

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Reopened Claims Program
Oregon Administrative Rules
Chapter 436, Division 045**

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
436-045, Reopened Claims Program)	No. 08-056

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 045, "Reopened Claims 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

This rule amendment corrects the applicability date in OAR 436-045-0003(1).

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 436-045

- 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

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REOPENED CLAIMS PROGRAM**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 045**

436-045-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.625 and ORS 656.726

Stat. Auth.: ORS 656.625 and ORS 656.726; Stats. Implemented: ORS 656.625
Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88.

436-045-0002 Purpose

The purpose of these rules is to establish guidelines for administering disbursements made from the Reopened Claims Program established to reimburse compensation paid as a result of awards made by the Board or voluntary claim reopenings pursuant to ORS 656.278.

Stat. Auth.: ORS 656.625 and ORS 656.726; Stats. Implemented: ORS 656.625 and ORS 656.726
Hist: Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0003 Applicability of Rules

(1) These rules are effective July 1, 2008, and apply to all requests for reimbursement from the Reopened Claims Program.

(2) These rules apply to all awards ordered on claims opened by the Board under ORS 656.278 on or after January 1, 1988 and all voluntary claim reopenings on or after January 1, 2002.

(3) These rules carry out the provisions of ORS 656.625.

(4) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.625; Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.625
Hist: Amended 6/12/08 as WCD Admin. Order 08-056, eff. 7/1/08

436-045-0005 Definitions

As used in OAR 436-045-0001 through 436-045-0030 unless the context requires otherwise:

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

(2) "**Compensation**" includes all benefits payable as a result of any order or award made by the Board or voluntary claim reopening pursuant to ORS 656.278.

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

(4) "**Department**" means the Department of Consumer and Business Services.

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

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

(7) "**Hearings Division**" means the Hearings Division of the Workers' Compensation Board.

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

(9) "**Reopened Claims Program**" and "Program" means the program established pursuant to ORS 656.625.

(10) "**Voluntary Claim Reopening**" means any claim reopened by the insurer or self-insured employer to provide benefits or to grant additional medical or hospital care to the claimant pursuant to ORS 656.278.

Stat. Auth.: ORS 656.726; Stats. Implemented: ORS 656.726
Hist: Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0006 Administration of Rules

Any orders issued by the divisions in carrying out the director's authority to enforce ORS Chapter 656 and these rules are considered orders of the director.

Stat. Auth.: ORS 656.704 and ORS 656.726; Stats. Implemented: ORS 656.704 and ORS 656.726
Hist: Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98

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 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.

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(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. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.704, 656.726(4), 656.745
Stats. Implemented: ORS 656.236, 656.289, 656.625, 656.704, 656.726(8), 656.740, 656.745
Amended 11/1/07 as WCD Admin. Order 07-062, eff. 1/1/08

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436-045-0010 Criteria for Eligibility

(1) In order to qualify for reimbursement from the Reopened Claims Program there must be:

(a) An order or award issued by the Board upon its own motion pursuant to ORS 656.278 and as provided by OAR Chapter 438, Division 12 or a voluntary claim reopening; and

(b) Verifiable compensation paid in accordance with the order or award issued by the Board or voluntary claim reopening, including permanent disability awarded as a result of a reopening due to a new or omitted medical condition pursuant to ORS 656.278(1)(b).

(2) Notwithstanding paragraph (1)(b) of this rule, reimbursement may be made from the Program for reasonable overpayments of temporary disability. Reasonable overpayments are those made from the date a worker becomes medically stationary, returns to work or is released to work until the insurer is notified or should have known of the status change.

(3) Costs for claims to subject workers of an employer who is in a noncomplying status as defined in ORS 656.052 are not eligible for reimbursement from the Program but remains a cost recoverable from the employer as provided by ORS 656.054(2).

Stat. Auth.: ORS 656.625

Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.625

Hist: Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

Statutory minor correction – ORS 183.335(7) (WCD 10-2021), filed and effective 10/8/21

436-045-0020 Limitation of Program

(1) Reimbursement shall be limited to the monies available in the Workers' Benefit Fund.

(2) In the event of insufficient funds 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 having qualified for reimbursement under the Program.

Stat. Auth.: ORS 656.625; Stats. Implemented: ORS 656.625

Hist: Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98

436-045-0025 Dispositions

(1) In order for a disposition of a claim by the parties to be considered for reimbursement eligibility under the Reopened Claims Program, it must be submitted to the director during the period of time in which the claim remains open under the Board's Own Motion or voluntary claim reopening.

(2) Dispositions submitted in accordance with (1) are not eligible to receive reimbursement from the Reopened Claims Program unless made with the prior written approval of the director.

(3) Requests for written approval of proposed dispositions shall include:

(a) A copy of the proposed disposition which specifies the amount of the proposed contribution to be made from the Reopened Claims Program;

(b) A statement from the insurer indicating how the amount of the contribution was calculated;

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(c) Any other information as required by the director.

(4) The director will not approve the disposition for reimbursement if the proposed contribution from the Program exceeds a reasonable projection of that claim's future liability to the Program under that Board's Own Motion reopening or voluntary claim reopening.

Stat. Auth.: ORS 656.236, 656.289 and 656.625; Stats. Impld: ORS 656.236, ORS 656.289 & 656.625
Hist: Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0030 Reimbursement

(1) Reimbursement shall be made by Compliance quarterly after receipt and approval of documentation of compensation paid by the paying agent.

(2) The director, by bulletin, shall prescribe the form and format for requesting reimbursement from the Program. Documentation to support the reimbursement request shall include but not be limited to:

(a) Net temporary disability compensation paid, net permanent disability paid, and net medical compensation paid for dates of injury prior to January 1, 1966. For purposes of this section, "net" compensation paid means the total compensation paid less any recoveries, including but not limited to, third party recovery, Retroactive Program reimbursement, and Workers with Disabilities Program reimbursement.

(b) Payment certification statement.

(c) Any other information deemed necessary by the director.

(3) Periodically Compliance shall audit the physical file of the paying agent to validate the amount reimbursed and to verify that the closing report is correct. Reimbursement shall not be approved if, upon such audit, it is found:

(a) Payments were not authorized in the Board's Own Motion order or voluntary claim reopening; or

(b) Payments of temporary disability compensation were made for periods of time during which the worker did not qualify as a "worker" pursuant to ORS 656.005(28); or

(c) Compensation has been paid as a result of untimely, inaccurate, or improper claims processing; or

(d) The separate payments of compensation have not been documented, as required under generally accepted accounting procedures; or

(e) Medical payments for claims with injury dates prior to January 1, 1966 are in excess of what should have been paid if paid in accordance with OAR 436-009-0030 and properly audited as required by OAR 436-009-0020; or

(f) Permanent disability payments were made in claims reopened for other than a new medical or omitted condition.

Stat. Auth.: ORS 656.625; Stats. Implemented: ORS 656.625
Hist: Amended 11/1/07 as WCD Admin. Order 07-062, eff. 1/1/08

**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 503-947-7717
Rules Coordinator Telephone

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to become effective July 1, 2008 was published in the May 2008 Oregon Bulletin.**
Date upon filing or later Rulemaking Notice 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)
- Clarify the requirements for and methods of requesting a hearing (436-001-0019)

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- 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":

- Correct the applicability provisions in rules 030-0003, 040-0003, and 045-0003

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- 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)
- 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)

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- 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.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday. ARC 930-2005