

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

In the Matter of the Amendment of:)
 • OAR 436-009, Oregon Medical Fee and Payment) SUMMARY OF
 • OAR 436-010, Medical Services) TESTIMONY AND
 • OAR 436-015, Managed Care Organizations) AGENCY RESPONSES

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 February 2021. On Feb. 17, 2021, a public rulemaking hearing was held as announced at 2 p.m. via teleconference from the Labor & Industries Building, 350 Winter Street NE, Salem, Oregon. Fred Bruyns, from the Workers’ Compensation Division, was the hearing officer. The record was held open for written comment through Feb. 22, 2021.

One person testified at the public rulemaking hearing, and the hearing officer read some testimony from the Workers’ Compensation Division into the record. The hearing transcript is recorded below as Exhibit 2. Written and oral (hearing) testimony are listed below.

Testimony list:

Exhibit	Testifying
<u>1</u>	Juerg Kunz, Workers’ Compensation Division
<u>2</u>	Hearing transcript: Lisa Anne Bickford, Coventry and Mitchell Government Relations
<u>3</u>	Juerg Kunz, Workers’ Compensation Division
<u>4</u>	Ben Johnson PA-C, President OSPA

Testimony: OAR 436-009-0040(2)(f)

Exhibit 1

“The workers’ compensation division (WCD) is proposing to raise the maximum allowable payment amounts for physician services, including anesthesia services, by an average of two percent, excluding amounts for office visits, which WCD proposes to increase by ten percent. The maximum allowable payment amounts for most physician services can be found in the physician fee schedule table (Appendix B). However, the maximum allowable payment amounts for anesthesia services are not listed in Appendix B. Rather, the maximum allowable payment amounts for anesthesia codes are determined by multiplying the anesthesia value by the conversion factor listed in OAR 436-009-0040(2)(f).

“WCD inadvertently did not make a change to the anesthesia conversion factor, hence the rules as proposed do not afford a two percent increase in the maximum allowable payment amounts for anesthesia services.

“WCD intends to correct this error by increasing the anesthesia conversion factor listed in OAR 436-009-0040(2)(f) from \$59.74 to \$60.93 when filing notice of the permanent OAR 436-009 with the secretary of state.”

Response: WCD changed the anesthesia conversion factor listed on OAR 436-009-0040(2)(f) from \$59.74 to \$60.93.

Testimony: OAR 436-009-0012

Exhibit 2

“... just wanted to offer short testimony in support of the state’s proposed rules. In particular, we appreciate the state’s inclusion of the expansion of telehealth services in recognition of providers that are basically scrambling to provide care in any way that they can during the pandemic. So, we appreciate that the division has expanded and removed the barriers to have limitations subject only to the appendix. ...”

Response: Thank you for your testimony.

Testimony: OAR 436-009-0012(5)(c)

Exhibit 3

“The workers’ compensation division (WCD) has proposed to increase the maximum payment amount of the facility fee of the originating site for telehealth services (HCPCS code Q3014) listed in Appendix B from \$35.00 to \$35.70.

“WCD inadvertently did not make that change to the facility fee of the originating site for telehealth services in OAR 436-009-0012(5)(c).

“WCD intends to correct this error by changing the maximum payment amount for HCPCS code Q3014 listed in OAR 436-009-0012(5)(c) from \$35.00 to \$35.70 when filing notice of the permanent OAR 436-009 with the secretary of state.”

Response: WCD changed the maximum payment amount listed in OAR 436-009-0012(5)(c) for HCPCS code Q3014 from \$35.00 to \$35.70.

Testimony: OAR 436-009 and 436-010

Exhibit 4

“...the Oregon Society of PAs (OSPA) would like to point out exclusionary concerns in the current rules. Several sections which should also apply to PAs do not include PAs in the rule. Section 436-009-0010, 1(a) and 9(a)(B) state “attending physician or authorized nurse practitioner.” The same terminology is used in 436-010-0230(6), 7(c), 8, 10, 13, and 14(a)(B).

“OSPA would like for this phrase to be changed to ‘attending physician, physician assistant or authorized nurse practitioner’ or alternately to ‘authorized attending provider.’ ”

Response: Thank you for your testimony. ORS 656.005(12)(b) provides, in relevant part, that “attending physician” means a doctor, physician, or physician assistant who is primarily responsible for the treatment of an injured worker’s compensable injury and who is: (B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative total of 18

Oregon Administrative Rules, Chapter 436

Public Testimony & Agency Responses

Page 3

visits, whichever occurs first, a (ii) physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or possession of the United States. Further, OAR 436-009-0005(5) and OAR 436-010-0005(3) provide that “[a]ttending physician” has the same meaning as described in ORS 656.005(12)(b). Physician assistants are included as attending physicians in the rules listed in your testimony. Therefore, WCD will publish the listed rules as proposed.

Dated this 3rd day of March, 2021.



MEMORANDUM

Workers' Compensation Division

February 1, 2021

To: Fred Bruyns, Rules Coordinator
From: Juerg Kunz, Medical Policy Analyst
Subject: Fee schedule for anesthesia services

The workers' compensation division (WCD) is proposing to raise the maximum allowable payment amounts for physician services, including anesthesia services, by an average of two percent, excluding amounts for office visits, which WCD proposes to increase by ten percent. The maximum allowable payment amounts for most physician services can be found in the physician fee schedule table (Appendix B). However, the maximum allowable payment amounts for anesthesia services are not listed in Appendix B. Rather, the maximum allowable payment amounts for anesthesia codes are determined by multiplying the anesthesia value by the conversion factor listed in OAR 436-009-0040(2)(f).

WCD inadvertently did not make a change to the anesthesia conversion factor, hence the rules as proposed do not afford a two percent increase in the maximum allowable payment amounts for anesthesia services.

WCD intends to correct this error by increasing the anesthesia conversion factor listed in OAR 436-009-0040(2)(f) from \$59.74 to \$60.93 when filing notice of the permanent OAR 436-009 with the secretary of state.

Juerg Kunz
Medical Policy Analyst

**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: <ul style="list-style-type: none"> • OAR 436-009, Oregon Medical Fee and Payment • OAR 436-010, Medical Services • OAR 436-015, Managed Care Organizations))))	TRANSCRIPT OF TESTIMONY
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------	----------------------------

The proposed amendment to the rules was announced in the Secretary of State’s *Oregon Bulletin* dated February 2021. On Feb. 17, 2021, a public rulemaking hearing was held as announced at 2 p.m. via teleconference from the Labor & Industries Building, 350 Winter Street NE, Salem, Oregon. Fred Bruyns, Workers’ Compensation Division, was the hearing officer. The record will be held open for written comment through Feb. 22, 2021.

INDEX OF WITNESSES

Witnesses	Page
<u>Lisa Anne Bickford, Coventry and Mitchell Government Relations.....</u>	<u>2</u>

TRANSCRIPT OF PROCEEDINGS

Fred Bruyns:

Good afternoon and welcome. This is a public rulemaking hearing.

The filing caption for this rulemaking is: “Workers’ compensation medical fees and payments, medical services, and managed care organizations.”

My name is Fred Bruyns, and I’ll be the presiding officer for the hearing.

The time is now 2:01 p.m. on Wednesday, Feb. 17, 2021. We are conducting this hearing by telephone from the Labor & Industries Building, 350 Winter St. NE, in Salem, Oregon. We are making an audio recording of today’s hearing.

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

- OAR 436-009, Oregon Medical Fee and Payment;
- OAR 436-010, Medical Services;
- OAR 436-015, Managed Care Organizations.

The department has:

- Summarized the proposed rule changes and prepared an estimate of fiscal and economic impacts in the notice of proposed rulemaking filed with the Oregon Secretary of State on Jan. 28, 2021;
- Distributed the notice 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, 2021.

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. 22, 2021, and will make no decisions until all of the testimony is considered.

I will bring to your attention some testimony from the Workers' Compensation Division marked "Exhibit 1." This testimony from Medical Policy Analyst Juerg Kunz is dated Feb. 1, 2021. The subject is "Fee schedule for anesthesia services." I will read this testimony verbatim into the record:

The workers' compensation division (WCD) is proposing to raise the maximum allowable payment amounts for physician services, including anesthesia services, by an average of two percent, excluding amounts for office visits, which WCD proposes to increase by ten percent. The maximum allowable payment amounts for most physician services can be found in the physician fee schedule table (Appendix B). However, the maximum allowable payment amounts for anesthesia services are not listed in Appendix B. Rather, the maximum allowable payment amounts for anesthesia codes are determined by multiplying the anesthesia value by the conversion factor listed in OAR 436-009-0040(2)(f).

WCD inadvertently did not make a change to the anesthesia conversion factor, hence the rules as proposed do not afford a two percent increase in the maximum allowable payment amounts for anesthesia services.

WCD intends to correct this error by increasing the anesthesia conversion factor listed in OAR 436-009-0040(2)(f) from \$59.74 to \$60.93 when filing notice of the permanent OAR 436-009 with the secretary of state.

We are ready to receive public testimony. Lisa Anne, is this a good time for you?

Lisa Anne Bickford:

Yes, I am here, and thanks for including me and thank you for holding the hearing. This is Lisa Anne Bickford with Coventry and Mitchell Government Relations. And, I just wanted to offer short testimony in support of the state's proposed rules. In particular, we

appreciate the state's inclusion of the expansion of telehealth services in recognition of providers that are basically scrambling to provide care in any way that they can during the pandemic. So, we appreciate that the division has expanded and removed the barriers to have limitations subject only to the appendix. So, thank you very much for that, and thank you to the division.

Fred Bruyns:

Thank you Lisa Anne, for your testimony.

Is there anyone else who would like to testify at this time?

Hearing no one, in a moment I will recess the hearing, but we will resume for additional testimony if anyone wishes to testify before 3 p.m.

Again, the record remains open for written testimony through and including Feb. 22, 2021. You may submit testimony in any written form. I encourage you to submit your testimony by email or as attachments to email. However, you may also use US mail. I will acknowledge all testimony received.

This hearing is recessed at 2:05 p.m.

Okay, this hearing is resumed at 2:58 p.m. Is there anyone else who would like to testify today? Hearing no one, the time is still 2:58 p.m.

Thank you for coming. This hearing is adjourned.

Transcribed from a digital audio recording by Fred Bruyns, Feb. 17, 2021.



MEMORANDUM

Workers' Compensation Division

February 18, 2021

To: Fred Bruyns, Rules Coordinator

From: Juerg Kunz, Medical Policy Analyst

Subject: Maximum payment amount for facility fee of originating site for telehealth services (HCPCS code 3014)

The workers' compensation division (WCD) has proposed to increase the maximum payment amount of the facility fee of the originating site for telehealth services (HCPCS code Q3014) listed in Appendix B from \$35.00 to \$35.70.

WCD inadvertently did not make that change to the facility fee of the originating site for telehealth services in OAR 436-009-0012(5)(c).

WCD intends to correct this error by changing the maximum payment amount for HCPCS code Q3014 listed in OAR 436-009-0012(5)(c) from \$35.00 to \$35.70 when filing notice of the permanent OAR 436-009 with the secretary of state.

Juerg Kunz
Medical Policy Analyst

Department of Consumer and Business Services
Workers' Compensation Division,
[350 Winter Street NE, PO Box 14480, Salem, OR 97309](mailto:350.Winter.Street.NE,PO.Box.14480,Salem,OR.97309),
Fred Bruyns

In response to the proposed changes of OR 45720 2021, the Oregon Society of PAs (OSPA) would like to point out exclusionary concerns in the current rules. Several sections which should also apply to PAs do not include PAs in the rule. Section 436-009-0010, 1(a) and 9(a)(B) state “attending physician or authorized nurse practitioner.” The same terminology is used in 436-010-0230(6), 7(c), 8, 10, 13, and 14(a)(B).

OSPA would like for this phrase to be changed to “attending physician, physician assistant or authorized nurse practitioner” or alternately to “authorized attending provider.”

Ben Johnson PA-C, President OSPA