

February 26, 2025

RULES COORDINATOR
WORKERS' COMPENSATION DIVISION
DEPT. OF CONSUMER & BUSINESS SERVICES
350 WINTER ST. NE
SALEM, OR 97309

Re: Written comments regarding WCD's rulemaking hearing on OAR 436-009, -010, -015

Dear Rules Coordinator,

SAIF Corporation thanks the Workers' Compensation Division (WCD) for the opportunity to provide written comments related to the proposed changes to OAR 436-009, -010, and -015. SAIF offers the following written comments for the division's consideration. For issues not specifically raised below, SAIF has no questions or concerns.

OAR 436-009-0060(2)-Interpreter Services

The proposed change adopts the Oregon Specific Code (OSC) of D0007 for interpreter services provided by a certified or qualified interpreter who is solely employed by a medical provider for that purpose. The proposed OSC for this service is currently utilized by Independent Medical Evaluation vendors when billing for an Independent Medical Evaluation. Utilizing the same code for interpreter services would require a revision of the service agreements between SAIF and its IME vendors. To avoid an administrative burden on SAIF and the IME vendors, SAIF requests that WCD create a new OSC for the above described interpreter services.

OAR 436-009-0060(2)-Worker Requested Medical Examination (WRME)

The proposed change expands the WRME services that are paid by the insurer to include a file review and addendum report. The proposed change conflicts with ORS 656.325(1)(e), which allows a worker to "request an examination to be conducted by a physician". The statute does not allow the worker or their representative to request a file review to be conducted by a physician nor does it allow for an addendum. Similarly, OAR 436-060-0147 that sets forth the process of obtaining a WRME does not provide for a file review or addendum report.

ORS 656.325(1)(e) further states that "[t]he cost of the examination and the examination report shall be paid by the insurer or self-insured employer." The clear statutory language only requires the insurer to pay the cost of the examination and the examination report. A file review consists of a review of the medical records and a subsequent report. It does not include an examination. Consequently, a report resulting from a file review is not an

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“examination report” and an insurer is not responsible for the cost of the file review. The proposed change would be an impermissible expansion of the statute.

Similarly, an addendum report is not specifically authorized as the statute limits payment for the examination report only, not an addendum report. Further, OAR 436-060-0147 provides the steps in which questions must be provided to a WRME provider and the timeline for issuing the examination report. Because an addendum report would issue after the examination report and potentially in response to later submitted questions, the submission of additional questions and the timing of the report would conflict with OAR 436-060-0147. *See also Craig A. Olsen*, 19 CCHR 90 (2014) (finding an insurer was not responsible for the cost of a WRME addendum report).

Lastly, ORS 656.325(1)(e) states “examination report”. The reference is singular and does not include subsequent reports, which would include an addendum report. For these reasons, SAIF requests WCD remove the proposed changes and maintain the current language for WRME costs that are paid by the insurer or self-insured employer.

OAR 436-009-0110(3)(d)(B)-interpreter services

SAIF appreciates the expansion of interpreter services to include certified and qualified interpreters who are employed by a medical provider solely to provide interpreter services. As written, SAIF is unsure whether the proposed change would require payment if the interpreter services were provided remotely via telephone or video. Additionally, as written, the rule suggests that an interpreter who otherwise meets the criteria would also be entitled to mileage reimbursement. At the advisory meeting, it was SAIF’s understanding that the services would be provided face to face and that mileage would not be paid for interpreters employed by a medical service provider solely to provide interpreter services. Assuming SAIF’s understanding is correct, SAIF suggests WCD clarify that the interpreter services must be provided face to face and is not subject to mileage reimbursement.

Additionally, SAIF seeks clarification that certified or qualified interpreters who are solely employed by a medical provider must bill for actual time spent when providing interpretive services. As written, OAR 436-009-0110(6)(b) does not specify the maximum payment for interpreters in this situation. The proposed rules include a new maximum payment for interpreter services provided by a certified or qualified interpreter who is employed by the medical provider. The rate does not require that the interpreter be “solely employed” by the medical provider. To avoid confusion and a possible inadvertent billing of the two hour minimum payment rate for certified or qualified interpreters who are solely employed to provide interpreter services, SAIF requests clarification that a certified or qualified interpreter solely employed by a medical provider to provide in-person (face to face) interpreter services may only bill in 15 minute increments.

SAIF also suggests WCD amend OAR 436-009-0110(5)(b) to include the billing code for certified or qualified interpreters employed by a medical provider solely to provide in-person (face to face) interpreter services. Under the current rule, an interpreter would not be required to provide the correct billing code on their invoice.

Additionally, the rule does not set forth a verification or certification process for the Workers' Compensation Division or insurer to confirm the interpreter is solely employed to provide interpreter services. SAIF suggests that the WCD consider creating a verification or attestation process.

OAR 436-010-0270(4)(a)-Communication with Providers

The proposed rule establishes a two day time period for the insurer to respond to a medical provider's inquiry regarding the claim status, accepted conditions, and MCO enrollment. SAIF may receive such inquiries via telephone, email, and fax. Depending on how the inquiry is made there can be a delay from the point of receipt of the inquiry (i.e. receipt of a fax) and directing the request to the appropriate SAIF representative. During the advisory meeting and in written comments, stakeholders expressed concern that two days was too short a time period. To ensure adequate time for the request to go to the appropriate representative, SAIF requests that the rule allow an insurer five days to respond.

As always, SAIF appreciates the WCD's engagement and commitment to the rulemaking process as well as its collaborative approach. Thank you for your consideration of SAIF's comments.

Sincerely,

/s/ Elaine Schooler
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