



Oregon

Kate Brown, Governor

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House Business and Labor Committee

House Bill 2040

Sally Coen, Administrator, Workers' Compensation Division

January 27, 2021

Chair Holvey, members of the committee, I am Sally Coen, Administrator of the Workers' Compensation Division which is part of the Department of Consumer and Business Services.

Workers' compensation insurers and self-insured employers are required by Oregon law to report specific types of claims to the department. These include accepted and denied disabling claims (worker loses time from work) and denied nondisabling claims (only medical services provided). The department uses the claim information in a variety of ways, including monitoring employer and insurer compliance, assisting injured workers, scheduling workplace safety inspections, and tracking workers' compensation system performance and trends.

Currently, reported claim documents come to us on paper forms or as document images. The division manually enters data from these documents into an extremely old database. In 2019, the legislature authorized the division to begin a Modernization Program for our processes and supporting computer systems. One goal of the program is to implement Electronic Data Interchange (or EDI) for claim information. This is computer-to-computer communication, without human entry of data, so that data can be processed quickly, accurately, and cost-effectively. We have used EDI for proof of coverage reporting since 2003 and for medical bill data reporting since 2008.

The law currently allows the director to require electronic submission of claim documents, however there are limits on what claim types are reported. Most notably insurers are not required to report accepted nondisabling claims, which make up a significant portion of workers' compensation claims.

This bill will allow the division to specify by rule what type of claim information must be reported electronically. This could include all nondisabling claims and other claim-related information currently required by paper. Having all types of claims reported will provide a more comprehensive picture of the workers' compensation system and its trends. Using electronic claim reporting will also provide cost savings for insurers and self-insured employers, making it easier to do business in Oregon especially for multi-state insurers who already interact with 39 states that have electronic claim reporting.

The soonest the division would adopt rules is July 1, 2023. This date will depend on the Modernization Program planning and development process and feedback from stakeholders in the public rulemaking process. The division will not change claim reporting requirements until electronic claim reporting is in place.

Unfortunately, our bill draft did not include all the items we hoped for, and we have requested the -1 amendments through your staff to clarify the effective date and correct a typographical error.

We have also attached a memo from Legislative Counsel describing the purpose of the form and style updates included in the bill. Much of the workers' compensation law originated in the early 1900s and has been continually subject to case law interpretations of the statutes, in some cases down to interpreting individual words. It is our understanding the form and style changes in HB 2040 are not intended to be substantive as noted in the memo.

We ask that you support HB 2040 with the -1 amendments. We have presented this bill to the Management-Labor Advisory Committee and will ask for their approval at their next meeting in early February. I would be happy to answer any questions.

HB 2040-1
(LC 557)
1/25/21 (TSB/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Department of
Consumer and Business Services)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2040**

1 On page 1 of the printed bill, line 2, before “amending” insert “creating
2 new provisions;”.

3 On page 13, line 38, delete “and” and insert “or”.

4 After line 40, insert:

5 **“SECTION 4. (1) The amendments to ORS 656.262, 656.268 and 656.277
6 by sections 1 to 3 of this 2021 Act become operative on July 1, 2023.**

7 **“(2) The Director of the Department of Consumer and Business
8 Services may adopt rules and take any other action before the opera-
9 tive date specified in subsection (1) of this section that is necessary
10 to enable the director, on and after the operative date specified in
11 subsection (1) of this section, to undertake and exercise all of the du-
12 ties, functions and powers conferred on the director by the amend-
13 ments to ORS 656.262, 656.268 and 656.277 by sections 1 to 3 of this 2021
14 Act.”.**

15 In line 41, delete “4” and insert “5”.

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STATE OF OREGON
Legislative Counsel Committee

January 25, 2021

To: Cara Filsinger, Senior Policy Analyst/Legislative Coordinator
Department of Consumer and Business Services

From: Sean Brennan, Senior Deputy Legislative Counsel

Subject: Use of "shall" as a form and style change in House Bill 2040

Following our conversation concerning the amendments to House Bill 2040, I wanted to note the reasons for the changes to the language of ORS 656.262, 656.268 and 656.277 other than the substantive provisions in the draft request. When possible, our office tries to update the language of the statutes to reflect our current form and style conventions, which are adopted as rules of the respective chambers of the Legislative Assembly. In making those changes, our intent is **not** to make substantive changes to the legal effect of the statutory language, but rather to make that language more consistent with modern understanding and practice. These form and style conventions include a specific use of "shall" to indicate a command to a particular person or entity to perform a particular function.

As an example, "shall" is appropriate in a legislative command such as, "The insurer or self-insured employer shall classify the claim as disabling or nondisabling within 14 days of the request." Here, the legislative directive is to require an insurer or self-insured employer to do something—that is, classify the claim as disabling or nondisabling within 14 days after a request.

By contrast, using "shall" to indicate a state of being at which the legislature wishes something to arrive is not the convention. Here, "must" is the appropriate term. For example, the legislature in this command simply states the condition that it intends will come to be: "Permanent disability compensation [*shall*] **must** be redetermined for work disability only." In this legislative command, the focus is not on any one person or entity's responsibility to redetermine permanent disability compensation, but rather that permanent disability compensation be redetermined by whichever person or entity is responsible for the redetermination. Using "shall" in this instance would create the false impression that this redetermination will occur without any agent performing the redetermination—that it will happen automatically, without any intervention of any kind, and that its happening is certain. The actual intent of the legislature, however, is to set up a goal and to leave the achievement of that goal to the responsible person or entity.

If a process or result will occur spontaneously, as a matter of course or otherwise without intervention, using "shall" might in that instance be appropriate. For example, "shall" might be appropriate in a statement like "The sun shall rise in the morning." This is not an instance of the legislature commanding the sun to rise, but rather a reflection of the inevitable fact of the sun's rising, without the agency or intervention of any person. The instances in which

we have changed “shall” to “must” in the bill draft, however, are of the type discussed in the previous paragraph.

Encl.