OAR Chapter 436-060, 436-030, 436-120
Implementation of House Bill 2040 (2021), House Bill 4138 (2022)
Transcript
Stakeholder Advisory Committee Meeting
September 7, 2022

Stakeholders attending:

Adison Covey	Gallagher Bassett
Amanda Horn	Marion County
Ashley Willard	Travelers Insurance
Catherine Shaw	Sedgwick
Dan Schmelling	SAIF Corporation
David Barenberg	SAIF Corporation
David Pyle	CareMark Comp MCO
Elaine Schooler	SAIF Corporation
Eric Boling	TRISTAR Insurance Group
Jennifer Flood	Ombuds for Oregon Workers
Jovanna Patrick	Hollander Lebenbaum & Gannicott
Karen Betka	Farmers Insurance
Keith Semple	Oregon Trial Lawyers Association
Kelli Ianke	Farmers Insurance
Kevin Barrett	SAIF Corporation
Kirsten Adams	AGC
Lauren Rolater	Farmers Insurance
Linh Vu	City of Portland
Marcy Grail	IBEW Local 125 | MLAC
Monica Nassar	Reinisch Wilson Weier PC
Rod Ewing	Travelers Insurance
Sonya Powers	Strategic Comp
Sue Quinones	City of Portland
Susan Lavier	TriMet
Tara Hutchinson	Farmers Insurance
Thais Lomax	Sedgwick
Tricia Jones	Clackamas County Risk and Benefits
Virginia Jones	Strategic Comp

Department staff members attending:

Adam Breitenstein
Barb Anderson
Barbara Belcher
Carrie Van Handel
Daneka Karma
Don Gallogly
Fred Bruyns
Jenni Bertels
Jennifer Flood
Kirsten Schrock
Matt West
Sally Coen
Stan Fields
Steve Passantino
Summer Tucker
Tasha Fisher
Troy Painter
Yesenia Gonzalez

NOTE: Time stamps next to each entry below correspond to the location on the audio recording.

00:40 Fred Bruyns | Welcome everyone. My name is Fred Bruyns. I coordinate rulemaking for the Workers' Compensation Division. I've probably been your point of contact for this meeting, and I really want to let you know that we appreciate your time, and we hope to learn a lot from you today. There is an agenda for today's meeting. If you don't have a copy, it is on our website, which is WCD.Oregon.gov. I had put it in the chat, but I think if you arrived after I put it in, it might have disappeared by now. In a moment I will put it back in after Summer starts to take us through the agenda.

01:19 Fred Bruyns | This is an advisory committee meeting. It's not like a public hearing. It's not a formal process. So, the most important thing is that we hear from you today if you have any advice on any of these issues – whether your hand is – whether you're able to get your virtual hand up or not, at some point please just speak up, because we don't want to miss the advice that you have for us – because it could be critical; it could make all the difference.

01:44 Fred Bruyns | As we go along, if you have any advice about fiscal impacts, positive or negative, please let us know. Also, a new requirement in the State of Oregon is to make some kind of statement about racial equity – the effect of a rulemaking on racial equity in Oregon. Sometimes we really don't have a lot of data – and, so, it's folks like you that can help us; if there is some sort of a disparate impact, please let us know.

02:11 Fred Bruyns | We will pick up background noises in your workplace, even keyboarding, so please keep that in mind, and mute selectively. But again, the most important thing is that we do hear from you.

02:25 Fred Bruyns | And, I'm going to run down a list of attendees from the public and just ask you to let me know if you're here. Actually, I can see you on the participant list, so I'm just going to announce that you're here, if you don't mind, and then later on we'll do an agenda and if for any reason someone wants to just observe, you have a perfect right to remain anonymous. You don't have to appear in the minutes if you didn't want to participate in the meeting, but again you're welcome at any time even if you change your mind if you want to do that. So, I see Kelli Ianke, Adison Covey, Ashley Willard, Catherine Shaw from Sedgwick, Dan Schmelling, SAIF Corporation, Diana Johnson, Elaine Schooler, SAIF Corporation, Eric Boling – sometimes I don't see the organization name and for that I apologize, but in the interest of time, I'm just going to continue to run down – Jovanna Patrick, Karen Betka, with Farmers, Keith Semple, probably with the OTLA, yes indeed, Lauren Rolater, Linh Vu, City of Portland, Marci Grail, MLAC, Maria Vanegas, Monica Nassar, Rod Ewing, Sonya Powers, Susan Lavier, Sue Quinones, City of Portland, Tara Hutchinson, Thais Lomax, Sedgwick. And again, that was very quick and brief, and I apologize. Anyone from our customer base – stakeholders – could you let us know you're here if I missed your name? Anyone? – I'm a little concerned we might have lost sound again. Summer, I'm going to call on you. Can you say something, Summer?

04:33 Summer Tucker | Yeah, I'm still here. I can hear you okay.

04:38 Fred Bruyns | Okay, thanks so much. Okay, we have a number of staff here from the department as well. Our role is to listen to you and take the information away with us. We will answer any questions that we can, if you have them for us. But, again, we're here to listen and learn.

04:58 Fred Bruyns | I'm going to actually call some names of people that I know are here from the department, and again, at the end I'll ask anyone who I missed to maybe let us know that they're here. Sally Coen and Matt West are administrator and deputy administrator, respectively. Barb Belcher from the Audit Unit, Adam Breitenstein is here, and Jenni Bertels from the division, Yesenia Gonzalez, Steve Passantino – and I think that's from the division, and Summer Tucker is the policy analyst responsible for some of the rulemaking that we're going to be discussing, and she's with us today. Also, Carrie Van Handel, Barb Anderson, Don Gallogly from our Information & Technology Section. Is there anyone from the department I have missed, and you'd like to actually let us know you're here?

06:05 Stan Fields | Fred, this is Stan Fields, can you hear me?

06:07 Fred Bruyns | Yes, thank you for joining us, Stan. I see Troy Painter is here as well. I think I missed Troy. Anyone else? Okay. And with that, I'm going to ask Summer Tucker to take us through our agenda today. And, I'm going to share the agenda with you, and let's see how that works.
[NOTE: Summer Tucker temporarily disconnected due to sound quality issues and will call in by telephone.]

07:17 Fred Bruyns | I apologize. I went around the table and I missed the folks who are here who are most important: Kirstin Adams, with Associated General Contractors welcome, Kevin Barrett, from SAIF Corporation, David Barenberg, from SAIF Corporation, and I think I got the rest of you. Okay, Summer, can you see the agenda now?

07:42 Daneka Karma | Fred, Summer was going to try to call in from her phone. I double checked with somebody else who is participating virtually, and it sounded really distorted on our end. I think she is trying to connect by phone just so it's clear. Just give her a second. I can see her face. She is trying to call in but she's on mute.

08:09 Fred Bruyns | Okay, we'll just stand bye for a moment.

08:17 Daneka Karma | But, I do see the agenda up.

08:35 Summer Tucker | Okay, can folks hear me okay? I'm here on the phone.

08:42 Daneka Karma | Yeah you sound crystal clear. Thank you.

08:51 Summer Tucker | Okay, it sounds like I can be heard, and we've got the agenda up. Yeah. Okay, so it looks like we're ready to go, yes? Fred, you can hear me okay too?

09:11 Fred Bruyns | Yes, I can.

09:14 Summer Tucker | Okay, alright well then, we'll get going then. Sorry for the delay. So, like Fred mentioned, I'm Summer Tucker. I'm the policy analyst for return-to-work and claims administration issues. Fred pretty much covered everything on the logistics. Since we've got a mix of people in person and Zoom, we'll alternate back and forth as we go through our comments. I'll just be taking us through the agenda, giving a summary of each issue, and then opening up for your comments. So, we've got a mix of issues here, the first one related to House

Bill 2040; then a few minor issues, really not related to legislation; and then House Bill 4138 issues; and of course at the end, housekeeping. Without any further ado, I'll just get going.

10:10 Summer Tucker | So, Issue #1, starting at the top here. What's going on here is that we're trying to get your feedback on whether rulemaking is needed at this time to implement House Bill 2040. A little background on the bill: House Bill 2040 basically made some changes to statute that will help pave the way in the future for electronic submission of claim information. Right now insurers are required to report denied claims, accepted disabling claims, and notices of closure to the division. Insurers don't have to report accepted nondisabling claims. House Bill 2040 just made some tweaks to that though – so, specifically, for like denials and notices of closure, the statute will change from requiring sending a document or copy of a document to the division – to instead just notifying the director in the manner prescribed in rule. The bill also makes a change to require reporting nondisabling claims in the manner the director prescribes in rule. Like I said, these changes were made to kind of allow the department to eventually receive claim information through electronic data interchange – EDI. The House Bill will be operative next year, July 1, 2023, but we are aware by that time, EDI is not going to be implemented at that time. We just won't be prepared quite yet. But, the law will update and will point insurers to look at rules to find out how to report claim information in specific areas. When EDI is implemented, we will be going through specific rulemaking related to that to shift reporting requirements from, again, document copies to data elements. But, we sort of need to address kind of the interim. Until that point our intent is to keep claim reporting requirements the same up until that point that EDI is implemented and ready to go. So that's what today's discussion is about – this interim period. We wanted to ask you all if there are any, maybe clarifications needed in rule – just to make sure that it's clear that, hey, insurers, continue doing what you've been doing in terms of reporting claim information and doing that when the bill is operative next July. So, we kind of end here – what we're wanting your input on is whether some of the options we've put forward would be helpful.

13:10 Summer Tucker | So, we think that the rules as is are likely sufficient to kind of keep the status quo next July. But, we identified a few spots where maybe some clarification would be helpful. We want to ask if that would be the case. And, we'd also like to find out if you have any other rules that you felt hey, this needs clarification, related to this topic. Or, lastly, if you think that no changes are needed, that the rules are sufficient as is, let us know about that as well.

13:46 Summer Tucker | So, Fred's on the options a little bit. So, Fred could you scroll to – just Option 1, because I want to highlight that one real quick. So, on the options, both #1, #3, and #5 are kind of the same thing, and you'll note that [audio unclear] future implementation of claims EDI, that this reporting requirement will change from requiring copies of these documents to sending required data elements electronically. And, I just want to be clear that this would not be official rule language. So, if you were to go to the Secretary of State's website, this would not appear on their version of the rules. This would be something – kind of an explanatory note that we could add onto the rules that we have published on our

website – on WCD's website. So, again, not official rule language, just something we thought that potentially could be helpful, and want to know if folks think that's the case. So, that's options 1, 3, and 5.

14:48 Summer Tucker | Option 2 relates to division 030. Basically, what we're doing here or proposing here, we should say, is just separating out the director when it comes to reporting requirements for notices of closure. So, right now the rule says provide the director, the parties, and worker's attorney a certain set of closure documents. We were thinking it might be clearer if the director is separated. That way, if changes are made in the future, that would be specific to the director and not be lumped in with what other parties need to receive. So, it's not a substantive change there.

15:29 And then on option 4, that relates to our existing rule on nondisabling claims. So, right now the rule basically says that the insurer has to – I'm sorry – does not have to report nondisabling claims, with two exceptions. One is if the nondisabling claim is denied; the other is if it is reclassified to an accepted disabling claim. In both cases, they have to be reported. But, what we would be doing here is just changing the language a little bit just to say the insurer is required to report the following to the director, and just change it to – I shouldn't say change it – just set it to what it is currently – so mirroring statute a little bit in that rule – in the future say – report the nondisabling claim information, and just setting it to what it currently is now in rule.

16:32 Summer Tucker | And, let's see – option 6 is just saying that, again, that no change to the rule is needed, with the understanding that the division will undergo rulemaking in the future to implement EDI, and will provide some reporting requirements there. Okay, so those are the options that we've got, along with the "other" there, if you have other ideas in mind. I'm going to check really quick, because I'm not the expert on this bill. The expert is here, Jenni Bertels, our EDI specialist, EDI claims analyst – Jenni, did I miss anything that you think is important that folks know before we get into the comments?

17:13 Jenni Bertels | No, I think you did a great job with the overview, but I'm here for questions if anyone has any.

17:22 Summer Tucker | Great. Alright, well, then I'll let the – take it away. So, just like I mentioned earlier, we'll kind of alternate between Zoom and in-person comments, so, anybody who's participating on Zoom, do you have any comments on this? Go ahead and use the raised hand function, and I'll kind of scroll through to see who's got their hand raised. So, I'm not hearing anybody on Zoom. So, Fred, is there anybody in the room who wants to speak to this one?

18:27 Fred Bruyns | Would anyone like to address this issue? No one here, Summer, for now.

18:38 Summer Tucker | Okay. Alright, well, that was easy. Okay. I was going to do a quick scroll through, but I don't think anybody has raised their hand. I don't see any kind of video, so I'm going to assume we're all good on this issue – no comments. But, if something comes up later, please let us know.

19:07 Summer Tucker | Okay, thanks, Fred, let's move on to issue #2. So, this is just a couple issues that are not related to legislation that just appear to be minor things that could be addressed. So, with issue 2, related to a division 060 rule on requests

for reimbursement, basically we identified that there are there are two separate rules that talk about insurers' responses to workers' requests for reimbursement, and that might be a little confusing. So, in division 009, rule 0025 states that when a worker requests reimbursement for things like mileage, lodging, meals – the insurer has to respond with a written explanation for each type of expense being paid or denied. There is also some specification in that rule about content and the format requirements. So, that division 009 rule is fairly robust. And then in division 060 there is a rule on the same topic, but it's much more limited; it just says that if the worker submits a request for reimbursement with multiple items, and full reimbursement is not made, the insurer must provide specific reasons for nonpayment or reduction of each item. So, it doesn't go into as much detail as the division 009 rules that is about here is what exactly must be in this response. So, we identified that this appears to be redundant and could be confusing if you are only looking at the 060 rule and are not aware of the other requirements of division 009. So, we'd like your input on whether the division 060 rule either should be removed, which is option 1, or maybe, updated for clarity, maybe the cross reference to division 009 [audio unclear] option 2. Or, if you feel that – no changes, and other. I'll just note that I think "no changes" and "other" are on each issue. I probably won't say them every time, but they are there. [audio unclear]. Okay, so that's issue #2. Is there anybody on Zoom that has a comment on this one? Oh, I'm sorry [audio unclear]. Thais, please go ahead.

21:24 Thais Lomax | I'd just like to say personally, I know a lot of my team would prefer a cross reference, because when we're looking at the rules, we often go to 060, initially, and it would be helpful to have the reminder.

21:42 Summer Tucker | Okay, thanks. Dan Schmelling?

21:47 Dan Schmelling | Yeah this is Dan from SAIF Corporation. I agree with the comment that a cross reference in the division 060 to the division 009 rules would be helpful, just for those folks that aren't as familiar with the rules and where to look. So, a cross reference would be our preference.

22:06 Summer Tucker | Okay, great. Thank you. I don't see any further hands on Zoom. Fred, is there anybody in person who wants to speak to this one?

22:21 Fred Bruyns | Anyone who wants to address this issue? It doesn't seem so Summer.

22:34 Summer Tucker | Fred, can you hear me okay?

22:36 Fred Bruyns | Yeah. I was on mute. I apologize. No, I don't think anyone here wants to speak to this issue for now.

22:43 Summer Tucker | Okay. Thanks, and I appreciate you – sorry to bug you each time. The room is a little bit small on my end, that's because I have a lot of different boxes of people to look at, so thanks for keeping track of that for me. Okay, I don't see any further hands on Zoom, so I think we're okay on this issue.

23:09 Summer Tucker | So, I'll get to issue #3. Alright, issue #3 – on this one, what we found is that this rule, which relates to electronic payment of compensation, so direct deposit, we found that this rule doesn't speak to requirements for self-insured employers when paying compensation [audio unclear]. More specifically, 060-0153 specifies that if you want to pay compensation electronically, if you're an insurer, section (1)(a) through (b) allow direct deposit, but you must get

consent from the worker before starting direct deposit. But for employers, subsection (1)(b) states that if an employer is making payments under 060, rule 0020, so kind of an arrangement with an insurer, in that case the employer can assume the worker consents to payment through direct deposit if that's the method the employer usually uses to pay the worker's wages. Self-insured employers who both take on the role of insurer and employer – so in some ways they appear to fall under both the insurer requirement of getting permission, and that employer requirement where – an assumption can be made based on how the worker is normally paid. But, the rule does not really address – here's what to do for self-insured employers – what they're expected to do – which is something a stakeholder noted to us. So, we would like your feedback on whether this rule should be reworded to more directly state the requirements for self-insured employers.

25:05 Summer Tucker | So, we just provided in option 1, one way to approach this, so what we've done here is just carved out self-insured employers, so the insurer requirement will remain the same – will still have to get consent before starting direct deposit. That special employer exception would also remain the same, and then it would specifically say that the self-insured employer could assume that the worker consents to having benefits paid if that's the method the employer usually uses to pay a worker's wages. So, just really more clearly laying out what insurer, employer, self-insured employer may do in the rule. So, I think that is the only option we put there, with the usual option of other. Would like to hear your comments though, starting with the folks on Zoom. I'll search to see if there are any hands up [audio unclear]. Okay, I don't see anything on Zoom, and I don't see anything in the chat. Fred, anybody in the room with a comment on this one?

26:39 Fred Bruyns | Anyone here? I don't think so, Summer.

26:44 Summer Tucker | Fred, if you spoke, you might be muted, because I didn't hear you.

26:50 Fred Bruyns | No, I don't think so, Summer. We're good.

26:52 Summer Tucker| Okay. Thanks. Okay, I guess we're good on this one.

27:02 Summer Tucker | Moving on to issue #4. Alright, this just relates to some language in rule about a specific kind of penalty. Specifically, there is some rule language [audio unclear] civil penalty under 656.745 – when it can be issued, and that language may be confusing. So, a little more explanation. So, rule 0200 in division 060, section (1), states that the director will issue a civil penalty under ORS 656.745(1) against an employer or insurer that intentionally or repeatedly induces workers to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades workers to accept less than the compensation due, or makes it necessary for workers to resort to proceedings against the employer to secure compensation due. A lot of words there, but the point being that these are certain violations of the statute that may result in civil penalties.

28:14 Summer Tucker | We identified that – Oh I'm sorry. I'm jumping ahead a little bit. So, [audio unclear] those four items, there is a mention in (1)(a) of the rule that a penalty under this section will only be assessed after all litigation on the matter has become final by operation of law. So, this issue is really about

specifically (1)(a) here. And, we identified that this particular sentence could be a little confusing and potentially not necessary. Part of what's going on here is that the language of the rule is a little bit vague. It seems to be referring to litigation that is related specifically to one of those four items that I just mentioned, items 1 through 4 on the agenda, but that reference is a little confusing because it doesn't quite match how this works – how the process works with these issues. So, typically, and I'm not the expert – so feel free to jump in and correct me – typically, if we get a complaint about an inducement not to file issue – the employer discouraged the worker from filing a claim – if we get one of those complaints, the division goes forward in doing an investigation, and if that investigation finds that, yes, inducement not to file occurred, the division then issues a civil penalty. But, the civil penalty order could be appealed, could create litigation, but it would most likely be the first action the division was taking that would result in litigation. So, a little bit of a – (1)(a) is a little circular, given that process. Another thing we noted is that most rules in chapter 436 aren't specifying here specifically when the penalty will go out. So, with this kind of provision here, you know, in general, when it comes to penalties in this area, we know that in some cases there's a separate dispute or case litigation that could involve maybe the same set or overlapping set of facts, as maybe an inducement issue. For example, maybe we get a complaint of an inducement issue, and maybe around the same time the worker is going through litigation to show maybe that they had good cause for failing to give notice of the accident within the 90 days, per statute. So, with issues in this area, we try to keep an eye out for those – any potential overlapping disputes, because we know that issuing a penalty can maybe cause confusion for some other proceedings. So, the rule indicates to account for that other litigation, but it is a little problematic, in that it's not really clear here's exactly what disputes should be taken into account. And that can be a little concerning, because we do want to make sure we address inducement issues promptly. So, what you'll see at the end of this write-up and in the options section, we'd like your input on whether it's necessary to state in rule that the penalty under this particular section will not be assessed until litigation is final.

31:37 Summer Tucker | So, you'll see in option 1 what we proposed is just removing that one sentence, (1)(a). And, I just want to be clear on this one, we're not intending to change our process for taking complaints, doing an investigation, issuing a civil penalty – the process is not intended to be changed. The basis for issuing a penalty would remain the same as those four items I mentioned come from statute. Any appeal rights would also remain the same on that penalty order. We just think it would be a little bit difficult to try to get into – here's specifically all the possibilities of what other litigation should be accounted for. And, we noted that it would probably be best if the timing of such penalty would be determined on more of a case-by-case basis, depending on the facts of the situation as we are aware of them. So that's kind of the [audio unclear], or our intent I should say, behind that option 1. We're just saying to remove (1)(a). Okay, a lot of words from me. But, that's option 1, and 2 and 3 are the usual "no change" and "other." Let's get to your comments. Anybody on Zoom with a

comment on this one? I'm not seeing any hands up. Fred, is there anybody in the room that wants to talk about this one at all?

33:23 Fred Bruyns | Any comments or concerns? I think not, Summer.

33:36 Summer Tucker | Okay, I think I – it popped out a little bit for me, but I got – the answer is no?

33:42 Fred Bruyns | Yes, no.

33:45 Summer Tucker | Yes-no. No comment. Yes, no comment. Okay. I'm not seeing any hands up, so we'll move on to the next item.

34:01 Summer Tucker | Okay, issue 5 here – another small item here. So, this is about the division 060 rule, rule 0095, about IMEs, independent medical examinations, and specifically the suspension of compensation. So, this rule addresses suspension of worker benefits when the worker does not attend an IME, but it doesn't state that a monetary penalty may also be imposed under division 010. So, a little more detail: The division 060 rule – Oh, is there an issue – someone trying to speak? Okay. That might have just been [audio unclear]. So, the rule 0095 basically allows, if the worker misses an independent medical exam, it allows the insurer to request that the division suspend the worker's benefit. Under the division 010 rules, division 010, rule 0265, if the worker fails to go to an IME, and they don't notify the insurer ahead of time or they don't have a sufficient reason for not going to the exam, the director can impose a monetary penalty against the worker. So, together, these rules establish if the worker misses an IME, the worker's benefits could be suspended under the division 060 rule, and the worker may also be subject to a monetary penalty under the division 010 rule. But, we recognize that only looking at the division 060 rule, a stakeholder might not be aware of the monetary penalty.

35:58 Summer Tucker | So, we just would like your input on whether it would be beneficial if, say, a reference was added to the division 060 rule that mentions the division 010 rule. So, what we've put in option 1 is just adding a statement kind of at the beginning [audio unclear]. So, just explaining option 1 here – Fred, if you could scroll a little bit – basically that language underlined would just be – that cross reference that I mentioned – so, putting in the division 060 rule, in the general section, just a mention that the director may also impose a monetary penalty against the worker under the division 010 rule, referencing that. Okay, so that's the description on this one. Any comments from those of you on Zoom? Okay, I'm not seeing any hands up. Fred, anybody in the room that wants to speak on this one?

37:55 Fred Bruyns | Anyone? No comments from the conference room, Summer.

38:08 Summer Tucker | Okay. Thanks, Fred. Okay, I think it looks like we're good on this one.

38:24 Summer Tucker | So, just going a little bit further down, now we're getting into the House Bill 4138 issues. You'll see at the top we've got a little background that applies to multiple issues, so I'm just going talk about it real quick, and then we'll go look at the issues, that way we're not [audio unclear] each time. Okay, so issue 6 – well, sorry, first some background. So, House Bill 4138 made a variety of changes, one of them is adding a new notice requirement related to temporary disability. Specifically, the bill states that the insurer or self-insured employer

may not end temporary disability benefits until written notice has been mailed or delivered to the worker and the worker's attorney. That notice has to include the reason temporary disability is no longer due and payable. So, the next couple issues, we're going to be talking about this issue, starting with issue #6.

39:27 Summer Tucker | So, issue #6 is pretty forward. We've just noted that, hey, the bill adds a new notice requirement in statute, but this notice requirement is not in the current rules. So, generally, right now, as is, insurers usually aren't required to send notice explaining why temporary is ending. It's not a blanket requirement. But, we do have some rules that talk about temporary disability. So, for instance rule 0020 in division 060, and rule 0030, talk about paying temporary total disability and temporary partial disability and talk about situations where temporary disability is no longer due and payable. In division 120 there's a rule that talks about how the insurer must pay temporary disability when the worker is in an approved training plan, and how that compensation may not be paid for more than 21 months. So, we've got some stuff in rule that talks about paying temporary disability, but not a general blanket – send a notice about ending temporary disability. Starting Jan. 1, 2024, so that's when the bill is effective, starting at that point, [audio unclear] but insurers are going to have to continue to meet any current statute or rule requirements for ending temporary disability, and then starting on Jan. 1, 2024, they will also have to provide this notice required by this bill.

41:04 Summer Tucker | So, an additional requirement. We wanted to ensure it's clear – what insurers have to do to be in compliance with statute. So, we thought it would be beneficial to add a mention of the notice requirement in rule.

41:17 Summer Tucker | So, you'll see in options 1 and 2 just some basic language about – in option 1, just adding a paragraph in division 060 just saying that, hey, in addition to other requirements in chapter 436, the insurer may not end temporary disability benefits until written notice is issued. This is just duplicating some of the language in statute from the bill.

41:45 Summer Tucker | And, option 2 – just very similar. It would just go into division 120. Same sentiments here. It would just maybe be a little shorter, since it could reference the division 060 rule. So, those are what we put forward as options in 1 and 2, and of course other things are options as well, if you want to bring those forward. So that's the gist on this one. Let's get to your comments, starting with those on Zoom. Anybody have any hands up for this one? Okay, Keith, sorry. I was scrolling and didn't see you. Go ahead.

42:35 Keith Semple | Keith Semple for Oregon Trial Lawyers Association. We're fine with either of those options, and we think it makes sense.

42:43 Summer Tucker | Okay, thanks. Elaine Schooler.

42:50 Elaine Schooler | Yes, hi, thank you, Elaine Schooler with SAIF Corporation. We're in agreement with the trial lawyers as well, that it makes sense to add this to the rule language. Thank you.

43:05 Summer Tucker | Great, thank you. Okay, yes, Thais. Please go ahead. You are welcome to go ahead. I see your hand's up.

43:24 Thais Lomax | Sorry, I hit the wrong button. Again, from the desk perspective, it would be really helpful to have a cross reference, similar to what was discussed

earlier – you know, putting it in the rule, but also being able to find it in multiple places is not bad.

43:48 Summer Tucker | Okay. Thanks. Okay, I don't see any more hands up on Zoom, so, Fred, anybody in the room with comments?

44:08 Fred Bruyns | Any comments from the conference room? It looks like nothing at this time, Summer.

44:21 Summer Tucker | Okay. Alright, I don't see much more here on Zoom. I don't see any comments. Okay. Alright, I guess we can move on to issue 7. Alright. Issue 7 – Here we're talking about some existing rule language. So right now, we've got some rule language that talks about sending the worker an explanation for stopping temporary disability in place of a scheduled payment – which we identified that it may not meet the intent of House Bill 4138. So, the rule that we're talking about here specifically is rule 0020 in division 060, in section (4). That particular rule provides some steps that the insurer has to do to end temporary disability in specific situations – so, in particular when the worker's attending physician or authorized nurse practitioner cannot verify the worker's inability to work. After completing those steps, the rule says that the insurer may stop temporary disability payments, and in place of a scheduled payment send the worker an explanation for stopping payment. So, that's what we've got in existing rule in this spot. What's a little unclear [audio unclear] 4138 is how far temporary disability has to be paid – but we know that temporary disability may not end until notice goes out, but it is a little grey as to what point the payment – how far they go. So, does it mean, for instance, that once the notice goes out, just issue no further payments on that established payment schedule? Or, it may mean that the temporary disability has to go – be paid through – to or through the date of the notice, for the days leading up to the notice. That's something that's a little bit of a grey area.

46:34 Summer Tucker | There was some testimony during the legislative session that indicated that the intent of the notice provision was to ensure that workers are notified when their payments are going to stop and give them a reasonable amount of time to correct mistakes. So, we're aware of that from the legislative session. So, kind of keeping those two things in mind, existing rule language and what's in 4138, we identified that maybe sending notice in place of a payment may not meet the intent of the bill, and maybe that some revision is needed.

47:07 Summer Tucker | So with option 1 here, we've proposed here, right in little (b) here, is to just update that part about the "in place of" explanation, so instead to say that if the AP or nurse practitioner is unable to verify the worker's inability to work, that the insurer may not end temporary disability benefits until written notice is provided. We put a citation to rule 0015, which is where we're thinking that general information about benefits that we talked about in just the last issue would go. So, just saying that may not end benefits until written notice is provided – instead of the "in place of" explanation.

47:57 Summer Tucker | Alright, let's get to your comments. Folks on Zoom – anything you'd like to say on this one? Okay, Elaine?

48:15 Elaine Schooler | Hi, Elaine Schooler with SAIF Corporation. We think this change makes sense to align it with the notice requirement. One piece that came

up is whether saying "notice is provided," versus "notice is mailed or delivered," as the statutory change references would be better for the implementation in this proposed change. But, would agree that the intent of – even in this situation, the notice needs to be mailed or delivered prior to the time-loss benefits ending.

48:55 Summer Tucker | Okay. Thank you, Elaine. Keith? I see your hand up.

49:03 Keith Semple | We're in agreement with that.

49:07 Summer Tucker | Okay. Great. I'm just going to scroll through. Okay, Fred, anybody in the room have a comment?

49:27 Fred Bruyns | Anyone here? Kirsten?

49:30 Kirsten Adams | This is Kirsten Adams of AGC. I would agree with both Keith and Elaine that it makes sense to have this in here – a little bit more specificity in this part.

49:43 Fred Bruyns | Thank you, Kirsten.

49:44 Kirsten | Great, thanks.

49:45 Fred Bruyns | Anyone else in the conference room want to speak to this one? I think that's it, Summer.

49:56 Summer Tucker | Okay. Alright, just taking a pause to make sure we didn't miss anybody. Okay.

50:10 Summer Tucker – Well, I guess we'll move on to the next one, issue 8. Okay, so on this one, we identified that, with some existing rule language in division 030, that the worker might be getting two different notices about the end of temporary disability benefits. So, a little more explanation. Obviously, with 4138, the worker is going to get a notice about temporary disability that tells them – here's the reason the payments are no longer due and payable. In division 030, rule 0015, section (7), there is an existing notice requirement – I'm just going to refer to it as the intent to close – and with this intent to close notice the rule says that the insurer has to send written notice to the worker and the worker's attorney when the insurer receives information that the worker's claim qualifies for closure, and this notice has to advise the worker of impending claim closure and that any temporary disability payments will end soon.

51:19 Summer Tucker | So, keeping both of these notices in mind, we identified it might be a bit confusing, depending on the timing – so for instance if, say, the worker got the 4138 notice, and here's the reason temporary disability is ending and later got the intent-to-close notice, that says temporary disability "will" end, which is sort of a prospective, so a little different of a message – so that can just be a little bit confusing. So, we'd like your input on whether this option we've put forward in option 1 could help better clarify maybe what the worker – the status of the temporary disability benefits is on that intent-to-close notice.

52:04 Summer Tucker | So, what you'll see in option 1 is, again, just that the notice must advise the worker of impending claim closure, and what we're suggesting is just to make few – and that any temporary disability "currently being paid" will end soon – so, hopefully, getting the point across that, hey, you've already been told that temporary disability – here's the reason why it's ending – and now you're getting this additional notice – we're referring to anything that is currently being paid. So, that would be what we've got here for option 1. Any comments from folks on Zoom on this one? Go ahead Keith.

52:53 Keith Semple | We think the option that you've proposed makes sense, so we don't have any objection to that.
53:04 Summer Tucker | Alright. Elaine, I see you.
53:07 Elaine Schooler | Hi, the same – we're in agreement with the change.
53:12 Summer Tucker | Okay, great. Alright. I don't see any further hands up, so, Fred, is there anybody in the room that has a comment on this one?
53:32 Fred Bruyns | Anyone here? No, Summer.
53:41 Summer Tucker | Okay. Well, not seeing any further hands up. Alright, let's move on to the next issue, issue #9. Oh, sorry, did someone have a comment, or just unmuted? Okay, I don't think – sounds like no one was trying to say anything, so I'm going to move on, but please pop something into the chat if we need to come back to you.
54:24 Summer Tucker | Okay, issue 9. So, we're going to take a little shift here. We're still talking about 4138, but it's just a different aspect of the bill. So, with 4138, there is a second notice requirement that was added in, this one related to medically stationary status. In particular, what the bill says, is that the insurer must mail or deliver a written notice to the worker and the worker's attorney within seven days following receipt of information that the worker is medically stationary. Now, currently insurers are not required to send a notice to the worker and their attorney just to let the worker know that they're – that they got information that the worker is medically stationary [audio unclear]. So, similar to what I mentioned with the temporary disability notice, is we just want to make sure it's clear – hey, there is this additional requirement in statute. Here's what you need to do to be compliant with that, so here's the notice requirement. So, again, similar to the temporary disability issue we talked about.
55:33 Summer Tucker | With option 1 we're just proposing to basically just put the language from the bill into the rule – duplicating it. And, we're looking to do that in two different spots – one in division 060, rule 0015, again, just repeating the bill language – and then one spot in division 030, a little bit shorter; it would just be saying provide the notice required under division 060. So that's what we've got on the options. What comments do the folks on Zoom have? Okay, Elaine, go on ahead.
56:21 Elaine Schooler | Yes, we agree with the change and it seems to make sense.
56: 28 Summer Tucker | Okay. And I see Keith as well.
56:34 Keith Semple | OTLA agrees as well. Thank you.
56:40 Fred Bruyns | Summer, you may have noticed – we have some chat from Ashley Willard.
56:45 Summer Tucker | Yes, I was just opening it up. It is opening up in a separate venue for me, so I have to kind of move it around. Okay, so I'm just going to read this aloud, just in case anybody can't see it for some reason. Ashley noted: How would HB 4138 impact OAR 436-060-0030(2)(a), and then 0030, same rule, but (2)b)? And, I'll just be honest, I don't know [audio unclear]
57:14 Ashley Willard | So, it's basically just saying that as the insurer we must stop paying temporary total disability and start paying temporary partial disability if they, basically, are with a new employer – then it's up to the injured worker to provide that information in order for us to pay them. And so, I'm just wondering –

because it then goes on to say if the worker fails to provide that documentation, then the insurer may assume that post-injury wages are the same or higher than – which would mean that we would not pay them. So, that conflicts with having to provide the written notice to stop temporary disability under House Bill 4138.

58:00 Summer Tucker | Okay, that's good to know.

58:08 Thais Lomax | But the rules – paying doesn't change – so I think if you send the notice saying we're not going to pay you because you did not reply – blah, blah, blah, blah, blah – then you've met both standards.

58:22 Ashley Willard | Then if they are working with, say, the employer at injury, and then they switch to a new employer, we would have to continue paying until we send them something saying please provide this information, even though it's their responsibility?

58:33 Thais Lomax | Right. So instead of just unilaterally stopping, you'd now just send them the notice saying we're stopping because.

58:52 Summer Tucker | I'm just going to jump in and make sure I got, just for the record, who was speaking, just so we have it for our minutes – Thais, that was you speaking, in response to Ashley's question?

59:02 Thais Lomax | Yeah, sorry about that.

59:04 Summer Tucker | Okay, that's okay. I understand – just trying to make sure we have it on the record correctly. Okay, it sounds like that might have addressed your question, Ashley?

59:21 Ashley Willard | Yeah.

59:24 Summer Tucker | Okay. Fred, is there anybody in the room that wants to speak on this one?

59:32 Fred Bruyns | Anyone?

59:33 Summer Tucker | On the medically stationary notice requirement?

59:39 Fred Bruyns | Not at this time, Summer

59:46 Summer Tucker | Okay, I don't see any further hands up. Oh – I think that was someone who was speaking with the last digits 5058. If you have a comment, I couldn't hear you very well, so I'll just take a moment [audio unclear] Okay, I guess not. So, we'll just keep moving, but let us know if we missed you.

01:00:28 Summer Tucker | Okay, issue 10. Still talking about medically stationary, but a little bit of a different aspect of the bill. So, currently attending physicians and nurse practitioners can retroactively declare a worker medically stationary, and there's no limit on how far back they can set that medically stationary date. House Bill 4138 adds a time limit on that retroactive dating. So, specifically it limits the physician or nurse practitioner from retroactively determining a worker to be medically stationary more than 60 days prior to the date of the determination.

01:01:13 Summer Tucker | Now in division 030, rule 0035, there are some provisions related to determining the date the worker is medically stationary in certain situations. When 4138 is effective, we think those provisions will still be appropriate, but they're going to be subject to this new 60-day limit kind of on top of that. So, again to try to ensure that's clear – okay there's this change – you've got to deal with this new 60-day limit, we thought it would be beneficial to put that 60-day information in rule.

01:01:50 Summer Tucker | So, in option 1, what we're proposing there is just to repeat the bill language – to just say you can't retroactively determine a worker medically stationary more than 60 days prior to the date of the determination. So, nothing real unique or different here, just repeating the bill language, on option 1, similar to a number of the other issues we've gone through. Alright, any comments on issue #10 from those of you who are on Zoom? Okay, Thais?

01:02:34 Thais Lomax | I think it's – my concern is clarification on that 60-day retroactive. We still have a lot of physicians and nurse practitioners where we'll receive a chart note that has everything for closure, but they won't say the words "medically stationary." And, does that 60 days apply to them commenting on that prior note while we've been trying to get that specificity from them to be able to close it? Or, are we going to now have to set additional exams just for that sentence? And, offline, if you needed examples, we have a number we could provide. We're caught in this loop of just trying to get those words from the doctor.

01:03:27 Summer Tucker | Okay, Yeah, that would be great if you have specific examples that you'd like to give us, kind of after this, or in the chat, whatever is easier, that's totally fine if you could provide that. Keith, I see you. Go ahead.

01:03:48 Keith Semple | Yeah, I think the number 1 amendment looks fine and makes sense to us. In terms of the question that was asked, I think the question then becomes what was the date of the determination. Was the date of the determination when the doctor kind of put it vaguely in the chart note, or the date of the determination once you ultimately clarify it? I think that is probably a case and fact-specific for, you know, what day did you determine the worker stationary, was this intended to be that in the chart note, so I think that would be how that question would be analyzed. That's just, I guess, my opinion. Thank you.

01:04:35 Summer Tucker | Thanks, Keith. Elaine, I see your hand up as well.

01:04:39 Elaine Schooler | Yes, thank you. We agree that it makes sense to add these changes to the rules.

01:04:49 Summer Tucker | Okay. Thank you. [audio unclear] hands up. I'm not seeing anything. Okay, Fred, anybody in the room with a comment on this one?

01:05:06 Fred Bruyns | Anyone? I guess not – not now, Summer.

01:05:17 Summer Tucker | Okay, nothing from the room. Okay. Thank you. Alright. I guess we'll move on to issue 11 here. Okay, so with issue 11, we're still talking a little bit about the 60-day limit, but a slightly different aspect of it. So, I just talked about how 4138 has the 60-day limit for retroactively dating the worker's medically stationary status. One thing we identified is that it was a little unclear what the medically stationary date should be if that physician or nurse practitioner retroactively dates the status more than 60 days prior. So, again, right now we don't have any limit on retroactive dating. We're going to have the 60-day limit. The bill does not state – here's what should happen if the doctor goes back more than 60 days, and because of that it is a little bit unclear whether, if that were to occur, if that means that the doctor has to revise the medically stationary date, or if that means that insurers have to close the claim using some other date that's within the 60-day limit. We just – that's not addressed by the bill.

01:06:53 Summer Tucker | So we noted that there might be some scenarios where the medically stationary date is somehow retroactively dated more than 60 days prior, so we've just got a couple of examples that I do want to emphasize might not be the only ones out there.

01:07:09 Summer Tucker | So, first, for example, say, if an attending physician concurs with an independent medical exam, and that independent medical exam found the worker was medically stationary more than 60 days prior. That's one scenario. Another one could be if there is a conflict about the date the worker is medically stationary. In division 030 we have a rule that says if there's a conflict, the medically stationary date is the earliest date a preponderance is established, but, potentially that earliest date might be more than 60 days prior. So, another one – and then, last one that we noted – that, say if the physician didn't indicate a specific date when determining the worker medically stationary, we have a rule that says if that occurs, the worker is presumed medically stationary on the date of the last examination prior to the date of the medically stationary opinion. But, what if that date of the last exam was more than 60 days prior?

01:08:13 Summer Tucker | So, again, these were just a few examples that occurred to us. There could be others. If you have them, we'd like to know. So, we would like your input on how should the medically stationary date be determined if this kind of situation comes up where the physician declares the medically stationary date more than 60 days prior. And you'll note here, we don't have specific options, pending your input. This is one where we just wanted to hear what folks think on this one before trying to go through really specific proposals on rule language. So, let's take it away with the Zoom comments. I see Keith, you have your hand up. Go ahead.

01:08:58 Keith Semple | Okay, I think OTLA's intent on this was to limit the effect of a backdated medically stationary date, not so much to affect when and how it's given, but to limit the effect in terms of creating an overpayment, by agreeing to a date that's long in the past. So, in terms of the agreement with a doctor that put's the stationary date more than 60 days in the past, the effective medically stationary date would be no more than 60 days prior to when it's being set and determined and agreed to.

01:09:42 Summer Tucker | Okay, thanks, Keith. Elaine?

01:09:45 Elaine Schooler | Hi, So, that's our understanding as well. This was meant to address situations where there's – like an independent medical evaluation that declares a worker medically stationary six months prior, and then the treating doctor concurs with that determination – to limit that determination to 60 days from when it's made, so that extended period of overpaid time-loss benefits isn't happening. Thank you.

01:10:26 Summer Tucker | Thanks, Elaine. Not seeing any other hands up here on Zoom. Okay, Fred, anybody in the room that has a comment on this one?

01:10:42 Fred Bruyns | Anyone here? Kirsten?

01:10:46 Kirsten Adams | Hi this is Kirsten Adams with AGC. I'd agree with both Keith and Elaine that that is consistent with the negotiations around the bill during the legislative session.

01:10:58 Fred Bruyns | Thank you Kirsten. Anyone else? That's it, Summer.

01:11:06 Summer Tucker | Okay. Thanks, Fred. So, just to make sure I understand correctly, the [audio unclear] of the comments here, the intent was to kind of limit the effect on payment of temporary disability, but not on other areas. Is that correct? [audio unclear] to make sure I understand [audio unclear] comments.

01:11:30 Keith Semple | Yeah, that's what I would say the main intent of this is address the effect of overpayment, not necessarily, like I said, when and how the opinion on medically stationary is given.

01:11:47 Elaine Schooler | This is Elaine Schooler with SAIF Corporation. I agree with Keith's interpretation.

01:11:54 Summer Tucker | Great. Thank you, Elaine. Okay, I'm not seeing any further hands up, so I'm just going to move on to the next issue. We have here issue #12. And, this is another one where we don't have some specific options provided here. We want to get your input first. So, specifically, this relates to a division 030 rule, rule 0020. And in that rule, it requires the current, within three months before closure, determination of medically stationary status, when a claim is being closed after a vocational training plan. We identified that this rule might conflict with 4138 in that limit on retroactive declaration of the medically stationary date.

01:12:47 Summer Tucker | So, a little more detail here. I know it's a little bit vague. So, rule 0020, section (4), little (b) requires that if, after claim closure, if a worker enrolls in an authorized vocational training plan, that the insurer must again close the claim when worker is no longer enrolled and actively engaged in the training plan. So, basically, closure happens, worker goes into a training plan, that training plan wraps up, then the insurer has to close the claim again. And, the rule specifies in this situation that if the worker is medically stationary, there must be a current (within three months before closure) determination of medically stationary status. As I mentioned, now 4138 is going to limit how far back medically stationary status can be retroactively determined. So, we see that the rule can have a three-month timeframe, that it could be a little bit confusing [audio unclear] conflict with that 60-day limitation. Our thought was that when redetermining that medically date, as the rule was calling for, the physician or nurse practitioner probably wouldn't be able to go back and use the medically stationary date that was established when the claim was closed for the first time, if that date was more than 60 days prior, which chances are it probably would be if the training plan is fairly long. So, we just would like your input on – your perspective on this rule, whether you see it as conflicting with 4138 and if you feel that any clarification is needed in rule about this redetermination requirement. So, take it away with your comments, folks on Zoom, go ahead and raise your hand if you've got something for us. Okay, Keith?

01:14:50 Keith Semple | I think that for OTLA we'd just reiterate what we said with regard to the last rule, in terms of it having an effect, being the effective date of the medically stationary date, as opposed to the date it's actually assigned. I can't think of – and maybe I'm just not thinking of something obvious – but I can't think of necessarily a way that this effect, or lack of effect, on a medically stationary date after a voc plan would change things, but I'm interested in what Elaine has to say. This wasn't really something that I think either of us had really thought a whole lot about. Like I said, we were focused on the effects, not

necessarily the date given, which obviously would be way in the past if you just did a voc program.

01:15:41 Summer Tucker | Okay, thanks Keith. Elaine, I see your hand up as well.

01:15:46 Elaine Schooler | Yes, thank you. Yeah, I agree with Keith. When we were talking about the change, a claim closure after an end of training in the vocational setting was not on our radar, and I don't think the intent was to impact that closure process. The medically stationary date in the vocational realm when we've ended training, from more of a formality, we're rerating the social-vocational piece for the work disability that was awarded in the prior closure. We're interested in hearing how the division thinks this may create a conflict, maybe with a specific example, and if there is a way to modify the current language if needed, to rather use, like if the worker "remains medically stationary," or something that removes the word "determination," which we're using as part of the change in House Bill 4138, for the worker being declared medically stationary – that could potentially set this apart as a separate piece that is not impacted. I can't – when we were looking at this, I can't think of how this impact the vocational aspect and the time-loss payments that are going out, in terms of the overpayment, but, again, perhaps, because this wasn't on our radar it just needs to be further fleshed out by all the parties.

01:17:28 Summer Tucker | Okay. Thanks, Elaine. Thais, go ahead.

01:17:34 Thais Lomax | I would just say from a practical standpoint, most examiners, if they're setting a mandatory closing exam for a post-voc closure, are not setting it 90 plus days before they're actually finished with the voc program, so it likely should have little to no impact, in general.

01:18:03 Summer Tucker | Okay. That's helpful to know. Thanks, Thais. Okay, I don't see any further comments here on Zoom. Fred, anybody in the room with anything to say on this one?

01:18:28 Fred Bruyns | Anyone? No, Summer.

01:18:38 Summer Tucker | Okay, thanks. Elaine, to get to your comment, to be honest, I think what we were thinking of in terms of an example was kind of what we have in that issue document about – okay, the physician has to redetermine medically stationary status, you know, how we have to kind of stick to that 60-day timeframe. We probably couldn't go back and just restate that old medically stationary status. That might be the issue. But, it's helpful to know that folks may not see that there might not be a practical impact, given that the focus of this particular provision [audio unclear] has more to do with time-loss. To my understanding, this particular redetermination piece came from a court decision fairly recently, some time in the past 10 years – that's why it's in there. That's just a little explanation – what it is and why it's there. Do you folks have any more comments on whether this will be impactful or not, or if this needs clarification [audio unclear]? Okay, I don't see any hands up, so I think we're good to move on.

01:20:21 Summer Tucker | That just takes us to the housekeeping items. So, I'll go through those. Probably what I'll do is kind of explain them, and then kind of take a pause between each, and if there's a comment, you know, raise your hand – and Fred,

just break in if someone in the room has something to say. I'll try and make sure to give some pauses for that to happen.

01:20:47 Summer Tucker | So, the first housekeeping item relates to 4138. The bill adds a 50 percent limit on recovering overpayments from permanent partial disability and adds that into ORS 656.268(16), and that was in addition to some existing limits on recovery from temporary disability and permanent total disability in (14). In our rule in division 060, rule 0170, it states that the insurer can only recover overpayments paid to a worker as specified in ORS 656.268(14) [audio unclear] some additional information in (16) when the bill's effective, we thought that the rule needed to be updated to just say 268(14) and 268(16), just expanding that citation a little bit to reflect some additions that came from 4138. Okay, so that's just the one housekeeping item we identified specific to 4138. I'll just take a pause really quick to make sure if there are any comments on that specifically.

01:22:13 Fred Bruyns | Summer, we – you might have mentioned it, but we have some chat that Thais gave us related to the last issue.

01:22:22 Summer Tucker | Yeah. I just saw it pop up, so let me – let me just read that aloud. So, Thais just noted that: "post-voc closure: Used to be if a worker did not treat during their voc we could issue closure based on MD statement that they remained stationary. Now, there is an exam needed in almost all cases to verify current status for new stationary declaration and work disability rating confirmation." Yes, Thais, you are pointing out kind of what that court decision – Court of Appeals kind of [audio unclear] now there's that additional exam requirement. Okay, so we got that comment captured. I assume there's nothing here on 4138 housekeeping issue? Not seeing anything, so I'm just going to keep going.

01:23:23 Summer Tucker | Now these are just other housekeeping items unrelated to 4138. In division 005 – not division 0005 – rule 0005 of division 060 we have definition of dependent. It just says that "relatives of a worker listed under ORS 656.005(10)" – there was a bill this legislative session, House Bill 4086 – that particular bill made some changes related to the definition of dependent in statute and expanded it – so, that expansion kind of needed to – dependents include some people beyond workers' relatives, so we just thought that the rule definition just needed a little update from relatives of a worker to individuals listed under statute. So, that's what that one is.

01:24:21 Summer Tucker | Next item, rule 0025. That one's just on moving a particular provision. So, there is a provision in the average weekly wage rule about how to calculate the weekly wage when the worker is employed through a union hiring hall. Right now that's located in the spot for calculating regular wages. But, we know that the union hiring hall provision is really its own thing – separate – so, we're just proposing here to take that item and move it to the more general section of that same rule. So, not changing it. Just moving it to a more general. Okay, so that's on that rule 0025 there. Next item.

01:25:08 Fred Bruyns | We have a – Kirsten would like to say something.

01:25:15 Summer Tucker | Oh yes, sorry – please go ahead Kirsten.

01:25:17 Kirsten Adams | Sure, Kirsten Adams of AGC. I had a question on this particular one. I'm just asking – it doesn't seem like there's much confusion about having it

in there, so I was wondering sort of what the impetus was for moving it at this point.

01:25:33 Summer Tucker | Honestly, I think it was just that we thought it be – make a little bit more sense just in the general section of the rule, just to make sure maybe it's not confused with being a regular wage – just to make it maybe a little clearer. Hey this is its own kind of special thing. Don't treat it as a regular wage. Treat it as this, you know, specific method. That would really be the only impetus. We're not trying to shake anything up significant there.

01:26:00 Kirsten Adams | I just concerned about maybe any down-the-road consequences of having this here versus the section it's been in, and kind of want to make sure that had been looked into and there wouldn't be any unintended consequences of the move.

01:26:16 Summer Tucker | Gotcha. I appreciate you mentioning that. I don't think the intent is to make any significant change in how people approach that particular situation.

01:26:31 Fred Bruyns | Thank you, Kirsten.

01:26:36 Summer Tucker | Okay. I'll just keep going unless any other comments pop up. I don't see any hands up on my end.

01:26:46 Summer Tucker | Okay, rule 0060. This one is just about correcting some punctuation in the rule language. We recognized that there was maybe a missing comma in one spot, just related to insurer's response to a request for a lump sum payment.

01:27:09 Summer tucker | Rule 0105 – this one is – this particular rule is related to the situation where the insurer can request the division suspend benefits if the worker does things that kind of imperil or delay recovery. When this kind of is happening, the insurer has to kind of demand in writing that the worker stop doing that. And, when the insurer sends the request to the division about suspending benefits, they have to include some information about how, when, with whom the worker's you know failure or refusal was verified. And we were just suggesting to maybe make that a little more specific and write instead "failure to comply" or "refusal to comply" – with kind of making sure they not imperil or delay recovery. That's item 0105.

01:28:05 Summer Tucker | Rule 0135, which I think – oh yeah, you're already there, Fred. [audio unclear] Okay. Rule 0135 – this one is just about updating a reference – the rule currently references section (2), which deals with a lot of different topics, and this rule specifically is requiring that if the insurer requests that the division suspend benefits that that request include a copy of a notice required in section (2) of this rule. Section (2) deals with a lot of different things, and so we were just thinking that that reference to section (2) could be a little bit more specific – to section (2), subsection (a), which deals specifically with that particular notice, so just making the reference more specific.

01:29:02 Summer Tucker | And, then, next one – rule 0150. This is just about making some tweaks to legal holidays. So, right now in section (2) there's just a list of state legal holidays, but that list is duplicative of statute, in ORS 187.010 and .020; those statutes define the current state legal holidays, so there's not necessarily a need to specifically list them in rule, and we already have a reference in that rule

to the statute. So, this is just about kind of taking that list of legal holidays out and keeping that statute reference. We'd also be looking to change the reference to weekend to Saturdays and Sundays.

01:29:55 Summer Tucker | Kind of in that same theme of legal holidays, the next two items for rule 0005 and rule 0015, are kind of on a similar theme. Rule 0005 is just about the definition of business days. Right now that references the list I mentioned in rule 0150. If that list goes away, we want to make sure to replace that with a reference to statute. With rule 0015 this would just be specifying legal holidays are the holidays defined under the statutes that I just mentioned.

01:30:28 Summer Tucker | And, then the last couple things are just kind of a couple/three rules here – one in division 030, one in division 060, two different spots, though. We noted there are a few spots where there's a reference to the Ombudsman for Injured Workers. That title has been updated to Ombuds Office for Oregon Workers – so just updating the title to be correct. So those are our housekeeping changes we've got on this issue document. I want to make sure we didn't miss any of your comments on these items or other ones from earlier, so anybody on Zoom if you have a comment, please go ahead and raise your hand so I can see and make sure we capture that. Okay, I'm not seeing anything. Fred, is there anybody in the room that has some last comments that they want to bring up?

01:31:32 Fred Bruyns | Any additional thoughts, comments, concerns. No, that's it, Summer.

01:31:45 Summer Tucker | Okay, it sounds like there isn't anything. So, I guess that wraps up what we've got on the docket for today. As I mentioned earlier, if you have additional comments or items that you wanted to maybe mention to us, that hasn't been covered here, or just you had a thought later on, that you wanted to get to us, please do get in touch with us – email us. And, Fred would have the contact information for that, I think. If you have a general policy email and you want to reach out to us. Don't be shy. Feel free to do that. And, I think from here, we're pretty much good for today. And I believe we'll have the minutes [audio unclear] online for folks who want to review later [audio unclear]. Fred, is there any kind of last-minute information that you could pass along [audio unclear].

01:32:39 Fred Bruyns | No, I just want to thank everyone very much for your time, and as Summer said, if you do have additional thoughts, please send them to my attention. You've probably had a number of emails from me, but if you have not been hearing from me – maybe someone passed the meeting information along to you – if you stay with us after – kind of after the close of the meeting, you can just give me your contact information, and then I will keep you in the loop going forward, including with draft, or actually with proposed rules, because there will be public testimony available – a period of public testimony – and then we would welcome your input then as well. So, thank you very much. So, please get in touch with us if you have additional information or thoughts, and we look forward to working with you again. Goodbye.

01:33:37 David Barenberg | I just want to say thank you, and thank you for doing these early and getting them out. And, then thank you to Summer and the team for a job well done. You heard an awful lot of "we all agree," and that's really hard to do.

01:33:53 Fred Bruyns | Thank you very much, Dave. And, thank you all.