



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services

Workers' Compensation Division

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www.wcd.oregon.gov

Dec. 21, 2007

To: Workers' compensation insurers, self-insured employers, and service companies

Subject: Vocational eligibility determination audit results, penalties, and required actions

The Workers' Compensation Division (WCD) recently conducted audits to verify whether workers were evaluated and notified of their eligibility or ineligibility for vocational assistance. WCD identified claims where it appeared a required eligibility evaluation had not been completed based on claim closures reported to the division between July 2005 and December 2006.

WCD identified a need for these targeted audits because of long-standing performance deficiencies in the industry in timely completing required eligibility evaluations. An earlier WCD study of claims closed in 2002 and 2003 revealed that a large number of required evaluations were not being completed. As a result, WCD conducted industry-wide quarterly reviews from the first quarter of 2004 through the first quarter of 2006 in which the division sent processors lists of claims that did not appear to have had an evaluation and required companies to submit a response for each worker identified. Throughout the quarterly reviews, division staff repeatedly explained statutory and rule requirements for vocational evaluations to help companies understand and comply with the requirements; however, data compiled for the recent audit sample (that was drawn from claim closures reported during a period that had been subject to a division quarterly review) revealed that the industry was not meeting requirements for ensuring that workers receive vocational evaluations and assistance if they are so entitled.

During the audits, the division found that required vocational eligibility evaluations had not been completed in more than 85 percent of the claims. You may find additional information regarding the division's findings at http://www.cbs.state.or.us/wcd/compliance/fau/voc_audit07.pdf.

ORS 656.340 requires companies to determine a worker's eligibility for vocational assistance when the worker is medically stationary and has not returned to regular or other suitable employment with the employer at the time of injury or aggravation. OAR 436-120-0320(2) clarifies when an eligibility evaluation is not required. The division previously notified the industry that insurers and self-insured employers could be subject to civil penalties if the audits found that companies had failed to comply with these requirements. Therefore, based on the division's validation that companies had not been completing required vocational assistance evaluations, WCD will immediately assess penalties against each company identified as having violated the requirements for vocational eligibility evaluations. Companies will be penalized \$500 plus an additional \$25 for each claim violation identified during the audits.

In addition, WCD will also notify each company and provide a list of the claims in which the audits revealed that an eligibility determination had not been done. Insurers and self-insured employers will be required to provide the division a written response to each of the claims identified within 35 days from the date of the notification. Failure to timely respond to each claim as ordered will subject companies to additional civil penalties under OAR 436-120-0900 and ORS 656.745(2).



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The division is available to provide assistance and training to companies regarding vocational eligibility requirements. Please direct any inquiries to Delmi Hernandez, Rehabilitation Review Unit manager, at (503) 947-7797 or send e-mail to delmi.a.hernandez@state.or.us.

If you have any questions regarding the audit findings or penalties described in this notice, please contact Sally Coen, Field Audit Unit manager, at (503) 947-7687 or send e-mail to sally.c.coen@state.or.us.

John Shilts, Administrator
Workers' Compensation Division

Distribution: PD 8002, PD 8013, IY, ID