



# Oregon

Kate Brown, Governor

## Exhibit "3"

Department of Consumer and Business Services

MLAC | Management-Labor Advisory Committee

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January 8, 2021

Fred Bruyns  
Department of Consumer and Business Services  
350 Winter Street NE, Suite 200  
Salem, OR 97309

Re: Permanent Rulemaking on OAR 436-060-0141

Dear Mr. Bruyns:

The Management Labor Advisory Committee (MLAC) appreciates the opportunity to submit comments on the final rule for OAR 436-060-0141 and wants to thank the Department for its hard work in finalizing this important rule.

MLAC has identified two areas of concern with the proposed final rule. The Department has added 436-060-0141(2)(b) which makes the medical/expert opinion permissive, rather than a requirement. The second concern involves the language proposed for audits.

### **MEDICAL/EXPERT OPINION SHOULD BE REQUIRED**<sup>1</sup>

MLAC understands the Department's desire to clarify that a medical/expert opinion should not be required for procedural denials. The Committee did not intend to require a medical or expert opinion for a non-medical or other procedural denial. However, we believe the Department has changed the language in a way that no longer requires a medical/expert opinion when the denial is based on other than procedural reasons. That was not the intent or recommendation of MLAC.

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<sup>1</sup> Labor representatives on the Committee also would like it noted for this record that they and worker representatives expressed a concern about the method by which medical or expert opinions may be obtained during the October 28<sup>th</sup> meeting, specifically opinions obtained exclusively through a record review. Considering the novel nature of this process, there was suggestion of requiring at least a tele-medicine examination, and the understanding that such a medical examination would trigger access to a WRME.

### Members

Kevin Billman  
UFCW Local 555

Tammy Bowers  
May Trucking Company

Alan Hartley  
Management representative

Jill Fullerton  
Clackamas Co. Fire District #1

Lynn McNamara  
Management representative

Kathy Nishimoto  
Duckwall-Pooley Fruit Company

Ateusa Salemi  
Oregon Nurses Association

Diana Winther  
IBEW Local 48

Kimberly Wood  
Management representative

Scott Strickland  
IUOE Local 701

Andrew Stolfi  
Director, Oregon Department of  
Consumer & Business Services,  
*Ex-Officio*

### Committee administration

Theresa Van Winkle  
Committee Administrator

The Department did add language under 436-060-0141(2) which addresses the issue regarding denials for procedural reasons. MLAC feels this additional language addresses the concerns identified during the Rulemaking Advisory Committee Meeting on October 28, 2020. We are unsure if the “may” in 436-060-0141(2)(b) is an oversight or whether the Department has another reason for its use of “may” instead of “shall”. However, it was clear in the October 28<sup>th</sup> meeting that both labor and management stakeholders felt it was important to require the medical/expert opinion unless the denial was for non-medical or procedural reasons. It is our position that it must be required in order for this rule to have the effect MLAC, and its stakeholders, were seeking.

MLAC respectfully requests the Department change 436-060-0141(2)(b) as follows:

(b) Investigate the source of the worker’s exposure to COVID-19 or SARS-CoV-2, which ~~shall~~ ~~may~~ involve obtaining a medical or expert opinion, if, before a compensability denial is issued, the worker tests positive for COVID-19 or a medical service provider diagnoses a presumptive case of COVID-19, the insurer is aware of the test results or presumptive diagnosis, and the source of the exposure is unclear;

### **COVID-19 AUDITS SHOULD BE REQUIRED OF DEPARTMENT**

MLAC understands the concerns expressed by the Department during the October 28<sup>th</sup> Rulemaking Advisory Committee Meeting. It is not the intent of MLAC to limit the Department’s auditing abilities for claims that are not related to COVID-19 or exposure to SARS-CoV-2. However, our request of the Department was to require audits related to COVID-19 or exposure to SARS-CoV-2 for the duration of the pandemic, not just during the temporary rule’s duration.

Elaine Schooler said it succinctly in her October 28 testimony: “. . . the audit was part of a specific agreement amongst the parties to ensure compliance and a uniform review of claim decisions to ensure reasonable investigations for these types of claims. Removing it is problematic for the concerns that were expressed prior to adoption of this temporary rule.”

Stakeholders of both management and labor expressed similar concerns and asked the Department to reinstate the requirement of the audit. It is MLAC’s intent to hold insurers accountable and for these audits to be a priority for the Department so issues are addressed appropriately and quickly. MLAC heard from the Department during our meetings that the Department had authority to conduct audits and would prefer not to add the requirement. MLAC felt differently as did the management and labor stakeholders who attended MLAC’s meetings as well as the Department’s Advisory Meeting on this rule.

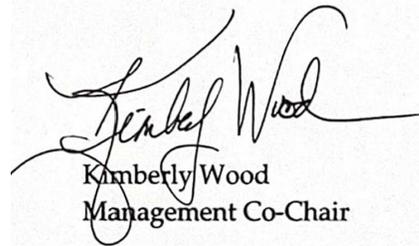
Department revise this section to req  
exposure to SARS-CoV-2 claims in addition to its other auditing authority.

We thank you for the opportunity to submit our concerns on this very important rule.

Sincerely,



Diana Winther  
Labor Co-Chair



Kimberly Wood  
Management Co-Chair