



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Workers' Compensation Division
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Aug. 15, 2017

Proposed Changes to Workers' Compensation Rules

Criteria for determining number of arbiters for medical arbiter panel; implementation of House Bill 2335

Please review the attached documents for more information about proposed changes and possible fiscal impacts.

The department welcomes public comment on proposed changes and has scheduled a public hearing.

- When is the hearing?** Sept. 18, 2017, 10:30 a.m.
- Where is the hearing?** Labor & Industries Building
350 Winter Street NE, Room F (basement)
Salem, Oregon 97301
- How can I make a comment?** Come to the hearing and speak, send written comments, or do both. Send written comments to:
Email – fred.h.bruyns@oregon.gov
Fred Bruyns, rules coordinator
Workers' Compensation Division
350 Winter Street NE (for courier or in-person delivery)
PO Box 14480, Salem, OR 97309-0405
Fax – 503-947-7514

The closing date for written comments is Sept. 22, 2017.

How can I get copies of the proposed rules and view testimony?

On the Workers' Compensation Division's website –
<http://wcd.oregon.gov/laws/Pages/proposed-rules.aspx>.

Or call 503-947-7717 to get free paper copies

Questions?

Contact Fred Bruyns, 503-947-7717.

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form

FILED
8-14-17 3:56 PM
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Department of Consumer and Business Services, Workers' Compensation Division

436

Agency and Division

Administrative Rules Chapter Number

Fred Bruyns

(503) 947-7717

Rules Coordinator

Telephone

Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405

Address

RULE CAPTION

Criteria for determining number of arbiters for medical arbiter panel; implementation of House Bill 2335

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
9-18-17	10:30 a.m.	Room F, 350 Winter Street NE, Salem, Oregon	Fred Bruyns

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

OAR 436-030-0165

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 656.726(4)

Other Authority:

Statutes Implemented:

ORS 656.268, as amended by enrolled House Bill 2335; Oregon Laws 2017, chapter 68

RULE SUMMARY

The public may also listen to the hearing or testify by telephone:
Dial-in number is 1-213-787-0529; Access code is 9221262#.

To implement enrolled House Bill 2335 (2017), the agency proposes to amend OAR 436-030-0165 to define a "panel" of physicians and to provide criteria the director may consider when determining whether to appoint two rather than three medical arbiters to a panel.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

09-22-2017 Close of Business

Fred Bruyns

fred.h.bruyns@oregon.gov

Last Day (m/d/yyyy) and Time
for public comment

Rules Coordinator Name

Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

FILED 8-14-17 3:56 PM ARCHIVES DIVISION SECRETARY OF STATE
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Department of Consumer and Business Services, Workers' Compensation Division 436
Agency and Division Administrative Rules Chapter Number

Criteria for determining number of arbiters for medical arbiter panel; implementation of House Bill 2335

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment of OAR 436-030-0165

Statutory Authority:

ORS 656.726(4)

Other Authority:

Statutes Implemented:

ORS 656.268, as amended by enrolled House Bill 2335; Oregon Laws 2017, chapter 68

Need for the Rule(s):

This rulemaking is required to implement enrolled House Bill 2335, which requires the director to appoint a panel of as many as three medical arbiters "in accordance with criteria that the director sets by rule." ORS 656.268(8)(c).

Documents Relied Upon, and where they are available:

Advisory committee meeting records; enrolled House Bill 2335. These documents are available for public inspection upon request to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Please contact Fred Bruyns, rules coordinator, 503-947-7717, fred.h.bruyns@oregon.gov.

Fiscal and Economic Impact:

The agency projects that proposed rule changes will have little or no fiscal impacts on the agency. Possible economic effects, if any, on other state agencies, units of local government, and the public are described below under "Statement of Cost of Compliance."

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

- a. The agency estimates that proposed rule changes will have no direct impact on costs of state agencies.
- b. The agency estimates that there will be no direct impact on units of local government.
- c. The agency estimates that proposed rule changes, through implementation of the revised ORS 656.268, will result in minor cost savings to workers' compensation insurance companies and self-insured employers. Insurers and self-insured employers pay the costs for medical arbiter exams, and to the extent the director's criteria result in panels of two arbiters, total examination costs will decline. The agency doesn't have experience applying the proposed criteria and therefore cannot project the extent of the savings. However, because three-member arbiter panels will remain the norm, and the criteria will identify exceptions, overall cost reductions likely will not be a substantial portion of total expenditures for the exams.

overall benefit

The agency estimates that proposed rule changes will result in a small decrease in payments to medical arbiters who participate in panel exams, to the extent the proposed selection criteria result in selection of two arbiters, rather than three arbiters, for some panels.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

Medical arbiters may be small businesses as defined by ORS 183.310(10). The agency maintains a list of nearly 300 medical arbiters, but only about 20 currently elect to perform panel exams. It is unknown whether these providers are small businesses.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The agency projects no cost of compliance effects on small businesses for reporting, recordkeeping, and other administrative activities required for compliance, including costs of professional services.

c. Equipment, supplies, labor and increased administration required for compliance:

The agency projects no cost of compliance effects on small businesses for equipment, supplies, labor, and increased administration required for compliance.

How were small businesses involved in the development of this rule?

The agency distributed notice of the advisory committee meeting to more than 3,300 stakeholders representing many businesses, large and small. Representatives of small businesses attended the advisory committee meeting.

Administrative Rule Advisory Committee consulted?: Yes
If not, why?:

09-22-2017 Close of Business

Fred Bruyns 

fred.h.bruyns@oregon.gov

Last Day (m/d/yyyy) and Time
for public comment

Printed Name

Email Address



Claim Closure and Reconsideration Oregon Administrative Rules Chapter 436, Division 030

Proposed

436-030-0165 Medical Arbitrator Examination Process

(1) The director will select a medical arbitrator physician or a panel of physicians in accordance with ORS 656.268(8)~~(d)~~.

(a) For the purpose of this rule, a “panel” of physicians is defined as two or three medical arbitrators.

(b) When a panel medical arbitrator examination is requested, the director will generally appoint three medical arbitrators. The director may consider the following criteria when determining whether to appoint two medical arbitrators instead:

(A) The location of the worker;

(B) The specialties of the doctors needed for the medical arbitrator examination; and

(C) The time frame for completing the reconsideration process.

~~(ac)~~ Any party that objects to a physician on the basis that the physician is not qualified under ORS 656.005(12)(b) must notify the director of the specific objection before the examination. If the director determines that the physician is not qualified to be a medical arbitrator on the specific case, an examination will be scheduled with a different physician.

~~(bd)~~ When the worker resides outside the state of Oregon, a medical arbitrator examination may be scheduled out-of-state with a physician who is licensed within that state to provide medical services in the same manner as required by ORS 656.268(8).

~~(ee)~~ Arbitrators or panel members will not include any health care provider whose examination or treatment is the subject of the review.

~~(df)~~ The insurer must pay all costs related to the completion of the medical arbitrator process in this rule.

(2) If the director determines there are enough appropriate physicians available to create a list of possible arbitrators and it is practicable, each party will be given the opportunity to agree on a physician and to remove one physician from the list through the process described below:

(a) The director will send the list to the parties electronically or by overnight mail.

(b) If the parties agree on a physician, every party must send a signed, written notice of that choice to the director.

ORDER NO. 17-XXX

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
***Proposed* CLAIM CLOSURE AND RECONSIDERATION**

(c) A party can remove a physician from the list, even when the parties have agreed on a physician to conduct the exam, by submitting a signed, written notice of that choice to the director.

(d) To be effective, the written notice of agreement on or rejection of a physician must be received by the director within three working days of the date the director sent the list.

(3) The worker's disability benefits will be suspended when the director determines the worker failed to attend or cooperate with the medical arbiter examination, unless the worker establishes a "good cause" reason for missing the examination or for not cooperating with the arbiter. The worker must call the director within 24 hours of the missed examination to provide any "good cause" reason.

(a) Notice of the examination will be considered adequate notice if the appointment letter is mailed to the last known address of the worker and to the worker's attorney, if the worker is represented.

(b) For the purposes of this rule, non-cooperation includes, but is not limited to, refusal to complete any reasonable action necessary to evaluate the worker's impairment. However, it does not include circumstances such as a worker's inability to carry out any part of the examination due to excessive pain or when the physician reports the findings as medically invalid.

(c) Failure of the worker to respond within the time frames outlined in statute for completion of the reconsideration proceeding may be considered a failure to establish "good cause."

(4) If a worker misses the medical arbiter examination, the director will determine whether or not there was a "good cause" reason for missing the examination.

(5) Upon determination that there was not a "good cause" reason for missing the examination, or that the worker failed to cooperate with the arbiter, the worker's disability benefits will be suspended and the reconsideration proceeding postponed for up to an additional 60 days.

(6) The suspension will be lifted if any of the following occur during the additional 60-day postponement period:

(a) The worker establishes a "good cause" reason for missing or failing to cooperate with the examination;

(b) The worker withdraws the request for reconsideration; or

(c) The worker attends and cooperates with a rescheduled arbiter examination.

(7) If none of the events that end the suspension under section (6) of this rule occur before the expiration of the 60-day additional postponement, the suspension of benefits will remain in effect.

(8) The medical arbiter or panel of medical arbiters must perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment.

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(a) The parties must submit to the director any issues they wish the medical arbiter or panel of medical arbiters to address within 14 days of the date of the director's notice of the start of the reconsideration proceeding. The parties must not submit issues directly to the medical arbiter or panel of medical arbiters. The medical arbiter or panel of medical arbiters will only consider issues appropriate to the reconsideration proceeding.

(b) The report of the medical arbiter or panel of medical arbiters must address all questions raised by the director.

(c) The medical arbiter will provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer within five working days after completion of the arbiter review. The cost of providing copies of such additional reports must be reimbursed according to OAR 436-009-0060 and must be paid by the insurer.

(9) When a worker's medical condition prevents the worker from fully participating in a medical arbiter examination that must be conducted to determine findings of impairment, the director may send a letter to the parties requesting consent to defer the reconsideration proceeding. The medical condition that prevents the worker from participating in the medical arbiter examination does not need to be related to the work injury.

(a) If the parties agree to the deferral, the reconsideration proceeding will be deferred until the medical record reflects the worker's condition has stabilized sufficiently to allow for examination to obtain the impairment findings. The parties must notify the director when it is appropriate to schedule the medical arbiter examination and provide the necessary medical records when requested. Interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the worker's impairment may be submitted at the time the parties notify the director that the medical arbiter examination can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (8).

(b) If deferral is not appropriate, at the director's discretion either a medical arbiter examination or a medical arbiter record review may be obtained, or the director may issue an Order on Reconsideration based on the record available at claim closure and other evidence submitted in accordance with ORS 656.268(6).

(10) All costs related to record review, examinations, tests, and reports of the medical arbiter must be billed and paid under OAR 436-009-0010, 436-009-0030, 436-009-0040, and 436-009-0060.

(11) When requested by the Hearings Division, the director may schedule a medical arbiter examination for a worker who has appealed a Notice of Closure rescinding permanent total disability benefits under ORS 656.206.

Statutory authority: ORS 656.726
Statutes implemented: ORS 656.268
Hist: Amended 1/29/15 as Admin. Order 15-052, eff. 3/1/15
Amended 10/12/15 as Admin. Order 15-061, eff. 11/17/15
[Amended xx/xx/xx as WCD Admin. Order 17-XXX, eff. 1/1/18](#)