

**BEFORE THE DIRECTOR OF THE
WORKERS' COMPENSATION DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of the Amendment of OAR)
Chapter 436, Workers' Compensation)
Department, Division 60, Rules)
Governing Claims Administration)

ORDER OF ADOPTION

The Director of the Workers' Compensation Department, 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 Department, Division 60, Claims Administration.

On October 21, 1985, the Workers' Compensation Department filed Notice of Public Hearing with the Secretary of State to amend rules governing claims administration. The Statement of Need and Legal Authority and the Statement of Fiscal Impact were also filed with the Secretary of State. A copy of the Notice and Proposed Rules were filed with the Legislative Counsel in accordance with ORS 171.707.

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 Department's distribution mailing list as their interest indicated. The notice was published in the November 1, 1985, Secretary of State's Administrative Rule Bulletin.

On November 20, 1985, 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 Director's Office, Workers' Compensation Department, Room 201, 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) OAR Chapter 436, Division 60, Rules Governing Claims Administration, as set forth in Exhibit "A" attached hereto, certified a true copy and hereby made part of this order, is adopted effective January 1, 1986.
- (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 a 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 183.75 within ten days after filing with the Secretary of State.

Dated this 12th day of December, 1985.

Workers' Compensation Department



William J. Brown, Director

Distribution: A through N; P through V;
Plus Y, Y(1), AA, and CC,
Insurance Commissioner (3)

EXHIBIT "A"

CHAPTER 436
WORKERS' COMPENSATION DEPARTMENT
DIVISION 60, CLAIMS ADMINISTRATION

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OREGON ADMINISTRATIVE RULES

OAR 436

DIVISION 60

CLAIMS ADMINISTRATION

Authority for Rules

436-60-001 These rules are promulgated under the Director's authority contained in ORS 656.210(2), 656.264, 656.265(6), 656.325, 656.331 and 656.726(3).

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76
Amended 4/27/78 as WCD Admin. Order 6-1978, eff. 4/27/78
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-001, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Purpose

436-60-002 It is the purpose of the Director that under the provisions of ORS 656.726(3) rules be established to allow insurers to uniformly process claims. One of the general charges to the Director under the Workers' Compensation Law is "... regulation and enforcement of . . . ORS 656.001 to 656.794." To meet that responsibility the Director has delegated to the Compliance Division the responsibility of ensuring the requirements of the statutes, rules and bulletins of the Department are complied with as they relate to claims processing. To that end, when it comes to the attention of the Compliance Division that an insurer is not processing a claim in accordance with the requirements of the law, the Compliance Division will so notify the insurer and request immediate appropriate action. If the appropriate action is not taken by the insurer in accordance with the law the insurer will be subject to civil penalty under ORS 656.745.

Hist: Filed 4/27/78 as WCD Admin. Order 6-1978, eff. 4/27/78
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-008, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Applicability of Rules

436-60-003 These rules are effective January 1, 1986, to carry out the provisions of:

- (1) ORS 656.210 - Temporary total disability
- (2) ORS 656.212 - Temporary partial disability
- (3) ORS 656.230 - Lump sum payments with Department approval
- (4) ORS 656.245 - Medical services to be provided; choice of doctor
- (5) ORS 656.262 - Responsibility for processing and payment of compensation; sight drafts; acceptance and

denial of claim; reporting claims; penalties for payment delays

(6) ORS 656.264 - Compensable injury, claim and other reports

(7) ORS 656.265 - Notice of accident from worker

(8) ORS 656.268 - Insurer claim closures

(9) ORS 656.307 - Determination of issues regarding responsibility for compensation payment

(10) ORS 656.325 - Required medical examination; suspension of compensation; injurious practices; claimant's duty to reduce disability; reduction of benefits for failure to participate in rehabilitation

(11) ORS 656.331 - Notice to worker's attorney

(12) ORS 656.726(3) - Department powers and duties generally

Hist: Filed 4/27/78 as WCD Admin. Order 6-1978, eff. 4/27/78
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Amended 4/4/84 as WCD Admin. Order 3-1984, eff. 4/4/84
Renumbered from 436-54-003, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Definitions

436-60-005 For the purpose of these rules unless the context requires otherwise:

(1) "Aggravation" means the worsened condition of an injured worker which is a medically verified increase in seriousness or severity of a condition arising from an industrial injury to the worker since the last award or arrangement of compensation for that industrial injury.

(2) "Attending Physician" means a doctor or physician who accepts the primary responsibility for the treatment of a worker's compensable injury.

(3) "Board" means the Workers' Compensation Board of the Workers' Compensation Department.

(4) "Claim" means a written request for compensation from a subject worker or someone on the worker's behalf, or any compensable injury of which a subject employer has notice or knowledge.

(5) "Compliance Division" means the Compliance Division of the Workers' Compensation Department.

(6) "Department" means the Oregon Workers' Compensation Department, consisting of the Board, Director and all their assistants and employees.

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(7) "Determination" means examination of the worker's claim for compensation by Evaluation Division.

(8) "Director" means the Director of the Workers' Compensation Department.

(9) "Employment on call" means sporadic, unscheduled employment on call by an employer with no right of reprisal if employe unavailable.

(10) "Employment through union hall" means workers who report to union halls for job placement.

(11) "Evaluation Division" means the Evaluation Division of the Workers' Compensation Department.

(12) "Health insurance," as defined under ORS 731.162, means insurance of humans against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness or childbirth, or against expense incurred in prevention of sickness, in dental care or optometrical service, and every insurance appertaining thereto. "Health insurance" does not include workers' compensation coverage.

(13) "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in this state or an employer or employer group who has been certified under ORS 656.430 that the employer or employer group meets the qualifications of a self-insured employer set out by ORS 656.407.

(14) "Loss of earning power" means the difference between wage earnings of the worker from the employment at the time of and giving rise to the injury and the wage earnings available from any kind of work approved by the attending physician prior to claim determination which is available to the injured worker, whether or not the work is accepted or performed.

(15) "Lump sum" means the payment of all or any part of a permanent partial disability award in one payment.

(16) "Medical Director" means the Medical Director in the office of the Director of the Workers' Compensation Department.

(17) "Party" means a claimant for compensation, the employer of the injured worker at the time of injury and the insurer, if any, of such employer.

(18) "Paying Agent" means the insurer responsible for paying compensation for a compensable injury.

(19) "Physical rehabilitation program" means any disability prevention services which include physical restoration provided a worker.

(20) "Process claims" means the receipt, review and payment of compensation of claims of workers.

Hist: Filed 4/27/78 as WCD Admin. Order 6-1978, eff. 4/27/78
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-005, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Administration of Rules

436-60-006 Any orders issued by the Divisions within the Department in carrying out the Director's authority to

enforce ORS Chapter 656 and the rules adopted pursuant thereto, are considered orders of the Director.

Hist: Filed 4/27/78 as WCD Admin. Order 6-1978, eff. 4/27/78
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-010, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Administrative Review

436-60-008 (1) Any party aggrieved by an action taken pursuant to these rules involving any matter concerning a claim may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS Chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Act.

(2) Any party aggrieved by an action taken pursuant to these rules involving all matters other than those concerning a claim may request a hearing of the Director.

(a) The Director shall forward the request for a hearing to the Department of Justice with pertinent records in the matter as requested.

(b) The Department of Justice shall forward the request and other pertinent information to the Hearings Division.

(c) Notwithstanding ORS 183.315(1), the issuance of orders under these rules, the conduct of hearings and the judicial review thereof by the Court of Appeals shall be as provided in ORS 183.415 through ORS 183.495 except:

(A) the Board may promulgate rules for the conduct of the hearings under these rules;

(B) the order of the hearing referee shall be deemed to be a final order of the Director; and

(C) the Director shall have the same right to a judicial review of the order of the hearing referee as any person who is adversely affected or aggrieved by such final order.

Hist: File 4/27/78 as WCD Admin. Order 6-19-78, eff. 4/27/78
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-998, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Reporting Requirements

436-60-010 (1) A subject employer shall accept notice of a claim for workers' compensation benefits from any injured worker or their representative. Employers, except self-insured employers processing their own claims, shall immediately and not later than five days after notice or knowledge of any claim or accident which may result in a compensable injury claim, report the same to their insurer.

(2) If a worker is injured and requires only first aid without medical services and is otherwise not entitled to compensation, no notice need be given the insurer where the employer maintains records of the date, worker and nature of injury treated for at least one year, which records shall be open to inspection by the Director or any party or its representative. For the purpose of this section, "medical services" means any medical treatment which is normally provided for an injury by a licensed individual, regardless of who provides it, or where it is provided.

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(3) An employer who is delinquent in reporting claims to its insurer in excess of 10 percent of their total claims reported during any quarter may receive a penalty assessed by the Director.

(4) An employer who intentionally or repeatedly makes payment of compensation in lieu of reporting to its insurer any claim or accident which may result in a compensable injury claim may receive a penalty assessed by the Director.

(5) The insurer shall receive, process and file a claim in compliance with ORS Chapter 656 to include reports as required in Chapter 656, WCD Administrative Orders and WCD Bulletins. A "First Medical Report" Form 436-827, signed by the worker, is considered written notice of an accident which may involve a compensable injury in accordance with ORS 656.265. As such, the signed Form 436-827 shall start the claim process the same as the Form 436-801, but shall not relieve the worker or employer of the responsibility of filing the Form 436-801.

(6) Any insurer who is delinquent in reporting or who submits the Forms 801, 1502, 1503 or 1644 with a late or error ratio of 10 percent of the volume of each respective form during any quarter may receive a penalty assessed by the Director.

Hist: Filed 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-100, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Notice to Worker's Attorney

436-60-015 (1) When an injured worker is represented by an attorney and the attorney has given written notice of such representation:

(a) The Director or insurer shall not request the worker to submit to an independent medical examination without giving prior or simultaneous written notice to the worker's attorney.

(b) The insurer shall not request suspension of compensation pursuant to ORS 656.325 without giving prior or simultaneous written notice to the worker's attorney.

(c) An insurer shall not contact the worker without giving prior or simultaneous written notice to the worker's attorney if the contact affects the denial, reduction or termination of the worker's benefits.

(2) An insurer who intentionally or repeatedly fails to give prior or simultaneous written notice to the worker's attorney as required by section (1) may receive a penalty assessed by the Director.

Hist: Filed 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Payment of Temporary Total Disability Compensation

436-60-020 (1) Payment of compensation under ORS 656.262(4) may be made by the subject employer if the employer so chooses. The making of such payments does not constitute a waiver or transfer of the insurer's duty to determine entitlement to benefits or responsibility to ensure timely benefit payments. The employer shall provide its

insurer with adequate payment documentation, as the insurer may require, to meet these responsibilities.

(2) When concurrent temporary disability is due the worker as a result of two or more separate claims, the insurers may petition the Compliance Division to make a pro rata distribution of compensation due under ORS 656.210. The insurers shall not unilaterally prorate temporary disability without the approval of the Compliance Division. The Compliance Division may order one of the insurers to pay the entire amount of temporary disability due or it may make a pro rata distribution between two or more of the insurers.

(3) The rate of compensation for regularly employed workers shall be computed as outlined in ORS 656.210. Monthly wages shall be divided by 4.35 to determine weekly wages. Continued payment of wages by the employer shall not be made in lieu of statutory temporary total disability due. The employer, however, is not precluded from supplementing the amount of temporary total disability paid the worker. Any workers' compensation benefits shall be identified separate from other moneys paid by the employer and shall not have usual payroll deductions withheld from such benefits.

(4) The rate of compensation for workers employed with unscheduled, irregular or no earnings shall be computed on the wages determined in the following manner:

(a) Employed on call basis: Use average weekly earnings for past 26 weeks, if available, unless periods of extended gaps exist, then use no less than last 4 weeks of employment to arrive at average. For workers employed less than 4 weeks, or where extended gaps exist within the 4 weeks, use intent at time of hire as confirmed by employer and worker.

(b) Employed Piecework: Use average as in subsection (a).

(c) Employed varying hours, shifts or wages: Use average as in subsection (a).

(d) Employed through union hall call board: Compute as 5 day worker regardless of number of days actually worked per week.

(e) Employed salary plus considerations (rent, utilities, food, etc.): Use only salary if considerations continue; use salary plus reasonable value of considerations if lost.

(f) Employed two jobs, two employers: Use only wage of job on which injury occurred if worker unable to work either job. If able to return to job where injury occurred, no benefit is due. If able to return to the job other than the one where injury occurred, temporary partial disability is due based on the combined earning power of both jobs.

(g) Employed where tips are a part of earnings: Use regular wages actually received, plus amount of tips required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of 1954, as amended, or the amount of actual tips reported by the worker, whichever amount is greater. Tips include tips the worker receives directly from customers, tips from charge customers that are paid to the worker by the employer, and the worker's share of any tips the worker receives under a tip-splitting arrangement.

(h) Employed 1 or 2 days per week: Use daily wage times 3 to arrive at weekly wage (ORS 656.210).

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(i) Employed with overtime: Overtime shall be considered only when worked on a regular basis. Overtime earnings shall be considered at the overtime rate rather than straight time. Example: If one day of overtime per month for a normally 40 hour a week worker, use 40 hours at regular wage and 2 hours at overtime wage; etc., to compute the weekly rate. If overtime varies in hours worked per day or week, use average as in subsection (a). One-half day or more will be considered a full day when determining days worked per week.

(j) Employed with incentive pay: Incentive pay provided by contract of employment shall be considered only when regularly earned. If incentive pay earnings vary, use average as in subsection (a).

(k) Employed with no wage earnings: Volunteer workers, city and county jail inmates, etc., when covered, shall have their benefits computed on the same assumed wage as premium is based.

(l) Employed commission only; commission plus wages: Use average commission earnings for past 26 weeks, if available. For workers without 26 weeks of earnings use the assumed wage on which premium is based. Any regular wage in addition to commission shall be included in the wage.

(m) Sole proprietors, partners and officers of corporation: Use assumed wage on which premium is based.

(n) School teachers or workers paid in like manner: Use annual salary divided by 52 weeks to arrive at weekly wage. Statutory temporary disability benefits shall extend over the calendar year.

(o) Situation not covered by ORS 656.210 or this section: The employer and worker shall be contacted and a reasonable wage determined to coincide with the objectives of the Workers' Compensation Law.

(5) When payable, compensation for the initial work day lost shall be paid for 1/2 day if the worker leaves the job during the first half of the shift and no compensation for the initial work day lost if the worker leaves the job during the second half of the shift.

(6) When a working shift extends into another calendar day, the date of injury shall be the date used for payroll purposes by the employer.

(7) The period of time during which the worker must be absent from work to keep a medical appointment or have therapy treatment after being released to regular or modified work shall not be considered as loss of earning power as described under ORS 656.212. As such, the worker is not entitled to temporary disability compensation for these visits when the appointment or treatment is scheduled during the work shift.

Hist: Filed 9/21/70 as WCB Admin. Order 12-1970
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-212, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Payment of Temporary Partial Disability Compensation

436-60-030 (1) The rate of temporary partial disability compensation due a worker shall be determined by:

(a) subtracting the post-injury wage earnings available from any kind of work; from

(b) the wage earnings from the employment at the time of, and giving rise to, the injury; then

(c) dividing the difference by the wage earnings in subsection (b) to arrive at the percentage of loss of earning power; then

(d) multiplying the current temporary total disability compensation rate by the percentage of loss of earning power.

(2) If the post-injury wage earnings are equal to or greater than the wage earnings at the time of injury, no temporary disability compensation is due.

(3) An insurer shall cease paying temporary total disability compensation and commence making payment of such temporary partial disability compensation as is due from the date an injured worker accepts and commences any kind of wage earning employment prior to claim determination.

(4) Temporary partial disability compensation payable pursuant to section (3) shall continue to be paid until:

(a) the attending physician verifies that the worker cannot continue working and is again temporarily totally disabled;

(b) the compensation is terminated by order of the Department or by claim closure by the insurer pursuant to ORS 656.268; or

(c) the compensation has been paid for two years.

(5) An insurer shall cease paying temporary total disability compensation and start making payment of such temporary partial disability compensation as would be due in section (1) when an injured worker refuses wage earning employment prior to claim determination under the following conditions:

(a) the attending physician has been notified by the employer or insurer of the specific duties to be performed by the injured worker and the physical requirements thereof;

(b) the attending physician agrees that the offered employment appears to be within the worker's capabilities; and

(c) the employer has provided the injured worker with a written offer of the employment which states the beginning time, date and place; the duration of the job, if known; the wage rate payable; an accurate description of the job duties and that the attending physician has said the offered employment appears to be within the worker's capabilities.

(6) Temporary partial disability compensation payable pursuant to section (5) shall continue to be paid until:

(a) the attending physician verifies that the worker's condition is such that he could no longer perform such work and is again temporarily totally disabled;

(b) the duration of the offered job has expired or that the offer of such employment is withdrawn. The employer discharging the worker because of violation of normal employment standards shall not be considered a withdrawal of offered employment;

(c) the compensation is terminated by order of the Department or by claim closure of the insurer pursuant to ORS 656.268; or

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(d) the compensation has been paid for two years.

(7) An insurer shall provide a written explanation to the injured worker, and the worker's attorney if represented, of the reasons for changes in the compensation rate and the method of computation whenever temporary total disability compensation is terminated and temporary partial disability compensation commences, and vice versa. A copy of the letter to the worker shall be sent to the Compliance Division in cases where the worker has refused wage earning employment.

Hist: Filed 4/27/78 as WCD Admin. Order 6-1978, eff. 4/27/80
Amended 1/11/80 as WCD Admin Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-222, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Payment of Permanent Partial Disability Compensation

436-60-040 (1) The worker may receive both permanent partial disability and temporary total disability at the same time. When a claim is reopened as a result of an aggravation of the worker's condition and temporary total disability is due, any permanent partial disability benefits due shall continue to be paid concurrently with temporary total disability benefits.

(2) When training commences in accordance with OAR 436-120 after the issuance of a determination order, Opinion and Order of a Referee, Order on Review, or Mandate of the Court of Appeals, the insurer shall suspend any award payments due under the order or mandate and pay time loss.

(3) Upon completion or termination of the training, any award payments shall be resumed. If no award payment remains due, temporary disability shall continue pending a subsequent determination order by the Evaluation Division, unless the worker has returned to regular employment.

Hist: Filed 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-232, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Payment of Medical Services; Choice of Attending Physician

436-60-050 (1) Only the insurer shall pay for medical expenses relating to a compensable injury claim. Such expenses include, but are not limited to, medical, surgical, hospital, nursing, ambulances, and other related services, and drugs medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services.

(2) For the purpose of this rule, a prosthetic appliance is an artificial substitute for a missing part or any device by which performance of a natural function is aided or augmented, including, but not limited to, hearing aids or eye glasses. If such a prosthetic appliance is damaged when in use at the time of an industrial accident the cost is a compensable medical expense, regardless of whether the worker actually received a physical injury at the time of the industrial accident.

(3) Any claim for medical services referred to under ORS 656.245 or this rule shall be submitted to the insurer even after aggravation rights under ORS 656.273 have expired. If the claim for medical services is denied, the worker may submit a request for hearing pursuant to ORS 656.283.

(4) The worker may choose an attending physician within the state of Oregon. Reimbursement to the worker of transportation costs to visit the attending physician, however, may be limited to within a city, or metropolitan area, or the distance to the nearest city or metropolitan area, from where the worker resides and where a physician providing like services is available. A worker who relocates within the state of Oregon may continue treating with the attending physician and be reimbursed transportation costs accordingly. If an insurer chooses to limit reimbursement to the nearest available city, or metropolitan area, a written explanation shall be provided the worker along with a list of physicians who provide the like services within an acceptable distance of the worker. The worker shall be made aware of the fact treatment may continue with any attending physician within the state of Oregon of the worker's choice, but the reimbursement of transportation costs will be limited as described.

(5) When the worker chooses an attending physician outside the state of Oregon, the insurer may object to the worker's choice and select the attending physician. Payment for treatment or services rendered to the worker after the insurer has objected to the worker's choice of attending physician may be rejected by the insurer.

(6) Subsequent change in attending physician by the worker is limited to four times after the initial choice without approval from the director, unless the insurer approves of the change. If the insurer disapproves of an additional change in an attending physician beyond the number of permitted, the insurer may require the Director's approval of the change in accordance with OAR 436-10.

Hist: Filed 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-245, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Lump Sum Payment of Permanent Partial Disability Awards

436-60-060 (1) The Compliance Division has the responsibility of approving lump sum payment of permanent partial disability awards in excess of 64 degrees. This responsibility extends to situations where the value of the award, through periodic payments or offset, is reduced to below the 64 degree value. Any lump sum payment of permanent partial disability award approved through litigation does not require Compliance Division approval.

(2) For injuries occurring prior to August 9, 1983, the Compliance Division hereby authorizes the insurer, in its discretion, to make a lump sum payment of a permanent partial disability award not in excess of 64 degrees provided the worker is not asked to waive any appeal rights. For injuries occurring on or after August 9, 1983, and the award does not exceed 64 degrees, the insurer shall pay all of the award to the worker in a lump sum.

(3) In cases where the final payment would be less than the amount computed in accordance with ORS 656.216(1), the insurer may include the lesser amount with the last full

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monthly payment of the award to the worker without Compliance Division approval.

(4) A worker who has been awarded a permanent partial disability award in excess of 64 degrees may apply to the Compliance Division, through the insurer, for an order directing the paying agent to pay all or part of the unpaid award in a lump sum. Any lump sum award will be subject to the law in force at the time of injury.

(5) The application shall include but not be limited to:

(a) a description of the award amount, amount of the monthly payments being paid, payments already paid, balance remaining and amount of award requested;

(b) a narrative description of the reason for the lump sum request, with an itemization of any debts owing to be paid by the lump sum amount;

(c) original signatures of both the worker and the insurer; and

(d) in prominent or bold-face type the paragraph:

"I UNDERSTAND THAT BY APPLYING FOR AND ACCEPTING A LUMP SUM PAYMENT OF ALL OR ANY PART OF MY PERMANENT PARTIAL DISABILITY AWARD, I WAIVE THE RIGHT TO APPEAL THE ADEQUACY OF THE AWARD."

(6) The Compliance Division in considering an application will not approve a lump sum payment when:

(a) the worker is engaged in a vocational assistance training program;

(b) the worker is receiving vocational assistance or is temporarily withdrawn from a training program; or

(c) the worker is engaged in litigation affecting the worker's permanent partial disability award.

(7) The Compliance Division shall approve or deny an application for lump sum payment of an award within 30 days after receipt of the application, unless additional information is needed to make a decision. The Compliance Division may approve an application to pay all or part of the award, as requested, or it may approve a lump sum payment of less than requested, or it may deny an application.

(8) If the Compliance Division approves an application, as submitted or as revised, it shall order the paying agency to pay the award in a lump sum in the amount approved within 5 working days after receipt of the order. Copies of the order and application approving or denying the application shall be sent to the paying agent and the applicant.

(9) If the application is denied in whole or in part by the Compliance Division, the worker shall be informed that within 15 days of the date of the order, the Director may be petitioned to reconsider the application.

(10) The Director shall, within 20 days after receipt of the petition, examine the application and such further evidence filed and enter an order. Copies of the order shall be sent to the paying agent, applicant and Compliance Division. Granting or denying a lump sum is at the sole discretion of the Director. Any such order issued by the Director is not appealable.

(11) If a lump sum payment is approved for part of an award, the lump sum payment shall be in addition to the

regularly scheduled monthly payment. The remaining balance shall be paid pursuant to ORS 656.216.

(12) Denial or approval of an application does not prevent another application by the worker for a lump sum payment of all or part of any remainder of the award, provided additional justification is submitted.

(13) Nothing in this rule applies to any lump sum payment included in a compromise settlement of a case that is pending before the Hearings Division of the Board.

Hist: Filed 6/23/66 as WCB Admin. Order 6-1966
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Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
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Renumbered from 436-54-250, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Reimbursement of Related Services Cost to a Worker

436-60-070 (1) The worker shall be notified at the time of claim acceptance that travel, prescriptions and other compensable injury related services paid by the worker will be reimbursed by the insurer upon request.

(2) For the purpose of this rule:

(a) The actual reasonable cost to a worker of related services resulting from a compensable injury shall be reimbursed within 60 days of the date of receipt by the insurer of a written request. The request shall be accompanied by sales slips, receipts or other evidence necessary to support the request.

(b) Meals, lodging, public transportation or use of a private vehicle required to seek medical services or collect compensation benefits when reimbursed at the then applicable rate of reimbursement to State of Oregon classified employees shall be deemed in compliance with this section. Reimbursement in excess of these rates will be allowed in those cases where special transportation or lodging is necessary and required.

(3) Requests for reimbursement of services not claim-related shall be returned to the injured worker within 60 days of the date of receipt by the insurer with an explanation of the reason for nonpayment.

Hist: Filed 10/23/69 as WCB Admin. Order 6-1969, eff. 10/29/69
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Consent to Suspension of Compensation or Reduction of Benefits Awarded the Worker

436-60-080 (1) The Compliance Division is responsible for issuing an order of consent to the suspension of compensation by an insurer under the following conditions:

(a) An order shall be issued if the worker, when requested by the Director or insurer, fails or refuses to submit to medical examination, or obstructs the same, at a time and from time to time at a place reasonably convenient for the worker. The compensation under the order shall be sus-

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pendent until the examination has taken place. No compensation shall be due or paid during such period.

(b) An order shall be issued for any period of time during which a worker fails or refuses to participate in a physical rehabilitation program. No compensation shall be due or paid during such period.

(c) An order shall be issued for any period of time during which a worker commits any insanitary or injurious practice which tends to either imperil or retard recovery. No compensation shall be due or paid during such period.

(d) An order shall be issued for any period of time during which a worker refuses to submit to such medical or surgical treatment as is reasonably essential to promote recovery. No compensation shall be due or paid during such period.

(2) The worker shall be provided the opportunity to dispute the matter of suspension of compensation prior to the issuance of an order by the Compliance Division.

(3) The Compliance Division may modify or set aside any order of consent to the suspension of compensation authorized before or after a request for hearing is filed.

(4) The Compliance Division has the authority to order payment of compensation, previously authorized suspended, in cases where incorrect information was provided at the time suspension occurred.

(5) The Compliance Division shall notify all interested parties of any order authorizing suspension, any modification of such order or the setting aside of such order.

(6) The Compliance Division may modify the period of suspension of compensation or deny a request for suspension of compensation because of an improper request.

(7) Continued payment of compensation to a worker, when an order of consent has been issued, shall not constitute failure to comply with this section on the part of the insurer, however, such continued payment shall not be recovered at a later date as an overpayment.

(8) The Evaluation Division may reduce, upon petition by the employer of the injured worker, the insurer or upon instructions by the Director, any benefits awarded the worker pursuant to ORS 656.268 when the worker has, without a valid reason, failed to follow medical advice of the attending physician or has failed to participate in or complete physical rehabilitation or vocational assistance programs prescribed for the worker pursuant to ORS Chapter 656 and WCD Administrative Rules. The benefits may be reduced by the amount the disability has been increased by the worker's failure to follow medical advice of the attending physician or to participate in or complete physical rehabilitation or vocational assistance programs.

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Request for Consent to Suspension of Compensation; Worker's Failure or Refusal to Submit to Medical Examination

436-60-090 (1) A worker shall submit to medical exam-

ination at a time and, from time to time, at a place reasonably convenient for the worker when requested to do so by the Director or insurer. However, no more than three separate medical examinations at different times, excluding examinations by consulting physicians may be requested during the life of the claim, except after notification to and authorization by the Director pursuant OAR 436-10.

(2) If an issue to be clarified by the scheduled examination is the necessity of continued treatment in the recovery process, and worker fails or refuses to be examined, further treatment can be suspended by order of the Compliance Division pending cooperation by the worker.

(3) The Director or insurer shall notify the worker, and the worker's attorney if represented, in writing at least 10 days prior to the examination to ensure receipt of the notice of the following:

(a) name of the examining physician or facility;

(b) the purpose of the examination;

(c) the date, time and place of the examination;

(d) the attending physician was notified of the examination;

(e) when required, the medical director has approved the examination;

(f) that the reasonable cost of public transportation or use of a private vehicle will be reimbursed and, that when necessary, reasonable cost of meals, lodging and related services will be reimbursed. Should an advance of these costs be necessary for attendance, a request for advancement shall be made in sufficient time to ensure a timely appearance; and

(g) in prominent or bold-face type the paragraph:

"ATTENDANCE OF THIS EXAMINATION IS MANDATORY. YOU ARE RESPONSIBLE FOR NOTIFYING US PRIOR TO THE DATE OF THE EXAMINATION OF ANY REASON WHY YOU CANNOT ATTEND AS SCHEDULED. FAILURE TO ATTEND THIS EXAMINATION, OR COOPERATE IN THE EXAMINATION, OR AN INVALID REASON FOR NOT ATTENDING SHALL RESULT IN SUSPENSION OF YOUR COMPENSATION BENEFITS PURSUANT TO ORS 656.325 and OAR 436-60."

(4) The Director or insurer upon receipt from the worker of a valid reason for not attending a scheduled examination or not completing an authorized program shall determine whether to reschedule same. If the examination is to be rescheduled, the Department or insurer shall immediately reschedule the worker for the requested examination as soon as possible in the future and consistent with the ability of the worker to submit to such examination.

(5) The Director or insurer shall verify by direct telephone communication with the examining physician, facility or with the staff of such physician or of such facility on the day scheduled for the examination that the worker did submit to the examination or that the worker failed to submit to examination.

(6) The insurer requesting consent to suspension of compensation because of a worker's failure or refusal to submit to a medical examination, or obstruction of same, shall apply to the Compliance Division. The application in letter form,

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with copy to the worker and the worker's attorney if represented, shall contain the following information:

(a) consent for suspension of compensation is requested pursuant to ORS 656.325 and OAR 436-60;

(b) what the worker was requested to submit to;

(c) the dates of all prior examinations scheduled by the insurer and the physician seen. If none, so state. If medical director's approval was obtained, provide a copy of the approval. If the current examination is by a consulting physician, written documentation of the physician's referral must be provided;

(d) that the worker failed or refused to be examined and any reason given by the worker why the examination could not be attended as scheduled. If a reason was provided but is considered invalid, explain;

(e) the date that verification of failure to attend was obtained from the examining physician, facility or their staff. Any delay in obtaining verification or in requesting consent for suspension of compensation may result in authorization being denied or the date of authorization be modified by the date of actual verification or the date the request is received by the Compliance Division;

(f) whether an examination will be rescheduled and, if so, the date, time and place of any rescheduled examination;

(g) any pertinent information that supports the request for suspension of compensation; and

(h) in prominent or bold-faced type the paragraph:

"NOTICE TO WORKER: IF YOU THINK THIS APPLICATION FOR SUSPENSION OF COMPENSATION IS NOT RIGHT YOU MAY RESPOND IN WRITING TO THE COMPLIANCE DIVISION, WORKERS' COMPENSATION DEPARTMENT, LABOR & INDUSTRIES BUILDING, SALEM, OREGON 97310. YOUR RESPONSE MUST BE RECEIVED BY THE DEPARTMENT WITHIN 10 WORKING DAYS OF THE DATE OF THIS NOTICE."

(7) The application to the Compliance Division shall be accompanied by a copy of the letter required in section (3) sent to the worker.

(8) The Compliance Division shall consider all documentation and correspondence submitted by the insurer and worker. If the evidence supports the application, the Compliance Division shall issue an order consenting to the suspension of compensation by the insurer from a date prescribed in this section and until such time as the worker has submitted to an examination scheduled by the Director or insurer.

(9) The Compliance Division order consenting to the suspension of compensation by an insurer shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS ORDER IS NOT RIGHT YOU MAY REQUEST A RECONSIDERATION OR A HEARING. REQUEST FOR RECONSIDERATION MUST BE IN WRITING AND SENT TO THE COMPLIANCE DIVISION, WORKERS' COMPENSATION DEPARTMENT, LABOR & INDUSTRIES BLDG., SALEM, OR 97310. HEARING REQUESTS MUST BE SENT TO THE HEARINGS DIVISION, WORKERS' COMPENSATION BOARD, 480 CHURCH STREET SE, SALEM, OR 97310."

(10) The Director or insurer shall verify when the worker has submitted to the rescheduled examination and shall immediately notify the Compliance Division, by letter, of the worker's attendance and that compensation has resumed as of the date of the examination.

(11) The insurer may request an administrative order of closure be issued by the Evaluation Division if the worker has made no effort to have compensation reinstated within 60 days after the Compliance Division has authorized suspension of compensation.

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Renumbered from 436-54-283, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Request for Consent to Suspension of Compensation; Worker's Failure to Participate in a Physical Rehabilitation Program

436-60-100 (1) A worker is required to participate in a physical rehabilitation program. A notice of such program issued by an insurer shall include a notice as described in section (2) informing the worker that failure to participate in the program shall result in suspension of compensation.

(2) The Director or insurer shall notify the worker, and the worker's attorney if represented, in writing at least 10 days prior to the start of a program of physical rehabilitation to ensure receipt of the notice of the following:

(a) purpose of the program;

(b) the date, time and place of the program;

(c) the attending physician was notified of the program;

(d) that the reasonable cost of public transportation or use of a private vehicle will be reimbursed and, that when necessary, reasonable cost of meals, lodging and related services will be reimbursed. Should an advance of these costs be necessary for attendance, a request for advancement shall be made in sufficient time to ensure a timely appearance; and

(e) in prominent or bold-face type the paragraph:

"ATTENDANCE AND PARTICIPATION IS REQUIRED IN A PROGRAM OF PHYSICAL REHABILITATION. FAILURE TO PARTICIPATE SHALL RESULT IN SUSPENSION OF YOUR COMPENSATION BENEFITS AND POSSIBLE REDUCTION OF ANY PERMANENT DISABILITY AWARDED PURSUANT TO ORS 656.325 and OAR 436-60."

(3) The Director or insurer upon receipt from the worker of a valid reason for not participating in a physical rehabilitation program shall determine whether to reschedule or continue same. If the program is to be rescheduled it shall be rescheduled as soon as possible in the future and consistent with the ability of the worker to participate in the program.

(4) The notice in section (2) will not be required to be repeated once the worker has agreed to participate in a physical rehabilitation program and then elects to withdraw after the specified date.

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(5) The insurer requesting consent to suspension of compensation because of a worker's failure or refusal to participate in a program of physical rehabilitation, or obstruction of same, shall apply to the Compliance Division. The application in letter form with copy to the worker, and the worker's attorney if represented, shall contain the following information:

(a) consent for suspension of compensation is requested pursuant to ORS 656.325 and OAR 436-60;

(b) what actions of the worker initiated the request for suspension of compensation;

(c) any reason given by the worker for failure or refusal to participate in the program, or obstruction of same;

(d) whether the program will be rescheduled and, if so, the date and place;

(e) any pertinent information that supports the request for suspension of compensation; and

(f) a notice, in prominent or bold-faced type, as follows:

"NOTICE TO WORKER: IF YOU THINK THIS APPLICATION FOR SUSPENSION OF COMPENSATION IS NOT RIGHT, YOU MAY RESPOND IN WRITING TO THE COMPLIANCE DIVISION, WORKERS' COMPENSATION DEPARTMENT, LABOR & INDUSTRIES BUILDING, SALEM, OREGON 97310. YOUR RESPONSE MUST BE RECEIVED BY THE DEPARTMENT WITHIN 10 WORKING DAYS OF THE DATE OF THIS NOTICE."

(6) The application to the Compliance Division shall be accompanied by a copy of the letter required in section (2) sent to the worker.

(7) The Compliance Division shall consider all documentation and correspondence submitted by the insurer and worker. If the evidence supports the application, the Compliance Division shall issue an order consenting to suspension of compensation by the insurer from a date prescribed in this section and until such time as the worker participates in a program or such program is determined inappropriate.

(8) The Compliance Division order consenting to the suspension of compensation by an insurer shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS ORDER IS NOT RIGHT YOU MAY REQUEST A RECONSIDERATION OR A HEARING. REQUEST FOR RECONSIDERATION MUST BE IN WRITING AND SENT TO THE COMPLIANCE DIVISION, WORKERS' COMPENSATION DEPARTMENT, LABOR & INDUSTRIES BLDG., SALEM, OR 97310. HEARINGS REQUESTS MUST BE SENT TO THE HEARINGS DIVISION, WORKERS' COMPENSATION BOARD, 480 CHURCH STREET SE, SALEM, OR 97310."

(9) The insurer shall notify the Compliance Division by letter when the worker participates in a program, and that compensation has resumed.

(10) The insurer may request an administrative order of closure be issued by the Evaluation Division if the worker has made no effort to have compensation reinstated within 60 days after the authorization of consent to the suspension of compensation.

Hist: Filed 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
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Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Request for Consent to Suspension of Compensation; Worker's Commission of Insanitary or Injurious Practices

436-60-110 (1) The insurer shall upon knowledge of a worker committing insanitary or injurious practices which tends to either imperil or retard recovery request in writing to the worker that such practices stop. The letter to the worker with copy to the worker's attorney if represented, shall explain:

(a) the insanitary or injurious practices being committed;

(b) that such practices are considered insanitary or injurious by the attending physician;

(c) that such practices stop by a specified date in the reasonable future and remain stopped; and

(d) in prominent or bold-face type the paragraph:

"COMMITTING OF SUCH INSANITARY OR INJURIOUS PRACTICES BEYOND THE DATE INDICATED SHALL RESULT IN SUSPENSION OF COMPENSATION BENEFITS AND POSSIBLE REDUCTION OF ANY PERMANENT DISABILITY AWARDED PURSUANT TO ORS 656.325 AND OAR 436-60."

(2) The insurer shall verify on the specified date whether the worker did or did not stop the insanitary or injurious practices and, if stopped, periodically check to see that such practices remain stopped.

(3) The insurer will not be required to repeat the request in section (1) once the injured worker has been put on notice and again commits the same insanitary or injurious practices after the specified date.

(4) The insurer requesting consent to suspension of compensation because of a worker's failure to stop insanitary or injurious practices, shall apply to the Compliance Division. The application in letter form, with copy to the worker and the worker's attorney if represented, shall contain the following information:

(a) consent for suspension of compensation is requested pursuant to ORS 656.325 and OAR 436-60;

(b) explanation of the insanitary or injurious practice being committed by the worker;

(c) whether or not the attending physician considers the practices to be insanitary or injurious to the worker;

(d) that the worker continues the insanitary or injurious practices after the date specified in the letter to the worker;

(e) the date that failure by the worker to stop the practices was verified and with who or how verified. Any delay in obtaining verification or in requesting consent for suspension of compensation may result in authorization being denied or the date of authorization being modified by the date of actual verification or the date the request is received by the Compliance Division; and

(f) in prominent or bold-faced type the paragraph:

"NOTICE TO WORKER: IF YOU THINK THIS APPLICATION FOR SUSPENSION OF COMPENSATION IS NOT RIGHT, YOU MAY RESPOND IN WRITING TO THE COMPLIANCE DIVISION, WORKERS' COMPENSATION DEPARTMENT, LABOR & INDUSTRIES BUILDING, SALEM, OREGON 97310. YOUR RESPONSE MUST BE RECEIVED BY THE DEPARTMENT WITHIN 10 WORKING DAYS OF THE DATE OF THIS NOTICE."

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ING TO THE COMPLIANCE DIVISION, WORKERS' COMPENSATION DEPARTMENT, LABOR & INDUSTRIES BUILDING, SALEM, OREGON 97310. YOUR RESPONSE MUST BE RECEIVED BY THE DEPARTMENT WITHIN 10 WORKING DAYS OF THE DATE OF THIS NOTICE."

(5) The application to the Compliance Division shall be accompanied by a copy of the letter required in section (1) sent to the worker.

(6) The Compliance Division shall consult with the Medical Director to review whether the practices are insanitary or injurious to the worker's recovery.

(7) The Compliance Division shall issue an order consenting to the suspension of compensation by an insurer for any period of time during which a worker commits any insanitary or injurious practice which tends to either imperil or retard recovery. The consent to suspension of compensation shall continue until the date the worker has, in fact, demonstrated termination of such practices to the insurer and no compensation shall be due or paid during such period.

(8) The Compliance Division order consenting to the suspension of compensation by an insurer shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS ORDER IS NOT RIGHT YOU MAY REQUEST A RECONSIDERATION OR A HEARING. REQUEST FOR RECONSIDERATION MUST BE IN WRITING AND SENT TO THE COMPLIANCE DIVISION, WORKERS' COMPENSATION DEPARTMENT, LABOR & INDUSTRIES BLDG., SALEM, OR 97310. HEARING REQUESTS MUST BE SENT TO THE HEARINGS DIVISION, WORKERS' COMPENSATION BOARD, 480 CHURCH STREET SE, SALEM, OR 97310."

(9) The insurer shall continually monitor the claim to ascertain when the worker has, in fact, stopped committing the insanitary or injurious practices. When it is established that the practices have stopped payment of compensation benefits shall commence effective on that date and the insurer shall immediately notify the Compliance Division by letter of the date of resumption.

(10) The insurer may request an administrative order of closure be issued by the Evaluation Division if the worker has made no effort to have compensation reinstated within 60 days after the Compliance Division has authorized suspension of compensation.

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Request for Consent to Suspension of Compensation; Worker's Refusal to Submit to Medical or Surgical Treatment

436-60-120 (1) The insurer shall upon knowledge of worker refusing to submit to such medical or surgical treatment as is reasonably essential to promote recovery, request in writing to the worker that such treatment be obtained. The

letter to the worker, with copy to the worker's attorney if represented, shall explain:

(a) the need for the recommended medical or surgical treatment;

(b) that such treatment is considered reasonably essential to promote the worker's recovery;

(c) that notice of consent for such treatment be given to the insurer by a specified date in the reasonable future; and

(d) in prominent or bold-face type the paragraph:

"THE DECISION WHETHER TO RECEIVE MEDICAL OR SURGICAL TREATMENT CONSIDERED REASONABLY ESSENTIAL TO PROMOTE RECOVERY IS A DECISION OF THE INJURED WORKER. FAILURE, HOWEVER, TO GIVE CONSENT BY THE DATE INDICATED OR FAILURE TO ACTUALLY RECEIVE SUCH TREATMENT SHALL RESULT IN SUSPENSION OF YOUR COMPENSATION BENEFITS AND POSSIBLE REDUCTION OF ANY PERMANENT DISABILITY AWARDED PURSUANT TO ORS 656.325 and OAR 436-60."

(2) For the purpose of this section failure of the worker to remain under a doctor's care, seek reasonable periodic examinations or participate in a treatment regimen shall be considered failure or refusal to submit to medical treatment.

(3) The insurer shall verify on the specified date whether the worker did or did not give consent for the recommended medical or surgical treatment.

(4) The insurer will not be required to repeat the request in section (1) once the injured worker has given consent for the recommended medical or surgical treatment and then elects to withdraw the consent after the specified date.

(5) The insurer requesting consent to suspension of compensation because of a worker's refusal to submit to recommended medical or surgical treatment, shall apply to the Compliance Division. The application in letter form, with copy to the worker and the worker's attorney if represented, shall contain the following information:

(a) consent for suspension of compensation is requested pursuant to ORS 656.325 and OAR 436-60;

(b) explanation of the recommended medical or surgical treatment;

(c) whether or not the attending physician considers the treatment reasonably essential to promote the worker's recovery;

(d) that the worker has refused and continues to refuse to submit to the recommended treatment after the date specified in the letter to the worker;

(e) any reason given by the worker for refusing to submit to the recommended medical or surgical treatment;

(f) the date that failure by the worker to give consent for the treatment was verified and with who or how verified. Such verification is required to be made immediately and any delay can result in suspension of compensation not being authorized until the actual date of verification, the date the request is received by the Compliance Division, or not at all; and

(g) in prominent or bold-faced type the paragraph:

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"NOTICE TO WORKER: IF YOU THINK THIS APPLICATION FOR SUSPENSION OF COMPENSATION IS NOT RIGHT YOU MAY RESPOND IN WRITING TO THE COMPLIANCE DIVISION, WORKERS' COMPENSATION DEPARTMENT, LABOR & INDUSTRIES BUILDING, SALEM, OREGON 97310. YOUR RESPONSE MUST BE RECEIVED BY THE DEPARTMENT WITHIN 10 WORKING DAYS OF THE DATE OF THIS NOTICE."

(6) The insurer shall provide documentation to adequately demonstrate that the medical or surgical treatment is reasonably essential to promotion of the worker's recovery and that the need for such medical or surgical treatment has been fully explained to the worker by the physician recommending such treatment. Documentation should consist of doctor's reports, copies of correspondence, reports of consultation on the medical or surgical treatment recommended or any other written evidence which demonstrates the recommended treatment is reasonably essential.

(7) The application to the Compliance Division shall be accompanied by a copy of the letter required in section (1) sent to the worker.

(8) The Compliance Division shall consult with the Medical Director to review whether the recommended treatment is reasonably essential to promote the worker's recovery.

(9) The Compliance Division shall issue an order consenting to the suspension of compensation by an insurer for any period of time during which a worker refuses to submit to recommended medical or surgical treatment reasonably essential to promote recovery. The consent to suspension of compensation shall continue until the date the worker has, in fact, consented to the recommended medical or surgical treatment and no compensation shall be due or paid during such period. When the worker has established a pattern of noncooperation, the Compliance Division may require the worker to begin recommended treatment before compensation shall be restarted.

(10) The insurer shall continually monitor the claim to ascertain when the worker has, in fact, consented to the recommended medical or surgical treatment. When it is established that consent has been given, payment of compensation benefits shall commence effective on the date the consent was given and the insurer shall immediately notify the Compliance Division by letter of the date of resumption.

(11) The insurer may request an administrative order of closure be issued by the Evaluation Division if the worker has made no effort to have compensation reinstated within 60 days after the Compliance Division has authorized suspension of compensation.

(12) The Compliance Division order consenting to the suspension of compensation by an insurer shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS ORDER IS NOT RIGHT YOU MAY REQUEST A RECONSIDERATION OR A HEARING. REQUEST FOR RECONSIDERATION MUST BE IN WRITING AND SENT TO THE COMPLIANCE DIVISION, WORKERS' COMPENSATION DEPARTMENT, LABOR & INDUSTRIES BLDG., SALEM, OR 97310. HEARING REQUESTS MUST BE SENT TO THE HEAR-

INGS DIVISION, WORKERS' COMPENSATION BOARD, 480 CHURCH STREET SE, SALEM, OR 97310."

(13) When the suspension is not approved, the Compliance Division shall notify the insurer of the reason for denial.

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Petition for Reduction of Benefits; Worker's Failure to Follow Medical Advice or Participate in or Complete Physical Restoration or Vocational Rehabilitation Programs or Commission of Insanitary or Injurious Practices

436-60-130 (1) The Director or insurer which determines that a worker has failed to follow the medical advice of the attending physician or has committed an insanitary or injurious practice or has failed to participate in or complete physical restoration or vocational rehabilitation programs may petition for a reduction of benefits awarded the worker when determination is made pursuant to ORS 656.268.

(a) The petition for reduction of benefits will be sent to the Evaluation Division.

(b) The petition shall contain all pertinent facts necessary to support the action requested and shall be accompanied by documentation to adequately demonstrate the worker's commission of an insanitary or injurious practice or failure to follow the attending physician's medical advice or participate in or complete physical restoration or vocational rehabilitation programs. Documentation may consist of telephone memoranda, doctor's reports, copies of correspondence, investigative reports or any other written evidence of the worker's failure to cooperate.

(2) The Evaluation Division shall, in the absence of a petition from an employer or an insurer, reduce a worker's benefits when it comes to the attention of the Evaluation Division that the worker has committed an insanitary or injurious practice or failed to follow the medical advice of the attending physician or has failed to participate in or complete physical restoration or vocational rehabilitation programs. The Evaluation Division, if necessary, may require other information from the insurer to adequately demonstrate the worker's commission of an insanitary or injurious practice or failure to follow the attending physician's medical advice or participate in or complete physical restoration or vocational rehabilitation programs prescribed for the worker pursuant to ORS Chapter 656 and WCD Administrative Rules.

(3) The Evaluation Division shall, upon determination of the worker's claim pursuant to ORS 656.268 and after considering any petition for reduction of benefits as described in section (1) or under the provisions of section (2), reduce the benefits awarded by the amount the disability has been increased by the worker's commission of an insanitary or injurious practice or failure to follow medical advice from his attending physician or to participate in or complete physical restoration or vocational rehabilitation programs.

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Any reduction shall be demonstrated in the Determination Order by the amount of disability which would have been awarded and the amount of the award ultimately resulting from the worker's failure to cooperate.

Hist: Filed 12/11/70 as WCB Admin. Order 16-1970
Amended 4/27/78 as WCD Admin. Order 6-1978, eff. 4/27/78
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-287, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Acceptance or Denial of a Claim

436-60-140 (1) Written notice of acceptance or denial of a claim shall be furnished to the claimant by the insurer within 60 days after the employer has notice or knowledge of the claim.

(2) Any insurer who is delinquent in accepting or denying a claim beyond the statutory 60 days in excess of 5 percent of their total volume of reported claims during any quarter may receive a penalty assessed by the director.

(3) The notice of acceptance in compliance with ORS 656.262 and the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law shall:

(a) inform the worker whether the claim is considered disabling or nondisabling;

(b) inform the worker of hearing and aggravation rights concerning nondisabling injuries including the right to object to a decision that the injury is nondisabling by requesting a determination pursuant to ORS 656.268;

(c) inform the worker of employment reinstatement rights and responsibilities under ORS Chapter 659;

(d) inform the worker of assistance available to employers from the Workers' Reemployment Reserve under ORS 656.622; and

(e) inform the worker that expenses personally paid for claim related expenses up to a maximum established rate shall be reimbursed by the insurer when requested in writing and accompanied by sales slips, receipts, etc., for meals, lodging, transportation, prescriptions and other expenses.

(4) The notice of denial in compliance with the rules of Practice and Procedure for Contested Cases under the Worker' Compensation Law shall:

(a) specify the factual and legal reasons for denial; and

(b) inform the worker of hearing rights.

(5) The insurer shall send notice of the denial to each provider of medical services and health insurance when compensability of all, or any portion, of a claim for medical services is denied. When the compensability issue has been finally determined the insurer shall notify each affected medical service provider and each health insurance provider of the results of the determination, including the results of proceedings under ORS 656.289(4) and the amount of any settlement.

(6) The insurer shall or the employer may make payment of compensation due pursuant ORS 656.262 and 656.273 and continue until such time as the claim is denied, except where there is an issue concerning the timely filing of a notice

of accident as provided in ORS 656.265(4). The insurer shall report to the Compliance Division payments of compensation made by the employer as if the insurer had made the payment.

(7) Pending acceptance or denial of a claim, compensation payable to a worker or the worker's beneficiaries does not include the costs of medical benefits or burial expense.

Hist: Filed 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-300, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Timely Payment of Compensation

436-60-150 (1) Benefits shall be deemed paid when deposited in the U.S. Mail addressed to the last known address of the worker or beneficiary. Notice of the method and manner of such payment shall be provided as prescribed by the Director.

(2) The acceptable timeliness of first payment of time loss by the employer or insurer shall be no less than the previous fiscal year's average of the respective entities rounded to the nearest 5th percentage point, but in no event less than 80% for a guaranty contract insurer and 90% for a self-insured employer. An insurer falling below these norms during any quarter may receive a penalty assessed by the director.

(3) Timely payment of temporary disability benefit has been made when paid no later than the 14th day after:

(a) employer's notice or knowledge of the claim if temporary disability is immediate and payable;

(b) employer's notice or knowledge of temporary disability related to but subsequent to the injury, which is payable;

(c) start of vocational training, if a claim has previously been determined;

(d) date the subject employer, or their insurer, has notice or knowledge of medically verified inability to work due to an aggravation of the worker's condition;

(e) date of any determination or litigation order which orders temporary disability;

(f) date a claim has been referred by the Workers' Compensation Department to the insurer for processing pursuant ORS 656.029; or

(g) date a noncomplying employer claim has been referred by the Workers' Compensation Department to the SAIF Corporation.

(4) Continued temporary disability due shall be paid to within 7 days of the date of payment at least once each 14 days thereafter. The employer, when making payments as provided in OAR 436-60-020(1), may make subsequent payments of temporary disability concurrently with the normal payroll schedule of the employer, rather than in the regular 14-day intervals.

(5) Timely payment of permanent disability benefit has been made when paid no later than the 30th day after:

(a) date of determination order by the Workers' Compensation Department; or

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(b) date of any litigation order which orders permanent disability.

(6) Subsequent payments of permanent disability benefits are made in monthly sequence as earned. Adjustments to monthly payment dates may be made by the insurer, but the worker shall be advised of the adjustment, and no payment period shall exceed one month.

(7) Timely payment of medical services or goods shall be deemed made when paid within 60 days of the receipt of statement. When there is a dispute over the amount of a bill or the necessity of services rendered, the insurer will pay the undisputed amount. Resolution of the disputed amount will be made in accordance with OAR 436-10.

(8) The insurer shall notify the claimant or provider of service in writing when compensation is paid of the specific purpose of the payment. When applicable, the notice shall indicate the time period for which the payment is made and the reimbursable expenses or other bills and charges covered. If any portion of the claim is denied the notice shall identify that portion of the claimed amounts that is not being paid.

Hist: Filed 11/14/66 as WCB Admin. Order 9-1966
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-310, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Use of Sight Draft to Pay Compensation Prohibited

436-60-160 A sight draft shall not be used to make payment of any benefits due a worker or beneficiary under ORS Chapter 656. Such benefits include temporary disability, permanent disability and reimbursement of costs paid directly by the worker.

Hist: Filed 12/19/75 as WCB Admin. Order 18/1975, eff. 1/1/76
Amended 4/27/78 as WCD Admin. Order 6-1978, eff. 4/27/78
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-315, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Recovery of Overpayment of Benefits

436-60-170 (1) Insurers may recover overpayment of benefits paid to a worker through the procedure specified by ORS 656.268(4).

(2) Recovery of overpayment by the insurer shall be explained in written form to the worker, and the worker's attorney if represented, or to the dependent(s) of the worker if a fatality, and include;

- (a) an explanation for the reason of overpayment;
- (b) the amount of the overpayment; and
- (c) the method of recovery of the overpayment.

Hist: Filed 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Amended 4/4/84 as WCD Admin. Order 3-1984, eff. 4/4/84
Renumbered from 436-54-320, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1, 86

Designation and Responsibility of a Paying Agent

436-60-180 (1) For the purpose of this rule:

(a) "Compensable injury" means an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death; an injury is accidental if the result is an accident, whether or not due to accidental means.

(b) "Responsibility" means liability under the law for the acceptance and processing of a compensable injury claim.

(2) The Compliance Division shall, by order, designate who shall pay a claim, if the claim is otherwise compensable, where there is an issue regarding:

(a) which of several subject employers is the true employer of a claimant worker;

(b) which of more than one insurer of a certain employer is responsible for payment of compensation to a worker;

(c) responsibility between two or more employers or their insurers involving payment of compensation for two or more accidental injuries; or

(d) joint employment by two or more employers.

(3) Own Motion claims are exempt from the provisions of this rule.

(4) Insurers with knowledge of a situation as defined in section (2) shall expedite the processing of the claim by immediate priority investigation to determine responsibility and whether the claim is otherwise a compensable injury claim.

(5) When a situation as described in section (2) is identified, the insurers shall immediately notify any other affected insurers of the situation. A copy of all medical reports or other pertinent material available relative to the injury shall be provided the other parties with the notification.

(6) Such notice received from another insurer shall be notice of a claim referred by the Director as provided by ORS 656.265(3).

(7) Upon determining an issue exists as to the responsibility for an otherwise compensable injury, an insurer shall request a paying agent be designated by application in letter form to the Compliance Division. The application shall contain the following information:

(a) designation of a paying agent is requested pursuant to ORS 656.307;

(b) acknowledgment that the injury to the worker is otherwise a compensable injury, but

(c) responsibility is an issue;

(d) identification of all parties and claims involved;

(e) acknowledgment that medical reports or other pertinent material available relative to the injury have been provided the other parties; and

(f) acknowledgment that notice has been provided the worker explaining the current actions being taken on the worker's claim.

(8) The Compliance Division shall not designate a paying agent where there remains an issue of whether the injury is a compensable injury claim or if the 60 days appeal period of a denial has expired without a request for a paying agent or a

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request for a hearing on the denial being received by the Department or Board.

(9) When notified by the Compliance Division that there is a reasonable doubt as to the status of the claim or intent of a denial, the insurers shall provide written clarification to the Compliance Division within 10 days of the date of the notification.

(10) The Compliance Division, upon receipt of a request for designation of a paying agent from the worker or someone on the worker's behalf, shall forward a copy of the request to the insurers involved.

(11) Insurers receiving notice from the Department of a worker's request for designation of a paying agent shall immediately process the request in accordance with sections (3) through (7).

(12) The Compliance Division, upon receipt of written acknowledgment from the insurers that the only issue is responsibility of an otherwise compensable injury claim, shall issue an order designating a paying agent pursuant to ORS 656.307. The insurer paying the lowest temporary disability rate, or if the same, the earliest claim shall be designated the paying agent. The designated paying agent shall make the first payment of temporary disability within 14 days after the date of the Compliance Division order.

(13) The Compliance Division, by copy of its order, shall refer the matter to the Hearings Division of the Workers' Compensation Board to set a hearing pursuant to ORS 656.307 to determine the issue of responsibility of benefits to the worker.

(14) The designated paying agent shall process the claim as an accepted claim through determination unless relieved of the responsibility by a hearing order. Compensation paid under the order shall include all benefits, including medical services, provided for a compensable injury to a subject worker or the worker's beneficiaries. The payment of temporary disability due shall be for periods subsequent to periods of disability already paid by any insurer.

Hist: Filed 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 4/29/80 as WCD Admin. Order 5-1980, eff. 4/29/80 (Temporary)
Amended 10/1/80 as WCD Admin. Order 7-1980, eff. 10/1/80
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-332, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Monetary Adjustments Among Parties and Workers' Compensation Department

436-60-190 (1) An order pursuant ORS 656.307 and OAR 436-60-180 shall apply only to the period prior to the order of a referee determining the responsible paying party. Payment of compensation made thereafter shall not be recovered from the Administrative Fund, except where the Director concludes payment was made after the date of the order of the referee, but before the order was received by the paying agent designated under OAR 436-60-180.

(2) When all litigation on the issue of responsibility is final, and the responsible paying party has been determined, the Compliance Division shall direct any necessary monetary adjustment between the parties involved which is not ordered or that cannot be voluntarily resolved by the parties.

Any failure to obtain reimbursement from an insurer for compensation paid as a result of an order pursuant OAR 436-60-180 shall be recovered from the Administrative Fund.

(3) When poor or untimely claim processing by the designated paying agent result in unnecessary cost to a claim, the Compliance Division may deny the right to reimbursement for the unnecessary cost from either the responsible paying agent or the Administrative Fund.

(4) When the responsibility issue is decided by a stipulated settlement, the monetary adjustment between the parties shall not be recovered from the Administrative Fund.

(5) When the compensability of a claim becomes an issue subsequent to the designation of a paying agent, the Compliance Division shall order termination of any further benefits due from the original order designating a paying agent. The designated paying agent will be responsible for ensuring the issue of responsibility continues to hearing as well as joining the issue of whether the claim is a compensable injury claim. Failure to seek a conclusion to the issue of responsibility by hearing shall preclude the designated paying agent from recovering from the Administrative Fund.

Hist: Filed 6/3/70 as WCB Admin. Order 5-1970
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 4/29/80 as WCD Admin. Order 5-1980, eff. 4/29/80 (Temporary)
Amended 10/1/80 as WCD Admin. Order 7-1980, eff. 10/1/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-334, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Assessment of Civil Penalties

436-60-200 (1) The Director through the Compliance Division and pursuant to ORS 656.745 may assess a civil penalty against an employer or insurer.

(2) An employer or insurer failing to meet the time frame requirements of Oregon Administrative Rules 436-60-010, 436-60-060, 436-60-070 and 436-60-180 may be assessed a civil penalty up to \$1,000.

(3) An insurer who willfully violates Oregon Administrative Rule 436-60-160 shall be assessed a civil penalty of \$1,000.

(4) Notwithstanding section (2) of this rule, an insurer who does not comply with the claims processing requirements of the statutes, and rules and orders of the Director relating thereto may be assessed a civil penalty of up to \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three month period.

(5) For the purpose of section (4), statutory claims processing requirements would include but not be limited to, ORS 656.210, ORS 656.212, ORS 656.228, ORS 656.234, ORS 656.236, ORS 656.245, ORS 656.262, ORS 656.263, ORS 656.264, ORS 656.265, ORS 656.268, ORS 656.273, ORS 656.307, ORS 656.325, ORS 656.331 and ORS 656.335.

(6) In arriving at the amount of penalty the Compliance Division may, but is not limited to, consider:

(a) the ratio of the volume of violations to the volume of claims reported, or

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(b) the ratio of the volume of violations to the average volume of violations for all insurers or self-insured employers, and

(c) prior performance in meeting the requirements as outlined in this section.

(7) When a penalty, based upon ratios, is appropriate and the volume to which the volume of errors are compared is 10 or less, the Compliance Division shall assess no more than \$200 regardless of the percentage of error. When, however, the volume exceeds 10 the Compliance Division will assess a penalty of \$25 per percentage point over the acceptable level or \$200 whichever is greater.

Hist: Filed 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-981, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86

Issuance/Service of Penalty Orders

436-60-210 (1) When a penalty is assessed as provided by OAR 436-60-200, the Compliance Division shall cause an order, with a notice of the rights provided under ORS 656.740, to be served on the party. If the party requests a hearing on the proposed assessment, the Compliance Division shall furnish the Department of Justice with pertinent records in the matter as requested.

(2) The Compliance Division shall serve the Order:

(a) by delivering a copy of the Order to the party in the manner provided by ORCP 7D.(3); or

(b) by sending a copy of the Order to the party by certified mail with return receipt requested.

Hist: Filed 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84
Renumbered from 436-54-983, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86



BEFORE THE DIRECTOR OF THE
WORKERS' COMPENSATION DEPARTMENT
OF THE STATE OF OREGON

In the Matter of the Amendment of
OAR Chapter 436, Workers' Compensation
Department, Division 60, Rules Governing
Claims Administration

) CITATION OF STATUTORY AUTHORITY,
) STATEMENT OF NEED, PRINCIPAL
) DOCUMENTS RELIED UPON, AND
) STATEMENT OF FISCAL IMPACT

1. Citation of Statutory Authority. The Statutory Authority for promulgation of these rules is ORS 656.210(2), 656.264, 656.265(6), 656.325, 656.726(3)(a), 656.331 and 656.335.
2. Need for Rules. The need for such rules is to govern the provisions of claims administration in accordance with existing law and statutory amendments passed by the 1985 Legislature.
3. Principal Documents Relied Upon. The commands of the statutes above referenced create the need for these rules. 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.

The economic effect of promulgating these rules should result in savings to large and small employers within the workers' compensation system. The actual amount cannot be determined, but it could be considerable.

DATED THIS 12th DAY OF DECEMBER, 1985.

Workers' Compensation Department



William J. Brown, Director

