

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON

In the Matter of the Amendment of OAR:)
436-050, Employer/Insurer Coverage Responsibility) SUMMARY OF
436-085, Premium Assessment) 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 Nov. 1, 2019. On Nov. 21, 2019, a public rulemaking hearing was held as announced at 10 a.m. in Room F of the Labor and Industries Building, 350 Winter Street NE, Salem, Oregon. Fred Bruyns, from the Workers’ Compensation Division, acted as hearing officer. The record was held open for written comment through Nov. 27, 2019.

No one testified at the public rulemaking hearing, recorded below as exhibit 2. The public submitted no written testimony. The agency submitted written testimony, recorded below as exhibit 1.

Testimony list:

Exhibit	Description
<u>1</u>	Aaron Fellman, Workers’ Compensation Division
<u>2</u>	Transcript of Nov. 21, 2019 rulemaking hearing

Testimony: OAR 436-050-0050 *Exhibit 1*

“... The new language specifies that when employers elect to provide coverage for nonsubject workers, they must give notice to the director. It was added to clarify an employer’s responsibilities under ORS 656.039.

“However, it appears that an insurer satisfies this requirement on the employer’s behalf when the new coverage is reported electronically, as required by OAR 436-162-0340. To avoid creating confusion about who is required to give notice, I recommend deleting the new language.

....”

Response: The agency will delete the new language, as recommended.

Dated this 17th day of December, 2019.



MEMORANDUM

November 20, 2019

To: Fred Bruyns, Rules Coordinator, Workers' Compensation Division

From: Aaron Fellman, Policy Analyst, Workers' Compensation Division

Subject: Proposed changes to OAR 436-050

Dear Fred,

The division's proposed changes to OAR 436-050 include adding new language to OAR 436-050-0050(1)(a). The new language specifies that when employers elect to provide coverage for nonsubject workers, they must give notice to the director. It was added to clarify an employer's responsibilities under ORS 656.039.

However, it appears that an insurer satisfies this requirement on the employer's behalf when the new coverage is reported electronically, as required by OAR 436-162-0340. To avoid creating confusion about who is required to give notice, I recommend deleting the new language.

Without the new language, the proposed change to OAR 436-050-0050(1)(a) would read as follows:

(a) ~~The~~ A carrier-insured employer must make the election to the insurer ~~must be made~~ in writing ~~to the insurer at the beginning on or before the effective date of a the coverage policy.~~ An election ~~and remains~~ in effect until a revised ~~written designation election~~ is given to the insurer.

Sincerely,

Aaron Fellman

**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)	
436-010, Medical Services)	TRANSCRIPT OF
436-015, Managed Care Organizations)	TESTIMONY
436-050, Employer/Insurer Coverage Responsibility)	
436-055, Certification of Claims Examiners)	
436-060, Claims Administration)	
436-070, Workers' Benefit Fund Assessment)	
436-085, Premium Assessment)	
436-105, Employer-at-Injury Program)	
436-110, Preferred Worker Program)	
436-140, Construction Carve-Out Programs)	

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INDEX OF WITNESSES

Witnesses	Page
No testimony.....	NA

TRANSCRIPT OF PROCEEDINGS

Fred Bruyns: So, 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.

The time is 10 a.m. on Thursday, November 21, 2019. We are in Room F of the Labor & Industries Building, 350 Winter St. NE, in Salem, Oregon. We are making an audio recording of today's hearing.

If you wish to present oral testimony today, please sign in on the "Testimony Sign-In Sheet" on the table by the entrance. If you plan to testify over the telephone, I will sign in for you.

The Department of Consumer and Business Services, Workers' Compensation Division proposes to amend chapter 436 of the Oregon Administrative Rules, specifically:

- Division 50, Employer/Insurer Coverage Responsibility;

Transcript of public rulemaking hearing
Nov. 21, 2019

- Division 85, Premium Assessment;
- Division 105, Employer-at-Injury Program; and
- Several rules throughout OAR chapter 436 that implement passed legislation or otherwise align rules with governing statutes.

The department has summarized the proposed changes and prepared estimates of fiscal and economic impacts in the notices of proposed rulemaking hearing. These notices and proposed rules with marked changes are on the table by the entrance. Also on the table are copies of testimony received to date: That from Susan Potter of McCauley Potter Fain Associates, requesting an increase in the administrative fee under the Employer-at-Injury Program; and a recommendation by the Workers' Compensation Division to remove proposed new wording in OAR 436-050-0050 that might create confusion between reporting requirements under this rule and requirements under OAR 436-162, the rules governing electronic data interchange for proof of coverage.

The Workers' Compensation Division: filed the notices of proposed rulemaking with the Oregon Secretary of State; mailed the notices to its postal and electronic mailing lists; notified Oregon legislators as required by ORS chapter 183; and posted public notice and proposed rules to its website.

The Oregon Secretary of State published the hearing notices in its *Oregon Bulletin* dated Nov. 1, 2019.

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 November 27, 2019, and will make no decisions until all of the testimony is considered.

We are ready to receive testimony. Is anyone here going to provide testimony this morning? Okay. Have you signed in on the sheet in the back, Jaye?

Jaye Fraser, SAIF Corporation: I'm not testifying.

Fred Bruyns: Oh, you're not - just moving – okay – from one place to another. Oh, yah Barb, if you'd check the sheet.

Barbra Hall, Workers' Compensation Division: I see nobody.

Fred Bruyns: No one. Okay. Anyone here is welcome to testify, so I will let you know. Is there anyone on the telephone with us who would like to testify? Okay – hearing no one, it is our policy to keep the hearing open for testimony a minimum of one-half hour. I will recess in a moment, but I want to remind you that the record does remain open until November 27, 2019. You may submit testimony in any written form. You may use email, fax, USPS mail, courier, or you may hand deliver testimony to Workers' Compensation Division Central Reception on the second floor of this building. On the table by the entrance are business cards that include my contact information. I will acknowledge all testimony received.
The hearing is recessed at 10:04 a.m.

The hearing is resumed at 10:30. Is there anyone here this morning who would like to testify?
Anyone on the telephone?

Jenny Walsh, Providence: Oh, I'm on the phone. This is Jenny Walsh from Providence.

Fred Bruyns: Okay, Jenny, would you like to testify this morning?

Jenny Walsh: No – not – no. Not this morning.

Fred Bruyns: Okay. Well this is a good opportunity ...

Jenny Walsh: I was just kind of listening in.

Fred Bruyns: That's fine. This is a good opportunity then to remind everyone that we're open for written testimony through and including Nov. 27, which I believe is next Wednesday, the day before Thanksgiving, so anyone is welcome to submit written testimony by that time.

And with that, the time is now 10:31. This hearing is adjourned. Thank you for coming.

Transcribed from a digital audio recording by Fred Bruyns, Nov. 21, 2019.