

OREGON STATE BAR
Legislative Proposal Summary

RE: Workers Compensation Subpoenas

FROM: OSB Health Law Section

Legislative Contact: Gwen Dayton
Phone: (503) 636-2204
Fax: (503) 636-8310
E-mail: gdayton@oahhs.org

This bill would amend ORS chapter 656.

1. PROBLEM PRESENTED

The HIPAA Privacy Standards (sec. 164.512(l)) permits health care providers and health plans to disclose protected health information as authorized by and to the extent necessary to comply with state law related to workers' compensation or other similar programs established by law that provide benefits for work-related injuries or illnesses without regard to fault. It is unclear whether Oregon law requires workers compensation subpoenas to comply with the Oregon Rules of Civil Procedure.

2. SOLUTION

Treat workers compensation medical records the same as other medical records held by health care providers. Resolve the confusion regarding applicability of the ORCPs by amending the workers compensation statutes to make it clear that a subpoena issued for individually identifiable health information involved in a workers compensation claim must comply with ORCP 55H.

3. PUBLIC POLICY IMPLICATION

It is our understanding that, prior to HIPAA and the 2003 amendments to the Oregon Rules of Civil Procedure, workers compensation subpoenas did not comply with the ORCPs. The authority for this position is not clear. Since April 14, 2003 (the HIPAA compliance date), hospitals have required workers compensation subpoenas to be compliant with the ORCPs. Hospitals have faced opposition in this position from participants in the workers compensation system.

4. SUGGESTED LANGUAGE

Amend ORS 656.726 to provide:

656.726 Duties and powers to carry out workers' compensation and occupational safety laws; rules. (1) The Workers' Compensation Board in its name and the Director of the Department of Consumer and Business Services in the director's name as director may sue and be sued, and each shall have a seal.

(2) The board hereby is charged with reviewing appealed orders of Administrative Law Judges in controversies concerning a claim arising under this chapter, exercising own motion jurisdiction under this chapter and providing such policy advice as the director may request, and providing such other review functions as may be prescribed by law. To that end any of its members or assistants authorized thereto by the members shall have power to:

(a) Hold sessions at any place within the state.

(b) Administer oaths.

(c) Issue and serve by the board's representatives, or by any sheriff, subpoenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony before any hearing under ORS 654.001 to 654.295, 654.750 to 654.780 and this chapter. ***Subpoenas issued pursuant to this paragraph must comply with ORCP 55H.***

- Also need a section that applies to others, beyond the board, who submit a subpoena seeking medical information to be used in a workers compensation claim. I suggest something similar to:

Section X:

Section XX is added to and made a part of ORS Chapter 656.

Section XX

A subpoena requesting individually identifiable health information, as that term is defined in ORCP 55H, to be used in support of a claim or for the purpose of administering or adjudicating a claim under this chapter must comply with ORCP 55H.