

Rulemaking advisory committee meeting  
Subject: Removal of SSN boxes from Forms 801 and 827; relevant rules  
Oct. 15, 2020, 9 a.m.

**Location:** Virtual meeting - GoToMeeting

**Committee members attending:**

Jennifer Flood	Ombudsman for Injured Workers
Jaye Fraser	SAIF Corporation
Nikki Fuhrer	Asante Patient Financial Services
Joe Martinez	Concentra
Sahrina Morse	Zoomcare
Miranda Rollins	Lane County Office of General Counsel
Dan Schmelling	SAIF Corporation
Elaine Schooler	SAIF Corporation
Paloma Sparks	OBI
Craig Stone	Intermountain Claims
Gina Wescott	S   D   A   O
Kimberly Wood	MLAC   Perlo Construction
Rebecca Zelen	Zoomcare

A summary of discussion has been added below the following agenda items:

**ISSUE #1**

**Short Title:** Deadline for using modified forms

**Rule:** OAR 436-060-0003(3)(c)

**Issue:** The deadline in current rule is no longer applicable.

**Background:** On April 1, 2020, OAR 436-060-0003 was amended to create a process for insurers to obtain approval for forms contained within the OAR 436 chapter 060 which they modified for their use. Rule language included a May 1, 2020 deadline, to allow time for insurers to comply with this new process by obtaining approval by the director to use any existing modified forms that had not been approved for use, or cease use. That deadline has passed, and this subsection of the rule can be removed. Currently, any insurer that uses a modified form must have director approval prior to using the form.

**Options identified:**

- Remove 436-060-0003(3)(c) as it is no longer applicable
- Other

**Fiscal Impacts, including cost of compliance for small business:** No impacts are expected, but the WCD invites input from the advisory committee members about costs, including costs to be borne by small businesses.

**Recommendation:**

**Summary of discussion:**

- Initially, the committee members did not provide comment, but Dan Schmelling, SAIF Corporation, asked later in the meeting, given that WCD will remove the SSN from the 801, if an insurer's modified form has already been approved by the department, will the insurer have to resubmit for review if the only change is removal of the SSN? Or, will the previously approved, modified form be okay?
- Fred thanked Dan for asking this question and replied that he doesn't know if resubmission will be required, but that the question will have to be considered and decided. It does seem like an absolutely predictable change – nothing to review except that the SSN field is no longer there.
- Gina Wescott, Special Districts Association, said they have an approved, modified form as well.

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**ISSUE #2**

**Short Title:** Social Security number (SSN) on workers' compensation report of injury form (Form 801)

**Rule:** OAR 436-060-0010(3)(a)

**Issue:** The rule requires an employer to submit a worker's SSN (if known) to the insurer. However, the division's business processes only require an SSN from the insurer, not the worker or employer.

**Background:** On July 20, 2020, the Management-Labor Advisory Committee (MLAC) wrote a letter to Governor Brown outlining six consensus recommendations related to workers' compensation system issues. The committee heard concerns that the use of a Social Security number (SSN) on the most common injury reporting form has a chilling effect on workers filing claims. Because the reporting form is used by many entities for a variety of purposes, the committee supported further discussion and recommended the Workers' Compensation Division (WCD) convene a stakeholder group to discuss the use of the SSN on the Form 801, "Report of Job Injury or Illness." The WCD expanded the discussion to include the Form 827, "Worker's and Physician's Report for Workers' Compensation Claims," used by medical providers to report a claim.

The WCD held a stakeholder meeting on September 15, 2020.

The WCD heard input that confirmed the mere presence of a box for the SSN on the forms deters some workers from filing a claim for an injury. Additionally, insurers and employers both expressed discomfort with the collection of a worker's SSN on the forms due to privacy concerns. Some of the solutions discussed were: moving the box for the SSN from the worker's portion of the form to the employer/provider portion; allowing an alternative identification number to be provided in place of the SSN; indicating on the form that providing an SSN is optional; and removing the box for the SSN from both forms. After reviewing all of the input received, the WCD decided to move forward with removing the SSN box from both the Form 801 and Form 827.

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With the SSN box removed from the Form 801, employers may not be compliant with rule as it is currently written. The SSN (if known) reporting requirement for employers should be removed from rule to ensure employers are compliant with rule when they solely report a claim using the Form 801. The rule currently requires insurers to report the SSN to WCD, and requires insurers to obtain the SSN from the employer. Insurers also need to obtain the SSN for other purposes, including the requirements for reporting disabling claim status and requesting supplemental disability benefits.

The WCD is interested in hearing from stakeholders how much time they will need to change their processes to obtain the SSN, and ensure it is not included on the Form 801, or any modified Form 801.

**Options identified:**

- Remove the requirement for the SSN to be reported to the insurer as a part of the first report
- Other

**Fiscal Impacts, including cost of compliance for small business:** We do not expect any significant fiscal impact, but the WCD invites input from the advisory committee members about costs, including costs to be borne by small businesses.

**Recommendation:**

**Summary of discussion:**

- Fred Bruyns, WCD, said that the division doesn't have data that would be a basis for estimating a fiscal impact, and he asked the committee members for advice.
- Craig Stone, Intermountain Claims, said he recognized the privacy issues, but WCD still requires the SSN to be reported on Form 1502. They are still required to get the SSN for Form 1502, and primarily for Medicare. By not having the SSN on the claim form, WCD does make it more difficult for them to obtain that information. Many TPAs require an SSN for their claims systems just to enter the claim. Yes, they can get the SSN from the employer when they make contact, which is good if the employer is familiar with workers' compensation. But, many of the insured businesses are mom and pop shops. Getting a hold of people can be difficult and can cause delays in their process. Workers are not very willing to give out their SSNs. Craig added that he knows the decision has already been made, but said there are big impacts that will make the initial investigation more difficult.
- Fred thanked Craig for this information and explained that this issue was discussed at a meeting on Sept. 15 – not a rulemaking meeting, just the first time SSN reporting was reconsidered in a number of years – and those present made a convincing case that requesting SSNs may deter workers from filing claims. Fred added that the division does recognize and did hear of some concerns about the problems of getting the SSN from the employer – you may make a contact, but that person may not know it or be allowed to access it – and from the worker. SSNs are needed for reporting to Medicare, and the civil penalties for not reporting are very substantial. Fred noted that some other states have already gone down this road, and some of the national carriers have developed systems

and methods for collecting SSNs. The division needs to know the size of the impact on claims processors – how much time is needed to get ready. The division does not want to create impossibilities. Fred asked for additional input on the amount of time needed for implementation – distribution to insureds, new business practices for collection of SSNs – and costs. The objective is to make a rule change effective Jan. 1, but rule changes can still allow for a grace period, a transition period.

- Gina Wescott, Special Districts Association, said she thinks they could be ready by Jan. 1.
- Fred reminded the committee of the opportunity to provide advice and asked if anyone has thoughts about the dollar impact, something the division could quantify, even if it is a very rough estimate. Fred added that if the committee members have additional advice after the fact they may send him written input ([fred.h.bruyns@oregon.gov](mailto:fred.h.bruyns@oregon.gov)) or provide advice over the phone (503-947-7717). Advice is needed as soon as possible, as the division may file proposed rules before the end of October, though possibly in November. Either way there will be a hearing later this fall.
- Dan Schmelling, SAIF Corporation, explained that modifying the form is the easy lift, versus communicating with their policy holders. It would be nice to have time beyond Jan. 1 to communicate with policy holders and if they ask for paper 801 forms – a two month transition period. Their online 801 could be updated by Jan. 1.
- Katie Bruns, WCD, thanked Dan for the input regarding timing and she noted that the plan has been to allow a grace period for the information to be spread and for implementation of the changes. Katie then described some of the next steps in this process. The division will issue an industry notice to explain all of the changes to the forms and the bulletins. The division will update the forms and the bulletins. The division prints Form 827 and will get it updated and distributed to providers. The 801 on the division's website will be updated. The division will also update Form 3283 ("A Guide for Workers Recently Hurt on the Job") that accompanies both Form 801 and 827, to make sure it is accurate regarding how SSNs will be used, because it still will be obtained at some point. These are the plans, in addition to the rulemaking process.
- Fred said that while we still have some health care providers on the line, he would like to know if they have concerns about removing SSNs from Form 827.
- Rebecca Zelen, Zoomcare, replied that their only concern is that when they need to verify a patients claim number, etc., they use the SSN to identify the worker, especially if they use several names, so it may be hard to obtain the information they need to bill the claims out.
- Fred asked if this is needed when they contact the adjuster at the insurance company.
- Rebecca said when they contact the insurance company, the first thing they request is the SSN. Without it they might not be able to obtain a claim number. The SSN is the easiest way to obtain it.
- Joe Martinez, Concentra, said he echoes those sentiments. That has always been a key driver in expediting claims through the payers and third parties. This is certainly going to have an impact on claim processing and timely reimbursement.