

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 MANAGED CARE ORGANIZATIONS

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[Bracketed 8 point text is deleted]; bold/underlined text is added

EFFECTIVE JANUARY 1, 1999

OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 015

NOTE: Only adopted, amended, and repealed rules are included in this document:

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436-015-0001 Authority For Rules

These rules are promulgated under the director's general rule-making authority of ORS 656.726(3) and specific authority under ORS 656.245, 656.248, 656.252, 656.254, 656.260, 656.268, 656.325, 656.327, [ORS] and 656.794(3)[, and ORS 656.260].

Stat. Auth.: ORS 656.726(3)

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Amended 12/16/98, as Admin. Order 98-061, eff. 1/1/99

436-015-0002 Purpose

The purpose of these rules is to establish and provide policies, procedures, and requirements for the administration, evaluation and enforcement of the statutes relating to the delivery of medical services by managed care organizations (MCOs) to injured workers within the workers' compensation system.

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436-015-0003 Applicability of Rules

(1) These rules [are effective June 1, 1996] **shall be applicable on or after the effective date** to carry out the provisions of ORS 656.245, 656.248, 656.252, 656.254, **656.260**, 656.268, 656.325, 656.327, **and** 656.794 [and ORS 656.260], and govern all [managed care organizations] **MCOs and insurers contracting with an MCO.**

(2) [The provisions of these rules shall be applicable to all managed care organizations and services rendered thereby, subsequent to] the effective date of these rules. **Applicable to this chapter, the director may, unless otherwise obligated by statute, waive any procedural rules as justice so requires.**

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436-015-0005 Definitions

[Additional definitions are contained in ORS Chapter 656. For the purposes of these rules unless the context requires otherwise:

(1) "Attending Physician" means a doctor or physician who is primarily responsible for the treatment of a worker's compensable injury or illness and who is:

(a) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or a board certified oral surgeon licensed by the Oregon Board of Dentistry; or

(b) A medical doctor, doctor of osteopathy or oral surgeon practicing in and licensed under the laws of another state; or

(c) For a period of 30 days from the date of first chiropractic visit on the initial claim or for 12 chiropractic visits during that 30 day period, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon; or

(d) For a period of 30 days from the date of first chiropractic visit on the initial claim or for 12 chiropractic visits, during that 30 day period, whichever first occurs, a doctor or physician of chiropractic practicing and licensed under the laws of another state; or

(e) A medical service provider authorized to be an attending physician, in accordance with a managed care organization contract.

(2) "Claimant" means the worker making a claim.

(3) "Consulting Physician" means a licensed physician who examines a worker, or the worker's medical record, at the request of the attending physician to aid in evaluation of disability, diagnosis and/or treatment. A consulting physician may, at the request of the attending physician, provide specialized treatment of the compensable injury or illness and give advice and/or an opinion regarding the treatment being rendered, or considered, for a workers' compensation injury.

(4) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

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(5) "Eligible" means an injured worker who has filed a claim and is employed by an employer who is located in an MCOs authorized geographical service area, covered by an insurer who has a contract with that MCO. Eligible also includes a worker with an accepted claim having a date of injury prior to contract when that worker's employer later becomes covered by an MCO contract.

(6) "Enrolled" means an eligible injured worker has received notification from the insurer that the worker is being required to treat under the auspices of the MCO. However, a worker may not be enrolled who would otherwise be subject to an MCO contract if the worker's primary residence is more than 100 miles outside the managed care organization's certified geographical service area.] **Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of Chapter 656 and OAR 436-010-0005 are hereby incorporated by reference and made a part of these rules.**

(1) "GSA" means a geographic service area.

(2) "Health Care Provider" means an entity or group of entities, organized to provide health care services or organized to provide administrative support services to those entities providing health care services. An entity solely organized to become [a Managed Care Organization] **an MCO** under these rules is not, in and of itself, a health care provider.

[(8) "Health Care Services" means medical or surgical treatment, nursing, hospital and optometrical services.

(9) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(10) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; or, an employer or employer group which has been certified under ORS 656.430 that it meets the qualifications of a self-insured employer under ORS 656.407.

(11) **(3)** "Managed Care Organization" or "MCO" means an organization formed to provide medical services and certified in accordance with OAR 436, Division 015.

[(12) "Medical Service" means any medical, surgical, chiropractic, dental, hospital, nursing, ambulance, or related services such as any medication, crutch, prosthesis, brace, support or physical restorative device.]

(4) "Primary Care Physician" means a physician qualified to be an attending physician according to ORS 656.005(12)(b)(A) and who is a general practitioner, family practitioner, or internal medicine practitioner.

[(14) "Report" means medical information transmitted in written form containing relevant subjective and objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the director.]

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436-015-0008 Administrative Review

[(1) Contested Case Hearings of Sanctions and Civil Penalties: Any person aggrieved by a proposed order or proposed assessment of civil penalty of the division issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for a hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request is in writing and specifies the grounds upon which the person requesting said hearing contests the proposed order or assessment.

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(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 20 days of receipt by the aggrieved person of notice of the proposed order or assessment. No hearing shall be granted unless the request is mailed to the administrator within said 20 days of receipt of notice.

(2) Director's Administrative Review of Other Actions: Any party aggrieved by an action taken by persons other than the director pursuant to Division 015, other than as described in section (1) of this rule, may request administrative review by the director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing delivered or mailed to the administrator of the Workers' Compensation Division within 60 days of the action. No administrative review shall be granted unless the request is in writing and specifies the grounds upon which the action is contested and is mailed to the administrator within 60 days of the contested action unless the director determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator on behalf of the director.

(c) In the course of the review, the administrator may require or allow such input or information from the parties or others as the administrator deems helpful.

(d) Pursuant to ORS 183.310 the administrator will specify in any order if a person aggrieved thereby may request a contested case hearing before the director.

(3) Contested Cases Before the Director: Any person aggrieved by a final order of the division pursuant to these rules where such order qualifies for review by hearing before the director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 656.260 or other applicable statutes. When the matter qualifies for review as a contested case, the process for review shall be as follows:

(a) The request for a contested case must be in writing delivered or mailed within 30 days of the date of service of the order to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request is in writing and specifies the grounds upon which the [action or] order is contested and is mailed to the administrator within 30 days from the date of mailing or other service of an order.

(b) The hearing shall be conducted by the director or the director's designee.

(c) Any order in a contested case issued by the director's designee is a preliminary order subject to revision by the director. The parties, pursuant to ORS 183.460, where applicable, may file written exceptions to this preliminary order and present written argument concerning those exceptions to the Director. Written exceptions must be mailed to the Director within 30 days following the date of service of this preliminary order. For consideration, mail exceptions to:

Department of Consumer and Business Services
Administration Hearings Unit
350 Winter Street NE, Room #330
Salem, OR 97310-0700]

(1) Any party may request that the director provide voluntary mediation after a request for administrative review or contested case hearing is filed. The request must be in writing. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, administrative review shall continue.

(2) Administrative Review Before the Director: The process for administrative review of such matters shall be as follows:

(a) Any party that disagrees with an action taken by an MCO pursuant to OAR 436-015 shall first use the dispute resolution process of the MCO.

(b) The aggrieved party shall file a written request for administrative review with the administrator of the Workers' Compensation Division within 60 days of the date the MCO issues a final decision under the MCO's dispute resolution process. If a party has been denied access to an MCO dispute resolution process because the complaint or dispute was not included in the MCO's dispute resolution process or because the MCO's dispute resolution process was not completed for reasons beyond a party's control, the party may request administrative review within 60 days of the failure of the MCO to issue a decision.

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The request must specify the grounds upon which the action is contested.

(c) The director shall create a documentary record sufficient for judicial review. The director may require and allow the parties to submit such input and information appropriate to complete the review.

(d) The director shall review the relevant information and issue an order. The order shall specify that it will become final and not subject to further review unless a written request for hearing is filed with the administrator within 30 days of the mailing date of the order.

(3) Contested Cases Before the Director: Any party that disagrees with an order pursuant to this rule may request a contested case hearing before the director as follows:

(a) The party shall file a written request for a contested case hearing with the administrator of the Workers' Compensation Division within 30 days of the mailing date of the order. The request shall specify the grounds upon which the order is contested.

(b) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(c) In the review of orders issued pursuant to ORS 656.260(14) and (16), no new medical evidence or issues shall be admitted at the contested case hearing. In these reviews, administrative orders may be modified at hearing only if the administrative order is not supported by substantial evidence in the record or reflects an error of law. The dispute may be remanded to the MCO for further evidence taking, correction, or other necessary action if the director determines the record has been improperly, incompletely or otherwise insufficiently developed.

(4) Contested Case Hearings of Sanctions and Civil Penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of civil penalty issued by the director pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as follows:

(a) The party shall file a written request for a hearing with the administrator of the Workers' Compensation Division within 20 days after service of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The Division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An administrative law judge from the Hearings Division, acting on behalf of the director, shall conduct the hearing in accordance with ORS 656.740 and ORS Chapter 183.

(5) Hearings on the Suspension or Revocation of an MCO's Certification:

(a) At a hearing on a notice of intent to suspend issued pursuant to OAR 436-015-0080(2), the MCO must show cause why it should be permitted to continue to provide services under these rules.

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(A) If the director determines that the acts or omissions of the MCO justify suspension of the MCO's certification, the director may issue an order suspending the MCO for a period of time up to a maximum of one year or may initiate revocation proceedings pursuant to OAR 436-015-0080(5). If the director determines that the acts or omissions of the MCO do not justify suspension, the director shall issue an order withdrawing the notice.

(B) The order must be served upon the MCO as provided in OAR 436-015-0130.

(C) If the MCO disagrees with the order, it may request a contested case hearing before the director by filing a written request with the administrator within 60 days of the date of service of the order.

(D) The contested case hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(b) A revocation issued pursuant to OAR 436-015-0080(5) shall become effective within 10 days after service of such notice upon the MCO unless within such period of time the MCO corrects the grounds for revocation to the satisfaction of the director or files a written request for hearing with the administrator of the Workers' Compensation Division.

(A) If the MCO appeals, the administrator shall set a date for a hearing and shall give the MCO at least ten days notice of the time and place of the hearing. At hearing, the MCO shall show cause why it should be permitted to continue to provide services under these rules.

(B) Within thirty days after the hearing, the director shall issue an order affirming or withdrawing the revocation. The director shall serve a copy of the order upon the MCO as provided in OAR 436-015-0130.

(C) If the MCO disagrees with the order, it may request a contested case hearing before the director by filing a written request with the administrator within 60 days of the date of service of the order.

(D) The contested case hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(c) An emergency revocation issued pursuant to OAR 436-015-0008(5), is effective immediately. The MCO must file a request for contested case hearing within 60 days of the date of service of the order. The contested case hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

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436-015-0009 Formed/Owned/Operated

[(1) Any health care provider or group of medical service providers wishing to establish a managed care organization must complete a

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three step process as follows:

(a) Submit a "Notice of Intent to Form" to the division, to ensure compliance with ORS 656.260 in a form and format as prescribed by the director.

(b) Submit a proposed plan of operation to the division which outlines the manner in which the managed care organization will meet the qualifications of ORS 656.260 and OAR 436-015-0030. If the plan is approved by the division, the managed care organization will have authorization to proceed to acquire the necessary services to meet the certification requirements.

(c) Submit an application for certification. Once the managed care organization has met the criteria for certification, a formal application must be submitted for approval by the division. Upon approval, the managed care organization will be allowed to contract with insurers in Oregon to provide medical services for injured workers.]

(1) No MCO formed, owned or operated by an insurer or by an employer other than a health care provider or medical service provider will be certified as an MCO.

(2) For purposes of this rule, factors which may be considered in determining that an MCO is or will be formed by an insurer or other non-qualifying employer may include, but are not limited to, the following:

(a) When an insurer or other non-qualifying employer or any member of its staff directly participates in the formation, certification or incorporation of the MCO;

(b) When an insurer or other non-qualifying employer or any member of its staff selects, nominates, assumes a position as, or acts in the role of, a director, officer, agent or employee of the MCO; or

(c) When an insurer or other non-qualifying employer, or any member of its staff, arranges for, lends, guarantees or otherwise provides financing for any of the organizational costs of the MCO.

(3) For the purposes of this rule, factors which must exist for the director to conclude that an MCO is or will be owned by an insurer or other non-qualifying employer may include but are not limited to the following:

(a) When any insurer or other non-qualifying employer or any member of its staff or immediate family members thereof arranges for, lends, guarantees or otherwise provides financial support to the MCO. For purposes of this rule, financial support does not include contracted fees for services rendered by an MCO; or

(b) When any insurer or other non-qualifying employer or any member of its staff or immediate family members thereof has any ownership or similar financial interest in or right to payment from the MCO.

(4) For purposes of this rule, factors which must exist for the director to conclude that an MCO is or will be operated by an insurer or other non-qualifying employer may include, but are not limited to, the following:

(a) When any insurer or other non-qualifying employer or any member of its staff makes or exercises any control over business, operational or policy decisions of the MCO;

(b) When any insurer or other non-qualifying employer or any member of its staff possesses or controls the ownership of voting securities of the MCO. Possession or control shall be presumed to exist if any person, directly or indirectly, holds the power to vote or

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holds proxies of any other person representing ten percent or more of the voting securities of the MCO;

(c) When any insurer or other non-qualifying employer or any member of its staff provides MCO services other than as allowed by section (6) of this rule;

(d) When an MCO contracts predominately with a single insurer to provide it with business. An MCO will have up to one year from the effective date of its first contract to meet the requirement of having contracts with more than one insurer;

(e) When any insurer or other non-qualifying employer, or any member of its staff, enters into any contract with the MCO that limits the ability of the MCO to accept business from any other source; or

(f) When any insurer or other non-qualifying employer, or any member of its staff, directs or interferes with the MCO's delivery of medical and health care services.

(5) For purposes of this rule, "staff" is any individual who is a regular employee of an insurer or other non-qualified employer or who is a regular employee of any parent or subsidiary entity of an insurer or non-qualified employer.

(6) Notwithstanding the provisions of sections (2), (3) and (4) of this rule, an MCO may contract with an insurer to provide certain managed care services. However, such insurer provided services must be in accordance with protocols and standards established by the certified MCO program and approved by the director. For purposes of this rule, the insurer cannot provide or participate in provision of managed care services related to dispute resolution, service utilization review or physician peer review.

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436-015-0010 Notice of Intent to Form

(1) Any health care provider or group of medical service providers initiating [a managed care organization] **an MCO** pursuant to ORS 656.260, shall submit a "Notice of Intent to Form" to the division, by [c]certified [M]mail, in a form and format as prescribed by the director. The notice shall include[,] but **is** not [be] limited to:

(a) Identity of the person or persons who participate in discussions intended to result in the formation of a MCO. If the person is a member of a closely held corporation, the notice should include the identity of the shareholders.

(b) The name, address, and telephone number of a contact person.

(c) A synopsis of the information which will be shared in discussions preceding the application for MCO certification.

[(d) A time certain when the application for certification will be submitted to the division.]

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(2) The application for certification must be submitted within 120 days of the filing of the Notice of Intent to Form.

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436-015-0020 Qualifying

(1) Any health care provider or group of medical service providers as defined in these rules [may make written application to the director to become certified as a managed care organization (MCO) to provide managed care to injured workers for injuries and diseases compensable under ORS Chapter 656. To obtain certification] **must qualify as an MCO prior to submission of an application for certification. To qualify**, the applicant must:

(a) Submit a [written] proposed plan for the MCO, along with 4 copies, to the administrator[,] **of the** Workers' Compensation Division[,] in which the applicant outlines the manner in which the proposed MCO will meet the requirements of ORS 656.260 and OAR 436-015-0030[.];

(b) Identify in the plan the specific persons to be directors of the proposed MCO, the person to be the president of the proposed MCO, the title and name of the person to be the day-to-day administrator of the [proposed] MCO and the title and name of the person to be the administrator of the financial affairs of the proposed MCO[.]; **and**

(c) Provide affidavits signed by each person identified in (1)(b) above which certifies that the individual has no interest in an insurance company that conflicts with OAR 436-015-0009.

[c] **(2)** If the **proposed** plan for the [proposed] MCO is approved by the director, the applicant [must be incorporated pursuant to the laws of the State of Oregon and provide satisfactory evidence of same to the administrator as the administrator shall require.] **shall be authorized to proceed to acquire the necessary services to meet the certification requirements.**

[(2) No MCO formed, owned or operated by an insurer or by an employer other than a health care provider or medical service provider will be certified as a MCO.

(3) The director may revoke the certification of an MCO if the director, at any time, determines that said MCO was formed or is owned or operated by an insurer or by an employer other than a health care provider or medical service provider as defined in these rules.

(4) For purposes of this rule, factors which must exist for the director to conclude that an MCO is or will be formed by an insurer or other non-qualifying employer include any one or more of the following:

(a) When an insurer or other non-qualifying employer, or any member of its staff, directly participates in the formation, certification or incorporation of the MCO;

(b) When an insurer or other non-qualifying employer, or any member of its staff, selects, nominates, assumes a position as, or acts in the role of, a director, officer, agent or employee of the MCO; or

(c) When an insurer or other non-qualifying employer, or any member of its staff, arranges for, lends, guarantees or otherwise provides financing for any of the organizational costs of the MCO.

(5) For the purposes of this rule, factors which must exist for the director to conclude that an MCO is or will be owned by an insurer or other non-qualifying employer include any one or more of the following:

(a) When any insurer or other non-qualifying employer, or any member of its staff or immediate family members thereof, arranges for, lends, guarantees or otherwise provides financial support to the MCO. For purposes of this rule, financial support does not include contracted

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fees for services rendered by an MCO; or

(b) When any insurer or other non-qualifying employer, or any member of its staff or immediate family members thereof, has any ownership or similar financial interest in or right to payment from the MCO.

(6) For purposes of this rule, factors which must exist for the director to conclude that an MCO is or will be operated by an insurer or other non-qualifying employer include any one or more of the following:

(a) When any insurer or other non-qualifying employer, or any member of its staff, makes or exercises any control over business, operational or policy decisions of the MCO;

(b) When any insurer or other non-qualifying employer, or any member of its staff, possesses or controls the ownership of voting securities of the MCO. Possession or control shall be presumed to exist if any person, directly or indirectly holds the power to vote or holds proxies of any other person, representing ten percent or more of the voting securities of the MCO;

(c) When any insurer or other non-qualifying employer, or any member of its staff, provides MCO services other than as allowed by section (8) of this rule;

(d) When any MCO exclusively contracts with a single insurer to provide it with business. For purposes of this subsection, "exclusively" means 75 percent or more of the workers covered by the MCO are insured with that insurer. An MCO will have up to 180 days from the effective date of its first contract to meet this requirement; or

(e) When any insurer or other non-qualifying employer, or any member of its staff, enters into any contract with the MCO that limits the ability of the MCO to accept business from any other source.

(7) For purposes of this rule, "staff" is any individual who is a regular employee of an insurer or other non-qualified employer under this rule, or who is a regular employee of any parent or subsidiary entity of an insurer or non-qualified employer under this rule as well.

(8) Notwithstanding the provisions of sections (4), (5) and (6) of this rule, an MCO may contract with an insurer to provide certain managed care services. However, such insurer provided services must be in accordance with protocols and standards established by the certified MCO program and approved by the director. For purposes of this rule, the insurer cannot provide managed care services related to dispute resolution, service utilization review and physician peer review.]

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436-015-0030 Applying for Certification

[(1) A health care provider or group of medical service providers applying for certification as a managed care organization (MCO) must submit a written application, along with 4 copies, to the division to become a managed care organization. The application must include specific information to ensure the MCO will be able to meet the provisions of these rules and subsections (a) through (s) of this section as follows: (a) The MCO must provide a list of the names, addresses, and specialties of the individuals who will provide services under the managed care plan, together with appropriate evidence of any licensing, registration or certification requirements for that individual to practice. This list shall indicate which medical service providers will act as attending physicians within the MCO.

(b) The MCO must provide a description of the times, places and manner of providing services under the plan to include a description of the initial geographical service area. The geographical service area shall be designated by a listing of the postal zip codes in the service area. This plan must provide at least an adequate number of each category of medical service provider. For purposes of these rules, the categories include acupuncturist, chiropractic, dentist, naturopath, optometrist, osteopath, physician and podiatrist, as defined in ORS 676.110. The requirements of this section must be met unless the MCO shows evidence that a lack of a type of provider exists in an area and that the minimum number is not available. The MCO plan must be adequate to ensure that workers governed by the MCO can:

(A) Access an MCO provider panel with a minimum of one attending physician within the MCO for every 1,000 workers covered by the plan;

(B) Receive initial treatment by an attending physician within 24 hours of the MCO's knowledge of the need or a request for treatment;

(C) Receive initial treatment by an attending physician in the MCO within 5 working days, subsequent to treatment by a physician outside the MCO;

(D) Receive treatment by an MCO physician in cases requiring emergency in-patient hospitalization;

(E) Receive information/[advice] on a 24 hour basis regarding medical services within the MCO which shall include identification of

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those attending physicians who are taking new patients;

(F) Seek treatment from any category of medical service provider as defined in (1)(b) above and have a choice of at least 3 medical service providers within each category. Treatment by all medical service providers including attending physicians will be governed by the MCO treatment standards and protocols;

(G) Access medical providers, including attending physicians, within a reasonable distance from the worker's place of employment, considering the normal patterns of travel. For purposes of this rule, 30 miles in urban areas and 60 miles in rural areas will be considered a reasonable distance;

(H) Receive treatment by a non-MCO medical service provider, when the enrolled worker resides outside the MCO's geographical service area. Such workers may only select non-MCO providers who practice closer to the worker's residence than an MCO provider of the same category and who agree to the terms and conditions of the MCO;

(I) Receive services that meet quality, continuity and other treatment standards prescribed by the director which will provide all medical and health care services in a manner that is timely, effective and convenient for the worker; and

(J) Receive specialized medical services the MCO is not otherwise able to provide. The application must include a description of the times, places and manner of providing such specialized medical services.

(c) The application must include copies of contract agreement(s), or other documents signed by the managed care organization and each participating medical service provider/health care provider representative, which verify membership.

(d) The MCO must designate a communication liaison for the department and the insurers at the MCO's established in-state location. The responsibilities of the liaison shall include, but not be limited to:

(A) Coordinating and channeling all outgoing correspondence and medical bills.

(B) Unless otherwise provided by the MCO contract, providing centralized receipt and distribution of all reimbursements back to the MCO members and primary care physicians.

(C) Serving as a member on the quality assurance committee.

(e) The MCO application must describe the reimbursement procedures for all services provided in accordance with the MCO plan. The members must comply with the following billing and report processing procedures:

(A) Submit all bills in accordance with the MCO contract with the insurer.

(B) Submit all reports and related correspondence to the insurer's authorized claims processing location, with copies to the MCO centralized communication liaison, or as otherwise provided by the contract.

(f) The MCO must provide satisfactory evidence of ability to meet the financial requirements necessary to ensure delivery of service in accordance with the plan.

(g) The MCO must provide a procedure within the managed care organization plan to provide financial incentives to reduce service costs and utilization without sacrificing the quality of service.

(h) The MCO must provide a Quality Assurance Program which meets the requirements of ORS 656.260(4) and includes, but is not limited to:

(A) A system for resolution and monitoring of problems and complaints which includes, but is not limited to, the problems and complaints of workers and medical service providers;

(B) Physician peer review shall be conducted by a group designated by the MCO or the director which must include, but is not limited to, members of the same healing art in which the physician practices;

(C) A standardized claimant medical recordkeeping system designed to facilitate entry of information into computerized databases for purposes of quality assurance.

(i) The MCO shall provide a program involving cooperative efforts by the workers, the employer, the insurer, and the managed care organization to promote early return to work for enrolled injured workers.

(j) The MCO shall provide a program involving cooperative efforts by the workers, the employer and the managed care organization to promote workplace safety and health consultative and other services. The program shall include:

(A) Identification of how the managed care organization will promote such services.

(B) A method by which the MCO will report to the insurer within 30 days of knowledge of occupational injuries and illnesses involving serious physical harm as defined by OAR 437-01; occupational injury and illness trends as observed by the MCO, and any observations that indicate an injury or illness was caused by a lack of diligence of the employer.

(C) A method by which an MCO's knowledge of needed loss control services will be communicated to the insurer for determining the need for services as detailed in OAR 437-01.

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(D) A provision that all notifications to the insurer from the MCO shall be considered as a request to the insurer for services as detailed in OAR 437-01.

(E) A provision that all managed care organizations shall maintain complete files of all notifications for a period of 3 years following the date that notification was given by the MCO.

(k) The MCO must provide a procedure for workers to receive compensable medical treatment from a primary care physician who is not a member of the MCO. The procedure must identify the criteria the MCO will use for approval or disapproval of such treatment.

(l) The MCO must include a program which provides adequate methods of peer review and utilization review to prevent inappropriate or excessive treatment to include at least, but not be limited to:

(A) Pre-admission review program, which requires physicians to obtain prior approval of [all] elective admissions to the hospital and of all elective surgeries prior to surgery being performed.

(B) Individual case management programs, which search for ways to provide appropriate care for less money for cases which are likely to prove very costly, such as physical rehabilitation or psychiatric care.

(C) Physician profile analysis which may include such information as each physician's total charges; number and costs of related services provided; time loss of claimant; and total number of visits in relation to care provided by other physicians to patients with the same diagnosis. A physician's profile shall not be released to anyone outside the MCO without the physician's specific written consent, with the exception that the physician's profile shall be released to the director without the necessity of obtaining such consent.

(D) Concurrent review programs, which periodically review the worker's care after treatment has begun, to determine if continued care is medically necessary.

(E) Retrospective review programs, which examine the worker's care after treatment has ended, to determine if the treatment rendered was excessive or inappropriate.

(F) Second surgical opinion programs which allow workers to obtain the opinion of a second physician when elective surgery is recommended. Second surgical opinions must be obtained prior to repeat surgeries.

(m) The MCO plan must include a procedure to provide services that meet quality, continuity and other treatment standards prescribed by the director and will provide all medical and health care services that may be required by ORS Chapter 656, in a manner that is timely, effective and convenient for the worker.

(n) The MCO plan must include a procedure for internal dispute resolution, with time frames to include a method to resolve complaints by enrolled injured workers, medical providers, and insurers in accordance with OAR 436-015-0110.

(o) The MCO plan must include a procedure for timely and accurate reporting to the director necessary information regarding medical and health care service costs and utilization in accordance with OAR 436-015-0040 and 436-010.

(p) The MCO plan must include a program which specifies the criteria for selection and deselection of physicians and the process for peer review. The process for terminating a physician and peer review shall provide for adequate notice and hearing rights for any physician.

(q) The MCO plan must include a procedure approved by the director to notify the division of the commencement or termination of membership in the organization.

(r) The MCO plan must describe how the MCO will provide insurers with information that will inform workers of all choices of medical service providers within the plan and how workers can access those providers.

(s) The MCO must provide a program that meets the requirements of ORS 656.260(4) for monitoring and reviewing contract matters between its providers and the MCO which are not covered under peer review, service utilization review, dispute resolution and quality assurance.

(2) The MCO shall also submit a copy of the MCO certification of incorporation and a copy of the MCO by-laws.

(3) Each application for certification shall be accompanied by a non-refundable fee of \$1,500 which will be deposited in the Department of Consumer and Business Services Fund.

(4) The MCO shall establish one place of business in this state where the organization administers the plan, keeps membership records and other records as required by OAR 436-015-0050.]

(1) A health care provider or group of medical service providers applying for certification as an MCO must submit to the director, within 120 days of the filing of the Notice of Intent to Form, the following:

(a) Four copies of an application in the format specified which includes specific information indicating the manner in which the MCO will be able to meet the provisions of these rules;

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- (b) The MCO certification of incorporation and a copy of the MCO by-laws;
- (c) A non-refundable fee of \$1,500 which will be deposited in the Department of Consumer and Business Services Fund; and
- (d) The approved MCO plan.
- (2) The MCO shall provide a description of the initial GSA. The GSA shall be designated by a listing of the postal zip codes in the service area.
- (3) The MCO plan shall provide a description of the times, places and manner of providing services under the plan adequate to ensure that workers governed by the MCO shall be able to:
- (a) Access an MCO provider panel with a minimum of one attending physician within the MCO for every 1,000 workers covered by the plan;
- (b) Receive initial treatment by an attending physician within 24 hours of the MCO's knowledge of the need or a request for treatment;
- (c) Receive initial treatment by an attending physician in the MCO within 5 working days, subsequent to treatment by a physician outside the MCO;
- (d) Receive treatment by an MCO physician in cases requiring emergency in-patient hospitalization;
- (e) Receive information on a 24-hour basis regarding medical services available within the MCO which shall include the worker's right to receive emergency or urgent care, and the hours of regular MCO operation if assistance is needed to select an attending physicians or answer other questions;
- (f) Seek treatment from any category of medical service provider as defined in (6)(a) of this rule and have a choice of at least 3 medical service providers within each category. Treatment by all medical service providers including attending physicians will be governed by the MCO treatment standards and protocols;
- (g) Access medical providers, including attending physicians, within a reasonable distance from the worker's place of employment, considering the normal patterns of travel. For purposes of this rule, 30 miles in urban areas and 60 miles in rural areas will be considered a reasonable distance;
- (h) Receive treatment by a non-MCO medical service provider when the enrolled worker resides outside the MCO's geographical service area. Such workers may only select non-MCO providers if they practice closer to the worker's residence than an MCO provider of the same category and if they agree to the terms and conditions of the MCO;
- (i) Receive services that meet quality, continuity and other treatment standards prescribed by the director which will provide all medical and health care services in a manner that is timely, effective and convenient for the worker; and
- (j) Receive specialized medical services the MCO is not otherwise able to provide.

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The application must include a description of the times, places and manner of providing such specialized medical services.

(4) The MCO plan must provide a procedure which allows for workers to receive compensable medical treatment from a primary care physician who is not a member of the MCO. The procedure must identify the criteria the MCO will use for approval or disapproval of such treatment, and provide written notice of the MCO physician qualification procedures to the worker.

(b) Provide services that meet quality, continuity and other treatment standards prescribed by the director and will provide all medical and health care services that may be required by ORS Chapter 656 in a manner that is timely, effective and convenient for the worker.

(5) The MCO shall provide:

(a) Copies of contract agreement(s) or other documents signed by the MCO and each participating medical service provider/health care provider representative which verify membership; and

(b) A list of the names, addresses, and specialties of the individuals who will provide services under the managed care plan together with appropriate evidence of any licensing, registration or certification requirements for that individual to practice. This list shall indicate which medical service providers will act as attending physicians in each GSA within the MCO.

(6) The MCO plan shall provide:

(a) An adequate number of medical service providers from each provider category. For purposes of these rules, the categories include acupuncturist, chiropractor, dentist, naturopath, optometrist, osteopath, physician and podiatrist, as defined in ORS 676.110. The requirements of this section must be met unless the MCO shows evidence that the minimum number is not available within a GSA.

(b) A program which specifies the criteria for selection and deselection of physicians and the process for peer review. The processes for terminating a physician and peer review shall provide for adequate notice and hearing rights for any physician.

(7) The MCO plan must provide adequate methods for monitoring and reviewing contract matters between its providers and the MCO to ensure appropriate treatment or to prevent inappropriate or excessive treatment including but not limited to:

(a) A program of peer review and utilization review to prevent inappropriate or excessive treatment including, but not limited to, the following:

(A) A pre-admission review program of elective admissions to the hospital and of elective surgeries.

(B) Individual case management programs, which identify ways to provide appropriate care for less money for cases which are likely to prove very costly, such as physical rehabilitation or psychiatric care.

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(C) Physician profile analysis which may include such information as each physician's total charges, number and costs of related services provided, time loss of claimant, and total number of visits in relation to care provided by other physicians to patients with the same diagnosis. A physician's profile shall not be released to anyone outside the MCO without the physician's specific written consent except that the physician's profile shall be released to the director without the necessity of obtaining such consent.

(D) Concurrent review programs, which periodically review the worker's care after treatment has begun, to determine if continued care is medically necessary.

(E) Retrospective review programs, which examine the worker's care after treatment has ended, to determine if the treatment rendered was excessive or inappropriate.

(F) Second surgical opinion programs which allow workers to obtain the opinion of a second physician when elective surgery is recommended. Second surgical opinions must be required prior to repeat surgeries.

(b) A quality assurance program which includes, but is not limited to:

(A) A system for resolution and monitoring of problems and complaints which includes, but is not limited to, the problems and complaints of workers and medical service providers;

(B) Physician peer review which shall be conducted by a group designated by the MCO or the director and which must include, but is not limited to, members of the same healing art in which the physician practices;

(C) A standardized claimant medical recordkeeping system designed to facilitate entry of information into computerized databases for purposes of quality assurance.

(c) A program for monitoring and reviewing other contract matters that meets the requirements of ORS 656.260(4) and which are not covered under peer review, service utilization review, dispute resolution and quality assurance.

(8) The MCO plan must include a procedure for internal dispute resolution to resolve complaints by enrolled injured workers, medical providers, and insurers in accordance with OAR 436-015-0110. The internal dispute resolution procedure shall include a provision allowing the waiver of the time period to appeal a decision to the MCO upon a showing of good cause.

(9) The MCO plan shall provide other programs that meet the requirements of ORS 656.260(4) including:

(a) A program involving cooperative efforts by the workers, the employer, the insurer, and the MCO to promote early return to work for enrolled injured workers; and

(b) A program involving cooperative efforts by the workers, the employer and the MCO to promote workplace safety and health consultative and other services. The program shall include:

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(A) Identification of how the MCO will promote such services.

(B) A method by which the MCO will report to the insurer within 30 days of knowledge of occupational injuries and illnesses involving serious physical harm as defined by OAR 437-001, occupational injury and illness trends as observed by the MCO, and any observations that indicate an injury or illness was caused by a lack of diligence of the employer.

(C) A method by which an MCO's knowledge of needed loss control services will be communicated to the insurer for determining the need for services as detailed in OAR 437-001.

(D) A provision that all notifications to the insurer from the MCO shall be considered as a request to the insurer for services as detailed in OAR 437-001.

(E) A provision that the MCO shall maintain complete files of all notifications for a period of 3 years following the date that notification was given by the MCO.

(10) The MCO shall establish one place of business in this state where the organization administers the plan, keeps membership records and other records as required by OAR 436-015-0050.

(11) The MCO plan must include a procedure for timely and accurate reporting to the director necessary information regarding medical and health care service costs and utilization in accordance with OAR 436-015-0040 and OAR 436-010.

(12) The MCO shall designate an in-state communication liaison for the department and the insurers at the MCO's established in-state location. The responsibilities of the liaison shall include, but not be limited to:

(A) Coordinating and channeling all outgoing correspondence and medical bills;

(B) Unless otherwise provided by the MCO contract, providing centralized receipt and distribution of all reimbursements back to the MCO members and primary care physicians; and

(C) Serving as a member on the quality assurance committee.

(13) The MCO must provide satisfactory evidence of ability to meet the financial requirements necessary to ensure delivery of service in accordance with the plan.

(14) The MCO plan shall describe the reimbursement procedures for all services provided in accordance with the MCO plan. The members must comply with the following billing and report processing procedures:

(A) Submit all bills in accordance with the MCO contract with the insurer.

(B) Submit all reports and related correspondence to the insurer's authorized claims processing location with copies to the MCO in-state communication liaison or as otherwise provided by the contract.

(15) The MCO plan shall provide a procedure within the MCO plan to provide

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financial incentives to reduce service costs and utilization without sacrificing the quality of service.

(16) The MCO plan must describe how the MCO will provide insurers with information that will inform workers of all choices of medical service providers within the plan and how workers can access those providers.

[(5)] **(17)** [Once all certification requirements have been met, w] **Within** 45 days of receipt of all [required] information **required for certification**, the director [will] **shall** notify the applicant of the effective date of the certification and the initial geographical service area of the [managed care organization] **MCO**. If the certification is denied, the applicant will be provided with the reason therefore.

[(6)] **(18)** The application for certification for [a Managed Care Organization] **an MCO** shall not be approved if:

(a) The organization is formed, owned or operated by a workers' compensation insurer or an employer other than a health care provider or group of medical service providers; or

(b) T]the [organization] **MCO** fails to meet the requirements of [these rules] **OAR 436-015**.

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436-015-0035 Coverage Responsibility of an MCO

(1) [A managed care organization] **An MCO** shall provide comprehensive medical services in accordance with its certification to all enrolled injured workers covered by the insurer/MCO contract[s].

(2) The director shall designate an MCO's initial [geographical service area] **GSA** and approve any expansions to the MCO's service area. Injured workers shall not be governed by an MCO until the director has approved the geographical service area. [Geographical service area] **GSAs** shall be established by postal zip code. The MCO may only provide contract services to those [geographical areas] **GSAs** approved by the director.

(3) [An MCO wishing to expand its geographical service area must obtain approval for such expansion from] **Any expansion of an MCO's GSA must be approved by** the director. The request **for expansion** must identify the postal zip code areas [wished to be included in] **of the proposed** expansion and include evidence that the MCO has an adequate provider panel in the new areas which meet the minimum requirements as set forth in OAR 436-015-0030[(1)]. An MCO may be authorized by the director to expand the [geographical service area] **GSA** without the minimum categories of medical service providers when the MCO establishes that **there are not an** [in]adequate number[s] of providers in a given category [are] able or willing to become members of the MCO. For categories where the MCO has fewer than three providers, the MCO must allow workers to seek treatment outside the MCO from providers in those categories, consistent with the MCO's treatment and utilization standards. Such providers, unlike primary care physicians cannot be

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required to comply with the terms and conditions regarding services performed by the MCO. However, while such providers are not themselves bound by the MCO's treatment and utilization standards, workers are subject to those standards.

(4) An MCO may contract only with an insurer as defined in OAR 436-[015]**010**-0005. When an MCO contracts with an insurer to provide services, the contract shall specify those employers governed by the contract. The MCO/insurer contract must include the following terms and conditions:

(a) The contract must specify [when establishing] who is governed by the contract[:];

(a) (b) The insured's place of employment must be within the authorized geographical service area;

(b) (c) [All workers at any specific employer's location shall be governed by the same MCO(s).] Insurers may contract with multiple MCOs to provide coverage for employers. **All workers at any specific employer's location shall be governed by the same MCO(s).** When insurers contract with multiple MCOs [to cover the same employer locations,] each worker shall have initial choice at time of injury to select [the] **which** MCO [which] will manage their care **except when the employer provides a coordinated health care insurance program as defined in OAR 436-010-0005(6);**

(c) (d) Workers enrolled in an MCO shall receive medical services in the manner prescribed by the terms and conditions of the [MCO] contract; **and**

(d) (e) To ensure continuity of care, the [MCO] contract shall specify the manner in which injured workers will receive medical services **on open claims including but not be limited to the following:**

(A) Upon enrollment, allowing the worker to continue to treat with a non-qualified medical service provider for at least seven days after the mailing date of the notice of enrollment; and

(B) Upon termination or expiration of the MCO/insurer contract, [an MCO contract terminates] **allows the workers to continue treatment** in accordance with ORS 656.245(4)(a).

(5) When MCO coverage for an injured worker is transferred from one MCO to another, the worker may continue to treat with their attending physician if that physician also qualifies as an attending physician under the new MCO/insurer contract or law and agrees to the terms and conditions of the **new** MCO, until a change of physician is necessary based upon the MCO's treatment standards and protocols.

(5) (6) Notwithstanding the requirements of this rule, failure of the [managed care organization] **MCO** to provide such medical services does not relieve the insurers of their responsibility to ensure benefits are provided injured workers under ORS **Chapter** 656[.001 to 656.794].

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436-015-0040 Reporting Requirements For an MCO

(1) In order to ensure the [managed care organization] **MCO** complies with the requirements of these rules, each MCO shall provide the director with a copy of **the entire text of** any MCO/insurer contract agreement, signed by the insurer and the MCO within 30 days of execution of such contracts. Amendments, [and] addendums, **and cancellations**, [to such] **together with the entire text of the underlying** contracts, shall [also] be submitted to the director within 30 days of **execution** [of the changes to the agreement].

(2) Any amendment to the approved MCO plan must be submitted to the director for approval. The MCO shall not take any action based on the amendment until the amended plan is approved.

[(2)] **(3)** Within 45 days of the end of each calendar quarter, each MCO shall provide the following information, current on the last day of the quarter, in a form and format as prescribed by the director: membership listings by category of medical service provider, including provider names, specialty, Tax ID number, Oregon license number, business address and phone number. When a medical provider has multiple offices, only one office location in each geographical service area needs to be reported. In addition, the updated membership listing shall include the names and addresses of all health care providers participating in the MCO.

[(3)] **(4)** By April 30 of each year, each MCO shall provide the director with the following information for the previous calendar year:

(a) A summary of any sanctions or punitive actions taken by the MCO against its members; [and]

(b) A summary of actions taken by the MCO's peer review committee[.]; **and**

(c) An affidavit that the approved MCO plan is consistent with the MCO's business practices, and that any amendments to the plan have been approved by the director.

[(4)] **(5)** Nothing in this rule limits the director's ability to require information from the MCO as necessary to monitor the MCO's compliance with the requirements of these rules.

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436-015-0050 Notice of Place of Business in State; Records MCO Must Keep in Oregon

(1) Every [managed care organization that is certified to provide medical services as required by ORS 656.260] **MCO** shall give the division notice of one **in-state** location and mailing address [in this state] where the [managed care organization] **MCO** keeps records of the following:

(a) Updated membership listings of all MCO members;

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- (b) Records of any sanctions or punitive actions taken by the MCO against its members;
- (c) Records of actions taken by the MCO's peer review committee;
- (d) Records of utilization reviews performed in accordance with the requirements of utilization and treatment standards pursuant to ORS 656.260 showing cases reviewed, the issues involved and the action taken;
- (e) A profile analysis of each provider in the MCO listed by the International Classifications of Disease-9-Clinical Manifestations (ICD-9-CM) diagnosis;
- (f) A record of those enrolled injured workers receiving treatment by non-panel primary care physicians authorized to treat pursuant to OAR 436-015-0070; and
- (g) All other records as necessary to ensure compliance with the certification requirements in accordance with OAR 436-015-0030.

(2) Records retained as required by section (1) of this rule must be maintained at the authorized in-state location for 3 full calendar years.

(3) If the MCO/insurer[s] contract [with the MCO] is canceled for any reason, all MCO records, as identified in section (1), relating to treatment provided to workers within the [managed care organization] MCO must be forwarded to the insurer upon request. The[se] records [do not] included [those] in subsections (1)(b), (c), (d) and (e) **of this rule are confidential** [as the confidentiality of these records is guaranteed under] in accordance with ORS 656.260(6) through (10)].

(4) Individual MCO [members] providers must maintain claimant medical records as provided by OAR 436-010-0240. [The records must be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided within each set of records. The records shall contain:

- (a) Objective and subjective findings;
- (b) Complete case history of the services rendered (diagnostic and therapeutic procedures employed) to each claimant, and the time involved if the procedure being billed is based upon time; and
- (c) Documentation by the attending physician that addresses the worker's time loss status, ability for early return to work, and a plan to manage all facets of care being provided.]

(5) Nothing in this section is intended to otherwise limit the number of locations the MCO may maintain to carry out the provisions of these rules.

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436-015-0060 Commencement/Termination of Members

(1) Prospective new members of [a managed care organization] an MCO shall submit an application to the [managed care organization] MCO. The directors, executive director, or administrator may approve the application for membership pursuant to the membership requirements of the MCO [managed care organization]. The [certified managed care organization] MCO shall verify that each new member meets all licensing, registration, and certification requirements necessary to practice in

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Oregon. If the MCO requires a membership fee, the fee shall be the same for every category of medical service provider. An MCO may not require membership fees or other MCO administrative fees to be paid by primary care physicians as defined in OAR 436-015-0070.

(2) Individual members may elect to terminate their participation in the [managed care organization] **MCO** or be subject to cancellation by the [managed care organization] **MCO** pursuant to the membership requirements of the [managed care organization] **MCO plan**. Upon termination of a member, the [managed care organization] **MCO** shall:

(a) Make alternate arrangements to provide continuing medical services for any affected injured workers under the plan.

(b) Replace any terminated member when necessary to maintain an adequate number of each category of medical service provider.

Stat. Auth.: ORS656.726(3)

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436-015-0070 Primary Care Physicians Who Are Not MCO Members

(1) The MCO shall authorize a physician who is not a member of the MCO to provide medical services to an enrolled worker if the physician qualifies as a primary care physician. For the purposes of this rule, the physician must:

(a) Qualify in accordance with ORS 656.005 (12)[(a), (b) and (b)] as an attending physician and must be a general practitioner, a family practitioner, or an internal medicine specialist.

(b) Maintain the worker's medical records;

(c) Have a documented history of treatment of that worker;

(d) Agree to comply with all terms and conditions regarding services governed by the MCO. For purposes of this section, the phrase "all terms and conditions regarding services governed by the MCO" means MCO treatment standards, protocols, utilization review, peer review, dispute resolution, billing and reporting procedures, and fees for services in accordance with OAR 436-015-0090; and

(e) Agree to refer the worker to the MCO for specialized care, including physical therapy, to be furnished by another provider that the worker may require.

(2) The primary care physician who is not a member of the MCO will be deemed to have maintained the worker's medical records and established a documented history of treatment, if the physician's medical records show treatment has been provided to the worker prior to the date of injury. Additionally, if an injured worker has selected a primary care physician through a private health plan, prior to the date of injury, the requirements of subsections (1)(b) & (c) shall be deemed to be met.

(3) Notwithstanding section (1), for those workers receiving their medical services from a

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facility which maintains a single medical record on the worker, but provides treatment by multiple primary care physicians who are not MCO members, the requirements of sections (1) and (2) will be deemed to be met. In this situation, the worker shall select one physician to treat the compensable injury as the primary care physician.

(4) Any questions or disputes relating to the worker's selection of a primary care physician who is not a MCO member shall be resolved pursuant to OAR 436-015-0110.

(5) Any disputes relating to a worker's non-MCO primary care physician's or other non-MCO physician's compliance with MCO standards and protocols shall be resolved pursuant to OAR 436-015-0110.

Stat. Auth.: ORS656.726(3)

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436-015-0080 Suspension; Revocation

(1) Pursuant to ORS 656.260, the certification of a managed care organization issued by the director may be suspended or revoked if:

- (a) The director finds a serious danger to the public health or safety;
- (b) [Service under the plan is not being provided] The MCO is providing services not in accordance with the terms of the certified MCO plan;
- (c) [The plan for the provision of medical or health care services fails to meet the requirements of these rules;
- (d) There is a change in legal entity of the MCO [managed care organization] which does not conform to the requirements of these rules;
- (e) (d) The [managed care organization] MCO fails to comply with ORS Chapter 656[.245, .248 and .260, these rules, or the requirements contained in], OAR 436-009, OAR 436-010, [and] 436-015, or orders of the director; [and 245.248.]
- (f) (e) The [managed care organization] MCO or any of its members commits any violation for which a civil penalty could be assessed under ORS 656.254 or ORS 656.745;
- (g) (f) Any false or misleading information is submitted by the [managed care organization] MCO or any member of the organization;
- (h) (g) The [managed care organization] MCO continues to utilize the services of a health care practitioner whose license has been suspended or revoked by the licensing board; or
- (i) (h) The director determines that said MCO was or is formed, owned or operated by an insurer or by an employer other than a health care provider or medical service provider as defined in these rules.

[(2) For the purpose of this rule:

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(a) "Suspension" and its variations means a stopping by the director of the MCO's authority to enter into new contracts with insurers for a specified period of time. The suspension period may be imposed for a period up to a maximum of one year.

(b) "Revocation" and its variations means a permanent revocation of an MCO's certification to provide services under these rules.

(c) "Show-Cause Hearing" means [an informal] a hearing with the director[or designee] at which the MCO may be heard and present evidence regarding the Director's intent to suspend or revoke its MCO certification .

(3) A show-cause hearing may be held at any time the director has reason to believe an MCO has failed to comply with its obligations under ORS Chapter 656, these rules, or orders of the director.

(4) Suspension or revocation under this rule will not be made until the MCO has been given notice and the opportunity to be heard through a show-cause hearing before the director. The MCO must show-cause why it should be permitted to continue to provide services under these rules. The process shall be as follows:]

(a) **(2)** The [D]director shall provide the MCO written notice of an intent to suspend the MCO's certification.

(a) The notice shall:

(A) Describe generally the acts of the MCO and the circumstances that would be grounds for suspension; [and the grounds for such action. The notice shall also]

(B) [a]Advise the MCO of their right to participate in a show cause hearing and the date, time and place of the hearing.

(b) The notice shall be [sent by certified mail] **served, as provided in OAR 436-015-0130, upon the MCO's designated in-state communication liaison and to the registered agent or other officer of the corporation upon whom legal process may be served** at least 30 days prior to the scheduled date of the hearing.

(3) The show cause hearing on the suspension shall be conducted as provided in OAR 436-015-0008(4).

[(b) After the show-cause hearing the director may issue an order suspending the MCO or may initiate revocation proceedings pursuant to section (5) of this rule.]

(4) An order of suspension shall suspend the MCO's authority to enter into new contracts with insurers for a specified period of time up to a maximum of one year. [Upon] **During the** suspension, the MCO may continue to provide services in accordance with the contracts in effect at the time of the suspension.

(a) A suspension may be set aside prior to the end of the suspension period if the director is satisfied of the MCO's current compliance, ability, and commitment to comply with ORS Chapter 656, OAR 436-009, OAR 436-010 and OAR 436-015 orders of the director and the certified MCO plan.

[(c)] **(b)** Prior to the end of the suspension period the division shall determine if the MCO is in compliance **with ORS Chapter 656, OAR 436-009, OAR 436-010, 436-015 orders of the director and the certified MCO plan.** If the MCO is in compliance the suspension will terminate on its designated date. If the MCO is not in compliance the suspension may be extended **beyond one year** without further hearing or revocation proceedings may be initiated.

[(d) A suspension may be set aside prior to the suspension period designated end, if the director is satisfied of the MCO's ability and commitment to comply with ORS Chapter 656 and the rules promulgated pursuant thereto and is in compliance.]

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(5) The process for revocation of a MCO shall be as follows:

(a) The director shall provide the MCO with notice of an order of revocation. The [notice] **order** shall: [Before revocation of certification under this section becomes effective, the director shall give the MCO notice that the certification will be revoked stating the grounds for the revocation. The notice shall be served on the MCO in the manner provided by ORS 656.427 (3).]

(A) Describe generally the acts of the MCO and the circumstances that are grounds for revocation; and

(B) Advise the MCO that [T]the revocation shall become effective within 10 days after [mailing receipt] **service** of such notice [by] **upon** the MCO unless within such period of time the MCO corrects the grounds for the revocation to the satisfaction of the Director or **files an appeal**[s in writing to the [department] administrator of the Workers' Compensation Division] **as provided in OAR 436-015-0008(5).**

(b) [If the MCO appeals, the director shall set a date for a hearing and shall give the MCO at least ten days notice of the time and place of the hearing. Within thirty days after the hearing, the director shall either affirm or disaffirm the revocation and give the MCO written notice thereof by registered or certified mail.] **The order shall be served upon the MCO's designated in-state communication liaison and to the registered agent or other officer of the corporation upon whom legal process may be served as provided in OAR 436-015-0130.**

(c) A show cause hearing on the revocation shall be conducted as provided in OAR 436-015-0008(5).

[c] **(d)** If revocation is affirmed [by the director], the revocation is effective ten days **after service of the order in accordance with OAR 436-015-0130 upon** [after] the MCO [receives notice of the affirmance] **unless the MCO appeals.** [petitions for judicial review of the affirmance pursuant to ORS 183.310 to 183.550.

(d) If the revocation is affirmed following judicial review, the revocation is effective ten days after entry of the final decree of affirmance.]

(6) After revocation of an MCO's authority to provide services under these rules has been in effect for three (3) years or longer, it may petition the director to restore its authority by [submitting a plan and application in the form and format] **making application** as provided in OAR 436-015[-0009].

(7) Notwithstanding section [(4)] **(5)** of this rule, in any case where the director finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the director may immediately revoke the certification of an MCO without providing the MCO a show-cause hearing. The order must be served upon the MCO as provided in OAR 436-015-0130. Such order shall be final, unless the MCO requests a hearing. The process for review shall be as provided in OAR 436-015-0008[(2)]**(5)**], except the parties shall have 60 days from the date of mailing or other service of an order within which to submit their request for hearing].

(8) Insurer contractual obligations to allow a managed care organization to provide medical services for injured workers are null and void upon revocation of the MCO certification by the director.

[(9) Appeals of preliminary and final orders of suspension issued under this rule shall be made as provided in OAR 436-015-0008(2).]

Stat. Auth.: ORS 656.726(3)

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436-015-0090 Charges and Fees

(1) Billings for medical services under [a managed care organization] **an MCO** shall be submitted in the form and format as prescribed in OAR 436-009. The payment of medical services may be less than, but shall not exceed, the maximum amounts allowed pursuant to OAR [Chapter 436, Division] **436-009**.

(2) [The adjusted cost/charge ratio as described in OAR 436-009 need not be applied to the inpatient hospital and outpatient surgical services provided by hospitals who are, by contract, members of a managed care organization. Hospitals which form, own or operate an MCO shall receive reimbursement for inpatient hospital and outpatient surgical services provided to injured workers covered by another MCO comparable to, or less than, the amount reimbursed for like services provided within their own MCO. For the purposes of this rule, when an MCO formed, owned or operated by a hospital, has contracts with insurers with differing reimbursement rates "comparable reimbursement" shall be the average of the contracted rates.

(3) The adjusted cost/charge ratio as described in OAR 436-009 shall be applied to the inpatient hospital and outpatient surgical services provided by hospitals who do not meet the provisions of section (2) of this rule.

(4) Notwithstanding section (1) of this rule, fees paid for medical services provided by primary care physicians who are not MCO members shall not be less than fees paid to MCO providers for similar medical services. Fees paid to medical providers who are not under contract with the MCO, shall be subject to the provisions of [Chapter 436, Division] **OAR 436-009**.

Stat. Auth.: ORS656.726(3)

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436-015-0095 Insurer's Rights and Duties

Insurers shall also comply with OAR 436-010 **and OAR 436-009** when carrying out their duties under these rules.

Stat. Auth.: ORS656.726(3)

Stats. Implemented: ORS656.260

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436-015-0100 Monitoring/Auditing

(1) The division shall monitor and conduct periodic audits of [the managed care organization] **an MCO** as necessary to ensure the compliance with the [managed care organization] **MCO** certification and performance requirements.

(2) All records of [the managed care organization] **an MCO** and their individual members shall be disclosed upon request of the director. These records must be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided for the codes.

Stat. Auth.: ORS656.726(3)

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436-015-0110 Dispute Resolution/Complaints of Rule Violation

(1) Disputes which arise between any party and [a managed care organization] **an MCO** shall first be processed through the dispute resolution process of the [managed care organization] **MCO**. [Disputes must be in writing and filed within 60 days of knowledge of the dispute.]

(2) The MCO[s] shall promptly provide a written summary of the MCO's dispute resolution process to anyone who requests it, or to any[one.] **party** or their representative[,] disputing any action of the MCO **or affected by a dispute**. The written summary shall include at least the following:

(a) The title, address and telephone number of the contact person at the MCO who is responsible for the dispute resolution process[.];

(b) The types of issues the MCO will consider in its dispute resolution process[.];

(c) [The steps] **A description of the procedures and time frames for submission, processing and decision at each level** of the dispute resolution process [and procedures at each level of that process.] **including the right of an aggrieved party to request administrative review by the director if the party disagrees with the final decision of the MCO; and**

(d) [Time frames for submission of disputes] **Advise that absent a showing of good cause, failure to timely appeal to the MCO shall preclude appeal to the director.**

[e] Time frames within which each step of the dispute resolution process will be completed.

(2) Upon receipt of a dispute, the MCO shall acknowledge such receipt in writing and notify all affected parties of the MCO's process for resolution.]

(3) Notification must be provided to the worker and the worker's attorney when the MCO:

(a) Receives any complaint or dispute pursuant to this rule; or

(b) Issues any decision pursuant to this rule.

(4) Whenever an MCO denies a service, or a party otherwise disputes a decision of the MCO, the MCO shall send written notice of its decision to all parties that can appeal the decision. If the MCO provides a dispute resolution process for the issue, the notice shall include the following paragraph, in bold text:

NOTICE TO THE WORKER AND ALL OTHER PARTIES: If you disagree with this decision and want to appeal it, you must notify us in writing within 30 days of the mailing date of this notice. Send a written request for review to: {MCO name and address}. If you have questions, contact {MCO contact person and phone number}. If you do not notify us in writing within 30 days, you will lose all rights to appeal the decision. If you appeal timely, we will review the disputed decision and

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notify you of our decision within 60 days of your request. Thereafter, if you continue to disagree with our decision, you may appeal to the director of the Department of Consumer and Business Services (DCBS) for further review. If you fail to seek dispute resolution through us, you will lose your right to appeal to the director of DCBS.

[(3)] **(5)** If an MCO receives a complaint or dispute which is not [handled by its] **included in the MCO** dispute resolution process, the MCO shall, within seven days from the date of receiving the complaint, notify the parties in writing of their right to request review by the director pursuant to OAR 436-015-0008. The [notification must include an explanation to the effect that:

WE ARE UNABLE TO HELP YOU WITH THE ISSUE YOU HAVE RAISED BECAUSE IT IS A MATTER WHICH WE DO NOT HANDLE. FOR ASSISTANCE, INJURED WORKERS MAY CALL THE WORKERS' COMPENSATION DIVISION'S TOLL FREE HOTLINE AT 1-800-452-0288 AND ASK TO SPEAK WITH A BENEFIT CONSULTANT. ALL OTHERS, OR THOSE WHO ARE CALLING FROM OUTSIDE OREGON, SHOULD CALL 1-503-945-7881.] **notice shall include the following**

paragraph, in bold text:

NOTICE TO THE WORKER AND ALL OTHER PARTIES: The issue you have raised is not a matter which we handle. To pursue this issue, you must request administrative review of the issue by the director of the Department of Consumer and Business Services (DCBS). Send written requests for review to: DCBS, Workers' Compensation Division, Medical Review Unit, 350 Winter Street NE, Room 21, Salem, OR 97310-1321. If you do not notify DCBS in writing within 60 days of your receipt of this notice, you will lose all rights to appeal the decision. For assistance, injured workers may call the Workers' Compensation Division's toll-free hotline at 1-800-452-0288 and ask to speak with a Benefit Consultant. All others, or those who are calling from outside Oregon, should call 1-503-947-7585 (TTY 503-947-7993).

[(4)] **(6)** **The time frame for resolution of the dispute by the MCO shall not exceed 60 days from the date of receipt of the dispute by the MCO until issuance of the final decision by the MCO.** After the MCO resolves a dispute, pursuant to ORS 656.260(14) the MCO shall notify all parties to the dispute in writing, including the worker's attorney where written notification has been provided by the attorney with an explanation of the reasons for the decision. This notice shall inform the parties of the next step in the process, including the right of an aggrieved party to seek administrative review by the director pursuant to OAR 436-015-0008.

[The time frame for resolution of the dispute by the MCO shall not exceed 60 days from the date of receipt of the dispute by the MCO until issuance of the final decision by the MCO.] **The notice shall include the following paragraph, in bold text:**

NOTICE TO THE WORKER AND ALL OTHER PARTIES: If you disagree with this decision and want to appeal it, you must notify the director of the Department of Consumer and Business Services (DCBS) in writing within 60 days of your

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receipt of this notice. Send written requests for review to: Department of Consumer and Business Services, Workers' Compensation Division, Medical Review Unit, 350 Winter Street NE, Room 21, Salem, OR 97310-1321. If you do not notify DCBS in writing within 60 days, you will lose all rights to appeal the decision. If you have questions, call a Workers' Compensation Division Benefit Consultant at (503)947-7585 (TTY 503-947-7993) or (toll-free in Oregon) 1-800-452-0288.

(7) If the MCO fails to issue a decision within 60 days, the MCO's initial decision is automatically deemed affirmed. The parties may immediately proceed as though the MCO had issued an order affirming the MCO decision. The MCO shall notify the parties of the next step in the process, including the right of an aggrieved party to seek administrative review by the director pursuant to OAR 436-015-0008 including the appeal rights provided in (6) above.

[(5)] **(8)** The director may assist in resolution of a dispute before the MCO. The director may issue an order to further the dispute resolution process. Any of the parties also may request in writing that the director assist in resolution if the dispute cannot be resolved by the MCO. [The request for review of all final MCO decisions shall be submitted to the director within 60 days of issuance of the MCO's final decision consistent with OAR 436-015-008.]

[(6)] **(9)** Complaints pertaining to violations of these rules shall be directed in writing to the Compliance Section of the division. The division may return the complaint to the originating party for completion if the complaint does not satisfy the requirements of this rule. The complaints must:

- (a) [s] **S**tate the grounds for alleging rule violation;
- (b) [i] **I**nclude the specific contention of error;
- (c) [s] **S**tate the complainant's request for correction and relief; and
- (d) [i] **I**nclude sufficient documentation to support the complaint.

[(7)] **(10)** The division may investigate the alleged rule violation. The investigation may include, but shall not be limited to, request for and review of pertinent medical treatment and payment records, interviews with the parties to the complaint, or consultation with an appropriate committee of the medical provider's peers, chosen in the same manner as provided in OAR 436-010-[0047]**0330**.

[(8)] **(10)** If the division determines upon completion of the investigation that there has been a rule violation, the division may issue penalties pursuant to ORS 656.745 and OAR 436-015-0120.

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436-015-0120 Sanctions and Civil Penalties

(1) If the director finds any violation of OAR 436-015[-0020, 436-015-0030, 436-015-0035, 436-015-0040, 436-015-0050, 436-015-0060, 436-015-0070, 436-015-0090, 436-015-0100(2), 436-015-0110], or if the MCO fails to meet any of the requirements of the certified plan, the director may impose one or more of the following sanctions against any [managed care organization] **MCO**:

(a) Reprimand by the director;

(b) Civil penalty of up to \$5000 for failure to comply with ORS 656.001 to 656.990. Each day a violation continues shall constitute a separate violation. All penalties collected under this section shall be paid into the Department of Consumer and Business Services Fund. In determining the amount of penalty to be assessed, the director shall consider:

(A) the degree of harm inflicted on the worker, insurer, or medical provider;

(B) whether there have been previous violations; and

(C) whether there is evidence of willful violation.

(c) Suspension or revocation of the MCO's certification pursuant to OAR 436-015-0080.

(2) [The director shall investigate the allegations and may seek advice from the Workers' Compensation Management-Labor Advisory Committee, practitioner's licensing boards, or professional associations. At the completion of the investigation, the director may adopt the recommendations of the Workers' Compensation Management-Labor Advisory Committee, licensing board, professional association, and may impose one or more of the sanctions as provided in section (1) of this rule.] **If the director determines that an insurer has entered into a contract with an MCO which violates OAR 436-015 or the MCO's certified plan, the insurer shall be subject to civil penalties as provided in ORS 656.745.**

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436-015-0130 Service of Orders

(1) When the director suspends or revokes certification of [a managed care organization] **an MCO** pursuant to OAR 436-015-0080, or **imposes a sanction or** assesses a civil penalty under the provisions of OAR 436-015-0120, the order, including a notice of the party's appeal rights, shall be served upon the party.

(2) The [order] **director** shall [be served] **serve the order** by delivering a copy to the party [through certified mail or] in [any] **the** manner provided by Oregon Rules of Civil Procedure **7D(3), or by sending a copy to the party by certified mail with return receipt requested.**

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