

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON

In the Matter of the Amendment of:

436-001, Procedural Rules, Rulemaking, Hearings, and Attorney Fees)))	SUMMARY OF TESTIMONY AND AGENCY RESPONSES
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This document summarizes the significant data, views, and arguments contained in the hearing record. The purpose of this summary is to create a record of the agency's conclusions about the major issues raised. Exact copies of the written testimony are attached to this summary.

The proposed amendment to the rules was announced in the Secretary of State's *Oregon Bulletin* dated Feb. 1, 2019. On Feb. 19, 2019, a public rulemaking hearing was held as announced at 10 a.m. in Room F of the Labor and Industries Building, 350 Winter Street NE, Salem, Oregon. Fred Bruyns, from the Workers' Compensation Division, acted as hearing officer. The record was held open for written comment through Feb. 25, 2019.

Rules subject to testimony at the rulemaking hearing were OAR 436-001, 009, 010, and 015. A separate summary of testimony has been prepared for divisions 009, 010, and 015. No one testified at the public hearing regarding division 001. A transcript of the hearing is recorded below as exhibit 1. One document was submitted as testimony.

Testimony list:

Exhibit	Testifying
<u>1</u>	Transcript of hearing (no testimony on division 001 at the hearing)
<u>2</u>	Jaye Fraser, SAIF Corporation

Testimony: OAR 436-001-0600

Exhibit 2

“SAIF supports WCD’s effort to ensure that workers understand the critical documents about their claims. SAIF is concerned, however, that the proposed April 1 implementation date for the proposed “multilingual notice” help page outlined in Division 001. SAIF’s review of the proposed rules identified over 150 documents (e.g. letters and worker notifications) that will require inclusion of a multilingual notice. Before it can begin its programming, SAIF needs a final version of the “multilingual notice” (Form 440-5377). SAIF’s information services division estimates it will take a minimum of 2-3 weeks of development time to program SAIF systems to generate the “multilingual notice”, and an additional 3 weeks to test the programming changes; however, until SAIF’s information services divisions reviews the final document these estimates, are just estimates. Additionally, if we are unable to recreate the form we will need to purchase additional technology to recreate the required fonts.

“SAIF recommends a July 1, 2019 effective date to provide insurers and self-insured employers the opportunity to program company systems.”

Oregon Administrative Rules, Chapter 436
Public Testimony & Agency Responses
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Response: Thank you for your testimony. The division has revised OAR 436-001-0600 to provide additional time before use of Form 5377, “Workers’ Compensation Multilingual Help Page,” is required. Bulletin 379, including Form 5377, will be published before April 1, and use of Form 5377 will be required on and after June 1, 2019. As requested by the rulemaking advisory committee, the help page will be published as a PDF file (in addition to Microsoft Word®), and it may be reproduced on plain paper.

Dated this 11th day of March, 2019

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON**

PUBLIC RULEMAKING HEARING

In the Matter of the Amendment of OAR:		
436-001, Procedural Rules, Rulemaking, Hearings, and Attorney Fees)	TRANSCRIPT OF TESTIMONY
436-009, Oregon Medical Fee and Payment Rules)	
436-010, Medical Services)	
436-015, Managed Care Organizations)	

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TRANSCRIPT OF PROCEEDINGS

Hearing officer:

Good morning and welcome. This is a public rulemaking hearing. My name is Fred Bruyns, and I’ll be the presiding officer for the hearing.

The time is 10 AM on Tuesday, Feb. 19, 2019. We are in Room F of the Labor and Industries Building, 350 Winter St. NE, in Salem, Oregon. We are making an audio recording of today’s hearing.

If you wish to present oral testimony today, please sign in on the testimony sign-in sheet on the table by the entrance. If you plan to testify over the telephone, I will sign in for you.

The Department of Consumer and Business Services, Workers’ Compensation Division proposes to amend chapter 436 of the Oregon Administrative Rules, specifically:

- Division 1, Procedural Rules, Rulemaking, Hearings, and Attorney Fees;
- Division 9, Oregon Medical Fee and Payment Rules;
- Division 10, Medical Services; and
- Division 15, Managed Care Organizations.

Transcript of public rulemaking hearing
Feb. 19, 2019

The department has summarized the proposed rule changes and prepared an estimate of fiscal and economic impacts in the notices of proposed rulemaking. These notices and proposed rules with marked changes are on the table by the entrance. Testimony received to date is also available on the table. Additional written testimony will be posted to the division's website as it arrives.

The Workers' Compensation Division: filed the notices of proposed rulemaking with the Oregon Secretary of State on Jan. 24 and 25, 2019; mailed the notices to its postal and electronic mailing lists; notified Oregon legislators as required by ORS chapter 183; and posted public notice and the proposed rules to its website.

The Oregon Secretary of State published the hearing notice in its Oregon Bulletin dated Feb. 1, 2019.

This hearing gives the public the opportunity to provide comment about the proposed rules. In addition, the division will accept written comment through and including Feb. 25, 2019, and will make no decisions until all of the testimony is considered.

We are ready to receive testimony. When I read your name, please come up to the table at my right. Lisa Johnson, would you like to testify?

Lisa Johnson:

Thank you. For the record, Lisa Johnson, with Majoris Health Systems. And, just had some comments on, under division 015, the proposal for requiring that if we have fewer than three practitioners of a certain type, making sure that the worker has those choices. Our concern there is with the hassle factor for providers, what we have experienced is that when a claim is new, it's not – workers have plenty of choices. Where we run into issues are with older claims where the worker may have already gone through a number of the providers in that area or just because of the extent and litigation and other things going on with the claim, that it can sometimes be harder to get them in to see a doctor. And, under this we would need to make sure there are three providers willing to see them, meaning we would be sending out a big, fat packet of chart notes and asking the providers to review those for a worker that they may never see – the worker may not even contact them or want to schedule with them. And so I think that is going to create barriers for some of the providers who currently are willing to treat injured workers.

Hearing officer:

Thank you very much Lisa.

Would anyone else like to testify this morning? If there is anyone on the telephone, would you like to testify? Hearing no one, it's our policy to keep hearings at least open and available to the public for a minimum of one-half hour in case someone arrives late. So, we will – I will suspend the hearing in a moment, but if you'd like to remain you are welcome to do so. Or if you leave, you can know that the transcript of this hearing will be posted to our website probably within a day or two. And, also, additional written testimony will be posted as it arrives.

Transcript of public rulemaking hearing
Feb. 19, 2019

So, let me just let you know that you may submit testimony in any written form. I encourage you to submit testimony by email or as attachments to email. However, you may also use fax, USPS mail, courier, or you may hand deliver testimony to Workers' Compensation Division Central Reception on the second floor of this building. On the table by the entrance are business cards that include my contact information. I will acknowledge all testimony received.

This hearing is recessed at 10:05 a.m.

This hearing is resumed at 10:30 a.m.

Is there anyone here present or on the telephone who'd like to testify this morning? Hearing no one, the time is still 10:30, and this hearing is adjourned. Thank you for coming.

Transcribed from a digital audio recording by Fred Bruyns, Feb. 19, 2019.



February 25, 2019

Fred Bruyns, Rules Coordinator
Workers' Compensation Division
P.O. Box 14480
Salem, OR 97309-0405

RE: SAIF Testimony on proposed changes to OAR Chapter 436 Divisions 01,
10, and 15

Dear Fred:

As always SAIF appreciates the opportunity to participate in the advisory committee process and to provide its comments on the proposed rules.

OAR 436-001 – Multilingual notification

SAIF supports WCD's effort to ensure that workers understand the critical documents about their claims. SAIF is concerned, however, that the proposed April 1 implementation date for the proposed "multilingual notice" help page outlined in Division 001. SAIF's review of the proposed rules identified over 150 documents (e.g. letters and worker notifications) that will require inclusion of a multilingual notice. Before it can begin its programming, SAIF needs a final version of the "multilingual notice" (Form 440-5377). SAIF's information services division estimates it will take a minimum of 2-3 weeks of development time to program SAIF systems to generate the "multilingual notice", and an additional 3 weeks to test the programming changes; however, until SAIF's information services divisions reviews the final document these estimates, are just estimates. Additionally, if we are unable to recreate the form we will need to purchase additional technology to recreate the required fonts.

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OAR 436-010-0210(6)(c) (new numbering)

SAIF recommends adding "out of state" to clarify the rule. Without track changes and SAIF's suggested additional language is in italics:

(c) If the insurer withdraws approval of the *out of state* attending physician, the insurer must notify the physician in writing:"

OAR 436-015-0030(6) This subsection requires MCOs to allow workers to treat off the MCO's panel when the MCO has fewer than three providers within a GSA willing to treat an injured worker. SAIF recommends that clarifying language be added specifying that the worker's off panel provider selection must be a provider available within the

GSA where the MCO does not have three providers willing to treat the worker. SAIF suggests adding "within the same GSA" as follows for both subsections (a) and (b):

- (a) ...For categories where the MCO has fewer than three providers within a GSA willing to treat a worker, the MCO must allow the worker to seek treatment outside the MCO from providers, *within the same GSA*,

SAIF believes this is consistent with the rule's intent to allow the worker to choose a physician within the worker's GSA, thus eliminating travel because there is not an available panel provider within the worker's GSA.

Please let me know if you have any questions regarding this testimony. Thank you for your consideration.

Sincerely,

Jaye C. Fraser

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