



Department of Consumer  
and Business Services

## Oregon Workers' Compensation Division's Modernization Program

### Project to Streamline Communications to Injured Workers and Employers Dec. 23, 2022, Stakeholder Response

This project's purpose is to review notices, forms, and publications required by workers' compensation rules in Oregon Administrative Rules (OAR) chapter 436 and identify opportunities for simplification and streamlining of the wording, frequency, and format of these documents.

The division is making significant efforts to streamline communications to injured workers and employers. We identified more than 50 instances of required language in rule, forms, and publications for analysis. This project is the initial step in a larger process which will have multiple phases moving forward, as well as additional opportunities for stakeholders to provide feedback during the process.

The biggest challenge has been determining where to start. We wanted to fully understand stakeholder issues around required language in notices. On March 8, 2022, the division held a stakeholder meeting to discuss these challenges. The feedback received in this meeting was crucial as we worked through our approach to this task and we greatly appreciate that – thank you!

Because of the feedback given, we decided to focus on notices and forms where verbatim language is required by rule as this language provides the least flexibility for stakeholders. For determining readability, initially we used the Flesch-Kincaid readability determination in Microsoft Word but noticed some inconsistencies with the determinations. Next, we tested several other readability evaluation tools and identified that the [Hemingway Editor tool](#) was more consistent and accurate. This tool adjusts readability scores in real time as edits are being done. Additionally, we created a weighted matrix to determine impact and feasibility of changes to help us prioritize which documents to focus on in this first phase of the project. The matrix measures impact and feasibility using the following criteria:

- Readability score
- Impact: How many workers receive the document? Some, many, most, or all?
- Benefits: Does the document identify actions needed to be taken by the worker to preserve or access benefits?
- Coordination: Are changes already being implemented for the document outside of this project that could be combined with proposed changes recommended through this project?
- History: Have we received prior requests from stakeholders to revise this document?

- Statute: Is a statutory change required to make changes to the document content, language, or format?
- Timing: Is there upcoming rulemaking that could speed up the process for revisions?

By following this criteria, we were able to identify a group of notices and forms to focus on for the first phase of this project. We will begin by reducing the complexity of language and explore options for format changes to improve overall readability. A list of the identified notices and forms is found at the end of this document. Because required language in notices of denial and notices of acceptance are also governed by the Workers' Compensation Board's rules (OAR chapter 438), any changes to this language must be coordinated by the Board.

The project team is currently analyzing the language and making recommendations for simplified language and format changes. The recommendations will be reviewed by our Policy Unit, program areas, and our leadership team. Once recommendations are reviewed and finalized, any changes required by rule will be addressed through the normal rulemaking process to allow opportunities for stakeholder feedback and recommendations.

### **Other Issues Outside of Project Scope**

In addition to the input about this project's goal, there were several concerns raised about other important issues that do not fit within the scope of the project. We want to provide responses to those concerns as well.

#### **1. What is the feasibility of adding an appeal date to required notice language or forms?**

Adding an appeal due date as a required element to a notice may be possible and doing so would require rulemaking. Stakeholders may submit [Form 5141 \(Possible Rule Issue Form\)](#) to request this rule issue to the division. Additionally, requirements for some notices are not solely under the division's authority. For example, with denial notices there are requirements under both OAR chapter [436](#) (Workers' Compensation Division rules) and chapter [438](#) (Workers' Compensation Board rules). In some cases, the request to add appeal due dates may need to be directed to, or coordinated with, the Board.

#### **2. What is the feasibility of adding QR codes to printed documents?**

It is feasible to add QR codes to printed documents. We ask that stakeholders submit [Form 5141 \(Possible Rule Issue Form\)](#) to help us identify printed documents that would benefit from a QR code and determine where the QR code would direct someone (e.g., the division's home page, forms page, or publications page). Because some of our publications are preprinted in bulk, the QR code would need to link to a fairly general webpage with an address that is unlikely to change in the foreseeable future.

#### **3. What is the feasibility of adding a QR code to the Notice of Compliance poster?**

It is possible for the division to add a QR code to the English version of the Notice of Compliance poster. We ask that stakeholders submit [Form 5141 \(Possible Rule Issue Form\)](#) so the division can better understand the need of adding a QR code to the general poster and what specific website users should be directed towards. For example, it could point to

the division's home page but if the intent is to find the most current information about an employer's workers' compensation insurance, the link should be <http://workcompcoverage.wcd.oregon.gov>. Before a QR code is added to the Spanish-language Notice of Compliance poster, the division would need to create a comparable page in Spanish that the code would direct users to. Once it's determined the landing page for the QR code in English, WCD can begin work on the translation of that page.

Because we preprint large quantities of the poster stock, depending on timing and how much stock we have on hand, it may take up to a year from the date the issue form is received before we can start providing posters with a QR code. However, employers may add a personal QR code to their own Notice of Compliance poster for ease of sharing electronically with employees.

**4. Could WCD add language to the "Notice to Worker" section of Form 827 (Worker's and Health Care Provider's Report for Workers' Compensation Claims) about the worker's right to choose a medical provider? The only place this is mentioned is in Form 3283 (A Guide for Workers Recently Hurt on the Job).**

[Form 801](#) (Report of Job Injury or Illness) contains a statement immediately above the worker's signature field that states: "I understand I have a right to see a health care provider of my choice subject to certain restrictions under ORS 656.260 and ORS 656.325."

It is possible to add similar language in the Notice to Worker section of Form 827, but because we order large quantities of these printed forms at a time, it would depend on timing and how much stock we have on hand of when the change can be implemented. Stakeholders may submit [Form 5141 \(Possible Rule Issue Form\)](#) to request this possible change to the division.

**5. Does WCD have a Spanish version of the Notice of Compliance poster?**

The Notice of Compliance poster is available in Spanish and can be ordered from our website at <https://wcd.oregon.gov/employer/Pages/noc-poster.aspx>.

**6. Has WCD created any additional information about Managed Care Organizations (MCO) for injured workers? Workers are often confused by MCO requirements and communications.**

OAR 436-010-0270(4) requires an insurer to "Provide the worker a written list of the eligible attending physicians within the relevant MCO geographic service area or provide a web address to access the list of eligible attending physicians. If the notice does not include a written list, then the notice must also:

- a) Provide a telephone number the worker may call to ask for a written list; and
- b) Tell the worker that they have seven days from the mailing date of the notice to request the list;"

If more guidance is needed, the division would like more information about specific challenges and identification of potential solutions. Stakeholders may submit [Form 5141 \(Possible Rule Issue Form\)](#) to provide further input and suggest solutions for these challenges.

#### **7. What is the division’s general response to concerns regarding timeframes?**

During the March 8, 2022, stakeholder meeting, we heard concerns about timeframes when responding to a suspension notice and return-to-work. There was also a suggestion about standardizing communication timeframes to make them the same or similar for ease of application (for example, changing all required timeframes for response to 15 days, no matter what kind of document). In general, changing notice or response timeframes will depend on whether it is required by administrative rule or statute. Changing timeframes that come from statute would require legislative changes. Timeframes set by administrative rule, such as the five-day timeframe to respond to a suspension notice in OAR 436-060-0135, would need to be addressed through the rulemaking process. Stakeholders may use [Form 5141 \(Possible Rule Issue Form\)](#) to submit issues to be included in future rulemaking discussions.

#### **8. Is there any way to require written approvals and denials for surgical procedures and medical procedure preauthorizations? Worker attorneys stated that currently there are confusing verbal approvals or denials, such as surgeries are denied because workers do not know to request a specific condition and are not told why the surgery is being denied. Worker attorneys also suggested that additional clarity was needed around denials versus deferrals.**

For surgery, OAR 436-010-0250(2) requires the provider to use [Form 5425 \(Elective Surgery Notification\)](#) or their own form. The request must be in writing and may not be just a notation in the chart notes. Insurers are required to deny a surgery in writing by using [Form 3228 \(Elective Surgery Response\)](#), although approval may be verbal only. Also, an insurer must respond in writing within 14 days of receiving a medical provider’s written request for preauthorization of diagnostic imaging studies, other than plain film x-rays. The response must include whether the service is preauthorized or not.

We simplified the process of asking for a new condition by using [Form 827 \(English\)](#) or [Form 827 \(Spanish\)](#) to request that the insurer formally accept a new or omitted medical condition. If the patient uses the form to request acceptance of a new or omitted medical condition during a medical visit, the medical service provider may write the claimed condition for the patient in the space provided on the form. After the patient signs the form, the provider must send it to the insurer within five days.

For needed clarification of denials versus deferrals in rule, stakeholders may use [Form 5141 \(Possible Rule Issue Form\)](#) to submit areas that could be clearer to be included in future rulemaking discussions.

Stakeholders may submit [Form 5141 \(Possible Rule Issue Form\)](#) at any time to notify the division about possible rule issues and to recommend solutions to address those issues. Once received, the division's Policy Unit will review the issues and potential resolutions and respond to the stakeholder who submitted the form.

### Required notice language in forms and publications: Phase 1

Statute or rule cite	Document name
OAR 436-060-0137(3)	Notice of required vocational evaluation
OAR 436-110-0240(2),(3)	Required notice language for Preferred Worker Program
OAR 436-120-0115(8)	Notice of extension of time for completing eligibility evaluation
OAR 436-120-0115(9)	Notice of eligibility or ineligibility for vocational assistance
OAR 436-120-0117(2)	Notice of deferral of vocational assistance eligibility evaluation
OAR 436-120-0165(2)	Notice of end of eligibility for vocational assistance
OAR 436-120-0185(1)	Notice of selection of a vocational counselor
OAR 436-120-0185(2)	Notice of change of a vocational counselor
OAR 436-120-0500(4)(b)	Notice of disapproval of training plan
OAR 436-120-0527	Notice of end of training
OAR 436-120-0700	Notice of denial of direct worker purchase
OAR 436-120-0700(6)(b)	Notice of denial of reimbursement of worker's costs to participate in vocational assistance
OAR 436-060-0095(3)	Notice to worker of scheduled independent medical exam
OAR 436-010-290(2)(c),(d)	Notice that palliative care is approved or disapproved
OAR 436-060-0015(4)	Notice of change of processing locations
OAR 436-060-0015(5)	Notice of change in rate of compensation and benefit amounts
OAR 436-060-0015(6)	Notice of wage used to calculate benefits at closure
OAR 436-009-0025(1)(d),(e)	Written explanation to the worker for each type of out-of-pocket expense being paid or denied
OAR 436-060-0035(4)(b)(A)	Request for verifiable documentation of the worker's wage from any secondary jobs
OAR 436-060-0035(5)	Notice of eligibility/ineligibility for supplemental disability
OAR 436-060-0035(8)	Notice that supplemental disability payments have stopped
OAR 436-060-0075(5)(c)	Notice to dependent that the information in the insurer's possession is not sufficient to determine the dependent's monthly benefit
OAR 436-060-0018(3)	Notice of refusal to reclassify the claim to disabling
OAR 436-060-0018(6)	Reclassification of a disabling claim
OAR 436-060-0020(5)(b)	Notice of rescheduled medical appointment and that temporary benefits will be suspended if the worker does not attend
OAR 436-060-0020(5)(d)	Notice that temporary disability payments have been suspended because the worker failed to attend a rescheduled appointment

ORS 656.325 OAR 436-060-0095 OAR 436-060-0095(6)	Request to authorize suspension under ORS 656.325, OAR 436-060-0095, and 436-060-0095(6)
OAR 436-060-0105(2)	Notice to cease insanitary or injurious acts
OAR 436-060-0105(4)	Request for suspension of benefits due to continuing insanitary or injurious acts
ORS 656.268 OAR 436-060-0105(5)	Request to reduce benefits awarded under ORS 656-268 for unreasonably failing to follow medical advice or failing to participate in a physical rehabilitation or vocational assistance program
OAR 436-060-0135(2)(a)	Request to suspend compensation for refusal or failure to cooperate in an investigation
OAR 436-060-0137(5)	Request to suspend compensation when the worker refuses or fails to attend or obstructs a required vocational evaluation
OAR 436-030-0015(1)(c)(A),(B)	Updated Notice of Acceptance at Closure
OAR 436-030-0017(1),(2)	Notice of refusal to close claim