

Agenda

Rulemaking Advisory Committee

Workers' Compensation Division Rules
OAR chapter 436, division 050

Implementation of [House Bill 2186](#) and [House Bill 2336](#) |
other issues

Type of meeting:	Rulemaking advisory committee
Date, time, & place:	Aug. 23, 2017, 8:30 a.m. to 9:30 a.m., Pacific Daylight Time Room F (basement), Labor and Industries Building, 350 Winter Street NE, Salem, Oregon Teleconference: 1-213-787-0529 Access code: 9221262#
Facilitators:	Chris Clark and Fred Bruyns, Workers' Compensation Division
8:30 to 8:35	Welcome and introductions; meeting objectives
8:35 to 9:25	Discussion of issues – see attached.
9:25 to 9:30	Summing up – next steps – thank you!

Attached: [Issues document](#)

**DIVISION 050 – RULES ADDRESSING SELF-INSURANCE AND IMPLEMENTATION OF HB
2336 AND HB 2186
ISSUES DOCUMENT FOR STAKEHOLDER ADVISORY COMMITTEE MEETING
Aug. 23, 2017**

ISSUE #1341 – OAR 436-050-0150(4); 436-050-0180(2) - “Public Employer Financial Analysis”

Issue: Many public employers have scored zero on the return-on-net assets ratio in the new financial strength analysis, but this may not necessarily indicate a higher financial risk.

Background: SB 1558(2014) required self-insured employers to demonstrate acceptable financial viability based on information required by the director by rule. The division established a set of financial ratios to assess the financial viability of self-insured employer groups through amendments to OAR 436-050-0260 in 2014. A similar set of three ratios was established for individual self-insured employers in rules effective January 1, 2017.

Under OAR 436-050-0150, a self-insured employer’s financial strength is determined using the current ratio, the debt-to-equity ratio, and the return-on-net assets ratio. These ratios are common measures of liquidity, financial leverage, and profitability, respectively. The self-insured employer receives a score of 1 to 6 for each ratio. The financial strength is rated on the combined score for the three ratios: a combined score of 0 to 6 is a weak rating, 7 to 12 is a moderate rating, and 13 to 18 is a strong rating. If an self-insured employer receives a moderate or weak rating, the division may take actions including increasing the required security deposit, requesting a financial correction plan, or denying an application to certify or revoking a current certification.

Several stakeholders have commented that use of a narrow set of ratios may not accurately capture the financial condition of all self-insured employers, and the division has been monitoring the initial application of the new rules for potential issues with the ratio analysis.

Based on early results, it appears that some public sector employers, such as school districts, have scored zero on the return-on-net assets ratio, however because public employers typically are not designed (and sometimes not permitted) to generate profit from their asset base, a low score is not necessarily a sign of poor financial viability. The division has also identified potential issues with the impact of the way public sector debt is structured, and recent changes to the way PERS liability is reported on public employer financial statements as having an adverse impact on public employers’ debt-to-equity ratio.

Because public sector employers are subject to other financial controls and protections, the division believes the rules could allow for more flexibility in how financial viability is demonstrated for these types of entities without a significant increase in exposure to default. Options include establishing an alternative or supplemental set of ratios for public employers, and allowing for more discretion in the application of security deposit increases based on the existing financial strength analysis.

Alternatives:

- No changes

- Establish an alternative or supplemental set of ratios for public employers and similar entities.
- Establish an alternative scoring method for public employers and similar entities using the same set of ratios.

Discussion:

ISSUE #1350 – OAR 436-050-0170 – “Excess Endorsements”

Issue: Some excess insurance policies have included endorsements giving the excess carrier the right to transfer claims from one service company to another if notification requirements of the policy are not met.

Background: The self-insurance program has seen endorsements to excess insurance policies giving the excess carrier the right to transfer claims from one service company to another if notification requirements of the policy are not met. These provisions do not comply with the requirements for notification of processing locations under OAR 436-050-0210, and raises concerns about the self-insured employer being able to correctly identify and report claims to the excess carrier on the report of losses and during the claims reserve audit. The rule should be revised to prohibit endorsements that do not comply with OAR 436-050-0210.

Alternatives:

- No changes
- Amend rule to provide that an excess policy may not include endorsements that do not comply with OAR 436-050-0210, including but not limiting to, giving the excess carrier the right to move claims.

Discussion:

ISSUE #1344 – OAR 436-050-0175(3) - “Medical reimbursement reporting by claim”

Issue: Self-insured employers are currently required to report the total number of claims where the maximum medical reimbursement is applied, but not to list the individual claims.

Background: Under ORS 656.262(5), an employer may reimburse their insurer for medical costs on nondisabling claims up to the maximum amount published in Bulletin 345. Self-insured employers may also exclude costs for medical services paid on nondisabling claims when reporting claim loss data used for experience rating modification, retrospective rating calculations, and determining deposits.

Under OAR 436-050-0175(3)(a)(B) and (3)(a)(C), claim loss data must include the total amount of excluded medical costs and the number of claims for which the maximum medical

reimbursement amount is claimed. Some self-insured employers also provide the amount of excluded medical costs applied to each claim in the claim lists required under paragraph (3)(a)(D) and Bulletin 209. When the per claim amount is not provided, the division must follow up at audit in order to verify the accuracy of the claim loss data. The division believes that requiring the amount of excluded medical costs applied to each claim to be included in the claim loss data would reduce the need for the division to follow up with self-insured employers and allow for more accurate auditing and rating.

Alternatives:

- No changes
- Amend OAR 436-050-0175(3) to require excluded medical costs to be reported by claim.

Discussion:

ISSUE #1263 – OAR 436-050-180(1)(e) - “IBNR for Indicated Deposit.”

Issue: Losses “incurred but not Reported” (IBNR), is applied against a self-insured employer’s annual incurred losses and reserves, but the definition only mentions annual incurred losses.

Background: OAR 436-050-0180(1)(e) provides that for the purposes of determining a self-insured employer’s security deposit, losses “incurred but not reported” (IBNR) is calculated “by applying a loss development factor...against the employer’s annual incurred losses.” The division believes that this description may be technically inaccurate, as the IBNR factor is applied against incurred losses for the reporting year, as well as outstanding reserves. To be consistent with the intent of the rule and [communications with the industry](#), the division intends to change the term “annual incurred losses to “incurred losses.”

Alternatives:

- No changes
- Remove the word “annual” from the definition of “incurred but not reported”

Discussion:

ISSUE #1338 – OAR 436-050-190 - “Implementation of HB 2336 (2017)”

Issue: HB 2336 (2017) provides the director may determine the claims processor for an individual self-insured employer that defaults, is decertified, or cancels its certification in the same manner as a self-insured employer group. The rule should be reviewed for consistency with the new statute.

Background: [HB 2336 \(2017\)](#) allows the director of the Department of Consumer and Business Services to determine who will process the claims of a self-insured employer that defaults, is decertified by the director, or cancels certification in the same manner as allowed for self-insured employer groups in current law. The bill also specified that the claims processing agent may choose its legal counsel.

OAR 436-050-0190(1) provides in part:

“(b) The director may refer the self-insured employer’s claims for processing to an assigned claims agent selected under ORS 656.054, or designate the service company responsible for continuing to process the employer’s claims, subject to the following:

(A) If an individual self-insured employer is being serviced by one or more service companies, the director will designate the service companies to continue processing claims in accordance with the contracts in effect. At least 90 days before the date the contract expires, the service company may submit a proposal to continue processing the claims. The director will consider the proposal along with other options and inform the service company of its decision; and

(B) If a self-insured employer defaults and is self-administering, the director may negotiate to have the employer’s claims processed on the employer’s behalf.”

To implement the provisions of the new law, the division intends to amend OAR 436-050-0190(1) to provide a single process for designation of a claims processor under ORS 656.443.

Alternatives:

- No changes
- Amend OAR 436-050-0190(1)(b) to apply to both individual self-insured employers and groups and delete paragraphs (A) and (B)
- Other changes

Discussion:

ISSUE #1335 – OAR 436-050 - “Revocation of self-insurance certificate.”

Issue: ORS 656.430(9) and 656.440 provide for two different processes for revocation of a self-insured employer’s certification under ORS 656.434. It is not clear when each process should be used.

Background: ORS 656.430(9) and 656.440 provide for two processes for revocation of a self-insured employer’s certification:

ORS 656.440(1) provides in part, “Before revocation of certification under ORS 656.434 becomes effective, the Director of the Department of Consumer and Business Services shall give the employer notice that the certification will be revoked stating the grounds for the revocation...The revocation shall become effective within 10 days after receipt of such notice by the employer unless within such period of time the employer corrects the grounds for the revocation or appeals in writing to the director.”

ORS 656.430(9) provides, “Notwithstanding ORS 656.440, the director may revoke the certification of any self-insured employer after giving 30 days’ written notice” if the employer fails to comply with the excess insurance requirements under ORS 656.430(8), if a self-insured employer group fails to meet the requirements under ORS 656.430(7) or if the self-insured employer fails to comply with the rules promulgated under ORS 656.430(11).

OAR 436-050-0200(4) provides that “Except as provided in ORS 656.430(9), notice of certificate revocation will be issued in accordance with the provisions of ORS 656.440,” but given the broad scope of the reasons for revocation provided under ORS 656.430(9), it is not clear when the 10-day process is intended to be used. Other rules providing for revocation include OAR 436-050-0150(6); 436-050-0170(6); 436-050-0180(5); 436-050-0190(2); 436-050-0195(3); 436-050-0260(15); 436-050-0290(4); and OAR 436-050-0340(1).

The division is currently reviewing these rules for consistency with the statute and intends to clarify when statute requires the 30 day process to be used.

Alternatives:

- No changes
- Consolidate procedures for revocation into OAR 436-050-0200 and 436-050-0340.
- Clarify in individual rules when ORS 656.430(9) applies and when it does not.

Discussion:

ISSUE #1358 – OAR 436-050-260(1); 436-050-0280(1)(b) – “Implementation of HB 2186”

Issue: HB 2186 (2017) permits a self-insurance program under ORS 30.282(3) to be certified as a self-insured employer group. This provision should be accommodated under the rules.

Background: [HB 2186 \(2017\)](#), requested by Special Districts Association of Oregon, permits a self-insurance program under ORS 30.282(3) to be certified as a self-insured employer group. OAR 436-050-0280(1) provides that a self-insured employer group made up of governmental subdivisions, “must have formed a[n] [inter]governmental entity as provided under ORS 190.003 to 190.110.” The division intends to amend the rule to recognize that a public self-insured employer group may be organized as a self-insurance program under ORS 30.282(3) to be consistent with the new law.

In addition, OAR 436-050-0280(1)(b) currently requires a new applicant for certification as a public self-insured employer group to submit proof that the governmental subdivisions have formed an intergovernmental entity as provided under ORS 190.003 to 190.110, and the division may need to establish a similar requirement for self-insurance programs under ORS 30.282(3). Because these programs are already required to submit documentation to the [Division of Financial Regulation](#), the division believes that providing proof that the program qualifies for exemption from the Insurance Code would be appropriate documentation to include with an application.

Alternatives:

- Amend rules to recognize that public entities organized as a self-insurance program under ORS 30.282(3) may form a self-insured employer group.
- Require proof that the self-insurance program has qualified for exemption from the Insurance Code to qualify for certification as a self-insured employer group.

Discussion:

ISSUE #1354 – OAR 436-050-0290(3) - Notice of self-insured employer group member termination.

Issue: The rules require a self-insured employer group to provide notice 10 days prior to the effective date of a member's termination or cancellation; however, sometimes termination is effective immediately. Rules could allow for notice to be submitted on or after the date of termination in these instances.

Background: OAR 436-050-0290(3) requires a self-insured employer group to submit financial and coverage information to the director no later than 10 days before the effective date of a member's termination or cancellation. One group administrator noted that in some cases a member obtains coverage without the knowledge of the group administrator, and termination is effective immediately. The rules could be amended to allow for notice to be submitted on or after the date of termination in these instances, or to establish a requirement for a member to provide prior notice before terminating membership.

Alternatives:

- No changes
- Separate requirements for cancellations and terminations.
 - Allow notice to be submitted upon termination when group member has already obtained coverage; or
 - Require member to submit notice of termination at prior to obtaining coverage.

Discussion:

Housekeeping Issues:

- ISSUE #1349 – OAR 436-050-0150(5)(c)(B).
 - Clarify that the director may take more than one of the actions under OAR 436-050-0150(5)(c)(B) by changing “or” separator to “and.” Include “including, but not limited to” language to clarify that the director may also take other actions if needed.
- ISSUE #1343 – OAR 436-050-175(3):
 - Clarify that the self-insured employer must report claims loss data to the director by March 1.
- ISSUE #1342 – OAR 436-050-180(4)(c):
 - The rule only references "self-insured employer group" but it applies to both groups and individual self-insured employers. Amend to refer to both.