

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF INSURANCE AND FINANCE
OF THE STATE OF OREGON

REC'D W.C.D.

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Administration

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In the Matter of the Amendment)
of Rules Governing Claims)
Administration (OAR Chapter 436,)
Workers' Compensation Division,)
Division 60, Rules 60-055 and)
60-185).)

ORDER OF ADOPTION LEG. COUNSEL'S OFF.

The Director of the Department of Insurance and Finance, pursuant to his general rule making authority under ORS 656.726(3) and in accordance with the procedure provided by ORS 183.335, amends OAR Chapter 436, Workers' Compensation Division, Division 60, Claims Administration.

On April 20, 1988, the Workers' Compensation Division filed Notice of Public Hearing with the Secretary of State to amend rules governing Claims Administration (OAR Chapter 436, Division 60, Rules 60-055 and 60-185). The Statement of Need and Legal Authority and the Statement of Fiscal Impact were also filed with the Secretary of State.

Copies of the Notice were mailed to interested persons in accordance with ORS 183.335(7) and OAR 436-01-000 and to those on the Division's distribution mailing list as their interest indicated. The notice was published in the May 1, 1988, Secretary of State's Administrative Rule Bulletin.

On May 18, 1988, the public hearing was held as announced. A summary of the written testimony and agency responses thereto is contained in Exhibit "C." This summary is on file and available for public inspection between the hours of 8 a.m. and 5 p.m., normal working days Monday through Friday in the Administrator's Office, Workers' Compensation Division, Room 202, Labor & Industries Bldg., Salem, Oregon 97310.

Having reviewed and considered the record of public hearing and being fully advised, I make the following findings:

- a. The applicable rule making procedures have been followed.
- b. The rules are within the Director's authority.
- c. The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT:

- (1) Rules Governing Claims Administration, OAR Chapter 436, Division 60, Rules 60-055 and 60-185, as set forth in Exhibit "A" attached hereto, certified a true copy and hereby made part of this order, are adopted effective July 1, 1988.
- (2) A certified true copy of the Order of Adoption and these rules, with Exhibit "B" consisting of the Citation of Statutory Authority, Statement of Need, Documents Relied on and Fiscal Impact Statement, attached hereto and hereby made part of this order, be filed with the Secretary of State.
- (3) A copy of the rules and attached Exhibit "B" be filed with the Legislative Counsel pursuant to the provisions of ORS 183.715 within ten days after filing with the Secretary of State.

Dated this 27 day of June, 1988.

Department of Insurance and Finance


Theodore R. Kulongoski, Director

Distribution: A thru N; P thru V;
Y thru AA; plus CC,
DD, EE and LL

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EXHIBIT "A"

OREGON ADMINISTRATIVE RULES
CHAPTER 436. WORKERS' COMPENSATION DIVISION
DIVISION 60: CLAIMS ADMINISTRATION

PAYMENT OF MEDICAL SERVICES ON NONDISABLING CLAIMS; EMPLOYER/INSURER RESPONSIBILITY

436-60-055 Pursuant to ORS 656.262(5) the costs of medical services for nondisabling claims, in amounts not to exceed \$500 per claim, may be paid by the employer if the employer so chooses. Such choice does not relieve the employers of their claim reporting requirements or the insurers of their responsibility to determine entitlement to benefits and process the claims accurately and timely. Also, when paid by the employer, such costs cannot in any way be used to affect the employer's experience rating modification or otherwise be charged against the employer. To enable the Director to ensure these conditions are met, insurers and employers must comply with the following process and procedures:

(1) Notwithstanding the choice made by the employer pursuant to section (2) of this rule, the employer and insurer shall process the nondisabling claims in accordance with all statutes and rules governing claims processing. The employer, however, may reimburse the medical service costs paid by the insurer if the employer has chosen to make such payments. The method and manner of reimbursement by the employer shall be as prescribed in section (3) of this rule. In no case, however, shall the employer have less than 30 days to reimburse the insurer.

(2) Prior to the commencement of each policy year, the insurer shall send a notice to the insured or prospective insured, advising of the employer's right to reimburse medical service costs up to \$500 on accepted, nondisabling claims. The Notice shall advise the employer:

(a) Of the procedure for making such payments as outlined in section (3) of this rule;

(b) Of the general impact on the employer if the employer chooses to make such payments;

(c) That the employer is choosing not to participate if the employer does not respond in writing within 30 days of receipt of the insurer's notice;

(d) That the employer's written election to participate in the reimbursement program remains in effect, without further notice from the insurer, until the employer advises otherwise in writing or is no longer insured by the insurer; and

(e) That the employer may participate later in the policy period upon written request to the insurer, however, the earliest reimbursement period shall be the first completed period, established pursuant to subsection (3)(a) of this rule, following receipt of the employer's request.

(3) If the employer wishes to make such reimbursement, and so advises the insurer in writing, the procedure for reimbursement shall be:

(a) Within 30 days following each three month period after policy inception or a period mutually agreed upon by the employer and insurer, the insurer shall provide the employer with a list of all accepted nondisabling claims for which payments were made during that period and the respective cost of each claim.

(b) The employer, no later than 30 days after receipt of the list, shall identify those claims and the dollar amount the employer wishes to pay for that period and reimburse the insurer accordingly.

(c) Failure by the employer to reimburse the insurer within the 30 days allowed by subsection (3)(b) of this rule shall be deemed notice to the insurer that the employer does not wish to make a reimbursement for that period.

(d) Notwithstanding subsection (3)(b) of this rule, the employer and insurer may, by written agreement, establish a period in excess of thirty (30) days for the employer to reimburse the insurer.

(e) The insurer shall continue to bill the employer for any payments made on the claims within 27 months of the inception of the policy period. Any further billing and reimbursement will be made only by mutual agreement between the employer and the insurer.

(4) Insurers shall maintain records of amounts reimbursed by employers for medical services on nondisabling claims. Insurers, however, shall not modify an employer's experience rating or otherwise make charges against the employer for any medical services reimbursed by the employer. For employers on retrospective rated plans, medical costs paid by the employer on nondisabling claims shall be included in the retrospective premium calculation, but the amount paid by the employer shall be applied as credits against the resulting retrospective premium.

(5) If a claim changes from a nondisabling to a disabling claim and the insurer has recovered reimbursement from the employer for medical costs billed by the insurer prior to the change, the insurer shall exclude those amounts reimbursed from any experience rating, or other individual or group rating plans of the employer. If the employer is on a retrospective rated plan, premium calculation shall be as provided in section (4) of this rule.

(6) Insurers who do not comply with the requirements of this rule or in any way prohibit an employer from reimbursing the insurer pursuant to section (3) of this rule, shall be subject to a penalty as provided by OAR 436-60-200(5).

(7) Self-insured employers shall maintain records of all amounts paid for medical services on nondisabling claims in accordance with OAR 436-50-220. When reporting loss data for experience rating, the self-insured may exclude costs for medical services paid on nondisabling claims in amounts not to exceed \$500 per claim.

Hist: Filed 12/18/87 as WCD Admin. Order 10-1987, eff. 1/1/88
(Temporary) as Rule 436-60-055.
Amended 6/27/88 as WCD Admin. Order 4-1988, eff. 7/1/88 as Rule
436-60-055.

ARBITRATION PROCEEDINGS COSTS ALLOCATION

436-60-185 (1) The cost of the arbitration proceedings conducted by the Board pursuant to ORS 656.307 and OAR 438-14 shall be equally shared between the insurers involved in the arbitration proceedings as identified by the "Arbitrator's Decision" issued pursuant to OAR 438-14-025.

(2) When the "Arbitrator's Decision" is received by Compliance, a copy of the Order shall be forwarded to the Department's Fiscal Section for collection.

Hist: Filed 12/18/87 as WCD Admin. Order 10-1987, eff. 1/1/88
(Temporary) as Rule 436-60-185.
Amended 6/27/88 as WCD Admin. Order 4-1988, eff. 7/1/88 as Rule
436-60-185.

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EXHIBIT "B"

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF INSURANCE AND FINANCE
OF THE STATE OF OREGON

In the Matter of the Amendment)	Statutory Authority,
of Rules Governing Claims)	Statement of Need,
Administration (OAR Chapter 436,)	Principal Documents Relied
Workers' Compensation Division,)	Upon, and Statement of Fiscal
Division 60, Rules 60-055 and)	Impact
60-185).)	

1. Citation of Statutory Authority. The Statutory Authority for promulgation of these rules is ORS 656.726(3)(a).
2. Need for Rules. The need for such rules is:
 - a. To prescribe policy and procedures for employers choosing to pay medical service costs as provided by ORS 656.262(5) to ensure such costs are not charged to or affect employers' premium, while still ensuring that claims are processed accurately and timely and workers' rights are not jeopardized; and
 - b. To prescribe policy and procedure on how the costs of arbitration proceedings held pursuant to ORS 656.307(2) are to be shared among the parties to the proceedings.
3. Principal Documents Relied Upon. ORS Chapter 656.262(5) and 656.307(2). Other than the testimony presented at the public hearing as summarized in Exhibit "C," no other principal documents, reports, or studies were relied upon.
4. Fiscal and Economic Impact. The following entities are economically affected: (a) state agencies, in their role of employer; (b) units of local government, in their role of employer; (c) large and small private sector employers subject to the Workers' Compensation Law; and (d) insurance companies processing workers' compensation claims.

For those employers who are experience rated the effect of choosing to pay medical costs as provided by rule 60-055 could be an eventual reduction in their overall workers' compensation costs. The actual amount cannot be determined. Workers' compensation insurers will experience some expense in administering the reimbursement program as outlined in rule 60-055, however, the amount or the extent to which that expense will be passed on to their insured employers is unknown.

The Department will experience some expense in the collection efforts with the promulgation of rule 436-60-185 relative to Arbitration Proceedings Costs Allocation. This expense however will not be to the extent necessary to increase the Department's premium assessment rate.

DATED THIS 27 DAY OF June, 1988.

DEPARTMENT OF INSURANCE AND FINANCE


Theodore R. Kulongoski, Director

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