



November 2, 2021

Mr. Fred Bruyns
Policy Analyst/Rules Coordinator
Department of Consumer and Business Services
Workers' Compensation Division
350 Winter St. NE
Salem, OR 97309-0405

Via Electronic Mail: WCD.Policy@dcbs.oregon.gov

Re: Proposed Amendments to Workers' Compensation Rules on Claims Processing Location and Claims Recordkeeping

Dear Mr. Bruyns:

The American Property Casualty Insurance Association (APCIA)¹ files this supplemental comment to the Department of Consumer and Business Services' proposed amendments to the rules governing claims processing location and claims recordkeeping. In addition to our comments filed on October 25, 2021, APCIA wishes to call attention to proposed new subsection OAR 436-060-0017(1)(a)(F) regarding the release of investigative statements and investigative summaries.

Current rule OAR 426-060-0017 governs the release of claim documents. Claim documents are defined as set forth in the enumerated subsections. New subsection OAR 436-060-0017(1)(a)(F) adds "Investigative statements and investigative summaries" to the definition of claim documents.

APCIA objects to the inclusion of investigative statements and investigative summaries to the definition of claim documents. As a preliminary matter, the terms are vague and ambiguous. Investigative statements and investigative summaries are not otherwise defined in the propose rule. It is unclear if the rule intends to cover only investigative statements or summaries that are planned to be introduced at hearing or relate to facts at issue in the claim, or whether the definition is intended to be broader and encompass all statements and summaries developed by a party in the development of its case. If the latter, such investigative summaries and statements are typically considered privileged work product and are not discoverable by the other party.

¹ APCIA represents nearly 60 percent of the U.S. property casualty insurance market and the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

APCIA is concerned that retaining "investigative statements and investigative summaries" within the definition of claims documents would authorize the release of protected work product commonly not discoverable in court or administrative proceedings. The release of investigative statements and investigative summaries upon request of a party would also jeopardize the integrity of ongoing investigations into alleged claimant and other types of fraud.

APCIA suggests the deletion of proposed OAR 436-060-0017(1)(a)(F):

(1) For the purpose of this rule:

(a) "Documents" means the written records making up, or relating to, the worker's claim, including but not limited to:

...

~~(F) Investigative statements and investigative summaries;~~

APCIA thanks you for your consideration of this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Bennett", with a long horizontal flourish extending to the right.

Steven A. Bennett
Assistant Vice President, Workers Compensation Programs & Counsel
American Property Casualty Insurance Association