

**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: 436-060, Claims Administration))))	TRANSCRIPT OF TESTIMONY
--	------------------	----------------------------

The proposed amendment to the rules was announced in the Secretary of State’s Oregon Bulletin dated Dec. 1, 2020. On Jan. 5, 2021, a public rulemaking hearing was held as announced at 9 a.m. via teleconference from the Labor & Industries Building, 350 Winter Street NE, Salem, Oregon. Fred Bruyns, from the Workers’ Compensation Division, was the hearing officer. The record will be held open for written comment through Jan. 8, 2021.

INDEX OF WITNESSES

Witnesses	Page
<u>Elaine Schooler, SAIF Corporation</u>	<u>2</u>
<u>Kirsten Adams, Associated General Contractors</u>	<u>3</u>
<u>Paloma Sparks, Oregon Business & Industry.....</u>	<u>3</u>

TRANSCRIPT OF PROCEEDINGS

Fred Bruyns:

Good morning and welcome. This is a public rulemaking hearing.

The filing caption for this rulemaking is: Processing workers’ compensation claims for COVID-19 or SARS-CoV-2 exposure.

My name is Fred Bruyns, and I’ll be the presiding officer for the hearing. The time is 9 AM on Tuesday, Jan. 5, 2021. We are conducting this hearing by telephone 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 60, Claims Administration, with the adoption of rule 141, "Claims for COVID-19 or Exposure to SARS-CoV-2." 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 posted to the Workers’ Compensation Division’s website.

Transcript of public rulemaking hearing
Jan. 5, 2021

The Workers' Compensation Division: filed the notice of proposed rulemaking with the Oregon Secretary of State on Nov. 18, 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 Dec. 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 Jan. 8, 2021, and will make no decisions until all of the testimony is considered.

We are ready to receive testimony, and I have one person recorded as wanting to testify this morning. Elaine Schooler, SAIF Corporation.

Elaine Schooler: Yes, good morning, and thank you Fred, and happy new year to you and everyone else on the phone participating in this rulemaking hearing. This is Elaine Schooler, testifying on behalf of SAIF Corporation, and we appreciate the opportunity to provide input on the division's proposed rule changes to OAR 436-060-0141. These permanent rules are the result of temporary rule changes that were enacted following several months worth of meetings before the Management-Labor Advisory Committee, and involved participation from stakeholders from management and labor and resulted in a temporary rule that was intended to create a claim processing consistency that would ensure insurers are processing Covid-19 claims in a way that's based on a robust claim investigation that would include expert or medical opinions to determine the source of exposure when it was unclear prior to the issuance of a decision. And, compliance with that claim processing requirement was ensured through the creation of mandatory claim audits, and both management and labor stakeholders agreed that this was an important safeguard to ensure that these Covid-19 claims were processed similarly across the board. As a whole the changes were applauded by all participants in that process. And, what we see now with the proposed permanent rule changes is a shift away from those critical and really foundational pieces of the temporary rule that the parties worked so hard to come to an agreement on. The proposed permanent rules would no longer ensure that robust claim investigation that includes the medical or expert opinion prior to issuing a decision, nor would it ensure that deviations in claim processing are identified early and then resolved timely through the mandatory audit process. SAIF urges the division to reconsider the proposed permanent rule changes and to go back to the changes that were promulgated through the temporary rules for those two critical elements. And, appreciate the opportunity to look at this and maintain that consistency that stakeholders agreed was necessary, as well as the compliance piece. I appreciate the opportunity to speak this morning, and thank you for the time.

Fred Bruyns: Thank you very much for your testimony, Elaine. Does anyone else wish to testify?

Kirsten Adams: This is Kirsten Adams with AGC. I'd like to testify.

Fred Bruyns: Certainly. Go ahead, Kirsten.

Kirsten Adams: Thank you so much for the opportunity. This is Kirsten Adams. I'm the public affairs counsel for Associated General Contractors. We represent commercial construction throughout the state. I'd like to echo what Elaine said and SAIF's comments. We think that the temporary rules better addressed the concerns that were brought forth in the extensive MLAC discussions around this issue. We think it's important to have the claims investigation with the expert opinion and then also to have the mandatory audit process. We think that keeping those elements in the temporary rule will better achieve the goals that these rules are looking to get at. So thank you so much for the opportunity.

Fred Bruyns: Thank you, Kirsten, for your testimony. Would anyone else like to testify at this time?

Paloma Sparks: Yah, this is Paloma Sparks from Oregon Business & Industry.

Fred Bruyns: Welcome, Paloma. Go ahead

Paloma Sparks: Thanks. Again, Paloma Sparks, Oregon Business & Industry. We are the state's largest and most comprehensive business association, representing over 1,600 businesses employing over 250,000 people. We were also extensively involved in the MLAC discussions around this. We have some real concerns about the changes in the permanent rules from the temporary rules regarding investigation, and also audits, so I would echo the language around that Elaine and Kirsten both mentioned.

Fred Bruyns:

Thank you, Paloma. Would anyone else like to testify at this time? Hearing no one, in a moment I will recess the hearing, but we will resume for additional testimony, if anyone wishes to testify before 10 A M.

Again, the record remains open for written testimony through and including Jan. 8, 2021. 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. I will acknowledge all testimony received.

This hearing is recessed at: 9:08 AM.

Okay, this hearing is resumed at: 9:58 AM.

Is there anyone else that would like to testify this morning? Hearing no one, the time is still 9:58 AM. Thank you for coming. This hearing is adjourned.

Transcribed from a digital audio recording by Fred Bruyns, Jan 5, 2021.