

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

In the Matter of the Amendment of OAR: ) SUMMARY OF  
436-105, Employer-at-Injury Program\* ) TESTIMONY AND  
 ) AGENCY RESPONSES

\*This hearing also provided the opportunity for testimony on proposed 436-050, “Employer/Insurer Coverage Responsibility” and OAR 436-060, “Claims Administration.” A separate summary will be prepared for OAR 436-050 & OAR 436-060.

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.

The proposed amendment to the rules was announced in the Secretary of State’s *Oregon Bulletin* dated Oct. 1, 2021. On Oct. 18, 2021, a public rulemaking hearing was held as announced at 10:30 a.m. via video conference from the Labor & Industries Building, 350 Winter Street NE, Salem, Oregon. Fred Bruyns, from the Workers’ Compensation Division, was the hearing officer. The record was held open for written comment through Oct. 25, 2021.

No testimony was presented at the rulemaking hearing. A transcript of the hearing is recorded below as exhibit 1. The public submitted one written document as testimony.

**Testimony list:**

<b>Exhibit</b>	<b>Testifying</b>
<u>1</u>	Transcript of hearing (no public testimony)
<u>2</u>	Susan Potter, McCauley Potter Fain Associates

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**Testimony: OAR 436-105-0540**

***Exhibit 2***

“I wanted to provide additional written testimony regarding this proposed amendment, which increases the administrative fee from \$120 to \$180. While this increase is overdue and necessary, I would like to continue to advocate that the fee be increased to \$200. I am providing a copy of the letter that our firm sent to WCD in November 2019, at which time a great deal of detail was provided for the support and rationale of a fee increase, and further at that time recommending an increase to \$200.

“The admin fee for EAIP has not been increased since 2007, so by the time a fee increase takes effect it will have been 15 years.

“Based on the data and projected increased costs to the fund, and percentage that administrative fees are as a total of fund reserves, it is our opinion that increasing the fee to \$200, rather than \$180, does not substantially impact the fund reserve requirements. ....”

**Oregon Administrative Rules, Chapter 436**  
**Public Testimony & Agency Responses**  
**Page 2**

“At the end of FY 2021, the WBF contained reserves sufficient for approximately seven quarters of annual expenditures. NOTE: 7 QUARTERS OF RESERVES= 21 months of sufficient reserves. This is far below the statutorily required 12-month balance.

“Administering the EAIP program, for insurers and self-insured employers, has increasingly taken more time, and certainly over the past 15 years, costs of doing business have increased greatly. As the attached letter documented two years ago, a great deal of time is spent reviewing claim documents online, communicating with all parties to gather and obtain sufficient and relevant data to document the eligibility of the EAIP as well as the necessary payroll documentation, provided for the correct payroll periods.

“In addition. the Department also made the change recently to eliminate Social Security numbers from 801 and 827 forms, but the Employer-At-Injury Program still requires that a Social Security number be provided on the reimbursement form. This has added additional staff time. frequently requiring multiple emails and phone calls to obtain this information directly rather than being able to pull the number from claim documents. This addition alone has increased the time sufficiently, in my opinion, to support the additional fee increase to \$200.

“The administrative costs for EAIP are a very small percentage of total EAIP costs, and also total WBF reserves. ....

“It remains our contention that adding an additional \$20 to the proposed admin fee, from \$180 to \$200, is reasonable, necessary and fair. ....”

**Response:**

Thank you for your testimony. The division has considered your recommendation, but will only be increasing the fee to \$180 as originally proposed. The division proposed \$180 to account for the inflation that occurred since the last increase, and to ensure the fee is not immediately outpaced by future inflation. The division believes that \$180 strikes a balance in encouraging use of the Employer-At-Injury Program (EAIP), and ensuring modest impact to the Worker Benefit Fund, which supports many other types of benefits in addition to the EAIP. However, we agree that the increase to the fee has been overdue, and we will continue to evaluate the sufficiency of the fee in the future.

Additionally, the division recognizes that for companies contracted to prepare EAIP reimbursements, communication between multiple parties may be needed to obtain required information and documentation. However, insurers are required to maintain the information needed for EAIP in their claim records. We recommend working closely with the insurer if there are difficulties in obtaining required information.

**Dated this 5th day of November, 2021.**

**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: 436-050, Employer/Insurer Coverage Responsibility, 436-060, Claims Administration, and 436-105, Employer-at-Injury Program.	) ) ) ) ) )	TRANSCRIPT OF TESTIMONY
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The proposed amendment to the rules was announced in the Secretary of State's *Oregon Bulletin* dated Oct. 1, 2021. On Oct. 18, 2021, a public rulemaking hearing was held as announced at 10:30 a.m. via video conference 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 Oct. 25, 2021.

**INDEX OF WITNESSES**

<b>Witnesses</b>	<b>Page</b>
No testimony was given at the hearing .....	NA

**TRANSCRIPT OF PROCEEDINGS**

Fred Bruyns:

Good morning and welcome. This is a public rulemaking hearing. (Can you hear me okay? Confirmed. Great. Okay) My name is Fred Bruyns, and I'll be the presiding officer for the hearing.

The time is now 10:31 on Monday, Oct. 18, 2021. We are streaming this hearing from the Labor & Industries Building, 350 Winter St. NE, in Salem, Oregon. We are making an audio recording of today's hearing and will create a transcript.

If you wish to present oral testimony today, I will add your name to the roster, and I will call for your names just a little later on.

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

- Division 050, Employer/Insurer Coverage Responsibility,
- Division 060, Claims Administration, and
- Division 105, Employer-at-Injury Program.

Transcript of public rulemaking hearing  
Oct. 18, 2021

The department has summarized the proposed rule changes and prepared estimates of fiscal and economic impacts in the notices of proposed rulemaking. These notices and proposed rules with marked changes are posted to the division's website at: [WCD.Oregon.gov](http://WCD.Oregon.gov), under "Laws and rules," and then "Proposed rules and testimony."

The Workers' Compensation Division: filed the notices of proposed rulemaking with the Oregon Secretary of State on Sept. 22 and Sept. 29, 2021; mailed the notices to its postal and electronic mailing lists; notified Oregon legislators as required by ORS chapter 183; and posted public notices and the proposed rules to its website.

The Oregon Secretary of State published the hearing notices in its *Oregon Bulletin* dated Oct. 1, 2021.

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 Oct. 25, 2021, and will make no decisions until all of the testimony is considered.

We are now ready to receive public testimony. When I read your name, please go ahead and testify. Actually, we don't have anybody on our roster yet, but I am going to actually ask for anybody's name who would like to testify at this time. Is there anyone?

Okay, hearing no one, in a moment I'm going to recess the hearing, and we will resume for additional testimony if anyone arrives before 11:30 a.m. this morning and wishes to testify. Unless testimony is in progress, we will close the hearing at 11:30.

So again, the record remains open for written testimony through and including Oct. 25, 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 U.S. mail. My contact information is in the Notices of Proposed Rulemaking posted to our website. I will acknowledge all testimony received.

This hearing is recessed at 10:34 a.m.

This hearing is resumed at 11:29 a.m.

Does anyone wish to testify today?

Hearing no one, this hearing is adjourned at 11:30 a.m.

Thank you for joining us today. Goodbye.

Transcribed from a digital audio recording by Fred Bruyns, Oct. 18, 2021.

**FAX COVER SHEET**

**McCauley Potter Fain Associates**  
**4990 SW Angel Avenue**  
**Beaverton, OR 97005**

**(503) 350-7074**  
**Fax (503) 646-8299**

**DATE: 10/25/2021**

**TO: Fred Bruyns**

**FAX: 503\_947-7514**

**FROM: Susan Potter, MS, Vocational Consultant**

**RE: EAIP PROGRAM REIMBURSEMENT PROCEDURES –  
ADDITIONAL WRITTEN TESTIMONY**

**CC:**

**Number of Pages including cover sheet:**

**MESSAGE: Dear Fred,**

**I am submitting this letter to be included in the Proposed  
Changes to Workers Compensation Rule OAR 436-105-0540,  
"Employer-At-Injury Program Reimbursement Procedures"**

**Thank you!**

**Susan Potter**



MCCAULEY · POTTER · FAIN · ASSOCIATES

October 25, 2021

Mr. Fred Bruyns  
Department of Consumer and Business Services  
Workers' Compensation Division  
Fax: (503) 947-7514

RE: Proposed changes to OAR 436-105-0540, "Employer-At-Injury Program Reimbursement Procedures"

Dear Fred:

I wanted to provide additional written testimony regarding this proposed amendment, which increases the administrative fee from \$120 to \$180. While this increase is overdue and necessary, I would like to continue to advocate that the fee be increased to \$200. I am providing a copy of the letter that our firm sent to WCD in November 2019, at which time a great deal of detail was provided for the support and rationale of a fee increase, and further at that time recommending an increase to \$200.

The admin fee for EAIP has not been increased since 2007, so by the time a fee increase takes effect, it will have been 15 years.

Based on the data and projected increased costs to the fund, and percentage that administrative fees are as a total of fund reserves, it is our opinion that increasing the fee to \$200, rather than \$180, does not substantially impact the fund reserve requirements. The Fiscal and Economic Impact figures provided by WCD stated the following, based on EAIP expenditures from 07/01/2020 – 06/30/2021:

- A \$60 increase to the administrative fee would increase EAIP expenditures from the Worker's Benefit Fund by approximately \$457,723 per year
- Payments for administration would rise from 4.12 percent to 6.19 percent of total EAIP costs, or from 0.61 percent to 0.92 percent of the total reserves in the WBF.
- The ending balance in the WBF for FY 2021 was \$149,617,795. ORS rules state that the WBF should have a minimum fund balance of no less than 12 months of projected expenditures. For FY 2022, this is estimated to be approximately 86.9 million. At the end of FY 2021, the WBF contained reserves sufficient for approximately seven quarters of annual expenditures. NOTE: 7 QUARTERS OF RESERVES = 21 months of sufficient reserves. This is far below the statutorily required 12-month balance.

Administering the EAIP program, for insurers and self-insured employers, has increasingly taken more time, and certainly over the past 15 years, costs of doing business have increased greatly. As the attached letter documented two years ago, a great deal of

time is spent reviewing claim documents online, communicating with all parties to gather and obtain sufficient and relevant data to document the eligibility of the EAIP as well as the necessary payroll documentation, provided for the correct payroll periods.

In addition, the Department also made the change recently to eliminate Social Security numbers from 801 and 827 forms, but the Employer-At-Injury Program still requires that a Social Security number be provided on the reimbursement form. This has added additional staff time, frequently requiring multiple emails and phone calls, to obtain this information directly rather than being able to pull the number from claim documents. This addition alone has increased the time sufficiently, in my opinion, to support the additional fee increase to \$200.

The administrative costs for EAIP are a very small percentage of total EAIP costs, and also total WBF reserves.

- Even with the \$60 increase in EAIP administrative fees, the percentage of the total cost of the Worker Benefit fund is less than 1% (.92%).
- Even with the \$60 increase in EAIP administrative fees, these costs are only 6.19 percent of total EAIP costs.

It remains our contention that adding an additional \$20 to the proposed admin fee, from \$180 to \$200, is reasonable, necessary and fair. It does not cause an undue burden on the Worker Benefit Fund reserves, based on the information provided the Department, and merely reflects what is a reasonable fee for services which has not been increased for 15 years.

I hope this information will be considered as the rules are being drafted. If you wish to speak to me or any of my staff further, we would be happy to explain and provide more detail on the time, care, cost and resources it takes to review claims and administer this program for Oregon employers.

Thank you for your consideration!

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Potter", written over the word "Sincerely,".

Susan Potter, MS  
Owner/Vocational Rehabilitation Counselor  
[spotter@mpfassociates.com](mailto:spotter@mpfassociates.com)



MCCAULEY · POTTER · FAIN · ASSOCIATES

November 13, 2019

Ms. Katie Bruns, Return to Work Policy Analyst  
Department of Consumer and Business Services  
Workers' Compensation Division  
Fax: (503) 947-7514

RE: Administrative Fee for EAIP Reimbursements  
OAR 436-120-0540 (2)

Dear Katie:

McCauley Potter Fain Associates has, over the years, processed many EAIP reimbursements for Oregon employers, insurers, and third-party administrators. It is a program highly regarded by all, and a benefit that most employers are eager to access.

We recently became aware of the fact that the \$120 administrative fee, which is provided to the insurer for administering this program, has remained the same for 12 years, since 2007. It is our opinion that given this length of time, the costs associated with doing business and processing EAIPs has risen significantly since 2007, and an increase in the rate of the administrative fee is warranted.

We would like to submit this letter to you in advance of the November 21, 2019 hearing on EAIP and propose an increase of the administrative fee to \$200. We believe this is reasonable, since this fee has not been increased for almost 13 years, and the amount of administrative time required to complete EAIP reviews and increased costs associated with doing business.

The average amount of time it takes to complete one EAIP reimbursement has been calculated by my staff to be 2 hours; some reviews may take less time, and many reviews can take 3+ hours to review and gather necessary information to complete the EAIP reimbursement (especially very complicated claims).

Siobhan Harris, an MPF EAIP Coordinator, comprised the following outline of the process we undertake to provide EAIP reviews:

- MPF receives closed claims list from insurer/TPA, which is usually in Excel format and needs to be formatted for our use. Some employers send them to us individually and so we must create and maintain spreadsheets for tracking. Some accounts require MPF EAIP consultants to travel to various office locations in the Portland metro area to review claims in person.
- MPF reviews individual claims to determine if they qualify for EAIP. There can be a large list of closed claims for any given month and many of them may not



qualify but must be reviewed. Most of the claims are reviewed on various online claims management systems; each insurer/employer uses a different system and some systems are extremely slow and can take a while to load all the documents. Any one claim in the system can have 6 or 7 pages of documents to look through and then each document can be multiple pages as well. The more pages involved, the longer it takes to load. We have to print supporting documentation and look through all the files, which can be 200+ in some of the longer claims, and then we put together our supporting packet once we figure out the claim is eligible for EAIP reimbursement. A lot of times there is missing information in the file that we then have to hunt down either from the claim's examiner, employer or sometimes even have to contact the doctor's office for missing medical release information. We also spend a good amount of time with tech support when one of the online systems isn't working properly or our passwords won't work.

- Payroll is requested from employers for qualifying EAIP claims. Some accounts have multiple employers and we must find the correct contact for each employer and follow up with each of them individually. Some employers are quick to respond and get back to us but many times we are having to follow up two, three, four, five, etc., times to get payroll. Employer payroll data may not be in the correct format, dates can be wrong, timecards missing, or it's just completely illegible and we need to follow up to get the correct information or to clarify. It is also very time-consuming to print out the payroll that we receive. Many times, it's in Excel and time is spent reformatting the reports to print properly, or it's in multiple PDFs and word documents that we have to print one by one. This is very time-consuming. Some employers send payroll for multiple claims, over a 2-3-month period of time, in no particular order, and it must be sorted. This step alone can take up to one hour.
- EAIP forms are completed and payroll calculations made to properly calculate the reimbursement and provide supporting documentation. Attention to detail and double-checking work is extremely important; every insurer and employer is different, and we have to ensure all the information is correct. When there is a change to the form, such as when the concurrent claim box was added, it took a while to update all our employer templates with the correct information. We will have to do this again when the rate increases from 45% to 50% and then again if the administrative fee is increased. It would be nice to do these at the same time so that we didn't have to recreate all the forms a second time. It also will be very time-consuming double-checking dates starting in January to see which claims get the 45% and which get the 50%. This will slow down our process considerably.
- The added concurrent claim section has proved to be very time-consuming for us as well since we don't have a database that lists all the individuals to easily check to see if they do have concurrent claims. Sometimes we don't receive them in chronological order, and we have to backtrack and dig up the files so

that we can double check dates. We keep a copy of the current year claims in our filing cabinets, but the rest are in storage requiring additional time to locate.

- MPF updates all the EAIP spreadsheets per employer, noting claim, claimant, EAIP reimbursement amount, date completed, once the EAIP reviews are finished. Insurers and employers request data tracking. Maintaining databases for EAIP claims is an administrative function that also requires staff time.
- The EAIP form is submitted to the state and an EAIP packet prepared and sent to the insurer/claims examiner to ensure all documentation is available in the claim file for future audits. Many employers also request a copy of the EAIP reimbursement form. There is a great deal of administrative time spent to prepare, copy or scan, and send documents where needed.
- MPF follows up with the employer and sends completed spreadsheets; some accounts have additional special requests or processes that are followed to track EAIP reimbursements.
- MPF provides EAIP follow up services. Employers contact us about the status of reimbursements; we reach out to the State to obtain information for the employer. We also have insurers that require us to send them a quarterly list of qualifying claims so that can take some time to compile.
- MPF responds to EAIPs that have been sent back by WCD. Sometimes requests that are sent back to us for missing or incorrect information so then we must redo them and resubmit. There are instances where there is a disabling claim that we received but the State hasn't received the proper documents and so we have to go back to the file and make a copy of the NOC, 801 and 1502 to send back in. Time is required to locate the file, get the necessary information, make the correction, or to find the missing documents.
- Processing EAIP reimbursements involves a great deal of communication, i.e. emails and telephone calls with employers and insurers trying to get all the necessary information needed to complete EAIP reimbursements accurately and timely. Follow up is necessary to keep things moving efficiently as possible and keep the EAIP program running smoothly.

I hope this gives you a better idea of what is involved in administering the EAIP program for Oregon employers and insurers. It would seem reasonable and fair to increase the administrative fee at this time, and we appreciate your consideration of this matter.

If you have any questions about this, or would like to speak to me further, please do not hesitate to contact me at (503) 350-7074. Thank you, Katie!

Sincerely,



Susan Potter, MS

Owner/Vocational Rehabilitation Counselor

[spotter@mpfassociates.com](mailto:spotter@mpfassociates.com)