

Oregon Administrative Rule Revision

Chapter 436, Divisions 009, 010, and 015

Rulemaking Advisory Committee Meeting Issues Document, Nov. 3, 2021

Issues submitted by ProLanguage Interpreters, LLC

Rule: OAR 436-009-0110(6)(b) *Non-certified* interpreters

Issue: The maximum hourly rate payable by insurers for *non-certified* interpreters has not changed in 12 years. Interpreters are experiencing increasing inflationary pressure—especially due to fuel cost. These pressures portend an inability to continue business in the very near term.

Background:

- In July, 2010 the WCD established a maximum hourly rate payable by insurers for interpreting services. That rate was \$60.00 – OAR 436-009-0155 (7/1/2010, p. 39).
- The current rate remains at \$60.00--OAR 436-009-0110, p. 64.
- Using the Bureau of Labor Statistics consumer price index, that \$60.00 is worth \$47.69 today. That's a 25.8% inflationary increase over 12 years. Sources: <https://www.in2013dollars.com/>; Oregon Center for Public Policy, <https://www.ocpp.org>; [CPI Inflation Calculator \(bls.gov\)](https://www.bls.gov), <https://data.bls.gov/cgi-bin/cpicalc.pl>.
- these rates, from an interpreter's viewpoint, are unsustainable as part of a business plan.

Fiscal Impact:

- An 8.3% increase in claim costs over 13 years for only those claims that use interpreter services should be non-disruptive to workers' compensation insurers given insurers' past and prospective profitability.

Options:

- No change. Risk: loss of a significant number of interpreters in the very near future.
- Increase maximum hourly rate payable by insurers less than 8.3%. Risk: the same as for no change; it may temporarily delay the loss of interpreters, but with an already substantial inflationary deficit of 25.8%, the situation is unsustainable.
- Increasing the maximum hourly rate payable by insurers to \$65.00 may delay the significant loss of interpreters in the short term. Risk: loss of a number of interpreters may be unavoidable in the longer term if rates don't keep up with inflation.

Recommendation: Increase fee schedule for non-certified interpreters \$5.00 / hr. (8.3%). This is a modest increase given the 25.8% inflationary increase since 2010.

Rule: OAR 436-009-0110(6)(b) *Certified* interpreters

Issue: The maximum hourly rate payable by insurers for *certified* interpreters has not changed in 4 years. This is the same challenge facing non-certified interpreters: increasing inflationary pressure—especially due to fuel cost. These pressures portend an inability to continue business in the very near term.

Background:

- In April, 2017 the WCD first established a \$70.00 maximum hourly rate payable by insurers for *certified* interpreting services. OAR 436-009-0110(6)(b) (4/1/2017, p. 72).
- The current rate remains at \$70.00-- OAR 436-009-0110(6)(b), p. 64.
- Using the Bureau of Labor Statistics consumer price index, that \$70.00 is worth \$62.55 today. That's a 11.9% inflationary increase over 4 years. Sources: <https://www.in2013dollars.com/>; Oregon Center for Public Policy, <https://www.ocpp.org>; [CPI Inflation Calculator \(bls.gov\)](https://www.bls.gov), <https://data.bls.gov/cgi-bin/cpicalc.pl>.

Fiscal Impact:

- An 8.6% increase in claim costs over 4 years for only those claims that use *certified* interpreter services should be non-disruptive to workers' compensation insurers given insurers' past and prospective profitability.

Options:

- No change. Risk: loss of a significant number of interpreters in the very near future.
- Increase maximum hourly rate payable by insurers less than 8.6%. Risk: the same as for no change; it may temporarily delay the loss of interpreters, but with an already substantial inflationary deficit of 11.9% and more expected inflationary pressure, the situation is unsustainable.
- Increasing the maximum hourly rate payable by insurers to \$76.00 may delay the significant loss of interpreters in the short term. Risk: loss of a number of interpreters may be unavoidable in the longer term if rates don't keep up with inflation.

Proposal: A \$6.00 / hr. fee schedule increase (8.6%) for certified interpreters. This is a modest increase given the 11.9% inflationary increase since 2017.

Rule: OAR (Citation unknown)

Issue: Medical providers require the use of interpreting services in order to determine the compensability of a new injury. However, insurers deny payment to interpreters for these services where an injury is ultimately determined to be non-compensable. As a result, insurers are enjoying the benefit of interpreters' services while denying interpreters reimbursement.

Background:

- Insurers have 60 days to determine whether a workers' compensation injury is compensable.
- It takes a minimum of one medical appointment (sometimes several) for a medical provider to evaluate the compensability of an injury.

- Where the claimant speaks a different language than the medical provider, an interpreter is often essential in the determination process.
- Interpreters expend their time and resources to enable an insurer to determine the injury's compensability.
- Where an injury is ultimately adjudicated as non-compensable, insurers deny payment to interpreters for these initial appointments.
- These expenses are necessary for the medical provider and insurer, yet unrecoverable by the interpreter (except *possibly* from the claimant) where the claim is determined to be non-compensable.
- The experience of our agency is that notification of an official determination of the non-compensable status of a claim is rarely received except as a line item on an EOB where the date of determination is not given.

Fiscal Impact:

- Without access to professional interpreting services the workers' compensation system will be adversely affected in a substantial way for those medical services requiring professional interpreting services in order to determine compensability of a new injury.
- Interpreters already have been adversely affected by bearing the cost of the fruits of their labors while the fruits are enjoyed by insurers.
- These costs are necessary for the workers' compensation system to function.
- This proposal shifts costs to their rightful place.
- Insurers are well-able to bear this cost of doing business.
- The workers' compensation system will continue to benefit because workers will experience a good-faith effort to determine valid, compensable injuries while weeding out those that lack evidence of compensability.

Options:

- No change; continue to allow insurers to benefit from interpreting services for which they will deny interpreters reimbursement. Risk: loss of a significant number of interpreters in the very near future.
- Reimburse interpreters for services provided while compensability of an injury is being evaluated.
- Promptly notify interpreters of a determination of non-compensability of an injury.

Proposal:

- Require insurers to pay interpreters for interpreting services used by insurers in order to determine compensability for a new injury until a claim has met all OAR requirements for official determination of non-compensability.