



## Hearing Officer's Report to Agency on Rulemaking Hearing

Date: 4/9/2019  
To: Department of Consumer and Business Services  
From: Alex Cheng, Hearing Officer  
Subject: In the matter of amending ORS 836-043-0125 to 836-043-00165

Hearing Date: March 25, 2019  
Hearing Location: Labor and Industries Building  
Comment Period End: April 1, 2019

### Background

ORS 737.318 directs the Department of Consumer and Business Services (DCBS) to establish and administer a continuing test audit program for workers' compensation insurers. Requirements of the program are set out in OAR 836-043-0125 to 836-043-00165.

DCBS convened a rulemaking advisory committee to provide input on possible improvements to the test audit program and any potential fiscal or economic impact of a rule change. Committee members included workers' compensation insurers, the National Council on Compensation Insurance (NCCI), and Oregon's Small Business Ombudsman for Workers' Compensation.

DCBS filed a notice of proposed rulemaking on February 26, 2019. The proposed rule adjusts the test audit program to better meet the needs of Oregon's workers' compensation insurance market by:

- Simplifying the program by reducing the number of premium size tiers used to categorize insurers.
- Reducing audit rates for insurers who meet the test audit performance standard of 20% error rate for the premium size tiers greater than \$2,500.
- Adjusting the formula for determining an insurer's error rate by giving equal weight to the statewide error rate and the insurer's specific error rate and excluding payroll reports and non-productive audits.
- Improving the error rate and test audit standards by including only the policies in which insurer the insurer performed an audit.
- Requiring insurers that do not meet test audit performance standards to meet with the DCBS director or a designee to report on its remediation plans. Performance standards vary by the number of policies audited. The proposed rule simplifies the program so that there are fewer tiers used to determine performance standards.

- Making technical changes relating to forms provided by DCBS, the timing and manner of reports provided to DCBS, and the frequency of examinations of the audit program.

DCBS held a public hearing on March 25, 2019. The proposed rule was open for public comment until April 1, 2019.

### **Comments**

At the public hearing, Todd Johnson testified on behalf of NCCI and requested that an implementation date for the final rule be chosen based on the start of a calendar quarter following publication of the final rule. No other individuals provided oral comments.

DCBS received two written comments:

- NCCI submitted written comment reiterating its request that the rule be implemented at the start of a calendar quarter.
- SAIF submitted comment requesting to simplify language in OAR 836-043-0145(2), which requires NCCI provide the policy number and named insured for all test audits that do not result in a significant difference in premium.

### **Discussion**

The proposed rule requires that NCCI select policies for test audits once a quarter. DCBS agrees that the most practicable implementation date is at the start of a calendar quarter.

DCBS agrees that some language in OAR 836-043-0145(2) could be revised for clarity; however the changes proposed by SAIF would remove key definitions from the rule. The term “significant premium difference” is defined in subsection (2) and used later in subsection (3). Removing the language would make the requirements in the rule less clear.

### **Recommendation**

Having considered fully all written and oral submissions, the hearing officer recommends:

- OAR 836-043-0145(2) be finalized with the following language:

*For audits that do not result in a significant premium difference, defined as in excess of \$500 in premium or in excess of two percent of the total standard premium, whichever is greater, the bureau shall provide the insurer with the policy numbers and the named insureds for all test audits closed without change.*

- The remainder of the rule be adopted as proposed; and
- The final rule become effective on July 1, 2019.

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Alex Cheng  
Hearing Officer

This Summary and Recommendation are reviewed and adopted.

Signed this 18<sup>th</sup> day of April, 2019.

Department of Consumer and Business Services



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Andrew Stolfi, Administrator  
Division of Financial Regulation