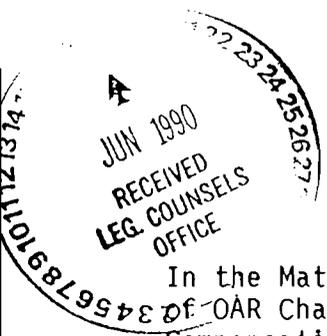


RECEIVED

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

JUN 18 4 39 PM '90

BARBARA COLLIERIS
SECRETARY OF STATE



In the Matter of the Amendment)
of OAR Chapter 436, Workers')
Compensation Division, Division 60,)
Claims Administration; Rule 001, 002,)
003, 005, 008, 010, 015, 020, 030,)
040, 045, 050, 080, 090, 095, 100,)
110, 120, 130, 140, 145, 150, 155,)
170 and 180)

ORDER OF ADOPTION
OF TEMPORARY RULES

The Director of the Department of Insurance and Finance, pursuant to the rule making authority in ORS 656.726(3); and in accordance with the procedure provided by ORS 183.335, amends OAR 436, Workers' Compensation Division, Division 60, Claims Administration. The amendments are being adopted by Temporary Rule, as provided by ORS 183.335(5) and (6), without prior notice.

Statement of Findings: I conclude that failure to act promptly will result in serious prejudice to the public interest.

On May 7, 1990, during a Special Session the Legislature enacted Senate Bills 1197 which made several changes in the Workers' Compensation Law. Some of the major changes in the law relate to or affect matters concerning safety and health, employer coverage, compensability, claims processing procedures, medical services, disability determination, dispute resolutions, disbursements from the Retroactive, Reopened Claims, Handicapped Workers' and Reemployment Assistance Reserves. The changes also create new provisions relating to the disposition of claims, employer responsibility, certification of claims examiners and the formation of Managed Care Organizations.

These changes in the law become effective either on May 7, 1990 or July 1, 1990 and, where so provided, will apply to all claims which exist or arise on or after July 1, 1990. Immediate action is necessary to permit timely implementation of the programs or modifications of programs prescribed in the legislation. Also, the immediate adoption of these rules will assure that all parties involved in the workers' compensation system are aware of how the changes will affect them, as well as minimize disruption or confusion in the delivery of benefits to injured workers.

IT IS THEREFORE ORDERED:

(1) OAR Chapter 436, Division 60, as set forth in Exhibit "A", attached hereto, certified a true copy and hereby made a part of this Order, is temporarily adopted effective July 1, 1990.

(2) A certified true copy of the Order of Adoption and these Rules, Exhibit "A", with Exhibit "B" consisting of the Citation of Statutory Authority, Statement of Need and Documents Relied Upon, hereby made a part of this Order, be filed with the Secretary of State.

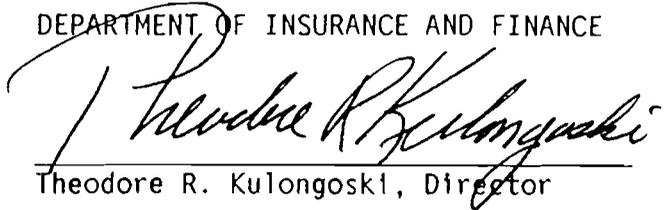
RECEIVED

JUN 18 4 39 PM '90

(3) A copy of the Rules and the attached Exhibit "B" be filed with the Legislative Counsel, pursuant to the provision of ORS 183.715 with the Secretary of State after filing with the Secretary of State.

Dated this 18th day of June, 1990.

DEPARTMENT OF INSURANCE AND FINANCE


Theodore R. Kulongoski, Director

Distribution: A through N
P through AA;
Plus CC and LL

EXHIBIT "A"

CHAPTER 436
DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
DIVISION 60, CLAIMS ADMINISTRATION

TABLE OF CONTENTS

436-60-001	Authority for Rules	3
436-60-002	Purpose	3
436-60-003	Applicability of Rules	3
436-60-005	Definitions	4
436-60-006	Administration of Rules	6
436-60-008	Administrative Review	6
436-60-009	Access to Department of Insurance and Finance Workers' Compensation Claim File Records	7
436-60-010	Reporting Requirements	8
436-60-015	Notice to Worker's Attorney	9
436-60-020	Payment of Temporary Total Disability Compensation	9
436-60-030	Payment of Temporary Partial Disability Compensation	13
436-60-040	Payment of Permanent Partial Disability Compensation	14
<u>436-60-045</u>	<u>Payment of Compensation during Worker Incarceration</u>	<u>15</u>
436-60-050	Payment of Medical Services; Choice of Attending Physician	15
436-60-055	Payment of Medical Services on Nondisabling Claims; Employer/Insurer Responsibility	16
436-60-060	Lump Sum Payment of Permanent Partial Disability Awards	18
436-60-065	Payments to Aliens Residing Outside of United States	20
436-60-070	Reimbursement of Related Services Costs	20
436-60-085	Suspension of Compensation and Reduction of Benefits	20

436-60-095	Medical Examinations; Suspension of Compensation and Notice to Worker	21
436-60-105	Suspension of Compensation for Insanitary or Injurious Practices, Refusal of Treatment or Failure to Participate in Rehabilitation	23
436-60-140	Acceptance or Denial of a Claim	25
<u>436-60-145</u>	<u>Disposition of a Claim</u>	<u>27</u>
436-60-150	Timely Payment of Compensation	28
<u>436-60-155</u>	<u>Additional Compensation for Untimely Processing</u>	<u>30</u>
436-60-160	Use of Sight Draft to Pay Compensation Prohibited	31
436-60-170	Recovery of Overpayment of Benefits	31
436-60-180	Designation and Responsibility of a Paying Agent	31
436-60-185	Arbitration Proceedings Cost Allocation	34
436-60-190	Monetary Adjustments Among Parties and Department of Insurance and Finance	34
436-60-200	Assessment of Civil Penalties	35
436-60-210	Issuance/Service of Penalty Orders	36

AUTHORITY FOR RULES

436-60-001 These rules are promulgated under the Director's authority contained in ORS 656.210(2), 656.236(1), 656.262(10) 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
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

PURPOSE

436-60-002 The purpose of these rules is to prescribe uniform standards by which insurers shall process workers' compensation claims pursuant to ORS 656.726(3); and, the terms and conditions under which insurers may enter into dispositions of compensable claims pursuant to ORS 656.236(1). The director has charged the Compliance Section of the Workers' Compensation Division with the administration and enforcement of the applicable statute, these rules and all bulletins pertaining to claims processing. Failure to process claims in accordance with these rules will subject insurers 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

APPLICABILITY OF RULES

436-60-003 These rules govern claims processing effective [January] July 1, 1990, and 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;
- (4) ORS 656.236. Disposition of compensable claims;

~~[(4)]~~ (5) ORS 656.245. Medical services and choice of physician;

~~[(5)]~~ (6) ORS 656.262. Responsibility for processing and payment of compensation, sight drafts, acceptance and denial and reporting of claims, and penalties for payment delays;

~~[(6)]~~ (7) ORS 656.264. Required reporting of information to the department;

[(7)] (8) ORS 656.265. Notices of accidents from workers;

[(8)] (9) ORS 656.268. Insurer claim closures;

[(9)] (10) ORS 656.307. Determination of responsibility for compensation payments;

[(10)] (11) ORS 656.325. Required medical examinations, suspension of compensation, injurious practices, claimant's duty to reduce disability, and reduction of benefits for failure to participate in rehabilitation;

[(11)] (12) ORS 656.331. Notice to worker's attorney; and,

[(12)] (13) ORS 656.726(3). The department's 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

DEFINITIONS

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

(1) "Aggravation" means a medically verified worsening of a condition arising from an industrial injury to the worker since the last award or arrangement of compensation for that injury as defined in ORS 656.273. A claim for aggravation requires written verification from an attending physician of a worsened condition, supported by objective findings.

(2) "Attending Physician" means [the] a doctor or physician as defined in ORS 656.005(12) who accepts primary responsibility for the treatment of a worker's compensable injury.

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

(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" means the Compliance Section of the Workers' Compensation Division of the Department of Insurance and Finance.

(6) "Department" means the Department of Insurance and Finance.

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

(8) "Director" means the Director of the Department of Insurance and Finance or the director's delegate.

(9) "Disposition" or "claim disposition" means the written agreement executed by all parties in which a claimant agrees to release rights, or agrees to release an insurer or self-insured employer from obligations, under ORS 656.001 to 656.794, except for medical services, in an accepted claim. The term "compromise and release" has the same meaning.

[(9)] (10) "Division" means the Workers' Compensation Division of the Department of Insurance and Finance.

[(10)] (11) "Employer" means a subject employer as defined in ORS 656.023.

[(11)] (12) "Employment on call" means sporadic, unscheduled employment at the call of an employer without recourse if the worker is unavailable.

[(12)] (13) "Employment through union hall" means workers who report to union halls for job placement.

[(13)] (14) "Evaluation" means the Evaluation Section of the Workers' Compensation Division of the Department of Insurance and Finance.

[(14)] (15) "Health insurance," as defined under ORS 731.162, means all insurance against bodily injury, illness or disability, and the resultant expenses, except for workers' compensation coverage.

[(15)] (16) "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 which has been certified under ORS 656.430 that it meets the qualifications of a self-insured employer under ORS 656.407.

[(16)] (17) "Loss of earning power" means the difference between a worker's wage earnings from the employment at the time of injury and the wage earnings available from any kind of work approved by the attending physician prior to claim determination, whether or not the worker accepts the work.

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

[(18)] (19) "Medical Director" means the Medical Director of the Workers' Compensation Division.

[(19)] (20) "Party" means a claimant for compensation, the employer of the claimant at the time of injury and the insurer of such employer.

[(20)] (21) "Paying Agent" means the insurer responsible for paying compensation for a compensable injury.

[(21)] (22) "Physical rehabilitation program" means any disability prevention services which include physical restoration.

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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

ADMINISTRATION OF RULES

436-60-006 Any orders issued by the Division in carrying out the Director's authority to enforce ORS Chapter 656 and these rules 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

ADMINISTRATIVE REVIEW

436-60-008 (1) Any party as defined by ORS 656.005(20), including SAIF Corporation as a designated processing agent pursuant to ORS 656.054, aggrieved by an action taken pursuant to these rules [involving any matter concerning a claim] in which a worker's right to compensation or the amount thereof is directly in issue, 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] Law.

(2) Any party described in section (1) aggrieved by an action taken pursuant to these rules involving any matter[s] other than those [concerning a claim] described in section (1), may request [a hearing before] an informal administrative review [the Director]. The process for administrative review shall be as follows:

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within thirty (30) days of the action.

(b) The review shall be conducted by the administrator, or the administrator's designee. The administrator's decision on review will establish whether the decision is final or whether the aggrieved party may request a hearing before the director pursuant to ORS 183.310.

(c) Any request for a hearing before the director pursuant to section (2), regarding the administrator's decision, must be made within 30 days of the date of the decision or the decision becomes final.

[(3) Notwithstanding ORS 183.315(1), the issuance of orders under these rules, the conduct of hearings and the judicial review 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.]

(3) When the issue which caused the action or decision qualifies for a hearing before the director as a contested case, it shall be reviewed pursuant to ORS 183.310 through 183.550, as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies as a contested case, the process for review shall be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds and is received by the division within thirty (30) days of the action or from the date of mailing or other service of an order.

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

(c) Any order in a contested case issued by another person on behalf of the director is a proposed order subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within thirty (30) days of issuance of the proposed 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
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

ACCESS TO DEPARTMENT OF INSURANCE AND FINANCE WORKERS' COMPENSATION CLAIM FILE RECORDS

436-60-009 (1) The department rules on Access of Public Records, Fees for Record Search and Copies of Public Records are found in OAR 440-05.

(2) Any person has a right to inspect nonexempt public records. The statutory right to "inspect" encompasses a right to examine original records. It does not include a right to request blind searches for records not known to exist. Inspection of exempt public records shall require a release signed by the claimant.

(3) Pursuant to ORS 192.430 and OAR 440-05-015(1) the director, as custodian of public records, makes the following restrictions and precautions to protect the integrity of claim file records and prevent interference with the regular discharge of the department's duties. A request to inspect or obtain copies of claim records or information from claims records shall be in writing or in person, and shall include:

(a) The name, address and telephone number of the requester, unless the director prescribes otherwise;

(b) A specific identification of the needed public record, or the type and format of the needed information, if known; and

(c) The number of copies required.

(4) Insurers processing a claim and trying to determine the relationship between a claimant's past history of work injuries and the insurer's claim are exempt from making a written request. A request by telephone shall be accepted, but will require the claimant's social security number and insurer claim number in addition to information required in section (3).

(5) Payment of fees for access of records shall be made in advance unless later payment is approved by the director. Workers and insurers of record, or their representatives, shall receive a first copy of any document free and additional copies at rates contained in OAR 440-05.

Hist: Filed 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

REPORTING REQUIREMENTS

436-60-010 (1) A subject employer shall accept notice of a claim for workers' compensation benefits from an injured worker or the worker's representative. Employers, except self-insured employers, shall report the claim to their insurers no later than five days after notice or knowledge of any claim or accident which may result in a compensable injury.

(2) If an injured worker requires only first aid without medical services and is otherwise not entitled to compensation, no notice need be given the insurer. The employer shall maintain records showing the name of the worker, the date, nature of the injury and treatment for one year. These 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 normally provided by a licensed person, regardless of who provides it, or where it is provided.

(3) The director may assess a civil penalty against an employer delinquent in reporting claims to its insurer in excess of 10 percent of the employer's total claims during any quarter.

(4) An employer intentionally or repeatedly paying compensation in lieu of reporting to its insurer claims or accidents which may result in a compensable injury claim may be assessed a penalty by the Director.

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

(6) The director may issue a civil penalty against any insurer delinquent in reporting or in submitting Forms 801, 1502, 1503 or 1644 with a late or error ratio of ten percent during any quarter.

(7) Insurers are required to report detailed medical service and billing data to the department as specified by the director. Reporting will be in the form and format prescribed 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

NOTICE TO WORKER'S ATTORNEY

436-60-015 (1) When an injured worker's attorney has given written notice of representation the Director or insurer shall give prior or simultaneous written notice to the worker's attorney:

(a) When requesting the worker to submit to an independent medical examination; or

(b) When contacting the worker in regards to any matter which may result in denial, reduction or termination of the worker's benefits.

(c) When contacting the worker in regards to any matter relating to disposition of a claim.

(2) The director shall assess a civil penalty against an insurer who intentionally or repeatedly fails to give notice as required under this rule.

Hist: Filed 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION

436-60-020 (1) An employer may pay compensation under ORS 656.262(4). Making such payments does not constitute a waiver or transfer of the insurer's duty to determine the worker's entitlement to benefits, or responsibility for the claim to ensure timely benefit payments. The employer shall provide adequate payment documentation as the insurer may require to meet its responsibilities.

(2) No compensation is due for temporary total disability suffered during the first three calendar days after the worker leaves work as a result of a compensable injury, unless the total disability is continuous for a period of 14 days or the worker is an inpatient in a hospital within the first period of time loss.

(a) The three day waiting period is three consecutive calendar days beginning with the day the worker first loses time from work as a result of the compensable injury.

(b) If the worker leaves work but returns and completes the work shift, that day shall not be considered the first day of the three day waiting period.

(c) If the worker leaves work and does not complete the work shift, that day shall be considered the first day of the three day waiting period.

(d) If the worker leaves work and does not complete the work shift, but returns to any type of work within 14 days of leaving work, no compensation is due for the three day waiting period.

(3) No compensation is due and payable for any period of time where the insurer has requested from the worker's attending physician verification of the worker's ability to work and the physician cannot verify it, unless the worker has been unable to receive treatment for reasons beyond the worker's control.

(4) An insurer may suspend temporary disability without authorization from Compliance pursuant to ORS 656.262(4)(c) when all of the following circumstances apply:

(a) The worker has missed a regularly scheduled appointment with the attending physician:

(b) The insurer has sent a certified letter to the worker, at least 10 days in advance of a rescheduled appointment, stating that the appointment has been rescheduled with the worker's attending physician; stating the time and date of the appointment; and giving the following notice:

YOU MUST ATTEND THIS APPOINTMENT. IF THERE IS ANY REASON YOU CANNOT ATTEND, YOU MUST TELL US BEFORE THE DATE OF THE APPOINTMENT. IF YOU DO NOT ATTEND, AND DO NOT HAVE A GOOD REASON FOR NOT ATTENDING, YOUR TEMPORARY DISABILITY BENEFITS WILL BE SUSPENDED WITHOUT FURTHER NOTICE, AS PROVIDED BY ORS 656.262(4)(c).

(c) The insurer verifies that the worker has missed the rescheduled appointment:

(d) The insurer sends a letter to the worker giving the date of the regularly scheduled appointment that was missed, the date of the rescheduled appointment that was missed, the date of the missed rescheduled appointment being the day benefits are suspended, and the following notice:

SINCE YOU MISSED A REGULAR APPOINTMENT WITH YOUR DOCTOR, WE ARRANGED A RESCHEDULED APPOINTMENT. WE NOTIFIED YOU OF THE RESCHEDULED APPOINTMENT BY CERTIFIED MAIL AND WARNED YOU THAT YOUR BENEFITS WOULD BE SUSPENDED IF YOU FAILED TO ATTEND. SINCE YOU FAILED TO ATTEND THE RESCHEDULED APPOINTMENT WITHOUT PROVIDING A GOOD REASON, YOUR TEMPORARY DISABILITY BENEFITS HAVE BEEN SUSPENDED. IN ORDER TO RESUME YOUR BENEFITS, YOU MUST ATTEND A RESCHEDULED APPOINTMENT WITH YOUR DOCTOR.

[(3)] (5) When a worker with an accepted disabling compensable injury who has not been determined medically stationary is required to leave work for any single period of four hours or more to receive medical consultation, examination or treatment with regard to the compensable injury, the worker shall receive temporary disability benefits calculated pursuant to ORS 656.212 for the period during which the worker is absent. However, such benefits are not payable if the employer pays wages for the period of absence.

[(4)] (6) When concurrent temporary disability is due the worker as a result of two or more claims, the insurers may petition Compliance 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 Compliance. Compliance may order one of the insurers to pay the entire amount of temporary disability due or make a pro rata distribution between two or more of the insurers.

[(5)] (7) When concurrent temporary disability is due the worker as a result of two or more claims involving the same worker, the same employer and the same insurer, the insurer may make a pro rata distribution of compensation due under ORS 656.210 without an order by Compliance. The worker shall receive compensation at the highest temporary disability rate of the claims involved.

[(6)] (8) 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. Employers shall not continue to pay wages in lieu of statutory temporary total disability payments due. However, the employer is not precluded from supplementing the amount of temporary total disability paid the worker. Employers shall separately identify workers' compensation benefits from other payments and shall not have payroll deductions withheld from such benefits.

[(7)] (9) Computation of the rate of compensation for workers with minimal earnings and entitled to the lesser amount of 90 percent of wages a week or the amount of \$50.00 is as follows:

(a) Ninety percent of weekly wages when the worker's wages are \$55.56 or less per week;

(b) Fifty dollars when the worker's weekly wage falls between \$55.56 and \$75.00 per week; and

(c) Sixty-six and two-thirds percent of weekly wages when the worker's wages are \$75.00 or more per week.

[(8)] (10) The rate of compensation for workers employed with unscheduled, irregular or no earnings shall be computed on the wages determined by this section. The insurer shall resolve situations not covered by ORS 656.210 or this section by contacting the employer and worker to determine a reasonable wage.

(a) For workers employed on call, paid by piece work or with varying hours, shifts or wages, insurers shall use the worker's average weekly earnings for the previous 26 weeks unless periods of extended gaps exist. When such gaps exist, insurers shall use no less than the previous four weeks of employment to arrive at an average. For workers employed less than four weeks, or where extended gaps exist within the four weeks, insurers shall use the intent at time of hire as confirmed by the employer and the worker.

(b) For workers employed through union hall call board insurers shall compute the rate of compensation on the basis of a five-day work week, regardless of the number of days actually worked per week.

(c) For workers paid salary plus considerations (rent, utilities, food, etc.) insurers shall compute the rate on salary only if the considerations continue. If the considerations do not continue, the insurer shall use salary plus a reasonable value of those considerations.

(d) For workers employed in two jobs with two employers insurers shall use only the wage of the job on which the worker was injured if the worker is unable to work either job. If the worker is able to return to the job where the injury occurred, no benefit is due. If the worker is able to return to the other job, temporary partial disability is due based on the combined earnings of both jobs.

(e) For workers employed where tips are a part of the worker's earnings insurers shall use the wages actually paid, plus the 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.

(f) For workers employed one or two days per week insurers shall use the worker's daily wage times three to arrive at a weekly wage (ORS 656.210).

(g) Insurers shall consider overtime hours only when the worker worked overtime on a regular basis. Overtime earnings shall be included in the computation at the overtime rate. For example, if the worker worked one day of overtime per month, use 40 hours at regular wage and two hours at the overtime wage to compute the weekly rate. If overtime varies in hours worked per day or week, use the averaging method described in subsection (a). One-half day or more will be considered a full day when determining the number of days worked per week.

(h) Bonus pay shall be considered only when provided as part of the written or verbal employment contract as a means to increase the worker's wages. End-of-the-year and other one time bonuses paid at the employer's discretion shall not be included in the calculation of compensation.

(i) Incentive pay shall be considered only when regularly earned. If incentive pay earnings vary, use the averaging method described in subsection (a).

(j) Covered workers with no wage earnings such as volunteers, jail inmates, etc., shall have their benefits computed on the same assumed wage as that upon which the employer's premium is based.

(k) For workers paid by commission only or commission plus wages insurers shall use the worker's average commission earnings for previous 26 weeks, if available. For workers without 26 weeks of earnings, insurers shall use the assumed wage on which premium is based. Any regular wage in addition to commission shall be included in the wage from which compensation is computed.

(l) For workers who are sole proprietors, partners or officers of corporations insurers shall use the assumed wage on which the employer's premium is based.

(m) For school teachers or workers paid in a like manner, insurers shall use the worker's annual salary divided by 52 weeks to arrive at weekly wage. Temporary disability benefits shall extend over the calendar year.

[(9)] (11) Compensation for the initial work day lost shall be paid for one-half 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.

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

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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

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 post-injury wage earnings from any kind of work; from
- (b) The wages earned from the workers' job at the time of 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) Temporary disability payments are not due if post-injury wages equal or are greater than the wages earned at the time of injury.

(3) An insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation from the date an injured worker begins any kind of wage earning employment prior to claim determination.

(4) Temporary partial disability compensation paid under section (3) shall continue until:

- (a) The attending physician verifies that the worker cannot continue working and is again temporarily totally disabled; or
- (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 paying temporary partial disability compensation under section (1) when an injured worker refuses or fails to begin 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 physical tasks to be performed by the injured worker;

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

(c) The employer has provided the injured worker with a written offer of employment which states the beginning time, date and place; the duration of the job, if known; the wages; an accurate description of the physical requirements of the job and that the attending physician has found the job to be within the worker's capabilities.

(6) Temporary partial disability compensation paid under section (5) shall continue until:

(a) The attending physician verifies the worker can no longer perform the job and is again temporarily totally disabled; or

(b) The job no longer exists or the job offer is withdrawn. (Discharging the worker for violation of normal employment standards is not withdrawal of a job offer); or

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

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

(7) The insurer shall provide the injured worker and the worker's attorney a written notice of the reasons for changes in the compensation rate, and the method of computation, whenever a change is made from temporary total disability compensation to temporary partial disability compensation, and vice versa. The insurer shall send Compliance a copy of the notice 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

PAYMENT OF PERMANENT PARTIAL DISABILITY COMPENSATION

436-60-040 (1) If 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, notice of closure, 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 temporary disability benefits.

(3) The insurer shall stop temporary disability compensation payments and resume any suspended award payments upon the worker's completion or the ending of the training, unless the worker is not then medically stationary. If no award payment remains due, temporary disability compensation payments shall continue pending a subsequent determination order by Evaluation. However, if the worker has returned to work, the insurer may reevaluate and close the claim without the issuance of a determination order by Evaluation.

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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

PAYMENT OF COMPENSATION DURING WORKER INCARCERATION

436-60-045 (1) A worker is not eligible to receive temporary total or temporary partial disability compensation during incarceration. All other compensation benefits shall be provided the worker the same as if the worker was not incarcerated. For the purpose of these rules:

(a) A worker is incarcerated only when imprisoned following conviction for a crime; or

(b) A worker is not considered incarcerated if the worker is on parole or work release status.

(2) Temporary disability compensation, if due and payable, shall be paid the worker within 14 days of the date the insurer becomes aware the worker is no longer incarcerated.

(3) A worker who is incarcerated shall have the same right to claim closure under ORS 656.268 as a worker who is not incarcerated. Any permanent disability awarded shall be paid the same as if the worker was not incarcerated.

Hist: Filed 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

PAYMENT OF MEDICAL SERVICES; CHOICE OF ATTENDING PHYSICIAN

436-60-050 [(1) Only the insurer shall pay for medical services relating to a compensable injury claim, except as provided by OAR 436-60-055. Medical services include but are not limited to medical, surgical, hospital, nursing, ambulances, drugs, medicine, crutches, prosthetic appliances, braces and supports and physical rehabilitation.]

[(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, including, but not limited to hearing aids and eye glasses. If such a prosthetic appliance is damaged when in use at the time of and in the course of a compensable injury, the cost of repair or replacement is a compensable medical expense, regardless whether the worker actually received a physical injury.]

[(3) Claims for medical services referred to under ORS 656.245 or this rule shall be submitted to the insurer regardless whether aggravation rights under ORS 656.273 have expired. If the insurer denies the claim for medical services, the worker may request a 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 may be limited to a city, metropolitan area, or a reasonable distance from the nearest city or metropolitan area in which the worker resides and where a physician providing like services is available. However, 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 limits reimbursement under this section, it shall provide the worker a written explanation and a list of physicians who provide similar services within a reasonable traveling distance for the worker. The insurer shall inform the worker that treatment may continue with any attending physician of the worker's choice within the State of Oregon, and that reimbursement of transportation costs may 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.]

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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Repealed 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

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
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

LUMP SUM PAYMENT OF PERMANENT PARTIAL DISABILITY AWARDS

436-60-060 (1) A lump sum payment of an award exceeding 64 degrees must have the approval of Compliance. Such approval is also required where the value of the award, through periodic payments or offset, is reduced to 64 degrees or less. Insurers shall pay subsequent awards at or below 64 degrees as provided by ORS 656.230(2). Compliance may approve lump sum payment in an amount less than that requested by the worker. A lump sum payment of a permanent partial disability award ordered as a result of litigation does not require Compliance approval.

(2) For injuries occurring prior to August 9, 1983, insurers may 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, where the award does not exceed 64 degrees, the insurer shall pay the award in a lump sum.

(3) When the final payment would be less than the amount computed in accordance with ORS 656.216(1), the insurer may include that amount with the last full monthly payment of the award to the worker without Compliance's approval.

(4) A worker awarded permanent partial disability in excess of 64 degrees may apply to Compliance, through the insurer, for an order directing the paying agent to pay all or part of the unpaid award in a lump sum. Applications for lump sum awards are subject to the law in effect at the time of injury.

(5) The insurer shall submit the application to Compliance within 10 working days from the date the insurer receives the signed application from the worker.

(6) The application shall be in the form prescribed by the director and shall include the following paragraphs in bold face type:

"THE INSURER WAIVES ITS RIGHT TO APPEAL THE AWARD."

and

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

(7) Compliance will not approve an application for lump sum payment when the worker is actively enrolled and engaged in a vocational training program under OAR 436-120; has temporarily withdrawn from such a program; or, the worker is involved in litigation affecting a permanent partial disability award.

(8) When Compliance approves an application it shall order the paying agency to pay the lump sum amount to the worker within 5 working days after receipt of the order.

(9) If the application is denied in whole or in part by Compliance, the worker may petition the director to reconsider the application within 15 days of receipt of the denial. The decision of the director upon reconsideration is final and not subject to further review.

(10) When a partial lump sum payment is approved, it shall be in addition to the regularly scheduled monthly payment. The remaining balance shall be paid pursuant to ORS 656.216.

(11) 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.

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

Hist: Filed 6/23/66 as WCB Admin. Order 6-1966
Amended 2/13/74 as WCB Admin. Order 5-1974, eff. 3/11/74
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 436-54-250, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

PAYMENTS TO ALIENS RESIDING OUTSIDE OF UNITED STATES

436-60-065 Pursuant to ORS 656.232 the director may award a lesser sum of compensation which, according to the conditions and costs of living in the place of residence of such beneficiary, will maintain the beneficiary in a like degree of comfort as a beneficiary of the same class residing in the United States and receiving the full compensation authorized by ORS Chapter 656. The director will determine the percentage rate of the Oregon benefit level which will apply for a given country. It shall be the responsibility of the insurer to ensure the beneficiary is an alien residing outside the United States. Should the beneficiary return to residence in the United States, benefits shall be adjusted accordingly.

Hist: Filed 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

REIMBURSEMENT OF RELATED SERVICES COSTS

436-60-070 (1) The insurer shall notify the worker at the time of claim acceptance that actual and reasonable costs for travel, prescriptions and other claim-related services paid by the worker will be reimbursed by the insurer upon request. The insurer may require reasonable documentation to support the request. The insurer shall reimburse the costs within 60 days of receiving the worker's written request and supporting documentation.

(2) Reimbursement of the costs of meals, lodging, public transportation and use of a private vehicle reimbursed at the rate of reimbursement for State of Oregon classified employees complies with this section. Reimbursement may exceed these rates where special transportation or lodging is needed.

(3) Denied requests for reimbursement shall be returned to the 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
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 436-54-270, May 1, 1985
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

SUSPENSION OF COMPENSATION AND REDUCTION OF BENEFITS

436-60-085 (1) Compliance will suspend compensation by order under conditions set forth in this rule. The worker shall have the opportunity to dispute the insurer's request for or proposal to suspend compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension when:

(a) The worker refuses or fails to submit to, or otherwise obstructs a medical examination reasonably requested by the insurer or the director. Compensation will be suspended until the examination has been completed. The person conducting the examination shall be the determiner of the conditions under which the examination will be conducted, including but not limited to

whether a video camera, tape recorder or third party may be present at the examination. The conditions of the examination shall be consistent with the normal practices of the examining person and in compliance with these rules. Compliance may determine whether special circumstances exist that would not warrant suspension of compensation for failure to attend or obstruction of the examination.

(b) The worker commits insanitary or injurious acts which imperil or retard recovery; refuses to submit to medical or surgical treatment reasonably required to promote recovery; or, fails or refuses to participate in a physical rehabilitation program.

(2) Compliance may also take the following actions in regards to the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where Compliance finds the suspension to have been made in error.

(3) The insurer may not later recover compensation it pays after receipt of an order suspending such payments.

(4) The director may reduce any benefits awarded the worker under ORS 656.268 when the worker has unreasonably failed to follow medical advice, or failed to participate in a physical rehabilitation or vocational assistance program prescribed for the worker under ORS chapter 656 and OAR chapter 436. Such benefits shall be reduced by the amount of the increased disability reasonably attributable to the worker's failure to cooperate.

Hist: Filed 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

MEDICAL EXAMINATIONS; SUSPENSION OF COMPENSATION AND NOTICE TO WORKER

436-60-095 (1) A worker shall submit to medical examinations reasonably requested by the insurer or the director. No more than three separate medical examinations may be requested by the insurer during each open period of a claim, except as provided under OAR 436-10. Examinations after the worker's claim is closed are subject to limitations in ORS 656.268(7). A claim for aggravation permits a new series of three medical examinations.

(2) The insurer or director shall notify the worker and the worker's attorney in writing of scheduled medical examinations at least 10 days prior to the examination. The notice shall contain the following:

(a) The name of the examiner or facility;

(b) The purpose and kind of examination;

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

(d) That the attending physician has been informed of the examination;

(e) If applicable, confirmation that 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 child care, meals, lodging and other related services will be reimbursed. A request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. 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;

(g) That an amount will be paid equivalent to net lost wages for the period during which it is necessary to be absent from work to attend the medical examination if benefits are not received under ORS 656.210(4) during the absence; and

(h) The following notice, in bold-faced and/or capital letters:

"YOU MUST ATTEND THIS EXAMINATION. IF THERE IS ANY REASON YOU CANNOT ATTEND, YOU MUST TELL US BEFORE THE DATE OF THE EXAMINATION. IF YOU FAIL TO ATTEND OR FAIL TO COOPERATE, OR DO NOT HAVE A GOOD REASON FOR NOT ATTENDING, YOUR COMPENSATION BENEFITS SHALL BE SUSPENDED AS REQUIRED BY THE WORKERS' COMPENSATION LAW AND RULES, ORS 656.325 AND OAR 436-60."

(3) Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Resources, Children's Services Division, comply with this rule.

(4) If the worker fails to attend or cooperate in a medical examination required to determine the nature or need for further treatment, without reasonable cause, any further treatment shall be suspended until the worker cooperates.

(5) The requesting party shall call the examining physician or facility on the day of the examination to confirm whether the worker participated. Any delay in obtaining confirmation 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 confirmation or the date the request is received by Compliance.

(6) The request for suspension shall be sent to Compliance. A copy of the request shall be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request shall include the following information:

(a) That the insurer requests suspension of benefits pursuant to ORS 656.325 and OAR 436-60-095;

(b) What specific actions of the worker prompted the request;

(c) The dates of any prior independent medical examinations for the current open period of the claim and the names of the examining physicians or facilities;

(d) A copy of any approvals given by the medical director;

(e) If the examination was to be performed by a consulting physician, a copy of the attending physician's referral;

(f) Any reasons given by the worker for failure to comply;

- (g) The date and with whom failure to comply was verified;
- (h) A copy of the letter required in section (2);
- (i) Any other information which supports the request; and
- (j) The following notice in bold-face and/or capital letters:

"NOTICE TO WORKER: IF YOU THINK THIS REQUEST TO SUSPEND YOUR COMPENSATION IS WRONG, YOU SHOULD IMMEDIATELY WRITE TO THE COMPLIANCE SECTION, WORKERS' COMPENSATION DIVISION, 21 LABOR & INDUSTRIES BUILDING, SALEM, OREGON 97310. YOUR LETTER MUST BE RECEIVED BY COMPLIANCE WITHIN 10 DAYS OF THE DATE OF THIS REQUEST. IF COMPLIANCE AUTHORIZES SUSPENSION OF YOUR COMPENSATION AND YOU DO NOT SUBMIT TO A MEDICAL EXAMINATION OF OUR CHOICE OR SHOW US A GOOD REASON WHY YOU CANNOT BE EXAMINED, WE WILL REQUEST THE WORKERS' COMPENSATION DIVISION TO CLOSE YOUR CLAIM."

(7) If Compliance consents to suspend compensation, the suspension shall be effective from the date determined in section (5) until the date the worker undergoes an examination scheduled by the insurer or director.

(8) The insurer shall assist the worker in meeting requirements necessary for the resumption of compensation payments. When the worker has undergone the examination, the insurer shall verify the worker's participation and reinstate compensation effective the date of the worker's compliance. The insurer shall immediately notify Compliance by letter of the date of resumption.

(9) If the worker makes no effort to reinstate compensation within 60 days of the date of the consent order, the insurer shall submit a request for an administrative order of closure to Evaluation.

(10) If Compliance denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial.

Hist: Filed 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

SUSPENSION OF COMPENSATION FOR INSANITARY OR INJURIOUS PRACTICES, REFUSAL OF TREATMENT OR FAILURE TO PARTICIPATE IN REHABILITATION

436-60-105 (1) The insurer shall demand in writing the worker immediately cease actions which imperil or retard recovery. Such actions include insanitary or injurious practices, refusing essential medical or surgical treatment, or failing to participate in a physical rehabilitation program. The written demand shall contain the following information, and a copy shall be sent simultaneously to the worker's attorney:

- (a) A description of the unacceptable actions;
- (b) Why such conduct is inappropriate;
- (c) An explanation of what the law requires of the worker and the date by which the inappropriate actions must stop; and,

(d) The appropriate notice of the consequences should the worker fail to correct the problem, in bold-face and/or capital letters:

"IF YOU CONTINUE TO DO INSANITARY OR INJURIOUS ACTS BEYOND THE DATE IN THIS LETTER, WE WILL REQUEST THE SUSPENSION OF YOUR WORKERS' COMPENSATION BENEFITS. IN ADDITION, YOU MAY ALSO HAVE ANY PERMANENT DISABILITY AWARD REDUCED IN ACCORDANCE WITH ORS 656.325 AND OAR 436-60."

or

"IT IS YOUR DECISION WHETHER TO RECEIVE MEDICAL OR SURGICAL TREATMENT NEEDED TO HELP YOU RECOVER FROM YOUR INJURY. HOWEVER, IF YOU FAIL TO CONSENT TO THIS TREATMENT, WHICH WE BELIEVE IS NEEDED TO HELP YOU RECOVER, WE WILL REQUEST THE SUSPENSION OF YOUR WORKERS' COMPENSATION BENEFITS. IN ADDITION, YOU MAY ALSO HAVE ANY PERMANENT DISABILITY AWARD REDUCED IN ACCORDANCE WITH ORS 656.325 AND OAR 436-60."

or

"YOU MUST ENTER PHYSICAL REHABILITATION IN ORDER TO RECOVER AS MUCH AS POSSIBLE FROM YOUR INJURY. IF YOU REFUSE TO PARTICIPATE, WE WILL REQUEST THE SUSPENSION OF YOUR WORKERS' COMPENSATION BENEFITS. IN ADDITION, YOU MAY ALSO HAVE ANY PERMANENT DISABILITY AWARD REDUCED IN ACCORDANCE WITH ORS 656.325 AND OAR 436-60."

(2) For the purposes of this rule, failure or refusal to accept medical treatment means the worker fails or refuses to remain under a physician's care or abide by a treatment regimen. A treatment regimen includes, but is not limited to a prescribed diet, exercise program, medication or other activity prescribed by the physician which is designed to help the worker reach maximum recovery and become medically stationary.

(3) The insurer shall verify whether the worker complied with the request for cooperation on the date specified in section (1). If the worker initially agrees to comply, or complies and then refuses or fails to continue doing so, the insurer is not required to send further notice before requesting suspension of compensation.

(4) The request for suspension shall be sent to Compliance. A copy of the request shall be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request shall include the following information:

(a) That the request for suspension is made in accordance with ORS 656.325 and OAR 436-60-105;

(b) A description of the actions of the worker which prompted the request, including whether such actions continue;

(c) Any reasons offered by the worker to explain the behavior;

(d) How, when and with whom the worker's failure or refusal was verified. Any delay in obtaining confirmation 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 confirmation or the date the request is received by Compliance;

- (e) A copy of the letter required in section (1);
- (f) Any other relevant information; and
- (g) The following notice in bold type and/or capital letters:

"NOTICE TO WORKER: IF YOU THINK THIS REQUEST TO SUSPEND YOUR COMPENSATION IS WRONG, YOU SHOULD IMMEDIATELY WRITE TO THE COMPLIANCE SECTION, WORKERS' COMPENSATION DIVISION, 21 LABOR & INDUSTRIES BUILDING, SALEM, OREGON 97310. YOUR LETTER MUST BE RECEIVED BY COMPLIANCE WITHIN 10 DAYS OF THE DATE OF THIS REQUEST. IF COMPLIANCE AUTHORIZES SUSPENSION OF YOUR COMPENSATION AND YOU DO NOT CORRECT YOUR UNACCEPTABLE ACTIONS OR SHOW US A GOOD REASON WHY THEY SHOULD BE CONSIDERED ACCEPTABLE, WE WILL REQUEST THE WORKERS' COMPENSATION DIVISION TO CLOSE YOUR CLAIM."

(5) If Compliance concurs with the request, it shall issue an order suspending compensation from a date established under section (4) until the worker complies with the insurer's request for cooperation. Where the worker is suspended for a pattern of noncooperation, Compliance may require the worker to demonstrate cooperation before restoring compensation.

(6) The insurer shall monitor the claim to determine if and when the worker complies with the insurer's requests. When cooperation resumes, payment of compensation shall resume effective the date cooperation was resumed. The insurer shall immediately notify Compliance by letter of the date of benefits resumption.

(7) The insurer shall make all reasonable efforts to assist the worker to restore benefits when the worker demonstrates the willingness to make such efforts.

(8) If the worker makes no effort to reinstate benefits within 60 days of the date of the consent order, the insurer shall submit a request for an administrative order of closure to Evaluation.

Hist: Filed 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

ACCEPTANCE OR DENIAL OF A CLAIM

436-60-140 (1) The insurer shall give the claimant written notice of acceptance or denial of a claim within [60] (90) days of the employer's notice or knowledge of the claim.

(2) The director may assess a penalty against any insurer delinquent in accepting or denying a claim beyond the [60] (90) days prescribed in ORS 656.262 in excess of 5 percent of their total volume of reported claims during any quarter.

(3) The notice of acceptance shall comply with ORS 656.262 and the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law. It shall [inform] specify to the worker:

(a) What conditions are compensable;

[(a)] (b) Whether the claim is disabling or nondisabling;

[(b)] (c) Of the Expedited Claim Service, 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 within one year of the date of injury;

[(c)] (d) Of the employment reinstatement rights and responsibilities under ORS Chapter 659;

[(d)] (e) Of assistance available to employers from the [Workers'] Reemployment Assistance Reserve under ORS 656.622; and

[(e)] (f) 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, or other reasonable written support, for meals, lodging, transportation, prescriptions and other related expenses.

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

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

(b) Inform the worker of the Expedited Claim Service and of the worker's right to a hearing under ORS 656.283.

(5) The insurer shall send notice of the denial to each provider of medical services and health insurance when compensability of any portion of a claim for medical services is denied. When compensability of the claim has been finally determined or when disposition of the claim has been made the insurer shall notify each affected [medical] service provider [and health insurance provider] of the results of the [that determination] disposition. The notification shall include the results of the proceedings under ORS 656.236 or 656.289(4) and the amount of any settlement.

(6) The insurer shall pay compensation due pursuant to ORS 656.262 and 656.273 until 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 employer may elect to pay compensation under this section in lieu of the insurer doing so. The insurer shall report to Compliance payments of compensation made by the employer as if the insurer had made the payment.

(7) Compensation payable to a worker or the worker's beneficiaries while a claim is pending acceptance or denial does not include the costs of medical benefits or burial.

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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

DISPOSITION OF A CLAIM

436-60-145 (1) Pursuant to ORS 656.236(1) the parties to a claim may dispose of any and all matters regarding the claim, except medical services, subject to the terms and conditions of this rule and OAR 438-09.

(2) The insurer or self-insurer shall have paid the claimant all benefits due and payable up to the date the disposition is sent to the claimant. For the purposes of this rule, "claimant" means an injured worker or any other person entitled to initiate or continue a claim for compensation.

(3) The insurer shall provide the claimant the information in this section in a separate notice accompanying the proposed disposition. The director may prescribe by bulletin the specific form and format for the notice. If the claimant does not read or comprehend English, or is otherwise unable to understand written language, the insurer shall provide this information in a language or other manner which ensures the worker understands the meaning of the claim disposition. The information in the notice shall include:

(a) An explanation of what it means to dispose of a claim under the Workers' Compensation Law, including that the worker's right to medical services cannot be disposed;

(b) If the claimant is receiving temporary disability compensation, the period of time the claimant will be without benefits following submission of the agreement;

(c) That if approved, the agreement is the final disposition of all matters specified in the agreement and is not subject to further review by any agency or court; and

(d) A written notice in bold type at the end of the letter which states:

NOTICE TO CLAIMANT: YOU WILL RECEIVE A NOTICE FROM THE WORKERS' COMPENSATION BOARD TELLING YOU THE DATE THIS AGREEMENT WAS SUBMITTED TO THEM FOR APPROVAL. YOU HAVE THE RIGHT TO REJECT THIS AGREEMENT WITHIN 30 DAYS FROM THE DATE OF THE NOTICE, BY NOTIFYING THE BOARD IN WRITING. IF YOU DO NOT HAVE AN ATTORNEY, YOU HAVE THE RIGHT TO PERSONALLY MEET WITH THE BOARD TO DISCUSS THIS AGREEMENT. THERE IS NO FEE OR CHARGE FOR YOU TO MEET WITH THE BOARD. YOU MAY CONTACT THE BOARD BY WRITING OR CALLING:

WORKERS' COMPENSATION BOARD
480 CHURCH STREET, SE
SALEM, OR 97310
TELEPHONE: (503) 378-3308 BETWEEN 8:00 A.M. AND 5:00 P.M. MONDAY THROUGH FRIDAY.

YOU MAY ALSO DISCUSS THIS AGREEMENT WITH THE WORKERS' COMPENSATION OMBUDSMAN WITHOUT ANY FEE OR CHARGE. YOU MAY CONTACT THE OMBUDSMAN BY WRITING OR CALLING:

WORKERS' COMPENSATION OMBUDSMAN
LABOR & INDUSTRIES BUILDING
SALEM, OR 97310
TELEPHONE: (503) 378-3351 BETWEEN 8:00 A.M. AND 5:00 P.M. MONDAY THROUGH FRIDAY.

YOU MAY ALSO CALL, TOLL-FREE IN OREGON, THE INJURED WORKERS' HOTLINE IN THE WORKERS' COMPENSATION DIVISION AT 1-800-452-0288.

(4) Pursuant to ORS 656.236, reimbursement under ORS 656.506(3), 656.622, 656.625, or 656.628 for a claim disposition under these rules requires the prior approval of the director as prescribed in OAR 436-40, 436-45, 436-75 and 436-110.

(5) Where SAIF Corporation is the designated processing agent pursuant to ORS 656.054, reimbursement for any claim disposition under this rule requires prior approval of the director.

(6) Dispositions of claims must contain all of the elements in the sequential order set forth in this section:

(a) A complete identity of the worker, contained in a caption, including:

(A) The worker's full name.

(B) The processing numbers assigned to the claim by the Workers' Compensation Board ("WCB number"), Court of Appeals and Supreme Court, if known.

(C) The insurer's or self-insurer's claim number.

(D) The date of the compensable injury or disease.

(E) The processing number assigned to the claim by the Workers' Compensation Division ("WCD number"), if known.

(F) The worker's social security number.

(G) The name of the insurer or self-insurer.

(b) A specific identification of all benefits and rights and insurer's or self-insurer's obligations under the Workers' Compensation Law which are disposed and released under the agreement.

(c) The amount of the consideration to be paid the claimant.

(d) That the worker was provided the notice containing all of the information about claims disposition prescribed in section (3).

(7) For the purpose of accurate data collection, the director will prescribe by bulletin a summary sheet which shall accompany the disposition when it is submitted to the Board.

(8) Pursuant to OAR 438-09, the Board will not accept submission of any proposed claim disposition which lacks any of the elements required in this rule.

Hist: Filed 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

TIMELY PAYMENT OF COMPENSATION

436-60-150 (1) Benefits are deemed paid when addressed to the last known address of the worker or beneficiary and deposited in the U.S. Mail. Payments

falling due on a weekend or holiday shall be paid on a working day prior to the weekend or holiday.

(2) First payment of time loss must be timely. An insurer's performance is in compliance when 80% of payments were timely for the previous fiscal year for a guaranty contract insurer, or 90% for a self-insured employer, when rounded to the nearest five percent (5%). The director may assess a penalty against an insurer falling below these norms during any quarter.

(3) Compensation withheld pursuant to ORS 656.268(14) shall not be deemed untimely provided the insurer notifies the worker in writing why benefits are being withheld and the amount that must be offset before any further benefits are payable.

[[3]] (4) Timely payment of temporary disability benefits means payment has been made no later than the 14th day after:

(a) The employer's notice or knowledge of the claim if temporary disability is immediate, unless the insurer cannot obtain verification of the worker's inability to work pursuant to ORS 656.262(4)(b); [or]

(b) The employer's notice or knowledge of temporary disability related to but subsequent to the injury;

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

(d) The date the subject employer, or its insurer, has notice or knowledge of a medically verified inability to work due to an aggravation of the worker's condition under ORS 656.273;

(e) The date of any determination or litigation order which orders payment of temporary disability, unless the order has been appealed by the insurer;

(f) The date the department refers a claim to the insurer for processing pursuant to ORS 656.029; or

(g) The date the department refers a noncomplying employer claim to SAIF Corporation.

(h) The date a claim disposition is disapproved by the Board, if temporary disability benefits are otherwise due.

[[4]] (5) Temporary disability shall be paid to within seven (7) days of the date of payment at least once each 14 days. When making payments as provided in OAR 436-60-020(1), the employer may make subsequent payments of temporary disability concurrently with the payroll schedule of the employer, rather than at 14-day intervals.

[[5]] (6) Permanent disability benefits shall be paid no later than the 30th day after:

(a) The date of [the determination order issued by the Department or the] a notice of claim closure issued by the insurer; [or]

(b) The date of any determination or litigation order which orders payment of compensation for permanent total disability;[.] or

(c) The date of any determination or litigation order which orders payment of compensation for permanent partial disability, unless the order has been appealed by the insurer.

(d) The date a claim disposition is disapproved by the Board, if permanent disability benefits are otherwise due.

[(6)] (7) Subsequent payments of permanent disability benefits are made in monthly sequence as earned. The insurer may adjust monthly payment dates, but shall inform the worker prior to making the adjustment. No payment period shall exceed one month without Compliance approval.

[(7) Billings for medical goods and services shall be paid within 60 days of the insurer's receipt of the statement and supporting reports. When there is a dispute over the amount of a bill or the necessity of services rendered, the insurer shall pay the undisputed amount. Resolution of the disputed amount shall 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, the time period for which the payment is made and the reimbursable expenses. The notice shall identify that portion of the claimed amounts for which reimbursement is denied.

Hist: 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

ADDITIONAL COMPENSATION FOR UNTIMELY PROCESSING

436-60-155 (1) Pursuant to ORS 656.262(10), the director may require the insurer to pay additional compensation when the insurer unreasonably delays or unreasonably refuses to pay compensation, or unreasonably delays acceptance or denial of a claim.

(2) When notified by the director that additional compensation under this rule may be due, the insurer shall respond in writing to the division within 10 days of the date of the notification.

(3) If no response is received within 10 days, the director may determine the additional amount due based on available information, including that submitted by the worker.

Hist: Filed 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

USE OF SIGHT DRAFT TO PAY COMPENSATION PROHIBITED

436-60-160 Insurers shall not use a sight draft to pay 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
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

RECOVERY OF OVERPAYMENT OF BENEFITS

436-60-170 (1) Insurers may recover overpayment of benefits paid to a worker only as specified by ORS 656.268[(10)] (13) and (14), unless authority is granted by a referee or the Workers' Compensation Board.

(2) Insurers shall explain in writing the reason, amount and method of recovery to the worker and the worker's attorney or to the worker's survivors.

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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

DESIGNATION AND RESPONSIBILITY OF A PAYING AGENT

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

(a) "Compensable [injury] condition" means an accidental injury or damage to a prosthetic appliance, or an occupational disease arising out of and in the course of employment, and which requires medical services or results in disability or death.

(b) "Exposure" means a specific incident or period during which a compensable condition may have occurred.

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

(2) Compliance shall designate by order which insurer shall pay a claim if the employers and insurers admit that the claim is otherwise compensable, and where there is an issue regarding:

(a) Which subject employer is the true employer of a worker;

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

(c) Which of two or more employers or their insurers is responsible for paying compensation for two or more on-the-job injuries; or

(d) Which of two or more employers is responsible when there is joint employment.

(3) With the consent of the Workers' Compensation Board, Own Motion claims are subject to the provisions of this rule.

(4) Upon learning of any of the situations described in section (2), the insurer shall expedite the processing of the claim by immediately investigating the claim to determine responsibility and whether the claim is otherwise compensable.

(5) Upon learning of any of the situations described in section (2), the insurer shall immediately notify any other affected insurers of the situation. Such notice shall identify the compensable condition and include a copy of all medical reports and other information pertinent to the injury. The notice shall identify each period of exposure which the insurer believes responsible for the compensable condition by the following:

(a) name of employer;

(b) name of insurer;

(c) specific date of injury or period of exposure; and

(d) claim number, if assigned.

[Insurers receiving such notification shall consider it as notice of a claim referred by the director pursuant to ORS 656.265(3).]

(6) Insurers receiving notification from the director or an insurer of a situation as described in section (2)(b) of this rule, shall consider it to be a report of claim forwarded by the employer pursuant to ORS 656.262(3).

[(6)] (7) Upon deciding that the responsibility for an otherwise compensable [injury] condition cannot be determined, the insurer shall request designation of a paying agent by applying in writing to Compliance. The application shall contain the following information:

(a) Identification of the compensable condition(s);

[(a)] (b) That the insurer is requesting designation of a paying agent pursuant to ORS 656.307;

[(b)] (c) That the insurer acknowledges the injury is otherwise compensable;

[(c)] (d) That responsibility is the only issue;

[(d)] (e) Identification of [all parties and] the specific claims or exposures involved[, including] by

(A) employer[s],

(B) insurer[s],

(C) date[s] of injury or specific period of exposure, and

(D) claim number[s], if assigned;

[(e)] (f) Acknowledgment that medical reports and other material pertinent to the injury have been provided to the other parties; and

[(f)] (g) Confirmation the worker has been advised of the actions being taken on the worker's claim.

[(7)] (8) Compliance will not designate a paying agent where there remains an issue of whether the [injury] condition is [a] compensable [injury claim]; or, if the 60 day appeal period of a denial has expired without a request for designation of a paying agent being received by the division, or a request for [a] hearing being received by the Board; or if an insurer included in the question of responsibility opposes designation of a paying agent because it has received no claim.

[(8)] (9) When notified by Compliance that there is a reasonable doubt as to the status of the claim or intent of a denial, the insurer shall provide written clarification to Compliance, the worker, insurers involved and other interested parties within 10 days of the date of the notification.

[(9)] (10) Upon receipt of a request for designation of a paying agent from the worker or someone on the worker's behalf, Compliance will forward a copy of the request to the insurers involved. Any injury or exposure named in the request shall be considered notice of claim referred by the director pursuant to ORS 656.265(3).

[(10)] (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 (4) through [(6)] (7).

[(11)] (12) Upon receipt of written acknowledgment from the insurers that the only issue is responsibility for an otherwise compensable injury claim, Compliance will issue an order designating a paying agent pursuant to ORS 656.307. The insurer paying the lowest temporary disability rate shall be designated the paying agent. If the temporary disability rates are the same, the insurer with 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 order.

[(12)] (13) By copy of its order, Compliance will refer the matter to the Workers' Compensation Board to set an arbitration proceeding pursuant to ORS 656.307 to determine which insurer is responsible for paying benefits to the worker.

[(13)] (14) The designated paying agent shall process the claim as an accepted claim through determination unless relieved of the responsibility by an order of the arbitrator. 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)

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

MONETARY ADJUSTMENTS AMONG PARTIES AND DEPARTMENT OF INSURANCE AND FINANCE

436-60-190 (1) An order pursuant to ORS 656.307 and OAR 436-60-180 applies only to the period prior to the order of the arbitrator determining the responsible paying party. Payment of compensation made thereafter shall not be recovered from the Insurance and Finance Fund, unless the Director concludes payment was made after the date of the order of the arbitrator, 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, Compliance shall direct any necessary monetary adjustment between the parties involved which is not ordered or not 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 Insurance and Finance Fund.

(3) When poor or untimely claim processing by the designated paying agent results in unnecessary costs, Compliance may deny reimbursement.

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

(5) When the compensability of a claim becomes an issue after designation of a paying agent, Compliance 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 arbitration 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 arbitration shall preclude recovery from the Insurance and Finance 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

ASSESSMENT OF CIVIL PENALTIES

436-60-200 (1) The Director through Compliance and pursuant to ORS 656.745 shall assess a civil penalty against an employer or insurer who intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employes to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due. A penalty under this section will only be assessed after all litigation on the matter has become final by operation of the law. For the purpose of this section:

(a) "Intentionally" means the employer or insurer acted with a conscious objective to cause any result described in ORS 656.745(1) or to engage in the conduct so described in that section.

(b) "Repeatedly" means more than once in any twelve month period.

(2) Pursuant to ORS 656.745, the director may assess a civil penalty against an employer or insurer who fails to comply with rules and orders of the Director regarding reports or other requirements necessary to carry out the purposes of the Workers' Compensation Law.

(3) An employer or insurer failing to meet the time frame requirements set forth in OAR 436-60-010, 436-60-060, 436-60-070 and 436-60-180 may be assessed a civil penalty up to \$1,000.

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

(5) Notwithstanding section (3) of this rule, an employer or insurer who does not comply with the claims processing requirements of ORS Chapter 656, 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.

(6) For the purpose of section (5), statutory claims processing requirements include but are not limited to, ORS 656.202, 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 656.313, ORS 656.325, ORS 656.331 and ORS 656.335.

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

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

(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 outlined in this section.

(8) When the volume of claims reported to which the volume of errors is compared is ten or less, Compliance shall assess no more than \$200 regardless of the percentage of error. However, when the volume exceeds ten, Compliance 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

ISSUANCE/SERVICE OF PENALTY ORDERS

436-60-210 (1) When a penalty is assessed as provided by OAR 436-60-200, Compliance shall serve an order on the party, with a notice of the rights provided under ORS 656.740.

(2) Compliance shall serve the Order by delivering a copy to the party in the manner provided by ORCP 7D.(3); or by sending a copy 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
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

0309C/dwz
ker/12-89