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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 436  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION

**FILED**

10/29/2020 2:14 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Department review of modified forms; reporting of workers' Social Security numbers

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/23/2020 11:55 PM

*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.*

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Salem, OR 97309

Filed By:  
FREDERICK BRUYNS  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 11/16/2020

TIME: 1:00 PM

OFFICER: Fred Bruyns

ADDRESS: Telephone only

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SPECIAL INSTRUCTIONS:

Telephone only: Toll-free, 1-844-766-  
2282 | PIN: 055622

NEED FOR THE RULE(S):

Rule amendments are needed primarily to align reporting requirements with revision of Form 801 to remove the worker's Social Security number field.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Rulemaking advisory committee records, written advice, and memorandum dated Oct. 2, 2020, from Sally Coen, Administrator, Workers' Compensation Division, to the Management-Labor Advisory Committee. 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:

Proposed amendments to the rules are not expected to substantially increase agency costs or workload. Possible impacts on stakeholders are described under "Statement of Cost of Compliance" below.

COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

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 not affect costs to state agencies for compliance with the rule.

b. The agency estimates that proposed rule changes will not affect costs to units of local government for compliance with the rule, with the exception of cities or counties that are self-insured employers; possible effects for insurers and self-insured employers are described in 1.c. below.

c. The agency estimates that proposed rule changes may affect costs to the public for compliance with the rule, specifically for insurers, for self-insured employers that do not process their own claims, and for service companies that process claims for insurers and self-insured employers. These claims processors still need to obtain workers' Social Security numbers to report to the Workers' Compensation Division on Form 1502, "Insurer Report." Effective claims management includes contact with workers and their employers and therefore opportunities to get workers' Social Security numbers, but additional follow up may be needed. The agency does not have a basis for projecting the number of additional contacts that may be necessary and the associated costs, but invites insurers, self-insured employers, and service companies to submit estimates of additional costs, if any.

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

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

Insurers and self-insured employers are generally not small businesses, but as many as ten service companies are small businesses and are subject to these rules.

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

Possible impacts are described under 1.c. above. Service companies process claims for insurers and self-insured employers, so any additional costs for service companies due to proposed rule changes will probably be passed along to insurers and self-insured employers.

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

Possible impacts are described under 1.c. above. Service companies process claims for insurers and self-insured employers, so any additional costs for service companies due to proposed rule changes will probably be passed along to insurers and self-insured employers.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The agency notified approximately 4,500 customers, including representatives of small businesses, about the advisory committee meeting, and at least one small business representative attended.

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RULES PROPOSED:

436-060-0003, 436-060-0010

AMEND: 436-060-0003

RULE SUMMARY: Rule 0003 is amended to remove a requirement for insurers to submit in-use, modified forms to the director by May 1, 2020, for review.

CHANGES TO RULE:

436-060-0003

Purpose, Applicability, Forms, and Bulletins ¶¶

(1) Purpose. The purpose of the rules in OAR 436-060 is to prescribe uniform standards for insurers to process workers' compensation claims under ORS chapter 656.¶¶

(2) Applicability.¶¶

(a) The rules are subject to the applicability provisions under ORS 656.202.¶¶

(b) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.¶¶

(3) Forms and bulletins.¶¶

(a) The forms and bulletins referenced in OAR 436-060 are available on the division's website at

<https://wcd.oregon.gov/forms/Pages/index.aspx>.¶¶

(b) With the approval of the director, an insurer may modify the appearance, wording, or font size of a paper form referenced in OAR 436-060. Any insurer modified paper form must:¶¶

(A) Obtain information equivalent to the division's current form;¶¶

(B) Use the same form number as the division's current form;¶¶

(C) Have an appearance and format substantially similar to the division's current form; and¶¶

(D) Have an asterisk after the form name with the following statement at the bottom: "This form was modified by [INSERT INSURER'S NAME], and has been approved for use by the Oregon Workers' Compensation Division."¶¶

~~(c) An insurer may continue using a modified paper form that was in use prior to the effective date of these rules if the insurer requests, no later than May 1, 2020, approval by the director to continue using that form, subject to the following:¶¶~~

~~(A) If the insurer requests approval by the director to continue using a modified paper form, the director will either approve the form, specify changes to the form, or deny approval of the form. The director may require immediate removal of information that violates state or federal laws or otherwise may cause harm to any person. Otherwise, the insurer must comply with the director's determination within six months of the director's decision; or¶¶~~

~~(B) If the insurer fails to request approval by the director to continue using a modified paper form by May 1, 2020, or if the insurer fails to comply with the director's determination within six months of the determination in subparagraph (A) of this paragraph, the modified paper form can no longer be used by the insurer.¶¶~~

~~(d) The director may revoke approval of an insurer modified paper form when the director determines the form does not comply with current federal or state law, or if the director finds the form no longer meets the requirements of (3)(b) of this rule.¶¶~~

~~(ed) To request approval of a modified paper form, the insurer must send or hand deliver the proposed form, along with a cover letter requesting approval to use the form, to the Forms and Bulletins Coordinator at WCD.FormsBulletins@oregon.gov or 350 Winter Street NE, P.O. Box 14480, Salem OR 97309-0405.~~

Statutory/Other Authority: ORS 656.726(4)

Statutes/Other Implemented: ORS 656.726(4), 84.013, 192.318, 192.355, 656.005, 656.126, 656.160, 656.202, 656.204, 656.206, 656.208, 656.210, 656.212, 656.214, 656.216, 656.228, 656.230, 656.234, 656.236, 656.245, 656.260, 656.262, 656.263, 656.264, 656.265, 656.268, 656.273, 656.277, 656.278, 656.289, 656.307, 656.308, 656.313, 656.325, 656.331, 656.360, 656.362, 656.386, 656.605, 656.704, 656.745

AMEND: 436-060-0010

RULE SUMMARY: Rule 0010 is amended to eliminate the reference to the worker's Social Security number (SSN) when explaining that the employer's report to the insurer "must provide the information requested on Form 801, and include at least ...." (Form 801, "Report of Job Injury or Illness," will be revised to remove the SSN field.)

CHANGES TO RULE:

436-060-0010

#### Employer Responsibilities ¶¶

(1) General. A subject employer must accept notice of a claim for workers' compensation benefits from a worker or the worker's attorney under ORS 656.265.¶¶

(a) Form 801, "Report of Job Injury or Illness," must be readily available for workers to report their injuries. The employer must provide Form 801 to the worker:¶¶

(A) Immediately upon request by the worker or worker's attorney under ORS 656.265(6); or¶¶

(B) Upon receiving notice or knowledge of an accident that may involve a compensable injury under ORS 656.262(3)(a).¶¶

(b) Form 827, "Worker's and Health Care Provider's Report for Workers' Compensation Claims," signed by the worker, is written notice of an accident that may involve a compensable injury. The signed Form 827 will start the claim process, but does not relieve the worker or employer of the responsibility of filing Form 801.¶¶

(c) Form 3283, "A Guide for Workers Recently Hurt on the Job," must be provided by the employer to the worker at the time a worker files a claim for workers' compensation benefits. Form 3283 may be printed on the back of Form 801.¶¶

(d) If a worker provides notice of a claim using an electronic form, the insurer may require the worker to sign a medical release form, so the insurer can obtain medical records necessary to process the claim under OAR 436-010-0240.¶¶

(2) Employer reporting time frame. An employer, except a self-insured employer, must report a claim to its insurer no later than five days after the date the employer has notice or knowledge of any claim or accident that may result in a compensable injury. The date an employer has knowledge of an accident that may result in a compensable injury is the earliest date any supervisor or manager of the employer has enough facts to reasonably conclude that workers' compensation liability is a possibility.¶¶

(3) Reporting requirements. The report must provide the information requested on Form 801, and include at least:¶¶

(a) The worker's name, ~~address, and Social Security number (if known)~~ and address;¶¶

(b) The employer's legal name and address; and¶¶

(c) The information required under ORS 656.262 and 656.265.¶¶

(4) Injuries not requiring medical services. The employer is not required to notify the insurer of an accident that does not require the worker to seek treatment from a licensed medical service provider, subject to the following:¶¶

(a) The employer must report the claim to the insurer under section (2) of this rule, if:¶¶

(A) The worker chooses to file a claim;¶¶

(B) The worker signs a Form 801;¶¶

(C) The worker or employer is billed for treatment; or¶¶

(D) The employer learns that the injury has resulted in medical services, disability or death. For the purposes of this paragraph, the date of that knowledge under section (2) of this rule is the date the employer received notice or knowledge of the medical services, disability, or death; and¶¶

(b) If the employer does not give the insurer notice under this section:¶¶

(A) The employer must maintain records for five years showing the name of the worker, the date of the accident, the nature of the injury and treatment provided; and¶¶

(B) These records must be available for inspection by the director, the worker or the worker's attorney, if any, and the insurer.¶¶

(5) Civil penalty for failure to report claims. The director may assess a civil penalty under OAR 436-060-0200 against an employer that:

(a) Is late in reporting more than ten percent of its total claims to its insurer during any quarter; or

(b) Intentionally or repeatedly pays compensation instead of reporting claims or accidents that may result in a compensable injury to its insurer.

(6) Worker's right to choose medical service provider. The worker may choose a medical service provider, attending physician or authorized nurse practitioner under ORS 656.245, 656.260, OAR 436-010 and 436-015. Except as provided under ORS 656.260 and OAR 436-015, if an employer restricts the worker's choice of medical service provider the director may impose a civil penalty of up to \$2,000.

Statutory/Other Authority: ORS ~~656.745~~, 656.265(6), 656.726(4), ~~656.745~~

Statutes/Other Implemented: ORS 656.745, ~~ORS~~ 656.245, 656.260, 656.262, 656.265