiality issues, use of a medical provider's employee as an interpreter is strongly discouraged, in order to protect the neutrality of the interpretation. Likewise, a medical provider's employee must not assist by completing paperwork for an injured worker with limited English proficiency for the same reason. I have seen many medical intake forms be invalidated in depositions because of the participation of medical providers' employees as interpreters. Their participation made the information be viewed as biased, not objective."

Options:

- Exclude family members and providers' employees from providing interpreter services.
- No change.
- Other?

Fiscal Impacts, including cost of compliance for small business:

Recommendations: