

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Workers with Disabilities Program
Oregon Administrative Rules
Chapter 436, Division 040**

Effective July 1, 2008

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NOTE: Significant revisions are marked with vertical lines in the right margins.

HISTORY LINES: These rules include only the most recent "History" lines. The history line shows when the rule was last revised (or "filed" if the rule has never been revised) and its effective date. To obtain a comprehensive history for OAR chapter 436, please call the Workers' Compensation Division, (503) 947-7627, or visit the division's Web site:

http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

In the Matter of the Amendment of Oregon Administrative Rules (OAR):)	ORDER OF ADOPTION No. 08-055
)	
)	
436-040, Workers with Disabilities Program)	

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436, division 040, "Workers with Disabilities Program."

On April 10, 2008, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0009, and posted copies to its Web site. The Secretary of State included notice of the public hearing in its May 2008 *Oregon Bulletin*.

On May 19, 2008, a public hearing was held as announced. In addition, the record was held open for written testimony through May 22, 2008. The department received no testimony regarding these rules.

RULE SUMMARY

Revised rules:

- Correct the applicability provisions in rule OAR 436-040-0003
- Repeal OAR 436-040-0100, "Suspension and Revocation of Authorization to Issue Guaranty Contracts," because this rule duplicates OAR 436-050-0015

FINDINGS

Having reviewed and considered the record and being fully informed, I make the following findings:

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

IT IS THEREFORE ORDERED THAT

- 1) Amendments to OAR chapter 436, as set forth in Exhibit "A", are attached, incorporated by reference, and **adopted on this 12th day of June 2008, to be effective July 1, 2008.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.

Order of Adoption
OAR 436-040

- 3) A copy of the amended rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

DATED this 12th day of June 2008.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Under the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 947-7810.

Distribution: WCD-ID, S0, S1, S2, S3, S4, S5, S6, S7, S8, ML, ME

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WORKERS WITH DISABILITIES PROGRAM**

EXHIBIT "A"

**OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 040**

436-040-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.726 and 656.628.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.628
Hist: WCD 1-1982(Admin), f. 1-20-82, ef. 2-1-82; WCD 6-1983(Admin), f. 12-20-83, ef. 1-1-84

436-040-0002 Purpose

The purpose of these rules is to establish guidelines for the administration of the Workers with Disabilities Program established to encourage the employment or re-employment of workers with disabilities.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0003 Applicability of Rules

(1) These rules are effective July 1, 2008, and apply to all applications for relief submitted prior to May 1, 1990 and all requests for reimbursement from the Workers with Disabilities Program filed with the director on or after July 1, 2008 for injuries occurring on or after November 1, 1981.

(2) These rules carry out the provisions of ORS 656.628.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
Hist: Amended 6/12/08 as WCD Admin. Order 08-055, eff. 7/1/08

436-040-0005 Definitions

Except where the context requires otherwise, these rules are governed by the following definitions:

(1) **"Compensation"** means all benefits, including medical services and attorney fees, provided for a compensable injury to a subject worker or the worker's beneficiaries. However, it does not include expenses as defined by the National Council on Compensation Insurance, in its Workers' Compensation Statistical Plan, Part IV.

(2) **"Deductible"** means the initial \$1,000 of cumulative compensation paid on qualifying claim(s) applied once per worker with a disability.

(3) **"Director"** means the director of the Department of Consumer and Business Services or the director's delegate for the matter.

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

(5) **"Employer"** means an employer who qualifies pursuant to the provisions of ORS 656.017, either as a carrier-insured employer or as a self-insured employer under ORS 656.407.

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(6) " Worker with a disability" means a worker who is afflicted with, or subject to, any permanent physical or mental impairment, whether congenital or due to an injury or disease, including periodic impairment of consciousness or muscular control of such character that the impairment would prevent the worker from obtaining or retaining employment.

(7) " Workers with Disabilities Claim Reserve" means the total anticipated liability (paid plus future reimbursable costs) regardless of any relief granted under the Workers with Disabilities Program.

(8) " Workers with Disabilities Program" means the program established under ORS 656.628.

(9) "Paying Agency" means the insurer, self-insured employer, or designated representative of the self-insured employer, responsible for paying compensation for a compensable injury.

(10) "Settlement" means any agreement produced as a result of the act or process of settling differences between a paying agent and a worker with a disability, or disposition of a claim pursuant to ORS 656.236 or 656.289.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0006 Administration of Rules

For the purpose of administration of the Workers with Disabilities Program, orders of the division are deemed orders of the director.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0008 Administrative Review

(1) If a paying agency or employer is aggrieved by a decision of the division, the director may be petitioned for reconsideration.

(2) The director shall examine the application and such further evidence filed, and enter an order. Copies of the order will be sent to the paying agency, the division, and employer, if applicable. Granting or denying reimbursement from the Workers with Disabilities Program is at the sole discretion of the director. Pursuant to ORS 656.628(7), the director's order is final and not subject to review by any court or other administrative body.

(3) In adopting these rules, the director reserves the right to re-examine any liability created against the Workers' Benefit Fund and to modify or terminate such liability, where such action is justified.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0010 Criteria for Eligibility

(1) The criteria used to determine eligibility for relief from the Workers with Disabilities Program are:

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- (a) Without regard to employer knowledge, a worker must have a permanent physical or mental impairment, whether congenital or due to an injury or disease which would prevent the worker from obtaining or retaining employment. For the purpose of this section, a worker has a pre-existing permanent impairment if it is equal to or greater than twenty five percent (25%) of the whole person.
- (b) There must be a subsequent compensable injury or injuries:
- (A) To the worker with a disability resulting in cumulative claim(s) costs in excess of \$1,000; or
- (B) To other workers employed by the disabled worker's employer resulting in cumulative claim(s) costs in excess of \$1,000.
- (c) The insurer or employer must demonstrate that the subsequent injury or injuries:
- (A) Would not have been sustained except for the disabled worker's impairment; or
- (B) Would not have occurred, to workers of the same employer, except for the act or omission of a worker with a disability which resulted from the disabled worker's impairment; or
- (C) Resulted in disability which is at least one-fourth greater by reason of the worker's pre-existing impairment, as determined by the division.
- (2) An employer declared noncomplying in accordance with ORS 656.052 is not eligible for relief from the Workers with Disabilities Program for injuries to subject workers occurring during any period of noncompliance.
- (3) A paying agency is not eligible for reimbursement from the Workers with Disabilities Program for any claim occurring to a worker during a period for which the employer is receiving premium reimbursement from the Re-employment Assistance Program, for that worker, pursuant to ORS 656.622(3).

Stat. Auth.: ORS 656.726
 Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
 Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0020 Limitation of Program

- (1) Reimbursement is limited to the monies available in the Workers' Benefit Fund .
- (2) In the event of insufficient reserves in the Workers' Benefit Fund, the director shall have final authority to determine an equitable distribution which will proportionately distribute the available funds among the claims which have qualified for reimbursement from the Workers with Disabilities Program.

Stat. Auth.: ORS 656.726
 Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
 Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0030 Application for Determination of Relief From the Workers with Disabilities Program

- (1) The paying agency must provide the director adequate evidence to establish eligibility for determination of relief from the Workers with Disabilities Program.

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- (2) When the deductible has been met and possible eligibility for relief becomes known, the paying agency shall make prompt application to the division requesting determination of relief from the Workers with Disabilities Program in a form prescribed by the director.
- (3) The application shall be submitted prior to the date of the last valuation affecting an employer's experience rating, prior to the last valuation for retrospective rating, whichever is the last to occur and prior to the employer ceasing to do business. The application shall be supported by sufficient evidence establishing eligibility for reimbursement under the general provisions herein and in accordance with OAR 436-040-0010. For employers that are not experience rated, application shall be submitted prior to the date there would have been a last valuation, had the employer been so rated, and prior to the employer ceasing to do business. The preceding application time frames do not apply to self-insured employers or their paying agencies.
- (4) To meet the requirements of OAR 436-040-0030(3), the paying agency shall:
- (a) Specify the condition which caused permanent impairment and which constituted a handicap;
 - (b) Specify whether this request is based on a causal or contributory relationship pursuant to OAR 436-040-0010(1)(c);
 - (c) Provide documentation describing prior impairment: such as medical reports, direct information from the worker, employer documentation, prior Determination Orders, Opinion and Orders, and Orders on Review;
- (5) The division will review the application to assure it is complete and the \$1,000 deductible has been met. The application, supporting documentation, and claims involved will then be submitted to the division for an eligibility determination.

Stat. Auth.: ORS 656.726
 Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
 Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0040 Eligibility Determination

- (1) The division shall determine whether a claim qualifies for reimbursement, and the percentage of the reimbursement.
- (2) The division shall issue a determination order accepting or denying the application within 30 calendar days after receipt of the application and supporting documentation.
- (3) The reimbursement percentage shown on the determination order will be:
- (a) 100% after the \$1,000 deductible in those cases qualifying under OAR 436-040-0010(1)(c)(A) and (B); or
 - (b) In direct proportion to the percentage the resulting disability was increased as a result of the pre-existing impairment in those cases qualifying under OAR 436-040-0010(1)(c)(C).

Stat. Auth.: ORS 656.726
 Stats. Implemented: ORS 656.628
 Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

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436-040-0050 Reimbursement

- (1) Reimbursement will be made to the paying agency based on the percentage of reimbursement ordered by the division.
- (2) Request for reimbursement shall not be made until the deductible has been met.
- (3) Requests for reimbursement are not to include: costs incurred for conditions unrelated to the compensable claim; costs incurred due to inaccurate, untimely, or improper processing; expenses; and settlement amounts not approved by the division, to which the parties agreed after relief was granted.
- (4) The division will authorize reimbursement to the paying agency quarterly after receipt and approval of documentation of compensation paid from the paying agency. Documentation shall include, but not be limited to:
 - (a) Net amounts paid separated into disability benefits by type, and medical benefits for corresponding quarterly time periods;
 - (b) The current Worker with a Disability Claim Reserve as defined in these rules;
 - (c) Payment certification statement; and
 - (d) Any other information deemed necessary by the director.
- (5) For purposes of subsection 4(a) of this rule, "net amounts paid" means the total compensation paid less any recoveries, including but not limited to, third party recovery, Retroactive Program reimbursement and Rehabilitation Program reimbursement.
- (6) Periodically the division will audit the physical file of the paying agency to validate the amount reimbursed. Reimbursement shall not be approved if, upon such audit, any of the following are found to apply:
 - (a) Compensation has been paid as a result of untimely, inaccurate, or improper claims processing;
 - (b) Compensation has been paid for treatment of any condition unrelated to the compensable claim for which Workers with Disabilities Program relief was granted.
 - (c) The compensability of the accepted claim is questionable and the rationale for acceptance has not been reasonably documented, as required under generally accepted claims management procedures;
 - (d) The separate payments of compensation have not been documented, as required under generally accepted accounting procedures;
 - (e) For applications received after January 1, 1990, the subject employer was no longer doing business at the time of application for the Workers with Disabilities Program determination; that the employer was on a retrospective rating plan that was closed prior to the application for the Workers with Disabilities Program determination; or, if not on an open retrospective rating plan, that the last valuation for experience rating modification purposes that could affect the employer was completed prior to the application for the Workers with Disabilities Program determination;

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- (f)** The insurer did not adjust the claims reserve value used in dividend, retrospective evaluation, or any claim valuation for experience rating determination to the percentage level specified in the order of acceptance, allowing for the \$1,000 compensation minimum, or did not make the necessary monetary adjustments with the employer; or
- (g)** The insurance carrier is not able to provide applicable records relating to experience rating, retrospective rating or dividend calculations at the time of audit or within ten working days thereafter. Any reimbursements received on claims, for which the insurer is unable to provide records, will be returned to the division at least until the next annual audit is conducted and all applicable records are reviewed.
- (7)** The division will authorize reimbursement to insurance companies only for compensation which could reasonably be projected at the first of either to occur;
- (a)** The last claim evaluation which would affect the employer's experience rating modification or retrospective rating adjustment, whichever is later; or
- (b)** For applications received after January 1, 1990, the employer ceases to do business, if that occurs first.
- (8)** The insurance company shall submit a claim valuation to the division at the first to occur of:
- (a)** The last claim valuation date which would affect the employer's experience rating modification or retrospective rating adjustment, whichever is later (usually three and one half years after the inception of the policy period); or
- (b)** For applications received after January 1, 1990, the employer ceases to do business. The valuation shall include future reserves for the claim at that time. The division will verify the future reserves are reasonable and based on the appropriate valuation date. If the division determines the submitted claim valuation is unreasonable or based on inappropriate information, the division may establish the claim valuation or adjust the claim valuation period. The claim valuation, when approved by the division, shall be the maximum Worker with a Disability Claim Reserve used as the basis for reimbursement for the claim.
- (9)** When a claim is settled by a Compromise and Release or a Disputed Claims Settlement, the department shall review and modify the final reserve to reflect resulting changes in liability. The paying agent shall be notified of any change in the final reserve. A director review of this action will be considered only when paid claim costs have exceeded the established reserve.
- (10)** In the event that a denied claim is found compensable by a hearing referee, the Workers' Compensation Board, or the Court of Appeals, and that decision is reversed by a higher level of appeal, the paying agency shall receive reimbursement for claim payments required to be made while the claim was in accepted status.

Stat. Auth.: ORS 656.726
 Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
 Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

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436-040-0060 Effects on Rates; Reporting

(1) Where an order of acceptance has established the percentage of reimbursement to an insured, the incurred claim cost above \$1,000, prior to reimbursement, shall be reduced by that percentage. The net incurred cost after such reduction shall be used in any dividend calculation, retrospective rating evaluation or experience rating computation, retroactively if necessary, and shall be reported at that net incurred cost to the rating organization. Any subsequent re-evaluation of the claims reserve requirements under the rules of the Unit Statistical Plan Manual shall be similarly reduced by the percentage of reimbursement.

(2) The paying agency "eligible for" or receiving reimbursement from the Workers with Disabilities Program, shall report the subject claims in such method and manner as the insurance commissioner shall require. Notwithstanding the reporting requirements of the Insurance Commissioner and an authorized rating organization, the paying agency must be able to document that such reimbursed costs are not and will not be included in data reported that will affect the rates and/or dividend eligibility.

(3) If compensation reported to the appropriate rating organization subsequently becomes eligible for reimbursement from the Workers with Disabilities Program, the insured paying agency shall immediately file a "re-evaluation of losses" report, pursuant to the Insurance Commissioner's rules, with a rating organization licensed by the Insurance Commissioner.

(4) If compensation used by the division for experience rating purposes becomes eligible for reimbursement from the Workers with Disabilities Program, the self-insured paying agency may file a request for re-evaluation of experience rating modification(s) with the division. Any necessary calculation(s) will be made, retroactively if necessary, when the annual experience rating modification is calculated.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)

Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0070 Settlements

(1) Any settlement of the claim by the parties is not eligible for reimbursement from the Workers with Disabilities Program unless made with the prior written approval of the division.

(2) Requests for written approval of proposed settlements should include:

(a) A copy of the proposed settlement;

(b) Correspondence between the paying agency and the claimant or claimant's representative which establishes the basis for settlement or a statement from the paying agency of how the amount of the settlement was calculated;

(c) Additional medical reports not available at the time of the determination; and

(d) Other material which would support the proposed settlement as an appropriate manner to handle the claim.

(3) The paying agency shall submit settlements to the division in the format prescribed by the director.

Stat. Auth.: ORS 656.726

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Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0080 Third Party Recoveries

(1) If a third party recovery is made prior to a claim qualifying for Workers with Disabilities Program relief, compensation recovered shall be credited against the compensation of the claim prior to any request for reimbursement.

(2) The Workers with Disabilities Program shall be a party to any third party recovery on a claim if payment from the program has been made prior to the third party recovery as provided in ORS 656.591 and ORS 656.593(1)(c).

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.628 (§286, ch. 70, OL 2007)
Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

436-040-0090 Assessment of Civil Penalties

The director, through the division and pursuant to ORS 656.745, may assess a civil penalty against an insurer. When the division imposes a penalty under this section, the order shall be issued in accordance with ORS 656.447, ORS 656.704 and the contested case provisions of the Administrative Procedures Act (ORS Chapter 183).

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.628
Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08

**436-040-0100 Suspension and Revocation of Authorization to Issue Guaranty Contracts
(Repealed)**

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.628
Hist: Amended 11/1/07 as WCD Admin. Order 07-061, eff. 1/1/08
Repealed 6/12/08 as WCD Admin. Order 08-055, eff. 7/1/08

**Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on

June 12, 2008 by the
Date prior to or same as filing date

Department of Consumer and Business Services
Workers' Compensation Division
Agency and Division

OAR chapter 436
Administrative Rules Chapter No.

Fred Bruyns
Rules Coordinator

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to become effective July 1, 2008 Rulemaking Notice was published in the May 2008 *Oregon Bulletin*.**
Date upon filing or later Month and Year

Rules affecting workers' compensation insurance, claims processing, medical billing, and return-to-work assistance.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: OAR 436-050-0025

AMEND: OAR:

436-001-0003	436-001-0252	436-009-0070	436-045-0003	436-050-0175	436-160-0330
436-001-0004	436-001-0265	436-009-0090	436-050-0002	436-050-0190	436-160-0340
436-001-0005	436-001-0296	436-015-0005	436-050-0003	436-050-0200	436-160-0350
436-001-0009	436-001-0300	436-015-0009	436-050-0005	436-050-0210	436-160-0360
436-001-0019	436-009-0004	436-015-0010	436-050-0008	436-050-0220	436-160-0410
436-001-0023	436-009-0008	436-015-0020	436-050-0045	436-110-0240	436-160-0430
436-001-0027	436-009-0010	436-015-0030	436-050-0050	436-110-0320	
436-001-0030	436-009-0015	436-015-0040	436-050-0100	436-110-0330	
436-001-0170	436-009-0020	436-015-0110	436-050-0110	436-160-0020	
436-001-0240	436-009-0030	436-030-0003	436-050-0120	436-160-0070	
436-001-0246	436-009-0040	436-040-0003	436-050-0170	436-160-0090	

REPEAL: OAR 436-040-0100

ORS 656.726(4)
Statutory Authority

Other Authority

ORS chapter 656
Statutes being Implemented

RULE SUMMARY

Amendments to OAR 436-001, "Procedural Rules for Rulemaking and Hearings":

- Clarify the applicability of the rules (436-001-0003)
- Carry out ORS 183.335 by requiring notice to legislators about proposed rulemaking (436-001-0009)

Certificate and Order for Filing Permanent Administrative Rules

- Clarify the requirements for and methods of requesting a hearing (436-001-0019)
- Clarify that parties only need to provide supplemental exhibits to the director's representative if the director has filed an entry of appearance; clarify that all exhibits offered will be included in the hearing file whether or not they are admitted into the evidentiary record (436-001-0240)
- Clarify that written exceptions to a proposed and final order should include argument (436-001-0246)
- Provide that a party may request that director review be stayed if there is a pending matter concerning a claim that may make the matter within the director's jurisdiction moot (436-001-0252)
- Change the time frame for submitting a statement of services from seven days of the hearing date to any time before an order is issued (436-001-0265)
- Allow the ALJ to issue a proposed and final order dismissing the request for hearing if the parties resolve all issues within the director's jurisdiction via a settlement or agreement (436-001-0170 & 0296)

Amendments to OAR 436-009, "Oregon Medical Fee and Payment Rules":

- Adopt by reference updated medical fee schedules and resources for the payment of health care providers, except as otherwise provided in these rules (436-009-0004)
- Extend the time for an insurer to request that a health care provider refund an overpayment for a compensable medical service from 90 to 180 days from the payment date; if the provider fails to respond or disagrees that an overpayment occurred, the insurer may request review by the director within 90 days of requesting the refund (436-009-0008)
- Exclude lumbar artificial disc replacement from compensability except under specified conditions (436-009-0015)
- Remove electronic data interchange medical reporting requirements in Appendix B, because OAR 436-160 includes the "Medical Bill Data Element Requirement Table" (436-009-0030)
- Raise the evaluation/management conversion factor from \$59.79 to \$64.79; lower the surgery conversion factor from \$93.66 to \$86.44 (436-009-0040)
- Reduce the maximum allowable fee for medications from 88% of the average wholesale price (AWP) to 83.5% of AWP and reduce the dispensing fee from \$8.70 to \$2.00 (436-009-0090)

Amendments to OAR 436-015, "Managed Care Organizations":

- Clarify MCO certification requirements by defining the terms "group" (of medical service providers) and "non-qualifying employer." (436-015-0005 & 0009)
- Require that if an MCO has not obtained contracts with more than one insurer within one year from the effective date of its first contract, the MCO must provide the director with a report documenting its efforts to obtain additional contracts (436-015-0009)
- Eliminate the requirement that a prospective MCO submit certain documentation within 120 days of the filing of the "Notice of Intent to Form" (436-015-0010 & 0030)
- Reduce the number of copies of MCO applications or plans that must be submitted to the director from four copies to one copy (436-015-0020 & 0030)
- Eliminate the requirement that a prospective MCO submit a certification of incorporation and a copy of the MCO by-laws with its application (436-015-0030)
- For the purpose of quarterly data reporting, require that MCOs submit National Provider Identification (NPI) numbers rather than Oregon license numbers for their member providers (436-015-0040)
- Update the wording of appeal rights notices that MCOs must provide to a worker and all other parties that may appeal an MCO's decision, to include updated department contact information, and that appeal time frames begin with the mailing date of the notice, not from the date notice is received by the party; simplify the process for making complaints about rule violations (436-015-0110)

Amendments to OAR 436-030, "Claim Closure and Reconsideration," 436-040, "Workers with Disabilities Program," and 436-045, "Reopened Claims Program":

Certificate and Order for Filing Permanent Administrative Rules

- Correct the applicability provisions in rules 030-0003, 040-0003, and 045-0003
- Repeal OAR 436-040-0100, "Suspension and Revocation of Authorization to Issue Guaranty Contracts," because this rule duplicates OAR 436-050-0015

Amendments to OAR 436-050, "Employer/Insurer Coverage Responsibility":

- Abbreviate the definition of "complete records" and adequately describe the term in the context of several rules in division 050 (436-050-0005, 0110, & 0210)
- Clarify rights of parties to appeal department orders by deleting an unnecessary and potentially misleading provision, which implies that if an order is final it cannot be appealed (436-050-0008(5)(d))
- Adopt a rule to explain how the Workers' Compensation Division will serve penalty orders (436-050-0025)
- To implement House Bill 2007, expand the definition of "owner of the private home" to include any person related by an Oregon registered domestic partnership (436-050-0045)
- Eliminate the provision that an employer's cancellation of coverage with an insurer does not terminate a guaranty contract; relocate a provision regarding overlapping self-insurance certification and guaranty contract coverage to rule 0200 (436-050-0100 & 0200)
- Supplement and clarify the description of record-keeping requirements (436-050-0110)
- Eliminate the requirement to include workers' social security numbers on lists of claims provided to the director when an insurer or self-insured employer transfers claims to a new processor/location (436-050-0110 & 0210)
- Require insurers and self-insured employers to keep written records as to whether supplemental disability benefits were approved or denied (436-050-0120 & 0220)
- Provide that excess insurance coverage may include a deductible endorsement acceptable to the director (436-050-0170)
- Increase the time for a self-insured municipality to provide its annual report to the director (436-050-0175)
- Require that self-insured employers notify the director within 30 days when the employer changes its operation in any manner that affects its workers' compensation claims liability (436-050-0190)
- Require that self-insured employers conduct certain claim processing activities and record-keeping, and accommodate periodic audits, at in-state locations (436-050-0210)
- Require that self-insured employers provide contact information to the director for the location where records are or will be kept and where claims are or will be processed in Oregon; require that self-insured employers provide the director contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director (436-050-0220)

Amendments to OAR 436-110, "Preferred Worker Program":

- Allow issuance of a Preferred Worker card to a worker determined eligible before claim closure, even if the worker does not have available, immediate employment (436-110-0320)
- Provide additional time for insurers to request claim cost reimbursement (from the Workers' Benefit Fund) if an employer informs an insurer about an injury to a preferred worker after the existing reimbursement deadlines have passed (436-110-0330)

Amendments to OAR 436-160, "Electronic Data Interchange":

- Provide the director discretion to require a trading partner agreement for medical data reporting, but eliminate the mandate for trading partner agreements for all EDI (436-160-0020)
- Clarify and simplify address reporting requirements (436-160-0090)
- Eliminate the requirement to submit paper reports to add or delete coverage for non-subject workers; the insurer must file the appropriate "include" or "exclude" endorsement transaction to the associated policy filing (436-160-0340 & 0350)

Certificate and Order for Filing Permanent Administrative Rules

- Require insurers to notify the director of guaranty contract terminations within ten days (not within seven days) consistent with requirements in OAR 436-050 (436-160-0360)
- Eliminate the requirement that the insurer submit a cancellation of a medical bill before resubmitting (436-160-0430)
- Revise electronic data interchange medical reporting requirements in Appendix B (436-160-0410)

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the Internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

/s/ John L. Shilts

Authorized Signer

6/12/08

Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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