

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
 • 436-010, Medical Services) TESTIMONY AND
) 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 Feb. 1, 2022. On Feb. 15, 2022, a public rulemaking hearing was held as announced at 9 a.m. by telephone and video conference. Fred Bruyns, from the Workers’ Compensation Division, was the hearing officer. The record was held open for written comment through Feb. 21, 2022.

No one testified at the hearing, though the hearing officer briefly described the subject matter of written testimony, Exhibits 1 and 2, received before the hearing, and explained that the testimony is posted to the division’s website. The transcript of the hearing is recorded below as Exhibit 3.

Testimony list:

Exhibit	Testifying
<u>1</u>	Ben Johnson, PA
<u>2</u>	Juerg Kunz, Workers’ Compensation Division
<u>3</u>	Transcript of hearing (no public testimony)

Testimony: OAR 436-015*

Exhibit 1

“... I am not seeing anything about the issue on PAs and MCO’s. ... [The Workers’ Compensation Division responded (in part) that in every geographic service area except one, all of the certified MCOs have at least three PAs on panel currently.] ... That being the case, it would be zero burdens on MCOs to include PAs in the rule, it would assure continuation of inclusion in the future and abate our concerns. This decision does neither, but I appreciate the opportunity to be heard.”

* Although the division did not propose changes to OAR 436-015, the rulemaking advisory committee discussed the possibility of requiring MCOs to have physician assistants on their provider panels.

Response: Thank you for your testimony. HB 2036 (2021) eliminates the requirement that a PA has a supervising physician. Instead, starting July 15, 2022, a PA is allowed to enter into a collaboration agreement. A PA must enter into a collaboration agreement no later than December

31, 2023. Although PAs will be able to operate more independently under collaboration agreements, there are still questions about how an MCO could add a PA to a panel without including others who are parties to the collaboration agreement. We looked into current MCO panel composition and found that in every geographic service area except one, all of the certified MCOs have at least three PAs on panel currently. One MCO operating in a more rural part of the state has just two PAs on its panel there. The reason we looked at who had three or more PAs is because for the required provider categories in our rules, if an MCO cannot offer at least three choices in the category, the worker may be able to seek treatment outside the MCO. The data shows that MCOs value the services of PAs, given that they are not required to include them on their panels currently, but consistently do so.

Testimony: OAR 436-009-0004

Exhibit 2

“The workers’ compensation division (WCD) has learned that the AMA has published new SARS-CoV-2-related CPT[®] codes after WCD published the proposed division 009 rules.

“The AMA has published CPT[®] code 0074A (Immunization administration by intramuscular injection of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (coronavirus disease [COVID-19]) vaccine, mRNA-LNP, spike protein, preservative free, 10 mcg/0.2 mL dosage, diluent reconstituted, tris-sucrose formulation; third dose). WCD intends to add CPT[®] code 0074A to OAR 436-009-0004(3)(a) when filing notice of the permanent OAR 436-009 rules, effective April 1, 2022, with the secretary of state.

“The AMA has published CPT[®] code 0081A (Immunization administration by intramuscular injection of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (coronavirus disease [COVID-19]) vaccine, mRNA-LNP, spike protein, preservative free, 3 mcg/0.2 mL dosage, diluent reconstituted, tris-sucrose formulation; first dose), CPT[®] code 0082A (Immunization administration by intramuscular injection of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (coronavirus disease [COVID-19]) vaccine, mRNA-LNP, spike protein, preservative free, 3 mcg/0.2 mL dosage, diluent reconstituted, tris-sucrose formulation; second dose), and CPT[®] code 91308 (Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (coronavirus disease [COVID-19]) vaccine, mRNA-LNP, spike protein, preservative free, 3 mcg/0.2 mL dosage, diluent reconstituted, tris-sucrose formulation, for intramuscular use). CPT[®] codes 0081A, 0082A, and 91308 will be effective upon receiving Emergency Use Authorization or approval from the U.S. Food and Drug Administration. WCD intends to add CPT[®] codes 0081A, 0082A, and 91308 to OAR 436-009-0004(3)(b) when filing notice of the permanent OAR 436-009 rules, effective April 1, 2022, with the secretary of state.”

Response: WCD added CPT[®] code 0074A to OAR 436-009-0004(3)(a) and CPT[®] codes 0081A, 0082A, and 91308 to OAR 436-009-0004(3)(b).

Dated this 2nd day of March, 2022.
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BRUYNS Fred H * DCBS

From: pfrlabs <pfrlabs@yahoo.com>
Sent: Friday, January 14, 2022 8:52 AM
To: BRUYNS Fred H * DCBS
Subject: Re: Proposed workers' compensation rules posted: OAR 436-009 and 010

That being the case, it would be zero burdens on MCOs to include PAs in the rule, it would assure continuation of inclusion in the future and abate our concerns. This decision does neither, but I appreciate the opportunity to be heard.

From Ben Johnson

On Jan 14, 2022, at 7:57 AM, BRUYNS Fred H * DCBS <Fred.H.BRUYNS@dcbs.oregon.gov> wrote:

Good morning Ben,

After considering the committee members' input and doing some research, we decided not to propose to require MCOs to include PAs on their panels. Although PAs will be able to operate more independently under collaborative practice agreements, there are still questions about how an MCO could add a PA to a panel without including others who are parties to the collaborative practice agreements. We looked into current MCO panel composition and found that in every geographic service area except one, all of the certified MCOs have at least three PAs on panel currently. One MCO operating in a more rural part of the state has just two PAs on its panel there. The reason we looked at who had three or more PAs is because for the required provider categories in our rules, if an MCO cannot offer at least three choices in the category, the worker may be able to seek treatment outside the MCO. The data shows that MCOs value the services of PAs, given that they are not required to include them on their panels currently, but consistently do so.

Thank you for contacting me today. Please let me know if you have questions, and please copy Juerg Kunz and Stan Fields (who are on this distribution), our medical policy analyst and managed care specialist respectively.

Sincerely,

Fred Bruyns, policy analyst/rules coordinator
Department of Consumer and Business Services
Workers' Compensation Division
971-286-0316; fax 503-947-7514
Email: fred.h.bruyns@dcbs.oregon.gov



Department of Consumer
and Business Services

From: pfrlabs <pfrlabs@yahoo.com>
Sent: Thursday, January 13, 2022 7:16 PM
To: BRUYNS Fred H * DCBS <Fred.H.BRUYNS@dcbs.oregon.gov>
Subject: Re: Proposed workers' compensation rules posted: OAR 436-009 and 010

Fred, I am not seeing anything about the issue on PAs and MCO's. Am I missing it?

From Ben Johnson

On Jan 13, 2022, at 4:09 PM, BRUYNS Fred H * DCBS
<Fred.H.BRUYNS@dcbs.oregon.gov> wrote:

Regarding: Workers' compensation medical fees and payments, medical services, and interpreter services

To: Rulemaking Advisory Committee members; Medical Advisory Committee Members; Management-Labor Advisory Committee members; other interested people

Hello,

The Workers' Compensation Division has published proposed amendments to:

- [OAR 436-009, Oregon Medical Fee and Payment; and](#)
- [OAR 436-010, Medical Services.](#)

Written testimony will be posted here as we receive it:
<https://wcd.oregon.gov/laws/Pages/proposed-rules.aspx>.

A virtual public rulemaking hearing is scheduled for Feb 15, 2022, 9 a.m. The closing date for written testimony is Feb. 21, 2022.

To connect to the hearing, click:
<https://www.zoomgov.com/j/1615336005?pwd=UFVWMkxCZWFPYlFhNkVZd21HZjhLUT09>

Meeting ID: 161 533 6005 | Passcode: 094015
Dial in: 833 568 8864 US Toll-free | Meeting ID: 161 533 6005

A summary of proposed rule changes is available at the bottom of this message.

Please let me know if you have questions.

Thank you!

Fred Bruyns, policy analyst/rules coordinator
Department of Consumer and Business Services
Workers' Compensation Division
971-286-0316; fax 503-947-7514
Email: fred.h.bruyns@dcbs.oregon.gov



Summary of proposed changes to OAR 436-009, Oregon Medical Fee and Payment:

- Amended rule 0004:
 - Adopts, by reference, new medical billing codes and related references; and
 - Adopts, in rule or by reference, CPT[®] codes and descriptors published by the American Medical Association.
- Amended rule 0005 defines “Legal holidays” as holidays listed in ORS 187.010 and 187.020.
- Amended rule 0010 has updated references to CPT[®] 2022.
- Amended rule 0012 has an updated reference to CPT[®] 2022.
- Amended rule 0020 clarifies requirements for payment of out-of-state hospitals for outpatient services.
- Amended rule 0023’s ambulatory surgery center fee schedules, Appendices C and D, include new billing codes for 2022; some maximum payment amounts are higher or lower, but overall reimbursement is not projected to change.
- Amended rule 0025 clarifies requirement for written explanation of what is a timely response by the insurer or representative to a worker’s question about reimbursement of out-of-pocket expenses.
- Amended rule 0030:
 - Clarifies requirement for written explanation of what is a timely response by the insurer or representative to a medical provider’s payment question; and
 - Clarifies requirement for timely response by the insurer or representative to a medical provider’s payment question.
- Amended rule 0040’s physician fee schedule, Appendix B, includes new billing codes for 2022; some maximum payment amounts are higher or lower, but overall reimbursement is not projected to change.
- Amended rule 0060:
 - Revises Oregon Specific Code (OSC) R0002, “Copies of medical records electronically,” to include that records may be provided on certain electronic media, uploaded to an insurer’s secure website, or sent using secure email or e-fax; and

- Clarifies requirements for billing for director-required medical exams or records review; OSC P0001 will be used to bill for an exam; new OSC P0002 will be used for record review; P0001 and P0002 are limited to six hours combined; OSC P0004, “Director required review - complex case fee,” is clarified that it is a one-time, flat fee pre-authorized by the director for an extensive review in a complex case; OSC P0005, “Director-required exam – failure to appeal,” is deleted.
- Amended rule 0080’s durable medical equipment, prosthetics, orthotics, and supplies fee schedule, Appendix E, increases maximum allowable payments by approximately \$250,365 per year, or 2 percent.
- Amended rule 0110:
 - Increases maximum allowable payments for interpreter services and no-show fees by an average of 8.4 percent. This increase is projected to raise the maximum allowable payments to interpreters by approximately \$212,350 per year;
 - Requires insurers to retain interpreters’ bills if the bill or chart note for the corresponding medical appointment has not been received;
 - Clarifies requirement for written explanation of what is a timely response by the insurer or representative to an interpreter’s payment question; and
 - Clarifies requirement for timely response by the insurer or representative to an interpreter’s payment question.

Summary of proposed changes to OAR 436-010, Medical Services:

- Amended rule 0241 defines legal holidays as the holidays listed in ORS 187.010 and 187.020.



MEMORANDUM

February 15, 2022

To: Fred Bruyns, Rules Coordinator

From: Juerg Kunz, Medical Policy Analyst

Subject: New SARS-CoV-2-related CPT[®] codes published by the American Medical Association (AMA)

The workers' compensation division (WCD) has learned that the AMA has published new SARS-CoV-2-related CPT[®] codes after WCD published the proposed division 009 rules.

The AMA has published CPT[®] code 0074A (Immunization administration by intramuscular injection of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (coronavirus disease [COVID-19]) vaccine, mRNA-LNP, spike protein, preservative free, 10 mcg/0.2 mL dosage, diluent reconstituted, tris-sucrose formulation; third dose). WCD intends to add CPT[®] code 0074A to OAR 436-009-0004(3)(a) when filing notice of the permanent OAR 436-009 rules, effective April 1, 2022, with the secretary of state.

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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 OAR: <ul style="list-style-type: none"> • 436-009, Oregon Medical Fee and Payment; and • 436-010, Medical Services.))))))	TRANSCRIPT OF TESTIMONY
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The proposed amendment to the rules was announced in the Secretary of State’s Oregon Bulletin dated Feb. 1, 2022. On Feb. 15, 2022, a public rulemaking hearing was held as announced at 9 a.m. via video and telephone conference. Fred Bruyns, from the Workers’ Compensation Division, was the hearing officer. The record will be held open for written comment through Feb. 21, 2022.

INDEX OF WITNESSES

Witnesses	Page
No testimony at the hearing	NA

TRANSCRIPT OF PROCEEDINGS

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.

Time is now 9:02 a.m. on Tuesday, Feb. 15, 2022. We are conducting this hearing from the Labor & Industries Building in Salem Oregon. However, we are doing so virtually, by video and telephone conferencing. We are making a digital recording of the 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; and
- OAR 436-010, Medical Services.

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. 12, 2022; 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, 2022.

Transcript of public rulemaking hearing
Feb. 15, 2022

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. 21, 2022, and will make no decisions until all of the testimony is considered. Some written testimony is posted to the Workers' Compensation Division's website. Exhibit 1 is testimony from Physician Assistant Ben Johnson about requiring MCOs to have physician assistants on their panels, and Exhibit 2 is testimony from Juerg Kunz of the Workers' Compensation Division requesting the adoption of new SARS-CoV-2-related CPT® codes recently published by the American Medical Association.

We are ready to receive public testimony. Is there anyone connected with us this morning 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 10 a.m., if anyone arrives after the fact, or anyone is welcome to change their mind.

Again, the record remains open for written testimony through and including Feb. 21, 2022. 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 9:05 a.m.

Okay, this hearing is resumed at 9:59 a.m.

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

Hearing no one, the time is 10 a.m.

Thank you for coming. This hearing is adjourned.

Transcribed from a digital audio recording by Fred Bruyns, Feb. 16, 2022.