

“... especially during this Covid time, I can assure you that being a small business owner, not seeing patients, but still paying rent, utilities and staff was quite different than doctors in a facility clinic. Also, as we reopened, I had to research and write all my own policies, measure 6-foot between chairs, print my own signs, buy all my PPE, etc. I really saw the benefit of a system. Let alone the purchasing power of a bigger system buying in bulk

“... I’m surprised about the added facility charge. When I worked at Rehab Med Assoc., at Legacy Good Samaritan, there was no facility charge for an in-office doctor appt. However, if a patient has a procedure such as a CT scan, then there is a charge for the procedure paid to the hospital and a charge for the physician who interprets the report. Interestingly, for well over a decade, radiologists have been able to read/interpret films at home; did their reimbursement change at that time? I suspect it didn’t. If their reimbursement did not change, i.e. they still received the facility reimbursement rate because they work at a facility, then it would be inconsistent to pay other doctors at the non-facility rate.”

Response: Thank you for your testimony. A rules advisory committee for the April 1, 2020, medical fee and payment rules strongly supported payment for telemedicine services at the non-facility rate. This is in line with the committee’s recommendation and the division’s intent to encourage providers to provide medical services via telehealth as appropriate. Going forward, we may have to adjust our payment rules as we become better acquainted with the changes that are happening in the delivery of health care services during the current Covid-19 pandemic.

Testimony: OAR 436-009-0012

Exhibit 2a

“... This is Lisa Anne Bickford, with Coventry. I just would like to offer Coventry’s support for the division’s proposed changes as listed in the draft. We feel that they are helpful in clarifying the rules, and we appreciate the division’s inclusion of other services beyond those listed in Appendix P, and deferring to medical providers’ judgment for what is deemed to be the appropriate services. And, appreciate the division’s language on just referring generally to appropriateness and the form of communication being appropriate; we appreciate that inclusion in the rule. Also, the place of service code “02” and modifier “95” amendments – we are also in support of. So we just wanted to testify today in support of the division’s proposal.”

Response: Thank you for your testimony.

Testimony: OAR 436-009-0012

Exhibit 2b

“Really echoing Lisa’s comments. We are in support of the changes. I think it was well developed and thought out, taking into account the previous meetings that we had on this topic with the public input, and so we appreciate the work done here and support all the changes.”

Response: Thank you for your testimony.

Testimony: OAR 436-009-0012

Exhibit 3

“Why is Oregon proposing to pay telehealth services at the non-facility rate when Medicare pays services with POS = “02” at the facility rate?”

Response: Thank you for your testimony. While we adopt CMS’ published relative value units (RVUs) as the basis for our physician fee schedule, we do not adopt Medicare policies. A rules advisory committee for the April 1, 2020, medical fee and payment rules strongly supported payment for telemedicine services at the non-facility rate. This is in line with the committee’s recommendation and the division’s intent to encourage providers to provide medical services via telehealth as appropriate.

Dated this 28th day of August, 2020.

BRUYNS Fred H * DCBS

From: Danielle Erb <DErb@brainrehab.com>
Sent: Friday, July 10, 2020 9:50 AM
To: KUNZ Juerg * DCBS
Cc: ANDERSEN Robert C * DCBS; VANNESS Jim * DCBS; BRUYNS Fred H * DCBS
Subject: RE: Request for advice: Draft proposed and temporary rules posted

Dear Mr. Kunz,

Thank you for your response. I'm surprised about the added facility charge. When I worked at Rehab Med Assoc., at Legacy Good Samaritan, there was no facility charge for an in-office doctor appt. This could be different in other hospitals, but it seems unlikely that Legacy isn't maximizing its billing. However, if a patient has a procedure such as a CT scan, then there is a charge for the procedure paid to the hospital and a charge for the physician who interprets the report. Interestingly, for well over a decade, radiologists have been able to read/interpret films at home; did their reimbursement change at that time? I suspect it didn't. If their reimbursement did not change, i.e. they still received the facility reimbursement rate because they work at a facility, then it would be inconsistent to pay other doctors at the non-facility rate.

Thank you for asking for input,

Danielle L. Erb, MD
Physical Medicine & Rehabilitation, Board Certified
Subspecialty Certified in Brain Injury Medicine
Brain Rehabilitation Medicine
1815 SW Marlow, #110, Portland, OR 97225
P: 503-296-0918; F: 503-296-6158

From: KUNZ Juerg * DCBS <Juerg.Kunz@oregon.gov>
Sent: Thursday, July 9, 2020 1:55 PM
To: Danielle Erb <DErb@brainrehab.com>
Cc: ANDERSEN Robert C * DCBS <Robert.C.Andersen@oregon.gov>; VANNESS Jim * DCBS <Jim.VanNess@oregon.gov>; BRUYNS Fred H * DCBS <Fred.H.Bruyns@oregon.gov>
Subject: RE: Request for advice: Draft proposed and temporary rules posted

Dear Dr. Erb,

Thank you for your comments regarding the difference between facility and non-facility rates. We will carefully consider your comments before finalizing the September 21, 2020, rules.

As you noted, the non-facility rate is higher than the facility rate to help pay the physician's overhead. When we drafted these proposed rules, we took into account that most of the time, when a physician gets paid at the facility rate, the insurer will receive a second bill from the facility where the service by the physician is provided at. I don't think that is the case when a service is provided through telehealth. Therefore, it seems more appropriate to pay the physician at the non-facility rate. Interestingly, Medicare pays for telehealth services at the lower rate, i.e. the facility rate, regardless of whether the physician is in his own office or in a facility, e.g., in a hospital.

It is our goal that physicians receive adequate compensation for treating workers' compensation patients. As you know, services provided through telehealth have increase dramatically since the start of the Covid-19

pandemic. I expect that even after tis pandemic, telehealth services will be much more widely used to treat workers' compensation patients than was the case before the pandemic. Going forward, I expect that we may tweak our payment rules as we become better acquainted with the changes that are happening now in the delivery of health care services.

On a personal note, I would like to thank you for your services to Oregon workers' compensation patients during these difficult time!

Sincerely,

Juerg Kunz
Medical Policy Analyst
Oregon Workers' Compensation Division
503-947-7741 / FAX 503-947-7629

juerg.kunz@oregon.gov

How is Our Service? Take a Short [Survey](#)



From: BRUYNS Fred H * DCBS <Fred.H.Bruyns@oregon.gov>

Sent: Thursday, July 9, 2020 1:07 PM

To: 'Danielle Erb' <DErb@brainrehab.com>; KUNZ Juerg * DCBS <Juerg.Kunz@oregon.gov>

Cc: ANDERSEN Robert C * DCBS <Robert.C.Andersen@oregon.gov>; VANNESS Jim * DCBS <Jim.VanNess@oregon.gov>;

BRUYNS Fred H * DCBS <Fred.H.Bruyns@oregon.gov>

Subject: RE: Request for advice: Draft proposed and temporary rules posted

Good afternoon Dr. Erb,

Thank you for contacting us. I am forwarding your comments to Juerg Kunz, our medical policy analyst, as well as some program managers.

Juerg will get back to you regarding your concerns.

Sincerely,

Fred Bruyns, policy analyst/rules coordinator
Department of Consumer and Business Services
Workers' Compensation Division
503-947-7717; fax 503-947-7514
Email: fred.h.bruyns@oregon.gov



How is Our Service? Take a Short [Survey](#)

From: Danielle Erb <DErb@brainrehab.com>

Sent: Thursday, July 9, 2020 11:47 AM

To: BRUYNS Fred H * DCBS <Fred.H.Bruyns@oregon.gov>

Subject: RE: Request for advice: Draft proposed and temporary rules posted

Dear Mr. Bruyns,

I am confused about the changes below in how “facility” and “non-facility” are being used. For example, previously, non-facility meant a completely independent private practice office versus a doctor’s office that is partially supported by a medical system. For example, I previously worked for Rehab Med Assoc. which is in a legacy building and receives some support from Legacy indirectly like housekeeping, parking lot, internet, on-site lab, hall-way directions and sign, etc. Whereas I now work completely independently and pay for all services; there is no indirect support like “Legacy” a produced policy and signs for Covid-19, etc. The “non-facility” reimbursement is higher to bridge this gap. This is not the same as me doing a Zoom call (on the professional level of zoom at my cost) at my house versus at my clinic. Either way it is “non-facility”. But if a Legacy doctor does a zoom call at their home on the Legacy system versus at the clinic it’s still “facility”. One other way to think is if a Providence doctor does video appointments at home some days and at the clinic other days to reduce the number of people on site, they shouldn’t get paid more for being at home than being in the office. Either way, Providence is providing the video platform and the physician is not paying rent for an empty office.

I hope this makes sense. Maybe I have interpreted this incorrectly as I’m a physician, not a biller, but Dr. Craven did not understand this distinction when we had the call on 5-22. From his perspective, as a facility, Kaiser, it does seem unfair that they are reimbursed at a lower rate, but especially during this Covid time, I can assure you that being a small business owner, not seeing patients, but still paying rent, utilities and staff was quite different than doctors in a facility clinic. Also, as we reopened, I had to research and write all my own policies, measure 6-feet between chairs, print my own signs, buy all my PPE, etc. I really saw the benefit of a system. Let alone the purchasing power of a bigger system buying in bulk, my non-oral, no touch thermometer just arrived yesterday!!!

Danielle L. Erb, MD

Physical Medicine & Rehabilitation, Board Certified
Subspecialty Certified in Brain Injury Medicine
Brain Rehabilitation Medicine
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436-009-0040 Fee Schedule

(I) Fee Schedule Table.

(a) Unless otherwise provided by contract or fee discount agreement allowed by these rules, insurers must pay according to the following table:

Services	Codes	Payment Amount:	
Services billed with CPT® codes, HCPCS codes, or Oregon Specific Codes (OSC):	Listed in Appendix B and performed in medical service provider’s office	Lesser of:	Amount in non-facility column in Appendix B, or Provider’s usual fee
	Listed in Appendix B and not performed in medical service provider’s office	Lesser of:	Amount in facility column in Appendix B*, or Provider’s usual fee

**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: 436-009, Oregon Medical Fee and Payment)))	TRANSCRIPT OF TESTIMONY
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The proposed amendment to the rules was announced in the Secretary of State’s Oregon Bulletin dated July 1, 2020. On July 22, 2020, a public rulemaking hearing was held as announced at 2 p.m. by telephone. Fred Bruyns, from the Workers’ Compensation Division, acted as hearing officer. The record will be held open for written comment through July 28, 2020.

INDEX OF WITNESSES

Witnesses	Page
<u>Lisa Anne Bickford, Coventry</u>	2
<u>Greg Gilbert, Concentra</u>	2

TRANSCRIPT OF PROCEEDINGS

Fred Bruyns:

Good afternoon 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 2 PM on Wednesday July 22, 2020. We are conducting this telephone hearing from the Labor & Industries Building, 350 Winter St. NE, in Salem, Oregon.

We are making an audio recording of today’s hearing.

The Department of Consumer and Business Services, Workers’ Compensation Division proposes to amend chapter 436 of the Oregon Administrative Rules, specifically division 9, Oregon Medical Fee and Payment Rules. The department has summarized the proposed rule changes and prepared an estimate of fiscal and economic impacts in the notice of proposed rulemaking. This notice and proposed rules with marked changes are available on the division's website. Written testimony has also been posted.

The Workers’ Compensation Division: Filed the notice of proposed rulemaking with the Oregon Secretary of State on June 17, 2020; mailed 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 July 1, 2020.

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 July 28, 2020, and will make no decisions until all of the testimony is considered.

We are ready to receive your testimony. Before you testify, I will record your name, and your organization, if any, and I will add you to our testimony sign-in sheet. I already have Lisa Anne signed up, so Lisa Anne, would you go ahead and provide any testimony that you would like to?

Lisa Anne Bickford:

Absolutely. This is Lisa Anne Bickford, with Coventry. I just would like to offer Coventry's support for the division's proposed changes as listed in the draft. We feel that they are helpful in clarifying the rules, and we appreciate the division's inclusion of other services beyond those listed in Appendix P, and deferring to medical providers' judgment for what is deemed to be the appropriate services. And, appreciate the division's language on just referring generally to appropriateness and the form of communication being appropriate; we appreciate that inclusion in the rule. Also, the place of service code "02" and modifier "95" amendments – we are also in support of. So we just wanted to testify today in support of the division's proposal.

Fred Bruyns:

Okay. Thank you Lisa Anne. Is there anyone else who would like to testify this afternoon?

Greg Gilbert:

Hey Fred. It's Greg Gilbert with Concentra.

Fred Bruyns:

Oh, welcome Greg. Go ahead.

Greg Gilbert:

Really echoing Lisa's comments. We are in support of the changes. I think it was well developed and thought out, taking into account the previous meetings that we had on this topic with the public input and so we appreciate the work done here and support all the changes.

Fred Bruyns:

Transcript of public rulemaking hearing
July 22, 2020

Okay, Thank you Greg. Is there anyone else on the line who would like to testify? For the record, no additional people wish to testify at this time.

It is our policy to leave hearings open for a minimum of one-half hour. In a moment I will recess the hearing, and we will resume for additional testimony, if there is any.

Again, the record remains open for written testimony through and including July 28, 2020. 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 fax or USPS mail. The notice of proposed rulemaking includes my contact information. I will acknowledge all testimony received.

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

This hearing is resumed at 2:30 p.m.

Is there anyone else on the phone who would like to testify with us this afternoon? Okay, hearing no one, the time is 2:31 p.m., and thank you for attending. This hearing is adjourned.

Transcribed from a digital audio recording by Fred Bruyns, July 22, 2020.

BRUYNS Fred H * DCBS

From: Mercedes Hudgins <Mercedes.Hudgins@mitchell.com>
Sent: Wednesday, July 22, 2020 6:43 PM
To: BRUYNS Fred H * DCBS
Cc: Karen Ritchie; Miriam Encarnacion; Darla White; Sheryll Bonite
Subject: Testimony: Proposed amendments to OAR 436-009 amended rule 0012

Importance: High

Hello Mr. Bruyns,

Please consider the following inquiry from our Regulatory Compliance Management team in response to the proposed amendment to OAR 436-009, Oregon Medical Fee and Payment rule [0012 Telehealth Services](#):

Why is Oregon proposing to pay telehealth services at the non-facility rate when Medicare pays services with POS = "02" at the facility rate?

Referencing proposed document published June 18, 2020:
https://wcd.oregon.gov/laws/Documents/Proposed_rules_and_testimony/Div-009-2020-07-22/9-20XXp.pdf

Page 1:
Section 436-009-0012
(3) Distant site provider billing
(b) When billing for telehealth services other than telemedicine services , the distant site provider:
(A): Must use the POS code "02"

Page 2:
(5) Payment
(a) Insurers must pay distant site providers at the non-facility rate

Medicare links:
Medicare Claims Processing Manual Chapter 12 - Physicians/Nonphysician Practitioners:
<https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c12.pdf>
Medicare transmittal – Place of Service update - <https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2017Downloads/R3873CP.pdf>

Thank you,



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