

**Rulemaking advisory committee meeting  
 OAR 436-030, implementation of House Bill 2335  
 July 25, 2017, 9 a.m., Room F, Labor & Industries Building, Salem, Oregon**

<b>Stakeholders attending</b>	<b>Agency staff attending:</b>
Dan Schmelling, SAIF Corporation	Cara Filsinger
Elaine Schooler, SAIF Corporation	Danae Hammitt
Erlina Vega, AIG Workers' Compensation	Fred Bruyns
Jaye Fraser, SAIF Corporation	Julia Hier
Jennifer Flood, Ombudsman for Injured Workers	Katie Whitehead
Joy Chand, Takacs Clinic	Sally Coen
Kevin Anderson, Sather Byerly Holloway LLP	Troy Painter
Kirsten Adams, Associated General Contractors	
Mike Van Leuven, Integrity Medical Evaluations	
Nellie deVries, Oregon Workers' Compensation Association	
Trevor Beltz, Oregon Medical Association	

Fred Bruyns welcomed the committee members, reminded the committee to describe any fiscal impacts that may result from potential rule changes, and asked the members to introduce themselves.

**ISSUE #1**

Rule: 436-030-0165 – Medical Arbiter Examination Process

Issue: House Bill 2335 requires that the director develop criteria on when it will appoint a panel of two arbiters.

Background: The passage of House Bill 2335 will result in the following changes to ORS 656.268(8)(c), effective January 1, 2018:

At the request of either of the parties, the director shall appoint a panel of as many as three medical arbiters [shall be appointed] in accordance with criteria that the director sets by rule.

Alternatives:

- Define a “panel” of physicians and provide criteria on when the director may consider to appoint two rather than three medical arbiters.
- Other

Fiscal Impacts, including cost of compliance for small business:

**Minutes:**

Fred then referred the committee to the single issue on the agenda and to the draft rules.

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5:19 Joy Chand asked if it would be an option to have either two or three physicians on the arbiter panel. Does it just depend on whoever is scheduling?

5:32 Fred said his understanding was that the standard would be three, and then based on these criteria, at times, we would select less than three. We will never select a one-member panel.

7:16 Jaye Fraser said they think the proposed rule meets the intent of the statute and provides the director the flexibility that is needed in this instance, while still maintaining the general sense that it will be a three-person panel. So it is an exception.

6:40 Kevin Anderson said the rule appears to be straightforward and that it is probably good that there is not a mechanism for someone to appeal the decision of going from a three to a two-member panel. It is the director's discretion.

7:24 Fred said that disagreements could come up, but our thinking has been that this is the director's decision. We will have to deal with this if it does come up.

7:41 Kevin added that it would be their preference not to have this become a litigated issue.

9:00 Kevin said he assumed rejecting one of the arbiters would work the same way.

9:07 Jennifer Flood noted that deselection only applies to the individual arbiters, not the panels.

11:00 Fred closed the meeting.