

## **Agenda**

### **Focus Group on Electronic Communication in the Workers' Compensation System**

**May 16, 2016, 9 a.m. to Noon**

**Room F, Labor & Industries Building, Salem, Oregon**

**Teleconference dial-in number: 213-787-0529 | Access code: 9221262#**

**Issue:** Customers have asked the Workers' Compensation Division to remove or revise terms in the administrative rules that restrict electronic communication (correspondence, notices, etc.) between various parties.

**Background:** Much of the wording in the rules was written at a time when electronic correspondence and reporting were impractical or impossible. Terms such as "mail," "U.S. mail," "U.S. Postal Service," "postmark," "certified mail," "regular mail," and "registered mail" describe delivery methods that have been mostly effective for giving notices to parties about actions, intended actions, rights and responsibilities, etc. However, use of these words in the rules presents barriers to paperless communication.

Some terms do not limit electronic communication unless a rule definition includes a restriction: "written," "in writing," "send," "submit," and "file."

**What forms of electronic communication are desired?**

**Are there particular processes that could be improved?**

**Who are the parties with whom you would like to communicate electronically?**

**What are the benefits?**

**Who benefits?**

**Are there potential negative impacts?**

**What are the barriers?**

**Should there be limitations for some types of correspondence?**

**What are the risks (hacking, misrouting, etc.)? Should some correspondence require “secure” email methods?**

**Rulemaking options and general recommendations:**

**Attachments:**      [chapter 436 extracts](#)  
                             [summary of chapter 656 barriers](#)  
                             [chapter 656 extracts](#)  
                             [extract from Uniform Electronic Transactions Act](#)

**Chapter 436 review**  
**Potential barriers to electronic communication**

*The following terms have been highlighted without considering whether they can or should be changed or whether they are barriers to electronic communication.*

**CHAPTER 436, DIVISION 001**

**PROCEDURAL RULES, RULEMAKING, HEARINGS,  
AND ATTORNEY FEES**

**436-001-0004      Definitions**

(1) The following definitions apply to these rules, unless the context requires otherwise. \* \* \*

(f) “Filed” means **mailed**, faxed, **e-mailed**, delivered, or otherwise submitted to the division in a method allowable under these rules. \* \* \*

(h) “**Mailed**” means addressed to the last known address, with sufficient postage and placed in the custody of the **U.S. Postal Service**. \* \* \*

**436-001-0009      Notice of Division Rulemaking**

\* \* \* (2) A person or organization may elect to receive **email** or hard-copy notification of proposed rulemaking actions conducted by the division.

(a) A person or organization may elect to subscribe to the division’s **e-mail** notification service at:  
<https://service.govdelivery.com/accounts/ORDCBS/subscribe/new>.

(b) A person or organization may elect to receive **hard-copy** notification by sending a request in writing, including the person or organization’s full name and **mailing** address, to the following address:

Rules Coordinator, Operations Section/Policy Team \* \* \*

**436-001-0019      Requests for Hearing**

\* \* \* (3) Requests for hearing may be filed in any of the following ways:

(a) By **mail**, to the following address:

Hearings Coordinator, Operations Section \* \* \*

(d) By **e-mail**, to [wcd.hearings@oregon.gov](mailto:wcd.hearings@oregon.gov). If the request for hearing is an attachment to the **e-mail**, it must be in a format that Microsoft Word 2010® (.docx, .doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable.

(e) By using the **online form**, available on the division’s website. \* \* \*

(7) The director will deny requests for hearing that are filed after the filing deadline. The party may request a limited hearing on the denial of the request for hearing within 30 days after the **mailing date** of the denial. The request must be filed with the division. At the limited hearing, the administrative law judge may consider only whether: \* \* \*

**436-001-0027      Timeliness; Calculation of Time**

(1) Timeliness of any document required by these rules to be filed or submitted to the division is determined as follows: (a) If a document is **mailed**, it will be considered filed on the date it is **postmarked**. \* \* \*

(b) If a document is faxed or **e-mailed**, it must be received by the division by 11:59 p.m. Pacific time to be considered filed on that date. \* \* \*

**436-001-0246      Proposed and Final Orders -  
Exceptions, Correction, Director Review**

\* \* \* (2) The parties or the division may initiate director review of a proposed and final order by filing exceptions as follows:

(a) Written exceptions, including any argument, must be filed with the division within 30 days of the **mailing date** of the proposed and final order. \* \* \*

(d) Exceptions, responses, and replies may be filed in any of the following ways:

(A) By **mail**, to the following address:

Hearings Coordinator, Operations Section \* \* \*

(D) By **e-mail**, to [wcd.hearings@oregon.gov](mailto:wcd.hearings@oregon.gov). If the exception, response, or reply is in an attachment to the **e-mail**, the attachment must be in a format that Microsoft Word 2010® (.docx, .doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable. \* \* \*

(5) Within 30 days of the **mailing date** of the proposed and final order, the director may issue a notice of intent to review the proposed and final order, even if no exceptions are filed. \* \* \*

(7) The administrative law judge may withdraw a proposed and final order for correction of errors within 10 calendar days of the **mailing date** of the order. The time for filing exceptions begins on the date the corrected proposed and final order is **mailed**.

(8) If no exceptions are timely filed or if no notice of intent to review is issued, the proposed and final order will become final 30 days after the **mailing date** of the order.

(9) Any requests for review or requests for reconsideration of a proposed and final order filed with the board or administrative law judge within 30 days of the **mailing date** of the order will be forwarded to the director and treated as timely exceptions under this rule.

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**CHAPTER 436, DIVISION 009**

**OREGON MEDICAL FEE AND PAYMENT RULES**

**436-009-0005 Definitions**

\*\*\* (12) "Date stamp" means to stamp or display the initial receipt date and the recipient's name on a paper or **electronic document**, regardless of whether the document is printed or displayed electronically. \*\*\*

(24) "**Mailed or mailing date**" means the date a **document is postmarked**. Requests submitted by facsimile or "fax" are considered **mailed** as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered **mailed** as of the date stamped by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered **mailed** as of the date of the request. \*\*\* 8

**436-009-0008 Request for Review by the Director**

\*\*\* (2) Time Frames and Conditions. \*\*\*

(b) For MCO-enrolled claims, a party that disagrees with an action or decision of the MCO must first use the MCO's dispute resolution process. If the party does not appeal the MCO's decision using the MCO's dispute resolution process, in writing and within 30 days of the **mailing date** of the decision, the party will lose all rights to further appeal \*\*\*.

(d) For claims not enrolled in an MCO, or for disputes that do not involve an action or decision of an MCO:

(B) A medical provider must request administrative review within 90 days of the **mailing date** of the most recent explanation of benefits or a similar notification \*\*\*

(5) Director Order and Reconsideration.

(a) \*\*\* A request must be **mailed to** ["**received by**" as of **4/1/16**] the director before the administrative order becomes final. \*\*\*

(6) Hearings. (a) Any party that disagrees with an action or administrative order under these rules may obtain review of the action or order by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the **mailing date** of the order under ORS 656.245, 656.248, 656.260, or 656.327, or within 60 days of the **mailing date** of an order under ORS 656.247. OAR 436-001 applies to the hearing. \*\*\*

(c) Contested case hearings of sanctions and civil penalties: \*\*\*

(A) A written request for a hearing must be **mailed** to the administrator of the Workers' Compensation Division. \*\*\*

(B) The request must be **mailed** to the division within 60 days after the **mailing date** of the order or notice of assessment.

**436-009-0018 Discounts and Contracts**

\*\*\* (2) Discounts. \*\*\*

(b) \*\*\*the insurer must report the fee discount agreement to the director by completing the director's **online form**. \*\*\*

(4) \*\*\* (b) \*\*\* The insurer must report the termination to the director prior to the termination taking effect by completing the director's **online form**. \*\*\*

**436-009-0025 Worker Reimbursement**

(1) \*\*\* (e) The explanation to the worker must be in 10 point size font or larger and must include: \*\*\*

(F) A notice of right to administrative review as follows:  
"\*\*\* Your request for review must be made within 90 days of the **mailing date** of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and **mail this document** with the required supporting documentation to the Workers' Compensation Division, \*\*\*"

**436-009-0030 Insurer's Duties and Responsibilities**

\*\*\* (3) Payment Requirements. \*\*\*

(c) The written EOB must be in 10 point size font or larger. **Electronic and written** explanations must include: \*\*\*

(F) A notice of right to administrative review as follows:  
"\*\*\* Your request for review must be made within 90 days of the **mailing date** of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and **mail this document** with the required supporting documentation to the Workers' Compensation Division \*\*\*"

(4) Communication with Providers. \*\*\*

(b) An insurer or its representative and a medical provider may agree to send and receive payment information by email or other electronic means. Electronic records sent are subject to the Oregon Consumer Identity Theft Protection Act under ORS 646A.600 to 646A.628 and federal law.

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**436-009-0060 Oregon Specific Code**

(2) Table of all Oregon Specific Codes (For OSC fees, see Appendix B.)

Service	OSC
<u>Electronic copies</u> of medical records requested by the insurer or its representative – does not include chart notes sent with regular billing.	R0002

**436-009-0110 Interpreters \* \* \***

(7) Payment Requirements. \* \* \*

(h) The insurer must provide a written explanation of benefits \* \* \*. If the billing is done electronically, the insurer or its representative **may provide this explanation electronically.** \* \* \*

(i) **Electronic and written** explanations must include: \* \* \*

(F) A notice of the right to administrative review as follows:

“\* \* \* Your request for review must be made within 90 days of the **mailing date of this explanation.** To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and **mail this document** with the required supporting documentation to the Workers’ Compensation Division \* \* \*”

(k) The insurer or its representative and an interpreter may agree to send and receive payment information by email or other electronic means. Electronic records sent are subject to the Oregon Consumer Identity Theft Protection Act under ORS 646A.600 to 646A.628 and federal law.

**CHAPTER 436, DIVISION 010**

**MEDICAL SERVICES**

**436-010-0005 Definitions**

(8) “Date stamp” means to stamp or display the initial receipt date and the recipient’s name on a **paper or electronic document.** regardless of whether the document is printed or displayed electronically.

(22) **“Mailed or mailing date” means the date a document is postmarked.** Requests submitted by facsimile or “fax” are considered **mailed** as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered **mailed** as of the date stamped by the Workers’ Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered **mailed** as of the date of the request.

**436-010-0008 Request for Review before the Director**

(2) \* \* \* (a) The following time frames and conditions apply to requests for administrative review before the director under this rule:

(A) \* \* \* If the party does not appeal the MCO’s decision using the MCO’s dispute resolution process, in writing and within 30 days of the **mailing date** of the decision, the party will lose all rights to further appeal the decision unless the party can show good cause. \* \* \*

(5) \* \* \* (c) \* \* \* If any party disagrees with an order of the director that no bona fide medical dispute exists, the party may appeal the order to the Workers’ Compensation Board within 30 days of the **mailing date** of the order. \* \* \*

(6) \* \* \* (a) \* \* \* The director may grant or deny a request for reconsideration at the director’s sole discretion. A request must be **mailed** [“received by” as of 4/1/16] to the director before the administrative order becomes final. \* \* \*

(7) \* \* \* (a) Any party that disagrees with an action or administrative order under these rules may obtain review of the action or order by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the **mailing date** of the action or order under ORS 656.245, 656.248, 656.260, or 656.327, or within 60 days of the **mailing date** of an action or order under ORS 656.247. OAR 436-001 applies to the hearing.

(c) Contested case hearings of sanctions and civil penalties: \* \* \*

(A) A written request for a hearing must be **mailed** to the administrator of the Workers’ Compensation Division. \* \* \*

(B) The request must be **mailed** to the administrator within 60 days after the **mailing date** of the order or notice of assessment.

**436-010-0220 Choosing and Changing Medical Providers**

(3) \* \* \* When the worker has changed attending physicians or authorized nurse practitioners twice by choice or has reached the maximum number of changes established by the MCO, the insurer must notify the worker by **certified mail** that any additional changes \* \* \*

(4) Worker Requesting Additional Changes of Attending Physician or Authorized Nurse Practitioner. \* \* \*

(d) Any party that disagrees with the director’s order may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the **mailing date** of the order. \* \* \*

**436-010-0265 Independent Medical Exams (IMEs) and Worker Requested Medical Exams (WRMEs)**

(1) \* \* \* (f) The worker may complete an **online survey** at [www.wcdimesurvey.info](http://www.wcdimesurvey.info) or make a complaint about the IME \* \* \*

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(2) IME/WRME Authorization.

(a) \* \* \* (A) To be on the director's list to perform IMEs or WRMEs, a medical service provider must complete the **online application** at [www.oregonwcdoc.info](http://www.oregonwcdoc.info), hold a current license, be in good standing with the provider's regulatory board, and \* \* \*

(8) \* \* \* When a worker objects to the location of an IME, the worker may request review before the director within six business days of the **mailing date** of the appointment notice.

(a) The request may be made in-person, by telephone, fax, **email**, or **mail**.

#### 436-010-0270 Insurer's Rights and Duties

(4) Insurer's Duties under MCO Contracts.

(d) When the insurer is enrolling a worker in an MCO, \* \* \* the notice must: (A) Provide the worker a written list of the eligible attending physicians within the relevant MCO \* \* \* the notice must also: \* \* \*

(ii) Tell the worker that he or she has seven days from the **mailing date** of the notice to request the list; \* \* \*

(e) When an insurer enrolls a worker in an MCO before claim acceptance, the insurer must inform the worker in writing \* \* \*. Necessary and reasonable medical services that are not otherwise covered by health insurance will be paid until the worker receives the notice of claim denial or until three days after the denial is **mailed**, whichever occurs first.

(k) When the insurer is disenrolling a worker from an MCO, \* \* \* The insurer must **mail** the notice no later than seven days before the date the worker is no longer subject to the contract. \* \* \*

(l) When an MCO contract expires or is terminated without renewal \* \* \* The notice must be **mailed** no later than three days before the date the contract expires or terminates. \* \* \*

#### 436-010-0340 Sanctions and Civil Penalties

\* \* \* (2) If the medical provider fails to provide information under OAR 436-010-0240 within fourteen days of receiving a request sent by **certified mail** or fax, penalties under this rule or OAR 436-015-0120 may be imposed.

## OREGON ADMINISTRATIVE RULES CHAPTER 436, DIVISION 015

### MANAGED CARE ORGANIZATIONS

#### 436-015-0008 Administrative Review

(2) \* \* \* (a) Any party that disagrees with an action taken by an MCO pursuant to these rules must first use the MCO's dispute resolution process. If the party does not appeal the MCO's decision, in writing and within 30 days of the **mailing date** of the decision, the party will lose all rights \* \* \*

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

(4) Hearings before an administrative law judge: Any party who disagrees with an order under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the **mailing date** of the order. \* \* \*

(5) Contested case hearings of sanctions and civil penalties: \* \* \* (a) The party shall file a written request for a hearing with the administrator of the Workers' Compensation Division within 60 days after the **mailing date** of the proposed order or assessment. \* \* \*

(6) \* \* \* (a) At a hearing on a notice of intent to suspend \* \* \* (B) If the MCO disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the **mailing date** of the order. \* \* \* (b) A revocation \* \* \* shall become effective \* \* \* unless \* \* \* the MCO corrects the grounds for revocation \* \* \* or files a written request for hearing with the administrator of the Workers' Compensation Division.

(C) If the MCO disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the **mailing date** of the order.

\* \* \* (c) An emergency revocation issued pursuant to OAR 436-015-0080(7) is effective immediately. The MCO must file a request for hearing as provided in OAR 436-001-0019 within 60 days of the **mailing date** of the order. \* \* \*

#### 436-015-0010 Notice of Intent to Form

Any health care provider or group of medical service providers initiating an MCO under ORS 656.260, must submit a "Notice of Intent to Form" to the director, by **certified mail** \* \* \*

#### 436-015-0030 Applying for Certification \* \* \*

(17) \* \* \* The plan must provide a procedure for regular, periodic updating of the MCO panel provider listings, with

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published updates being available electronically no less frequently than every 30 days. \* \* \*

#### 436-015-0035 Coverage Responsibility of an MCO

(4) \* \* \* The MCO/insurer contract must include the following terms and conditions: \* \* \*

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

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

\* \* \* (4) \* \* \* If the MCO provides a dispute resolution process for the issue, the notice must include the following \* \* \* If you want to appeal this decision, you must notify us in writing within 30 days of the mailing date of this notice. \* \* \*

(5) If an MCO receives a complaint or dispute that is not included in the MCO dispute resolution process \* \* \*. The notice must include the following \* \* \* **If you do not notify DCBS in writing within 60 days of the mailing date of this notice, you will lose all rights to appeal** \* \* \*

(6) \* \* \* After the MCO resolves a dispute \* \* \* the MCO must notify all parties \* \* \* with an explanation of the reasons for the decision. \* \* \* The notice must include \* \* \* : **NOTICE TO THE WORKER AND ALL OTHER PARTIES: If you want to appeal this decision, you must notify the director \* \* \* in writing within 60 days of the mailing date of this notice.** \* \* \*

## CHAPTER 436, DIVISION 030

### CLAIM CLOSURE AND RECONSIDERATION

#### 436-030-0005 Definitions

(8) **“Mailed or Mailing date,” for the purposes of determining timeliness under these rules, means the date a document is postmarked. Requests submitted by electronic transmission (by facsimile or “fax”) will be considered mailed** as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped or punched in by the Workers’ Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

#### 436-030-0007 Administrative Review

(4) Contested Case Hearings of Sanctions and Civil \* \* \*

(a) The party must send the request for hearing in writing to the director within 60 days after the mailing date of the proposed order or assessment. \* \* \*

#### 436-030-0015 Insurer Responsibility

(1) \* \* \* (c) \* \* \*

(B) In the case of an instant fatality, the Updated Notice of Acceptance may be combined with the Notice of Closure if the following is included: (iii) \* \* \* **“Notice to Worker’s Beneficiary or Estate: \* \* \* The insurer is required to determine the appropriate benefits to be paid to any beneficiaries and begin those payments within 30 days of the mailing date of this notice.**

If you disagree with the notice of acceptance, you may appeal \* \* \* within 30 days of the mailing date.

A beneficiary who was mailed this notice may request reconsideration of the notice by the Workers’ Compensation Division, Appellate Review Unit \* \* \* within 60 days of the mailing date of this notice.

Beneficiaries who were not mailed a copy of this notice may request reconsideration of this notice within one year of the date this notice was mailed to the estate of the worker. \* \* \*

(3) Copies of Notices of Refusal to Close must be mailed to the director and the parties, and to the worker’s attorney, if the worker is represented.

(4) In claims with a date of injury on or after January 1, 2005 \* \* \* the insurer must consider: \* \* \* (d) The worker’s work history \* \* \* for the period from five years before the date of injury to the mailing date of the notice of closure \* \* \*

(5) In claims where the date of injury is before January 1, 2005 \* \* \* the insurer must consider: \* \* \* (d) The worker’s work history \* \* \* for the period from five years before the date of injury to the mailing date of the notice of closure \* \* \*

#### 436-030-0017 Requests for Claim Closure by the Worker

\* \* \* (2) If an insurer issues a notice of refusal to close the claim, the notice must \* \* \* include the following information and appeal language: (d) Mailing date of the notice;

\* \* \* (g) The following language, in bold print:

“If you disagree with this Notice of Refusal to Close your claim, you must file a letter of disagreement with the Workers’ Compensation Board within sixty (60) days from the date of this notice. \* \* \* You must mail your letter of disagreement to the Workers’ Compensation Board \* \* \*

#### 436-030-0020 Requirements for Claim Closure

\* \* \* (2) \* \* \* (c) **Additional documentation.** Unless \* \* \* attending physician or authorized nurse practitioner has released the worker to the job held at the time of injury (for dates of injury on or after January 1, 2006) or that the worker has returned to the job held at the time of injury, all of the following is required:

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(A) An accurate description of the physical requirements of the worker's job held at the time of injury, which has been provided by **certified mail** to the worker and the worker's legal representative, if any, \* \* \*

(D) \* \* \* the worker's work history for the period beginning five years before the date of injury to the **mailing date** of the Notice of Closure\* \* \*

(5) The "Notice of Closure," Form 1644, is effective the date it is **mailed** to the worker and to the worker's attorney if the worker is represented, or to the worker's estate if the worker is deceased, regardless of the date on the Notice itself.

(6) The notice must be in the form and format prescribed by the director in these rules and include only the following:

\* \* \* (g) The date the Notice of Closure was **mailed**;

\* \* \* (9) If the worker is deceased at the time the Notice of Closure is issued:

(a) The worker's copy of the notice must be addressed to the estate of the worker and **mailed** to the worker's last known address.

(b) Copies of the notice may be **mailed** to any known or potential beneficiaries to the worker's estate. If a copy of the notice is **mailed** to a beneficiary, it must be **mailed** by both **regular mail** and **certified mail** return receipt requested.

(8) A copy of the Notice of Closure must be **mailed** to each of the following persons at the same time, with each copy clearly identifying the intended recipient:

(a) The worker;

(b) The employer;

(c) The director; and

(d) The worker's attorney, if the worker is represented.

(10) The worker's copy of the Notice of Closure must be **mailed** by both **regular mail** and **certified mail** return receipt requested.

#### 436-030-0023 Correcting and Rescinding Notices of Closure \* \* \*

(3) The "Date of closure (**mailing date**)" on the Correcting or Rescinding Notice of Closure must be the date the correction or rescission is **mailed**. The **mailing date** of the Notice of Closure being rescinded or corrected must be identified within the body of the Correcting or Rescinding Notice of Closure.

(4) The worker's copy of the Correcting and Rescinding Notices of Closure must be **mailed** by both **regular mail** and **certified mail** return receipt requested \* \* \*

(6) The Rescinding Notice of Closure must: \* \* \*

(d) Be distributed and **mailed** to the parties consistent with these rules.

(7) When a Notice of Closure granting only time loss has been issued, if the insurer determines the worker's medically stationary status is unchanged and the worker is entitled to an award of permanent disability, the insurer must use a

Notice of Closure, Form 1644, to rescind and reissue the closure. In such cases, the Notice of Closure must:

(g) Be distributed and **mailed** to the parties consistent with these rules.

(8) \* \* \* Examples of appropriate uses of Correcting Notices of Closure include, but are not limited to: \* \* \*

(b) An incorrect "**mailing date**"; \* \* \*

(9) A Correcting Notice of Closure must:

#### 436-030-0034 Administrative Claim Closure

(1) \* \* \* In order to close a claim under this section, the insurer must: (a) Wait for the 30-day lack of treatment period to expire or any additional time period recommended by the attending physician or authorized nurse practitioner before sending the worker written notification by **certified mail** informing the worker \* \* \*

(3) A claim must be closed when the worker fails to attend a mandatory closing examination for reasons within the worker's control. To close a claim under this section, the insurer must:

(a) Inform the worker in writing sent by **certified mail**, at least 10 days prior to the mandatory closing examination of: \* \* \*

#### 436-030-0115 Reconsideration of Notices of Closure

\* \* \* (3) A request for reconsideration may be made by **mailing**, phoning, or delivering the request to the director \* \*

#### 436-030-0145 Reconsideration Time Frames and Postponements

(1) When appealing a Notice of Closure for claims that are medically stationary or that statutorily qualified for closure on or after June 7, 1995, a request for reconsideration must be **mailed** within:

(a) Sixty (60) days of the **mailing date** of the Notice of Closure for a worker's request.

(b) Seven (7) days of the **mailing date** of the Notice of Closure for an insurer's request. An insurer's request for reconsideration is limited to the findings used to rate impairment.

(c) Sixty (60) days of the **mailing date** of the Notice of Closure for a beneficiary's request if the Notice of Closure was **mailed** to the beneficiary under ORS 656.268(5)(b).

(d) One year of the date the Notice of Closure was **mailed** to the estate of the worker if the Notice of Closure was not **mailed** to the beneficiary under ORS 656.268(5)(b).

\* \* \* (3) \* \* \* (c) Except as provided in sections (4), (5), and (6) of this rule, the director will either **mail** an Order on Reconsideration within 18 working days from the date the reconsideration proceeding begins or notify the parties that the reconsideration proceeding is postponed \* \* \*

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(7) If the director fails to **mail** an Order on Reconsideration or a Notice of Postponement under the time frames specified in ORS 656.268, the reconsideration request is automatically deemed denied. \* \* \*

### 436-030-0165 Medical Arbitrator Examination Process

\* \* \* (2) If the director determines there are enough appropriate physicians available to create a list of possible arbitrators and it is practicable, each party will be given the opportunity to agree on a physician and to remove one physician from the list through the process described below:

(a) The director will send the list to the parties electronically or by overnight mail. \* \* \*

(3) \* \* \* (a) Notice of the examination will be considered adequate notice if the appointment letter is **mailed** to the last known address of the worker and to the worker's attorney, if the worker is represented.

### 436-030-0185 Reconsideration: Settlements and Withdrawals \* \* \*

(6) When the parties desire to enter into a stipulated agreement \* \* \* they may \* \* \* request the director enter an Order on Reconsideration affirming the Notice of Closure. \*

\* \* \* (a) A written request for an affirming reconsideration order must: (A) Be made by **certified mail**; \* \* \*

## CHAPTER 436, DIVISION 035

### DISABILITY RATING STANDARDS

#### 436-035-0005 Definitions

\* \* \* (3) "Date of issuance" means the **mailing date** of a notice of closure or Order on Reconsideration under ORS 656.268 and ORS 656.283(6).

## CHAPTER 436, DIVISION 045

### REOPENED CLAIMS PROGRAM

#### 436-045-0008 Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division \* \* \* may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740. \* \* \*

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the **mailing** of the proposed order or assessment. No hearing shall be granted unless the request is **mailed** or delivered to the administrator within 60 days after the **mailing** of the proposed order or assessment.

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the **mailing date** of the order or notice of action. \* \* \*

## CHAPTER 436, DIVISION 050

### EMPLOYER/INSURER COVERAGE RESPONSIBILITY

#### 436-050-0005 Definitions

(30) "**Written**" means that which is expressed in writing, **and includes electronic records**.

#### 436-050-0008 Administrative Review and Contested Cases

\* \* \* (2) Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty \* \* \* may request a hearing by sending a written request to the Workers' Compensation Division's administrator within 60 days after the order was **mailed**.

(3) A hearing will not be granted if the request: \* \* \*

(b) Is **mailed** or delivered to the administrator more than 60 days after the order was **mailed**.

(4) Under ORS 656.704(2) and 731.240(1), any party that disagrees with an action or order of the director \* \* \* may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the **mailing date** of the order or notice of action. \* \* \*

#### 436-050-0025 Service of the Notice of Civil Penalty Orders

When the director issues a civil penalty order, it will be served by **certified mail**, return receipt requested, or in any other manner provided by Oregon Rules of Civil Procedure (7)(D). **Proof of service may include a hard copy signed receipt or electronic verification**.

#### 436-050-0060 Transition from Guaranty Contract Filings to Policy-Based Proof of Coverages

\* \* \* (4) A guaranty contract in effect on or after July 1, 2009 is canceled the earliest of: \* \* \*

(c) The insurer **mailing** notice of cancellation to the employer at least \* \* \* days prior to the cancellation effective date \* \* \*

#### 436-050-0120 Records Insurers Must Keep in Oregon; Removal and Disposition

(1) The records of claims for compensation that each insurer is required to keep in this state include: \* \* \*

(b) A written record of all payments made as a result of any

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claim including documentation of the date the payment was **mailed**. Documentation may be the actual **mailing date**, or an explanation of the time period between the date of issuance and **mailing**; and \* \* \*

#### 436-050-0165 Security Deposit Requirements

(2) \* \* \* (a) \* \* \* (E) The ISLOC will be automatically extended without amendment for an additional one (1) year from the expiry date, or any subsequent expiry date, unless, at least 60 days before the expiry date, the director is notified in writing by **registered mail or overnight delivery**, that the bank has elected not to extend the ISLOC for another period.

#### 436-050-0220 Records Self-Insured Employer Must Keep in Oregon; Period to be Retained, Removal and Disposition

(3) The records of claims for compensation that each self-insured employer is required to keep in this state include, but are not limited to: \* \* \*

(b) A written record of all payments made as a result of any claim including documentation of the date the payment was **mailed**. Documentation may be the actual **mailing date** or an explanation of the time period between the date of issuance and **mailing**. \* \* \*

#### 436-050-0410 Notice to Director of Lease Arrangement; Termination

(2) A worker leasing company may terminate its obligation to provide workers' compensation coverage by giving to its insurer, its client, and the director written notice of the termination. \* \* \* Notice to the client under this section must be given by **mail**, addressed to the client at its last-known address.

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### CHAPTER 436, DIVISION 055

#### CERTIFICATION OF CLAIMS EXAMINERS

##### 436-055-0008 Administrative Review

(1) Any party that disagrees with a proposed order or proposed assessment of civil penalty of the director issued under ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740. The request for hearing must be **mailed** or delivered to the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the **mailing date** of the proposed order or assessment. \* \* \*

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules \* \* \* may request a hearing by filing a hearing request as provided in OAR 436-001-0019 within 60 days of the **mailing date** of the order or notice of action. \* \* \*

(3) Any person that disagrees with an action taken under these rules by another person, except as described in sections (1) and (2), may request administrative review by the director as follows:

(a) The request for administrative review must be **mailed** or delivered to the Administrator of the Workers' Compensation Division \* \* \*

### CHAPTER 436, DIVISION 060

#### CLAIMS ADMINISTRATION

##### 436-060-0005 Definitions

(16) "Written" and its variations mean that which is expressed in writing, including electronic transmission.

##### 436-060-0008 Administrative Review and Contested Cases

(2) Contested case hearings of Sanctions and Civil Penalties: Any party \* \* \* may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740. \* \* \*

(b) The aggrieved person must file a hearing request with the Administrator of the Workers' Compensation Division within 60 days after the **mailing** of the proposed order or assessment. No hearing will be granted unless the request for hearing is **mailed** or delivered to the administrator within 60 days of the **mailing date** of the proposed order or assessment.

(3) Hearings before an administrative law judge: Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (2), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the **mailing date** of the order or notice of action. \* \* \*

(4) \* \* \* Any party aggrieved by an action taken under these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. \* \* \*

(a) The request for administrative review must be made in writing to the Administrator of the Workers' Compensation Division within 90 days of the action. No administrative review will be granted unless the request specifies the grounds upon which the action is contested and is **mailed** or delivered to the administrator \* \* \*

##### 436-060-0010 Reporting Requirements

(2) \* \* \* **If a worker reports a claim electronically** the insurer may require the worker to sign a medical release form, so the insurer can obtain medical records under OAR 436-010-0240, necessary to process the claim.

(10) The insurer must file all disabling claims with the director within 14 days of the insurer's initial decision either to accept or deny the claim. To meet this filing requirement,

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the Insurer's Report, Form 1502, accompanied by the Form 801, **or its electronic equivalent**, is to be submitted to the director.

#### 436-060-0012 Notices and Correspondence Following the Death of a Worker

(1) If a worker is deceased, regardless of the cause of death, an insurer must: \* \* \*

(c) Issue a Notice of Closure, when applicable, to the estate of the worker. The insurer must **mail** the worker's copy of the Notice of Closure to the worker's last known address. The insurer may **mail** copies of the Notice of Closure to any known or potential beneficiaries.

#### 436-060-0017 Release of Claim Documents

(1) For the purpose of this rule:

(a) "Documents" include \* \* \* **electronic transmissions**, and correspondence between the insurer, service providers, claimant, the division or the Workers' Compensation Board.

(b) "Possession" means documents making up, or relating to, the insurer's claim record on the date of **mailing** the documents to the claimant, claimant's attorney or claimant's beneficiary. Any documents that have been received by the insurer five or more working days prior to the date of **mailing** shall be considered as part of the insurer's claim record even though the documents may not have yet reached the insurer's claim file.

(2) The insurer must date stamp each document upon receipt with the date it is received. The date stamp must include the month, day, year of receipt, and name of the company, unless the document already contains the date information and name of recipient company, as in faxes, **e-mail and other electronically transmitted communications**. \* \* \*

(4) \* \* \* Upon the request of the claimant's attorney, a request for documents shall be considered an ongoing request for future documents received and generated by the insurer for 180 days after the initial **mailing date** under section (7) or until a hearing is requested before the Workers' Compensation Board. \* \* \*

(7) The insurer must furnish copies of documents within the following time frames:

(a) The documents of open and closed files, or microfilmed files must be **mailed** within 14 days of receipt of a request, and copies of documents of archived files within 30 days of receipt of a request.

(b) If a claim is lost or has been destroyed, the insurer must so notify the requester in writing within 14 days of receiving the request for claim documents. The insurer must reconstruct and **mail** the file within 30 days from the date of the lost or destroyed file notice. \* \* \*

(d) Documents are deemed **mailed** when addressed to the last known address of the claimant, claimant's beneficiary, or claimant's attorney and deposited in the **U.S. Mail**.

(8) The documents must be **mailed** directly to the claimant's or beneficiary's attorney, when the claimant or beneficiary is represented. If the documents have been requested by the claimant or beneficiary, the insurer must inform the claimant or beneficiary of the **mailing** of the documents to the attorney. \* \* \*

(10) Rule violation complaints about release of requested claims documents must be in writing, **mailed** or delivered to the division \* \* \*. When notified by the director that a complaint has been filed, the insurer must respond in writing to the division. The response must be **mailed** or delivered to the director within 14 days of the **mailing date** of the division's inquiry letter. \* \* \*

#### 436-060-0018 Nondisabling/Disabling Reclassification

\* \* \* (5) Within 14 days of the worker's request, the insurer must review the claim and, \* \* \* (b) \* \* \* the insurer must send a Notice of Refusal to Reclassify to the worker and the worker's attorney, if the worker is represented. The notice must include the following \* \* \*

"If you disagree with this Notice of Refusal to Reclassify, you must appeal by contacting the Workers' Compensation Division within sixty (60) days of the **mailing** of this notice \* \* \*

(6) A worker dissatisfied with the decision in the Notice of Refusal to Reclassify may appeal to the director. Such appeal must be made no later than the 60th day after the Notice is **mailed**. \* \* \*

(20) The worker and the insurer have 30 days from the **mailing date** of the Director's Review order to appeal the director's decision to the Hearings Division of the Workers' Compensation Board. \* \* \*

#### 436-060-0020 Payment of Temporary Total Disability Compensation

(5) An insurer may suspend temporary disability benefits without authorization from the division \* \* \* when \* \* \*:

(d) The insurer sends a letter to the worker, the worker's attorney and the division \* \* \*:

"Since you missed a regular appointment with your doctor, we arranged a new appointment. We notified you of the new appointment by **certified mail** and warned you that your benefits would be suspended \* \* \*"

#### 436-060-0035 Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(3) Within five business days of receiving notice or knowledge of employment in addition to the primary job on a claim \* \* \* the insurer must:

(b) Clearly advise the worker, in the initial notice, that the insurer must receive verifiable documentation within 60 days of the **mailing date** of the notice \* \* \*

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**436-060-0095 Medical Examinations; Suspension of Compensation; and Independent Medical Examination Notice** \* \* \* (5) If an examination is scheduled by the insurer \* \* \* the worker and the worker's attorney shall be simultaneously notified in writing of the scheduled medical examination \* \* \* The notice \* \* \* must contain \* \* \*:

(i) The following notice in prominent or bold face type:  
“\* \* \* **If you object to the location of this appointment you must contact the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 within six business days of the mailing date of this notice.** \* \* \*”

(6) The insurer must include with each appointment notice it sends to the worker: \* \* \*

(j) The following notice in prominent or bold face type:  
“**Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the mailing date of this request. If the division grants this request, you may lose all or part of your benefits. If your claim has not yet been accepted, your future benefits, if any, will be jeopardized.**”

(9) If the division consents to suspend compensation, the suspension shall be effective \* \* \*

(11) If the worker makes no effort to reinstate compensation in an accepted claim within 60 days of the mailing date of the consent to suspend order, the insurer must close the claim \* \* \*

(13) The division may also take the following actions concerning the suspension of compensation: (a) Modify or set aside the order of consent \* \* \* (b) Order payment of compensation previously suspended \* \* \*

(14) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

**436-060-0105 Suspension of Compensation for Insanitary or Injurious Practices, Refusal of Treatment or Failure to Participate in Rehabilitation; Reduction of Benefits**

\* \* \* (5) The request for suspension must be sent to the division. A copy of the request, including all attachments, must 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 must include the following information:

\* \* \* (g) The following notice \* \* \*:  
“**Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-**

**0405. Your letter must be mailed within 10 days of the mailing date of this request.** \* \* \*”

(7) If the division concurs with the request, it shall issue an order suspending compensation \* \* \*

(10) If the worker makes no effort to reinstate benefits within 60 days of the mailing date of the consent order, the insurer must close the claim under OAR 436-030-0034. \* \* \*

(13) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

(14) 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 \* \* \*. When an insurer submits a request to reduce benefits under this section, the insurer must:

(c) Send a copy of the request, including the supporting documentation, to the worker and the worker's representative, if any, by certified mail; and

(d) Include the following notice \* \* \*:

“**Notice to worker: If you think this request to reduce your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the mailing date of this request. If the division grants this request, you may lose all or part of your benefits.**” \* \* \*

**436-060-0135 Injured Worker, Worker Representative Responsible to Assist in Investigation; Suspension of Compensation and Notice to Worker**

\* \* \* (5) The request for suspension must be sent to the division \* \* \*. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service. \* \* \*

**436-060-0137 Vocational Evaluations; and Suspension of Compensation**

\* \* \* (10) The insurer must send the request for suspension to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service. The request must include the following information: (i) The following notice \* \* \*:

“**Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the mailing date of this request. If the division grants this request, you may lose all or part of your benefits.**”

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\*\*\* (12) If the division suspends compensation \*\*\*

(15) A suspension order becomes final unless, within 60 days after the date of **mailing** of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

#### 436-060-0140 Acceptance or Denial of a Claim

\*\*\* (5) A notice of acceptance \*\*\* must include a current **mailing date** \*\*\*

#### 436-060-0147 Worker Requested Medical Examination

\*\*\* (3) The insurer must, upon written notice from the worker, **mail** to the director no later than the 14th day following the insurer's receipt of the worker's request, the names and addresses of all physicians or nurse practitioners who have \*\*\*

#### 436-060-0150 Timely Payment of Compensation

(1) Benefits are deemed paid when addressed to the last known address of the worker or beneficiary and deposited in the **U.S. Mail** or when funds are transferred to a financial institution for deposit in the worker's or beneficiary's account by approved **electronic equivalent**. \*\*\*

(7) Permanent disability must be paid no later than the 30th day after: \*\*\* (b) The date of any litigation order that orders payment of permanent total disability. Permanent total benefits accruing from the date of the order must begin no later than the 30th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board is the **mailing date**, and from the courts, it is the date of the appellate judgment \*\*\*

(8) Fatal benefits must be paid no later than the 30th day after: \*\*\*

(b) The date of any litigation order which orders fatal benefits. Fatal benefits accruing from the date of the order must begin no later than the 30th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board is the **mailing date**, and from the courts, it is the date of the appellate judgment. \*\*\*

#### 436-060-0153 Electronic Payment of Compensation

(1) An insurer may pay benefits through a direct deposit system, automated teller machine card or debit card, or other means of **electronic transfer** if the worker voluntarily consents. The worker's consent must be obtained prior to initiating **electronic payments** and may be written or verbal. The insurer must provide the worker a written confirmation when consent is obtained verbally. The worker may discontinue receiving **electronic payments** by notifying the insurer in writing. \*\*\*

#### 436-060-0155 Penalty to Worker for Untimely Processing

(2) Requests for penalties and attorney fees under this section must be in writing, stating what benefits, attorney fees or costs have been delayed or remain unpaid, and **mailed** or delivered to the division \*\*\*.

(3) For the purpose of this section, "violation" is either:

(a) A late payment or the nonpayment of any single payment due, in which case a request for penalty must be **mailed** or delivered to the director \*\*\*; or

(b) A continuous nonpayment or underpayment \*\*\*. In these instances, a request for penalty must be **mailed** or delivered to the director \*\*\*.

(4) When notified by the director that additional amounts may be due the worker as a penalty under this rule, the insurer must respond in writing to the division. The response must be **mailed** or delivered to the division within 21 days of the **mailing date** of the division's inquiry letter, with copies of the response, including any attachments, sent simultaneously to the worker and the worker's attorney (if represented). \*\*\*

#### 436-060-0180 Designation and Responsibility of a Paying Agent

\*\*\* (8) When notified by the division that there is a reasonable doubt as to the status of the claim or intent of a denial, the insurer must provide written clarification to the division, the worker, insurers involved and other interested parties within 21 days of the **mailing date** of the notification. \*\*\*

#### 436-060-0190 Monetary Adjustments Among Parties and Department of Consumer and Business Services

#### 436-060-0195 Miscellaneous Monetary Adjustments Among Insurers

(3) \*\*\* When notified by the division that a dispute over monetary adjustment exists the insurer must provide a written response to questions or issues raised, including supporting documentation, to the division, insurers involved and other interested parties within 21 days of the **mailing date** of the notification. \*\*\*

#### 436-060-0400 Penalty and Attorney Fee for Untimely Payment of Disputed Claims Settlement

(2) Requests for penalties and attorney fees under this section must be in writing, state what payments were delayed or remain unpaid, and **mailed** or delivered to the division \*\*\*

(3) When notified by the director that a penalty or attorney fees have been requested under this rule, the insurer must respond in writing to the division. The response must be **mailed** or delivered to the division \*\*\*

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**436-060-0510 Reimbursement of Permanent Total Disability Benefits from the Workers' Benefit Fund**

(1) The insurer may request reimbursement of permanent total disability benefits paid after the date of the notice of closure under ORS 656.206(6)(a).

(2) Requests for reimbursement must be filed within one year of the mailing date of the final order upholding the notice of closure \* \* \*

**CHAPTER 436, DIVISION 070**

**WORKERS' BENEFIT FUND ASSESSMENT**

**436-070-0008 Administrative Review**

(1) Contested case hearings regarding sanctions and civil penalties: Any employer \* \* \* may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with 656.740. \* \* \* (b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Hearings regarding estimation actions and orders: Under ORS 656.704(2), any employer who disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. \* \* \*

**CHAPTER 436, DIVISION 075**

**RETROACTIVE PROGRAM**

**436-075-0008 Administrative Review**

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued under ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board under ORS 656.740. \* \* \*

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing under OAR 436-001-0019 within

30 days of the mailing date of the order or notice of action. \* \* \*

**436-075-0070 Reimbursement**

\* \* \* (2) Requests for reimbursement must be mailed or delivered to the Performance Section within 30 days after the end of each quarter to be processed in that quarterly disbursement.

(3) Requests for reimbursement mailed or delivered to the Performance Section more than 30 days after the end of the quarter will be processed with the next quarterly disbursement.

\* \* \*

**CHAPTER 436, DIVISION 080**

**NONCOMPLYING EMPLOYERS**

**436-080-0030 When a Hearing on the Order Is Requested**

(1) A request for hearing on an order issued under OAR 436-080-0010 or 436-080-0040 must specify the grounds upon which the employer contests the order and must be mailed or delivered to the division within 60 calendar days after the mailing of the order.

**436-080-0040 Assessment of Civil Penalties Against Non-complying Employer; Hearing on Proposed Assessment**

\* \* \* (4) The division will mail or otherwise serve an order assessing a civil penalty, with a notice to the employer of rights under ORS 656.740.

**436-080-0060 When a Worker Files a Claim for an Injury**

\* \* \* (3) If the employer wishes to object to the claim, the employer shall request a hearing. The request for hearing must be filed within 60 days from the date of the mailing of the Notice of Referral. \* \* \*

(5) When the division finds that at the time of the injury, either the worker was not a subject worker or the employer was not a subject employer, the worker and employer shall be notified of such determination. The worker may request a hearing by filing a hearing request within 60 days after the mailing of the determination. \* \* \*

**CHAPTER 436, DIVISION 085**

**PREMIUM ASSESSMENT**

\* \* \*

**436-085-0008 Administrative Review**

(1) Any insurer or self-insured employer aggrieved by a proposed order or proposed assessment of civil penalty of

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the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740. \* \* \*

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 60 days after the **mailing** of the proposed order or assessment. No hearing will be granted unless the request for hearing is **mailed** or delivered to the administrator within 60 days after the **mailing date** of the proposed order or assessment.

(2) Under ORS 656.704(2), any insurer or self-insured employer that disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the **mailing date** of the order or notice of action. \* \* \*

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**CHAPTER 436, DIVISION 100**

**WORKERS' COMPENSATION BENEFITS OFFSET**

**436-100-0040 Sanctions Against Worker for Failure to Cooperate With the Department**

\*\*\* (2) If a worker fails to comply with these rules, the director will make a written demand upon the worker by personal service or registered mail. If the worker fails to comply within 20 days of receipt of the demand, the director may authorize suspension of benefits until the worker complies. \*\*\*

**CHAPTER 436, DIVISION 120**

**VOCATIONAL ASSISTANCE TO INJURED WORKERS**

**436-120-0003 Applicability of Rules**

\*\*\* (7) Timeliness of any document required by these rules to be filed or submitted to the division is determined as follows:

(a) If a document is mailed, it will be considered filed on the date it is postmarked.

(b) If a document is faxed or e-mailed, it must be received by the division by 11:59 p.m. Pacific time to be considered filed on that date. \*\*\*

**436-120-0005 Definitions**

\*\*\* (8) "Filed" means mailed, faxed, e-mailed, delivered, or otherwise submitted to the division in a method allowable under these rules. \*\*\*

(11) "Mailed" means postmarked to the last known address.

**436-120-0008 Administrative Review and Contested Cases**

(1) Administrative review of vocational assistance matters: \*\*\* (a) The worker's request for review must be mailed or otherwise communicated to the department \*\*\*

(f) After the parties have had the opportunity to present evidence, and any meetings or conferences deemed necessary by the director have been held, the director will issue a final order. The parties have 60 days from the date the order is issued to request a hearing. An order is issued on the date it is mailed.

(g) The director may on the director's own motion reconsider or withdraw any order that has not become \*\*\*. A request for reconsideration must be mailed before the administrative order becomes final, or if appealed, before the proposed and final order is issued. \*\*\*

(3) Hearings before an administrative law judge:

(a) Under ORS 656.340(16) and 656.704(2), any party that disagrees with an order issued under subsection (1)(f) of

this rule or a dismissal issued under subsection (1)(d) of this rule may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order. \*\*\*

(4) Contested case hearings of civil penalties: \*\*\* (a) The insurer or employer must send the request for hearing in writing to the administrator of the Workers' Compensation Division \*\*\* within 60 days after the mailing date of the notice of the proposed order or assessment.

**436-120-0012 General Requirements For Notices and Warnings**

(1) All notices and warnings to the worker issued under OAR 436-120 must: \*\*\* (g) Be mailed to the worker by both regular and certified mail.

(2) All copies of notices must be mailed to the worker's legal representative. \*\*\*

(3) Unless otherwise indicated under OAR 436-120-0017, copies of all notices must be mailed to the division at the same time they are mailed to the worker.

**436-120-0018 Postponement Notices**

A letter informing the worker that the eligibility evaluation has been postponed does not require specific language in the headings but must include a heading clearly indicating the purpose of the letter and must: \*\*\*

(4) Be mailed to the worker within 14 days of the insurer receiving notification that the worker is likely eligible for vocational assistance. \*\*\*

**436-120-0125 Conditions for Postponement of the Vocational Eligibility Evaluation**

\*\*\* (3) If the insurer is unable to determine eligibility or make a decision regarding a particular vocational service because of insufficient data, the insurer must explain to the worker in writing what information is necessary and when it expects to determine eligibility or make a decision. This explanation must be mailed to the worker \*\*\*

**436-120-0175 Redetermining Eligibility for Vocational Assistance**

If a worker was previously determined ineligible or the worker's eligibility ended, the insurer must redetermine eligibility within 35 days of notification of a change of these circumstances: \*\*\*

(6) The worker, who returned to work prior to becoming medically stationary, informs the insurer that he or she is likely eligible for vocational assistance and requests a determination within 60 days of the mailing date of the Notice of Closure.

\*\*\*

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**436-120-0915 Sanctions of Registered Vocational Assistance Providers and Certified Individuals**

(3) \* \* \* (a) The director will send by certified mail a written notice of intended suspension or revocation and the grounds for such action. \* \* \*

**CHAPTER 436, DIVISION 150**

**WORKERS' BENEFIT FUND CLAIMS PROGRAM**

**436-150-0008 Administrative Review**

(1) Any party as defined by ORS 656.005, and including the Oregon Insurance Guaranty Association, aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740. \* \* \*

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing date of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (1) of this rule, may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. \* \* \*

**CHAPTER 436, DIVISION 162**

**ELECTRONIC DATA INTERCHANGE;  
PROOF OF COVERAGE**

**436-162-0370 Proof of Coverage Terminations**

When the insurer cancels coverage before the expiration of the policy term, the insurer must: \* \* \* (2) Retain a record of the written notice sent to the employer under ORS 656.427, and proof of mailing of that notice, for inspection by the division \* \* \*

## Chapter 656 review

### Potential barriers to electronic communication

*The following terms have been highlighted without considering whether they can or should be changed or whether they are barriers to electronic communication.*

#### Statements in ORS chapter 656 regarding documents that are “mailed” Summary

- Request for verification of wages from concurrent employment (656.210(2)(a))
- Notice of subjectivity to managed care organization (656.245(4)(a) – “regular” mail & (b)(B); 656.262(4)(i))
- Proposed and final order (director’s) (656.260(16))
- Notice of claim denial (656.262(2); 656.319(1))
- Notice that failure to appear at rescheduled medical appointment may result in suspension of compensation (“certified” mail) (656.262(4)(e))
- Notice of workers’ compensation accident (656.265(3))
- Notice of Closure if worker is deceased (656.268(5))
- Notice of review by medical arbiter (department’s) (656.268(6))
- Order on Reconsideration (director’s) (656.268(6); 656.319(4))
- Notice of classification of claim as disabling or nondisabling (656.277(1))
- Request for hearing (to WCB Hearings Division) (656.283(2))
- Notice of time and place of hearing (656.283(4)(c))
- Request for Board Review (to Board and to parties) (656.295(2))
- Notice of review (656.295(4))
- Order on Review (656.295(8))
- Notice of refusal to close claim (656.319(5))
- Notice of Closure (PTD) (656.319(7))
- Notice of IME (656.325(1)(g))
- Notice of policy cancellation (656.427(2) & (4))
- Notice of revocation of self-insurance certification (“registered” or “certified” mail) (656.440(2))
- Demand for recovery of premiums and assessments by SAIF Corporation (656.505(2))
- Demand for payment of premiums, fees, assessments, and penalties by SAIF Corporation (656.560(2)) (“registered” or “certified” mail)
- Demand that worker or other beneficiaries or legal representative exercise right of election under 656.578 (656.583) (“registered” or “certified” mail or by personal service)
- Notice when worker or beneficiaries elect to recover damages from employer or third person (656.593) (“registered” or “certified” mail or by personal service)
- Administrative order (director’s) (656.704)
- Timeliness of reports to the director or board (656.726(4)(a)) (“regular” mail)
- Order declaring person to be a noncomplying employer (656.740(1) & (2))
- Proposed assessment of civil penalty (656.740(1) & (2))
- Notice of termination of worker leasing license (656.850(5))
- Notice of hearing rights and procedures (183.413)
- Notice of right to hearing (183.415) (personally or by “registered” or “certified” mail)
- Hearing orders to be mailed (183.417; 183.470)
- Petition for review by Court of Appeals (183.482) (copy to agency and parties by “registered” or “certified” mail)

## Chapter 656 review

### Potential barriers to electronic communication

#### Statements in ORS chapters 656 regarding documents that are mailed Detail

**ORS 656.210(2)(a)** For the purpose of this section, the weekly wage of workers shall be ascertained: \* \* \*

(b) Notwithstanding paragraph (a)(B) of this subsection, the weekly wage calculated under paragraph (a)(A) of this subsection shall be used for workers employed in more than one job at the time of injury unless the insurer, self-insured employer or assigned claims agent for a noncomplying employer receives:

(A) Within 30 days of receipt of the initial claim, notice that the worker was employed in more than one job with a subject employer at the time of injury; and

(B) Within 60 days of the date of **mailing** a request for verification, verifiable documentation of wages from such additional employment.

**ORS 656.245(4)(a)** \* \* \* A worker becomes subject to the contract upon the worker's receipt of actual notice of the worker's enrollment in the managed care organization, or upon the third day after the notice was sent by **regular mail** by the insurer or self-insured employer, whichever event first occurs.

**ORS 656.245(4)(b)(B)** If the insurer or self-insured employer gives notice that the worker is required to receive treatment from the managed care organization, the insurer or self-insured employer must guarantee that any reasonable and necessary services so received, that are not otherwise covered by health insurance, will be paid as provided in ORS 656.248, even if the claim is denied, until the worker receives actual notice of the denial or until three days after the denial is **mailed**, whichever event first occurs. \* \* \*

**ORS 656.260(16)** \* \* \* The director shall complete administrative review and issue a proposed order within a reasonable time. The proposed order of the director issued pursuant to this section shall become final and not subject to further review unless a written request for a hearing is filed with the director within 30 days of the **mailing** of the order to all parties.

**ORS 656.262(4)(e)** If a worker fails to appear at an appointment with the worker's attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245, the insurer or self-insured employer shall notify the worker by **certified mail** that temporary disability benefits may be suspended after the worker fails to appear at a rescheduled appointment. \* \* \*

**ORS 656.262(4)(i)** The insurer or self-insured employer may unilaterally suspend payment of all compensation to a worker enrolled in a managed care organization if the worker continues to seek care from an attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 that is not authorized by the managed care organization more than seven days after the **mailing** of notice by the insurer or self-insured employer.

**ORS 656.262(2)** \* \* \* A copy of the notice of denial shall be **mailed** to the director and to the employer by the insurer. \* \* \*

**ORS 656.265(3)** Notice shall be given to the employer by **mail**, addressed to the employer at the last-known place of business of the employer, or by personal delivery to the employer or to a foreman or other supervisor of the employer. \* \* \*

**ORS 656.268(5)** \* \* \* (b) The insurer or self-insured employer shall issue a notice of closure of the claim to the worker, to the worker's attorney if the worker is represented, and to the director. If the worker is deceased at the time the notice of closure is issued, the insurer or self-insured employer shall **mail** the worker's copy of the notice of closure, addressed to the estate of the worker, to the worker's last known address and may **mail** copies of the notice of closure to any known or potential beneficiaries to the estate of the deceased worker.

(c) The notice of closure must inform: \* \* \* (B) The worker of: \* \* \* (iii) The right of the worker or beneficiaries of the worker who were **mailed** a copy of the notice of closure under paragraph (b) of this subsection to request reconsideration by the director under this section within 60 days of the date of the notice of closure;

(iv) The right of beneficiaries who were not **mailed** a copy of the notice of closure under paragraph (b) of this subsection to request reconsideration by the director under this section within one year of the date the notice of closure was **mailed** to the estate of the worker under paragraph (b) of this subsection; \* \* \*

(e) \* \* \* If the worker is deceased at the time the notice of closure is issued, a request for reconsideration by a beneficiary of the worker who was **mailed** a copy of the notice of closure under paragraph (b) of this subsection must be made within 60 days of the date of the notice of closure. A request for reconsideration by a beneficiary to the estate of a deceased worker who was not **mailed** a copy of the notice of closure under paragraph (b) of this subsection must be made

## Chapter 656 review

### Potential barriers to electronic communication

within one year of the date the notice of closure was **mailed** to the estate of the worker under paragraph (b) of this subsection. \* \* \*

(6) \* \* \* (d) Except as provided in subsection (7) of this section, the reconsideration proceeding shall be completed within 18 working days from the date the reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit within the department. The deadline of 18 working days may be postponed by an additional 60 calendar days if within the 18 working days the department **mailed** notice of review by a medical arbiter. If an order on reconsideration has not been **mailed** on or before 18 working days from the date the reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days where a notice for medical arbiter review was timely **mailed** or the director postponed the reconsideration pursuant to paragraph (b) of this subsection, or within such additional time as provided in subsection (8) of this section when reconsideration is postponed further because the worker has failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and any further proceedings shall occur as though an order on reconsideration affirming the notice of closure was **mailed** on the date the order was due to issue.

#### **656.277 Request for reclassification of nondisabling claim; nondisabling claim procedure; attorney fees.** (1)(a) \* \* \*

The insurer or self-insured employer shall classify the claim as disabling or nondisabling within 14 days of the request. A notice of such classification shall be **mailed** to the worker and the worker's attorney if the worker is represented. The worker may ask the Director of the Department of Consumer and Business Services to review the classification by the insurer or self-insured employer by submitting a request for review within 60 days of the **mailing** of the classification notice by the insurer or self-insured employer. \* \* \*

#### **656.283 Hearing rights and procedure; rules; impeachment evidence; use of standards for evaluation of disability.** \* \*

\* (2) A request for hearing may be made by any writing, signed by or on behalf of the party and including the address of the party, requesting the hearing, stating that a hearing is desired, and **mailed** to the Workers' Compensation Board. \* \* \*

(4)(a) At least 60 days' prior notice of the time and place of hearing shall be given to all parties in interest by **mail**. \* \* \*

#### **656.289 Orders of Administrative Law Judge; review; disposition of claim when compensability disputed; approval of director required for reimbursement of certain expenditures.** \* \* \* (2) A copy of the order shall be sent forthwith by **mail** to the Director of the Department of Consumer and Business Services and to all parties in interest.

(3) The order is final unless, within 30 days after the date on which a copy of the order is **mailed** to the parties, one of the parties requests a review by the Workers' Compensation Board under ORS 656.295. \* \* \*

(4)(c) \* \* \* Upon approval of the disputed claim settlement, the Administrative Law Judge, the board or the court shall **mail** to the director a copy of the disputed claim settlement.

#### **656.295 Board review of Administrative Law Judge orders; application of standards for evaluation of disability.** \* \* \*

(2) The requests for review shall be **mailed** to the board and copies of the request shall be **mailed** to all parties to the proceeding before the Administrative Law Judge. \* \* \*

(4) Notice of the review shall be given to the parties by **mail**. \* \* \*

(7) The order of the board shall be filed and a copy thereof sent by **mail** to the director and to the parties.

(8) An order of the board is final unless within 30 days after the date of **mailing** of copies of such order to the parties, one of the parties appeals to the Court of Appeals for judicial review pursuant to ORS 656.298.

#### **656.319 Time within which hearing must be requested.** (1) With respect to objection by a claimant to denial of a claim for compensation under ORS 656.262, a hearing thereon shall not be granted and the claim shall not be enforceable unless:

(a) A request for hearing is filed not later than the 60th day after the **mailing** of the denial to the claimant; or

(b) The request is filed not later than the 180th day after **mailing** of the denial and the claimant establishes at a hearing that there was good cause for failure to file the request by the 60th day after **mailing** of the denial. \* \* \*

(4) With respect to objections to a reconsideration order under ORS 656.268, a hearing on such objections shall not be granted unless a request for hearing is filed within 30 days after the copies of the reconsideration order were **mailed** to the parties.

(5) With respect to objection by a claimant to a notice of refusal to close a claim under ORS 656.268, a hearing on the objection shall not be granted unless the request for hearing is filed within 60 days after copies of the notice of refusal to close were **mailed** to the parties. \* \* \*

(7) With respect to objection by a claimant to a notice of closure issued under ORS 656.206, a hearing on the objection shall not be granted unless the request for hearing is filed within 60 days after the notice of closure was **mailed** to the claimant.

## Chapter 656 review

### Potential barriers to electronic communication

**656.325 Required medical examination; worker-requested examination; qualified physicians; claimant's duty to reduce disability; suspension or reduction of benefits; cessation or reduction of temporary total disability benefits; rules; penalties.** (1) \* \* \* (g) A worker who objects to the location of an independent medical examination must request review by the director under paragraph (c)(A) of this subsection within six business days of the date the notice of the independent medical examination was mailed.

**656.427 Termination of workers' compensation insurance contract or surety bond liability by insurer.** \* \* \* (2) An insurer may cancel a workers' compensation insurance policy or surety bond under this section as follows:

(a) If the cancellation of a workers' compensation insurance policy is for reasons other than those set forth in paragraphs (b) and (c) of this subsection, it is effective at 12 midnight not less than 45 days after the date the notice is mailed to the employer.

(b) If the cancellation of a workers' compensation insurance policy is based on the insurer's decision not to offer insurance to employers within a specific premium category, it is effective not sooner than 90 days after the date the notice is mailed to the employer.

(c) If the cancellation of a workers' compensation insurance policy is based on nonpayment of premium, the cancellation is effective not sooner than 10 days after the date the notice is mailed to the employer. \* \* \*

(4) Notice to the employer under this section shall be given by mail, addressed to the employer at the last-known address of the employer. \* \* \*

**656.440 Notice of certificate revocation; appeal; effective date.**

\* \* \* (2) If the employer appeals, the Hearings Division of the Workers' Compensation Board under ORS 656.283 shall set a date for a hearing \* \* \* Within 10 days after the hearing, the Administrative Law Judge shall either affirm or disaffirm the revocation and give the employer written notice thereof by registered or certified mail.

**656.505 Estimate of payroll when employer fails to file payroll report; demand for and recovery of premiums and assessments.** \* \* \* (2) If the report required and the premiums and assessments due thereon are not made within 30 days from the mailing of such demand the employer shall be in default as provided in ORS 656.560, and the [SAIF] corporation may have and recover judgment or file liens for such estimated premiums and assessments or the actual premium and assessment, whichever is greater. \* \* \*

**656.560 Default in payment of premiums, fees, assessments or deposit; remedies.** \* \* \*

(2) If any employer insured with the State Accident Insurance Fund Corporation fails to make and maintain the deposit provided in ORS 656.552 or fails to make payment of premiums, fees and assessments required within 30 days after a written demand by the State Accident Insurance Fund Corporation, such employer is in default and is also subject to a penalty of 10 percent of the amount then due. The written demand shall be mailed to the employer at the last-known address of the employer by registered or certified mail. \* \* \*

**656.583 Paying agency may compel election and prompt action.** (1) The paying agency may require the worker or other beneficiaries or the legal representative of a deceased worker to exercise the right of election provided in ORS 656.578 by serving a written demand by registered or certified mail or by personal service upon such worker, beneficiaries or legal representative. \* \* \*

**656.593 Procedure when worker elects to bring action; release of liability and lien of paying agency in certain cases.**

(1) If the worker or the beneficiaries of the worker elect to recover damages from the employer or third person, notice of such election shall be given the paying agency by personal service or by registered or certified mail. The paying agency likewise shall be given notice of the name of the court in which such action is brought, and a return showing service of such notice on the paying agency shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the defendant of the lien of the paying agency, as provided in this section. \* \* \*

**656.704 Actions and orders regarding matters concerning claim and matters other than matters concerning claim; authority of director and board; administrative and judicial review; rules.** \* \* \* (3) \* \* \* (c) Notwithstanding ORS 656.283 (3), if parties to a hearing scheduled before an Administrative Law Judge are involved in a dispute regarding both matters concerning a claim and matters not concerning a claim, the Administrative Law Judge may defer any action on the matter concerning a claim until the director has completed an administrative review of the matters other than those concerning a claim. The director shall mail a copy of the administrative order to the parties and to the Administrative Law Judge. \* \* \*

## Chapter 656 review

### Potential barriers to electronic communication

#### **656.726 Duties and powers to carry out workers' compensation and occupational safety laws; rules. \* \* \***

(4) \* \* \* (a) \* \* \* Unless otherwise specified by law, all reports, claims or other documents shall be deemed timely provided to the director or board if mailed by regular mail or delivered within the time required by law. Notwithstanding any other provision of this chapter, the director may adopt rules to allow for the electronic transmission and filing of reports, claims or other documents required to be filed under this chapter and to require the electronic transmission and filing of proof of coverage required under ORS 656.419, 656.423 and 656.427. \* \* \*

#### **656.740 Review of proposed order declaring noncomplying employer or nonsubjectivity determination; review of proposed assessment or civil penalty; insurer as party; hearing. (1)**

A person may contest a proposed order of the Director of the Department of Consumer and Business Services declaring that person to be a noncomplying employer, or a proposed assessment of civil penalty, by filing with the Department of Consumer and Business Services, within 60 days after the mailing of the order, a written request for a hearing. Such a request need not be in any particular form, but shall specify the grounds upon which the person contests the proposed order or assessment. \* \* \*

(2) A person may contest a nonsubjectivity determination of the director by filing a written request for hearing with the department within 60 days after the mailing of the determination.

\* \* \*

#### **656.850 License; compliance with workers' compensation and safety laws.**

(5) \* \* \* A notice of termination shall state the effective date and hour of the termination, but the termination shall be effective not less than 30 days after the notice is received by the director. Notice to the client under this section shall be given by mail, addressed to the client at the client's last-known address. \* \* \*

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### From the Uniform Electronic Transactions Act (UETA)

#### **84.072 Conditions under which public body may send notice by electronic mail. (1)** As used in this section:

(a) "Agreement" has the meaning given that term in ORS 84.004.

(b) "Public body" has the meaning given that term in ORS 174.109.

(2) A public body may send to a person by electronic mail a notice that a law of this state requires the public body to send by regular mail if:

(a) The law does not expressly prohibit or restrict the use of electronic mail as a means by which to deliver the notice; \* \*

\*