Claims Administration
Oregon Administrative Rules
Chapter 436, Division 060

Effective Jan. 1, 2017

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NOTE: Revisions are marked as follows:

Deleted text has a "strike-through" style, as in ~~Deleted~~

Added text is underlined, as in <u>Added</u>

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

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CLAIMS ADMINISTRATION

OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 060

436-060-0001 Authority for Rules [Repeal]

~~These rules are promulgated under the director's authority contained in ORS 656.210(2), 656.262(11), 656.264, 656.265(6), 656.325, 656.331, and 656.726(4).~~

Statutory authority: ORS 656.210(2), 656.262(11), 656.264, 656.265(6), 656.325, 656.331, 656.704, and 656.726(4)
Statutes implemented: ORS 656.210(2), 656.262(11), 656.264, 656.265(6), 656.325, 656.331, 656.704, and 656.726(4)
Hist: Amended 11/30/01 as WCD Admin. Order 01-061, eff. 1/1/02
Repealed 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0002 Purpose [Repeal – See rule 0003]

~~The purpose of these rules is to prescribe uniform standards by which insurers shall process workers' compensation claims under ORS 656.726(4). The director has charged the Workers' Compensation Division with the administration and enforcement of the applicable statutes, these rules, and all bulletins pertaining to claims processing. Failure to process claims in accordance with these rules will subject insurers to civil penalty under ORS 656.745; to penalties payable to the claimant under ORS 656.262(11); and, to sanctions under ORS 656.447.~~

Statutory authority: ORS 656.262(11), 656.447, 656.704, 656.726(4), and 656.745
Statutes implemented: ORS 656.262(11), 656.447, 656.704, 656.726(4), and ORS 656.745
Hist: Amended 12/5/05 as WCD Admin. Order 05-077, eff. 1/1/06
Repealed 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0003 Purpose and Applicability of these Rules

(1) Purpose.

The purpose of these rules is to prescribe uniform standards by which insurers process workers' compensation claims under ORS chapter 656.

(2) Applicability. ~~These rules govern claims processing and carry out the provisions of:~~

~~(a) ORS 656.210. Temporary total disability;~~

~~(b) ORS 656.212. Temporary partial disability;~~

~~(c) ORS 656.230. Lump sum payments;~~

~~(d) ORS 656.262. Responsibility for processing and payment of compensation, sight drafts, claimant's duty to cooperate with an investigation, acceptance and denial and reporting of claims, and penalties for payment delays;~~

~~(e) ORS 656.264. Required reporting of information to the director;~~

~~(f) ORS 656.265. Notices of accidents from workers;~~

~~(g) ORS 656.268. Insurer claim closures, insurer recovery of overpayments;~~

~~(h) ORS 656.273 Aggravation for worsened conditions, procedures, limitations, additional compensation;~~

~~(i) ORS 656.277 Request for reclassification of nondisabling claim, nondisabling claim procedure;~~

~~(j) ORS 656.307. Determination of responsibility for compensation payments;~~

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

~~(l) ORS 656.331. Notice to worker's attorney; and,~~

~~(m) ORS 656.726(4). The director's powers and duties generally.~~

~~(2)~~ The rules are subject to the applicability ~~of these rules is subject to~~provisions under ORS 656.202.

(~~3~~3) Director's discretion.

The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Statutory authority: ORS 656.210, 656.212, 656.230, 656.262, 656.264, 656.265, 656.268, 656.273, 656.277, 656.307, 656.325, 656.331, 656.704, and 656.726(4)
Statutes implemented: ~~ORS 656.704 and~~ 656.726(4)
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0005 Definitions

For the purpose of these rules unless the context requires otherwise:

(1) "Aggravation" means an actual worsening of the compensable condition~~(s)~~ after the last award or arrangement of compensation ~~,~~ that ~~is established by medical evidence supported by objective findings, and otherwise~~ satisfies the ~~statutory~~ requirements of ORS 656.273.

(2) "Authorized nurse practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010.

(3) "Designated p~~P~~aying ~~A~~agent" means the insurer temporarily ordered responsible to pay compensation for a compensable injury under ORS 656.307.

(4) "Director" means the Director of the Department of Consumer and Business Services or the director's designee, unless the context requires otherwise.

(5) "Disposition" or "claim disposition" means the written -agreement to release rights or obligations under ORS 656.236.

~~in which a claimant agrees to release rights, or agrees to release an insurer or self-insured employer from obligations, under ORS 656.001 to 656.794, except for medical services, in an accepted claim. The term "compromise and release" has the same meaning.~~

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

(7) "Employer" means a subject employer under ORS 656.023.

~~(8) "Employment on call" means sporadic, unscheduled employment at the call of an employer without recourse if the worker is unavailable.~~

~~(9) "Health insurance," under ORS 731.162, means all insurance against bodily injury, illness or disability, and the resultant expenses, except for workers' compensation coverage.~~

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

(~~10~~9) "Inpatient" means a~~n injured~~ worker who is admitted to a hospital before and extending past midnight for treatment and lodging.

(~~11~~10) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS ~~Chapter~~ chapter 731 to transact workers' compensation insurance in Oregon; or~~,~~ an employer or employer group certified under ORS 656.430 that it meets the qualifications of a self-insured employer under ORS 656.407.

~~(12) "Lump sum" means the payment of all or any part of a permanent partial disability award in one payment.~~**(11)** "Mailed" or "mailing date," unless otherwise specified, means:

(a) The date a document is postmarked;

(b) The date automatically produced by electronic transmission (e.g., email or facsimile);

(c) The date a hand-delivered document is stamped or punched in by the recipient; or

(d) The date of a phone, or in-person request, when allowed under these rules.

(~~13~~12) "Physical rehabilitation program" means any services provided to a~~n injured~~ worker to prevent the compensable injury from causing continuing disability.

(13) "Regularly employed worker" means any worker who receives a regular wage as defined in section (16) of this rule. For workers who are paid a daily wage, "regularly employed" means actual employment or availability for such employment.

(14) "Service company" means the contracted agent for an insurer authorized to process claims and make payment of compensation on behalf of the insurer.

(15) "Suspension of compensation" means:

(a) No temporary disability, permanent total disability, or medical and related service benefits ~~will~~ accrue or ~~be~~ are payable during the period of suspension; and

(b) Vocational assistance and payment of permanent partial disability benefits will ~~be stayed~~stop during the period of suspension.

(16) "Wage" is as defined in ORS 656.005(29). As used in these rules:

(a) "Irregular wage" means a money rate paid at variable rate, or is paid on unscheduled or unpredictable intervals, including but not limited to workers who are seasonally employed, on call, paid hourly, or are paid by piece rate; and

(b) "Regular wage" means a money rate which is paid at a constant rate at uniform intervals including, but not limited to, wages paid on a daily or weekly basis. Hourly wages may be considered regular if the same number of hours are worked each pay period.

(17) "Wage earning agreement" means the verbal or written contract of hiring or terms of employment made between the worker and employer.

(~~16~~18) "Written" ~~and its variations~~ means ~~that which is~~ expressed in writing, including electronic transmission.

Statutory authority: ~~ORS 656.704 and~~ 656.726(4)
Statutes implemented: ~~ORS 656.704 and~~ 656.726(4)
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0006 Administration of Rules [Repeal]

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

Statutory authority: ORS 656.704 and 656.726(4)
Statutes implemented: ORS 656.704 and 656.726(4)
Hist: Amended 10/2/02 as WCD Admin. Order 02-059, eff. 11/1/02
Repealed 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0008 Administrative Review and Contested Cases

(1) Request for hearing on an action concerning a worker's right to compensation.

Any party ~~as defined by ORS 656.005~~, ~~including~~ or~~an~~ assigned claims agent ~~as a designated processing agent under ORS 656.054~~, ~~aggrieved by~~that disagrees with an action taken under these rules ~~in which~~that concerns a worker's right to compensation, or the amount of compensation due~~thereof is directly in issue~~, may request a hearing by the Hearings Division ~~of the Workers' Compensation Board in accordance with~~under ORS chapter 656 and OAR chapter 438. ~~the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law~~

~~except where otherwise provided in ORS chapter 656.~~

(2) ~~Contested case h~~Request for hearings o~~f~~n proposed ~~s~~Sanctions ~~and~~ or ~~c~~Civil ~~p~~Penalties.~~:~~

Any party ~~as described in section (1)~~, or assigned claims agent, ~~aggrieved~~ that disagrees with~~by~~ a proposed order or proposed assessment of civil penalty of the director issued under ORS 656.254, 656.260, 656.735, 656.740, 656.745 or 656.750 may request a hearing by the Hearings Division. To request a hearing the party, or assigned claims agent, must:

(a) Mail or deliver a written request for hearing to the Workers' Compensation Division within 60 days of the mailing date of the proposed order or assessment; and ~~the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.~~

(b) ~~(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request s~~Specif~~i~~y, in the request,~~es~~ the ~~grounds~~ reasons ~~upon which~~ why the ~~person requesting the hearing~~party, or assigned claims agent, ~~contests~~ disagrees with the proposed order or assessment.

~~(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) Administrative review of a matter other than a matter concerning a claim.**

Any party, or assigned claims agent, that disagrees with an action taken under these rules, except as described in section (1) of this rule, may request the director to conduct an administrative review of the action.

(a) To request administrative review, the party must:

(A) Mail or deliver a written request for review to the Workers' Compensation Division within 90 days of the contested action; and

(B) Specify, in the request, the reasons why the party disagrees with the proposed order or assessment.

(b) Requests mailed more than 90 days after the contested action may be considered if the director determines there was good cause for delay, or that substantial injustice may otherwise result.

(4~~3~~) Request for hearing on a matter other than a matter concerning a claim.~~Hearings before an administrative law judge:~~

~~Under ORS 656.704(2), a~~Any party, or an assigned claims agent, that disagrees with an action or order of the director under these rules, other than as described in sections (1) and (2) 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. OAR 436-001 applies to the hearing.

~~**(4) Administrative review by the director or designee:** 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. The process for administrative review of such matters will be as follows:~~

~~(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 within 90 days of the contested action unless the director or the director's designee determines that there was good cause for delay or that substantial injustice may otherwise result.~~

~~(b) In the course of the review, the division may request or allow such input or information from the parties that the division deems helpful.~~

Statutory authority: ORS 656.704, 656.726(4), and 656.745
Statutes implemented: ORS 656.254~~45~~, 656.260, 656.704, 656.726(4), and 656.740(1)
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0009 Access to Department of Consumer and Business Services Workers' Compensation Claim File Records

(1) General.

Under ORS 192.430 and OAR 440-005-0015(1) the director, as custodian of public records, ~~promulgates~~ adopts this rule to protect the integrity of claim file records and prevent interference with the regular discharge of the department's duties.

(2) Access to public records.

The department rules on Access of Public Records, Fees for Record Search and Copies of Public Records are found in OAR 440-005, accessible at: http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_440/440_005.html.

~~Payment of fees for access to records must be made in advance unless the director determines otherwise.~~ (a) The director will provide the first copy of any document to a ~~Workers~~ worker, worker's attorney, ~~and~~ insurer~~s~~ of record, or ~~their its~~the insurer's legal representatives and service companies ~~shall receive a first copy of any document free~~without charge.

(b) Additional copies ~~shall~~ will be provided at the rates set forth in OAR 440-005. Payment of fees for access to records must be made in advance unless the director determines otherwise.

(3) Inspection of nonexempt public records.

Any person has a right to inspect and obtain copies of nonexempt public records. The statutory right to "inspect" encompasses a right to examine original records. It does not include a right to request blind searches for records not known to exist. ~~The director will retain or destroy records according to retention schedules published by the Secretary of State, Archives Division.~~

(4) Inspection of exempt records.

~~Under ORS 192.502(20) w~~Workers' compensation claims records are exempt from public disclosure. Access to workers' compensation claims records will be granted at the sole discretion of the director in accordance with this rule, under the following circumstances:

(a) When necessary for insurers, ~~self-insured employers and~~ service companies, and their legal representatives for the sole purpose of processing workers' compensation claims~~.~~; ~~The division will accept a request by telephone or facsimile transmission, but such request must include the claimant's social security number and insurer claim number in addition to the information required in section (7).~~

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers;~~.~~

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim;~~.~~ or ~~Such circumstances include when workers' compensation claims file information is required by a public or private research organization in order to contact injured workers in order to conduct its~~

~~research. The director may enter into such agreements with such institutions or persons as are necessary to secure the confidentiality of the disclosed records.~~

(d) When a worker or the worker's ~~representative~~ attorney requests review of the worker's~~'~~ claim record.

(5) Release of records to other persons.

The director may release workers' compensation claims records to persons other than those described in section (4) of this rule when the director determines such release is in the public interest and ~~.~~

~~(a) For the purpose of these rules, a "public interest" exists when~~ the conditions ~~set forth~~ in ORS 192.502(20) and subsections~~s~~ (4)(~~a~~c) ~~through (d)~~ of this rule have been met, ~~.~~including when workers' compensation claims file information is required by a public or private research organization in order to contact injured workers in order to conduct its research.

(a) The determination whether the request to release workers' compensation claims records meets those conditions ~~shall~~ is~~be~~ at the sole discretion of the director.

(b) The director may enter into written agreements as necessary to ensure that the recipient of workers' compensation claims records under this section uses or provides the information to others only in accordance with these rules and the agreement with the director, and to ensure the confidentiality of the disclosed records. The director may terminate such agreements at any time the director determines that one or more of the conditions of the agreement have been violated.

(6) Revocation of access to exempt records.

The director may deny or revoke access to workers' compensation claims records at any time the director determines such access is no longer in the public interest or is being used in a manner ~~which~~ that violates these rules or any law of the State of Oregon or the United States.

(7) Requests for records.

A ~~Requests~~ request to inspect or obtain copies of workers' compensation claim records ~~must~~ may be made in writing, ~~or~~ in person, or by phone.

(a) ~~and~~ Written requests must include:

(~~a~~A) The name, address, ~~and~~ telephone number, and email address of the requester;

(~~b~~B) The reason for requesting the records;

(~~c~~C) A ~~specific identification~~sufficiently detailed description of the ~~public~~ record~~(s)~~ ~~required~~ requested;

~~and the format in which they are required;~~

(~~d~~D) The -format and number of copies ~~required~~requested; and

(~~e~~E) The account number of the requester, when applicable.

(b) In addition to the information required in subsection (a), a request made by telephone or facsimile transmission must include:

(A) The worker's Social Security number; and

(B) The insurer claim number.

(c)

~~(8)~~ Except as prescribed in subsections (4)(a) through (d) of this rule, a request to inspect or obtain copies of a worker's claim record must be accompanied by ~~person must submit to the division~~ an attorney retainer agreement or release signed by the ~~claimant~~ worker~~in order to inspect or obtain copies of workers' compensation claims records~~.

(A) The director may refuse to honor any release ~~that~~ the director determines is likely to result in disclosed records being used in a manner contrary to these rules.

(B) Upon request, the director will review proposed release forms to determine whether the proposed release is consistent with the law and this rule.

(8) Retention of records.

The director will retain or destroy records according to retention schedules published by the Secretary of State, Archives Division.

Statutory authority: ORS 192.430, ORS 192.502, ~~656.704~~ and 656.726(4)
Statutes implemented: ORS 192.430 and ORS 192.502~~656.704 and 656.726(4)~~
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0010 ~~Reporting Requirements~~Employer Responsibilities

(1) General.

A subject employer must accept notice of a claim for workers' compensation benefits from a~~n injured~~ worker or the worker's ~~representative~~attorney under ORS 656.265.

(a) ~~The employer must provide a copy of the~~ Form 801, "Report of Job Injury or Illness," ~~Form 801, to the worker immediately upon request; the form~~ must be readily available for workers to report their injuries. The employer must provide Form 801 to the worker:

(A) Immediately upon request by the worker or worker's attorney under ORS 656.265(6); and

(B) Upon receiving notice or knowledge of an accident that may involve a compensable injury under ORS 656.262(3)(a). ~~Proper use of this form satisfies ORS 656.265.~~

(~~2~~b) ~~A~~ Form 827, "Worker's and Health Care Provider's Report for Workers' Compensation Claims," ~~Form 827,~~ signed by the worker, is written notice of an accident~~,~~ that may involve a compensable injury under ORS 656.265. The signed Form 827 will ~~shall~~ start the claim process, but ~~shall~~ does not relieve the worker or employer of the responsibility of filing ~~a~~ Form 801.

(c) The employer must provide Form 3283, "A Guide for Workers Recently Hurt on the Job," to the worker at the time a worker files a claim for workers' compensation benefits. Form 3283 may be printed on the back of Form 801.

(d) If a worker ~~reports~~ provides notice of a claim using an electronic form~~ally~~, the insurer may require the worker to sign a medical release form, so the insurer can obtain medical records necessary to process the claim under OAR 436-010-0240~~, necessary to process the claim~~.

(~~3~~2) Employer reporting time frame.

An ~~E~~employer~~s~~, except a self-insured employer~~s~~, must report ~~the~~ a claim to ~~their~~ its insurer~~s~~ no later than five days after the date the employer has notice or knowledge of any claim or accident~~,~~ that may result in a compensable injury. The date an employer~~'s~~ has knowledge ~~date~~ of an accident that may result in a compensable injury is the earliest ~~of the~~ date any supervisor or manager of the employer ~~(any supervisor or manager) first knew of a claim, or of when the employer~~ has enough facts to reasonably conclude that workers' compensation liability is a possibility.

(3) Reporting requirements.

The report must provide the information requested on ~~the~~ Form 801, and include~~, but not be limited to,~~ at least:

(a) ~~the~~ The worker's name, address, and Social Security number;~~,~~

(b) ~~the~~ The employer's legal name and address;~~,~~ and

(c) ~~the~~ The ~~data~~ information ~~specified by~~required under ORS 656.262 and 656.265.

(4) Injuries not requiring medical services.

The employer is not required to notify the insurer of an ~~For the purpose of this section, "first aid" means any treatment provided by a person who does not require a license in order to provide the service. If~~accident that ~~an injured worker~~does not require the worker to seek~~s~~ ~~only first aid~~treatment from a licensed medical service provider, subject to the following:

(a) The employer must report the claim to the insurer under section (2) of this rule, if:

(A)~~, no notice need be given the insurer, unless the~~ The worker chooses to file a claim;

(B) ~~. If a~~ The worker signs ~~a~~ a Form 801;~~,~~

(C) ~~the claim must be reported to the insurer. If the person must be licensed to legally provide the treatment or if a~~The worker or employer is billed for ~~the service will result~~treatment; or~~, notice must be given to the insurer.~~

(D) The employer learns that the injury has resulted in medical services, disability or death. For the purposes of this paragraph, the date of that knowledge under section (2) of this rule is the date the employer received notice or knowledge of the medical services, disability, or death; and

(b) ~~When~~ If the employer does not give the insurer notice under this section~~the worker requires only first aid and chooses not to file a claim~~;~~,~~

(A) the The employer must maintain records showing the name of the worker, the date of the accident, the nature of the injury and first aid treatment provided, for five years; and.

(B) These records shall must be open to available for inspection by the director, or any party or its representativethe worker or the worker's attorney, if any, and the insurer.

If an employer subsequently learns that such an injury has resulted in medical services, disability or death, the date of that knowledge will be considered as the date on which the employer received notice or knowledge of the claim for the purposes of processing under ORS 656.262.

(5) Civil penalty for failure to report claims.

The director may assess a civil penalty under OAR 436-060-0200 against an employer that:

(a) Is late delinquent in reporting -more than claims to its insurer in excess of ten percent of the its employer's total claims to its insurer during any quarter.; or

(b) (6) An employer iIntentionally or repeatedly paysing compensation in lieu stead of reporting to its insurer claims or accidents that may result in a compensable injury claim may be assessed a civil penalty by the directorto its insurer.

(6) Worker's right to choose medical service provider.

The worker may choose a medical service provider, attending physician or authorized nurse practitioner under ORS 656.245, 656.260, OAR 436-010 and 436-015. Except as provided under ORS 656.260 and OAR 436-015, if an employer restricts the worker's choice of medical service provider the director may impose a civil penalty of up to $2,000.

(7) The insurer must process and file claims and reports required by the director in compliance with ORS chapter 656, WCD administrative rules, and WCD bulletins. Such filings shall not be made by computer-printed forms, facsimile transmission (FAX), electronic data interchange (EDI), or other electronic means, unless specifically authorized by the director.

(8) When an insurer receives a claim and the insurer does not provide insurance coverage for the worker's employer on the date of injury, the insurer may check for other coverage or forward it to the director. The insurer must do one or the other within three days of determining they did not provide coverage on the date of injury. If the insurer finds that another insurer provides coverage, the insurer must send the claim to the correct insurer within the same three day period. If the insurer cannot find coverage, the insurer must forward the claim to the director within the same three-day period.

(9) The insurer or self-insured employer and service company, if any, must be identified on all insurer generated workers' compensation forms, including insurer name, service company name (if applicable), and the mailing address and phone number of the location responsible for processing 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,

~~the Insurer's Report, Form 1502, accompanied by the Form 801, or its electronic equivalent, is to be submitted to the director. However, when the Form 801 is not available within a time frame that would allow a timely filing, a Form 1502, accompanied by a signed Form 827 when available, will satisfy the initial reporting requirement. If the Form 801 is not submitted at the time of the initial filing of the claim, the Form 801 must be submitted within 30 days from the filing of the Form 1502. A Form 801 prepared by the insurer in place of obtaining the form from the employer/worker does not satisfy the requirement to file the Form 801, unless the employer/worker cannot be located, or the form cannot be obtained from the employer/worker due to lack of cooperation, or the form is computer-printed based upon information obtained from the employer and worker. The insurer must submit copies of all acceptance or denial notices not previously submitted to the director with the Form 1502. Form 1502 is used to report claim status and activity to the director.~~

~~**(11)** When submitting a Form 1502 the minimum data elements an insurer must provide are the worker's legal name, Social Security number, insurer's claim number, date of injury, and the employer's legal name.~~

~~**(12)** When submitting an initial compensability decision Form 1502, the insurer must report:~~

~~(a) The status of the claim;~~

~~(b) Reason for filing;~~

~~(c) Whether first payment of compensation was timely, if applicable;~~

~~(d) Whether the claim was accepted or denied timely; and~~

~~(e) Any Managed Care Organization (MCO) enrollment, and the date of enrollment, if applicable.~~

~~**(13)** The insurer must file an additional Form 1502 with the director within 14 days of:~~

~~(a) The date of any reopening of the claim;~~

~~(b) Changes in the acceptance or disability status;~~

~~(c) Any litigation order or insurer's decision that causes reopening of the claim or changes the acceptance or disability status;~~

~~(d) MCO enrollment that occurs after the initial Form 1502 has been filed;~~

~~(e) The insurer's knowledge that a previous Form 1502 contained erroneous information;~~

~~(f) The date of any denial; or~~

~~(g) The date the first payment of temporary disability was issued.~~

~~**(14)** A nondisabling claim must be reported to the director only if it is denied, in part or whole. It must be reported to the director within 14 days of the date of denial. A nondisabling claim that becomes disabling must be reported to the director within 14 days of the date of the status change.~~

~~**(15)** If the insurer voluntarily reopens a qualified claim under ORS 656.278, it must file a Form 3501 with the director within 14 days of the date the insurer reopens the claim.~~

~~**(16)** The insurer must report a new medical condition reopening on the Form 1502 if the claim cannot be closed within 14 days of the first to occur: acceptance of the new condition, or the insurer's knowledge that interim temporary disability compensation is due and payable.~~

~~**(17)** New condition claims that are ready to be closed within 14 days must be reported on the "Insurer Notice of Closure Summary," Form 1503, at the time the insurer closes the claim. The "Modified Notice of Acceptance" and "Updated Notice of Acceptance at Closure" letter must accompany the Form 1503.~~

~~**(18)** If, after receiving a claim from a worker or from someone other than the worker on the worker's behalf, the insurer receives written communication from the worker stating the worker never intended to file a claim and wants the claim "withdrawn," the insurer must submit a Form 1502 with a copy of the worker's communication to the director, if the claim had previously been reported.~~

~~**(19)** The director may issue a civil penalty against any insurer delinquent in reporting or in submitting Forms 801, 1502, 1503 or 1644 with a late or error ratio in excess of twenty percent during any quarter. For the purposes of this section, a claim or form shall be deemed to have been reported or submitted timely according to the provisions of ORS 656.726(4).~~

~~**(20)** Insurers must make an annual report to the director reporting attorney fees, attorney salaries, and all other costs of legal services paid under ORS chapter 656. The report must be submitted on forms furnished by the director for that purpose. Reports for each calendar year must be filed not later than March 1 of the following year.~~

~~**(21)** If an insurer elects to process and pay supplemental disability benefits, under ORS 656.210(5)(a), the insurer does not need to inform the director of their election. The insurer must request reimbursement, under OAR 436-060-0500, by filing Form 3504 "Supplemental Disability Benefits Quarterly Reimbursement Request" with the director for any quarter during which they processed and paid supplemental disability benefits. If an insurer elects not to process and pay supplemental disability benefits, the insurer must submit Form 3530, "Supplemental Disability Election Notification," to the director. The election remains in effect for all supplemental disability claims the insurer receives until the insurer changes its election. The election is made by the insurer and applies to all service companies an insurer may use for processing claims.~~

~~**(22)** An insurer may change its election made under section (21):~~

~~(a) Annually and~~

~~(b) Once after the division completes its first audit of supplemental disability payments made by the insurer.~~

Statutory authority: ORS ~~656.262, 656.264,~~ 656.265(6)~~, 656.704~~, 656.726(4), and 656.745
Statutes implemented: ORS ~~656.210~~656.245, 656.260, 656.262, ~~656.264,~~ and 656.265~~, 656.704, and 656.726(4)~~
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0011 Insurer Reporting Requirements [New rule]

(1) General.

The insurer must process and file claims and reports required by the director in compliance with ORS chapter 656, OAR chapter 436, and orders of the director.

(a) All forms must be legible and include all information required by this rule.

(b) The insurer may not submit forms, or their electronic equivalents, by email, facsimile, electronic data interchange (EDI), or other electronic means, without the director's prior authorization.

(c) Electronic forms, when allowed, must include the same fields and elements as their paper counterparts.

(2) Misdirected claims.

If an insurer receives a claim and did not provide coverage for the worker's employer on the date of injury, the insurer must forward the claim to either the correct insurer or the director within three days of the date it determined it was not responsible for the claim.

(3) Identification of insurer.

All workers' compensation forms generated by the insurer must include:

(a) The insurer's name;

(b) The service company's name, if applicable; and

(c) The mailing address and phone number of the location responsible for processing the claim.

(4) Claims status and activity reporting.

The insurer must report all disabling claims status and activity to the director using Form 1502, "Insurer's Report."

(a) The insurer must file a Form 1502 with the director within 14 days of:

(A) The date of the insurer's initial decision to accept or deny the claim;

(B) The date of any reopening of the claim, except voluntary reopening under ORS 656.278;

(C) The date of a change in the acceptance or classification of the claim following the initial Form 1502;

(D) The date of a litigation order or insurer's decision that changes the acceptance or classification of the claim, or causes the claim to be reopened;

(E) The date a worker is enrolled in a managed care organization that occurs after the initial Form 1502 has been filed;

(F) The date the insurer has knowledge that a previously filed Form 1502 contained erroneous information;

(G) The date of a denial that occurs after the initial Form 1502 has been filed; or

(H) The date first payment of temporary disability is issued, if the date was not included in the initial Form 1502.

(b) Each Form 1502 the insurer files must include at least the following information:

(A) The worker's legal name;

(B) The worker's Social Security number;

(C) The insurer's claim number;

(D) The date of injury;

(E) The employer's legal name;

(F) The employer's policy number;

(G) The status of the claim; and

(H) The reason for filing.

(c) The Form 1502 reporting the insurer's initial decision to accept or deny a claim must also include:

(A) If the first payment of compensation was made within the time frame required under OAR 436-060-0150, if applicable;

(B) If the claim was accepted or denied within the time frame required under OAR 436-060-0140; and

(C) If the worker is enrolled in a managed care organization, and the date of enrollment, if applicable.

(5) Filing the first Form 1502 on a claim.

The first Form 1502 the insurer files on a claim must be accompanied by:

(a) Copies of all acceptance or denial notices not previously submitted to the director; and

(b) A signed Form 801, or its electronic equivalent, except when a Form 801 is not available for timely filing.

(A) The Form 801 must be completed by the employer and worker, unless:

(i) The Form 801 cannot be obtained from the employer or worker because the employer or worker cannot be located, refuses to cooperate, or is physically unable to complete the form; or

(ii) The Form 801 was prepared using an electronic form that required it to be prepared by the insurer based upon information obtained from the employer and worker.

(B) If a Form 801 is not available for timely filing:

(i) The Form 1502 may be accompanied by a signed Form 827 to satisfy the initial reporting requirement; and

(ii) The Form 801 must be submitted within 30 days of the date the insurer filed the first Form 1502.

(6) Nondisabling claims.

The insurer is not required to report a nondisabling claim to the director, except:

(a) The insurer must report a nondisabling claim that is denied in part or whole to the director within 14 days of the date of denial; and

(b) The insurer must report a nondisabling claim that is reclassified as disabling to the director within 14 days of the date of the status change.

(7) Voluntarily reopened own motion claims.

The insurer must file Form 3501, "Notice of Voluntary Reopening Own Motion Claim," with the director within 14 days of the date the insurer voluntarily reopens a qualified claim under ORS 656.278.

(8) New condition reopening.

If the insurer reopens a claim due to a new medical condition, and the claim:

(a) Is not closed within 14 days, the insurer must file Form 1502 with the director within 14 days of the earliest of:

(A) The date the new condition is accepted; or

(B) The date the insurer has knowledge that interim temporary disability compensation is due and payable; or

(b) Is closed within 14 days, the insurer must report the reopening on the Form 1503, "Insurer Notice of Closure Summary" filed with the director at the time the insurer closes the claim. The Form 1503 must be accompanied by the "Modified Notice of Acceptance" and "Updated Notice of Acceptance at Closure" sent to the worker.

(9) Claim withdrawal.

The insurer must file a Form 1502 with the director if it receives written communication from the worker stating the worker never intended to file a claim and wants the claim withdrawn after the claim has been reported. The Form 1502 must be accompanied by a copy of the worker's communication.

(10) Failure to report.

The director may issue a civil penalty against any insurer that does not file required notices and forms within the time frames of these rules.

(11) Reporting of legal service costs.

Insurers must make an annual report to the director reporting attorney fees, attorney salaries, and all other costs of legal services paid under ORS chapter 656. The report must be submitted on forms provided by the director for that purpose. Reports for each calendar year must be filed by March 1 of the following year.

(12) Election of payment of supplemental disability.

If an insurer elects to not process and pay supplemental disability benefits under ORS 656.210(5)(a) and OAR 436-060-0035:

(a) The insurer must submit Form 3530, "Supplemental Disability Election Notification," to the director. The insurer is not required to inform the director if it elects to process and pay supplemental disability unless the insurer has previously provided notice otherwise.

(b) The insurer must use Form 3504, "Supplemental Disability Benefits Quarterly Reimbursement Request," to request reimbursement under OAR 436-060-0500 for each quarter the insurer processed and paid supplemental disability benefits.

Statutory authority: ORS 656.264, 656.265(6), 656.726(4) and 656.745
Statutes implemented: ORS 656.210, 656.262, 656.264 and 656.726(4)
Hist: Adopted 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17

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:

(a) Address all future notices and correspondence to the worker's estate or qualified beneficiaries;

(b) Provide a written notice of acceptance or denial of a claim to the estate of the worker; and

(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.

(2) Other notices required under this chapter intended for the worker are not required when the worker is deceased.

Statutory authority: ORS 656.726(4)
Statutes implemented: ORS 656.262, 656.264, 656.268
Hist: Adopted 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16

436-060-0015 Required Notice ~~And~~ and Information

(1) Notice to worker's attorney.

If a worker is represented by an attorney, and the ~~When an injured worker's~~ attorney has given written notice of representation, the insurer must provide ~~prior or simultaneous~~ written notice ~~must be given~~ to the worker's attorney before, or at the same time, as ~~under ORS 656.331 when~~:

(a) The ~~director or~~ insurer requests the worker to submit to a medical examination;

(b) The insurer contacts the worker regarding any matter ~~which~~ that may result in denial, reduction, or termination of the worker's benefits; or

(c) The insurer contacts the worker regarding any matter relating to the disposition of a claim under ORS 656.236.

(2) Penalty for failure to provide notice to worker's attorney.

The director ~~shall~~ may assess a civil penalty against an insurer ~~who~~ that intentionally or repeatedly fails to give notice as required under section (1) of this rule.

(3) Information provided to worker.

The insurer or ~~the~~ service company must provide:

(a) ~~the pamphlet~~Form 1138, "What Happens if I'm Hurt on the Job?~~,~~" ~~Form 1138,~~ to every ~~injured~~ worker who has a disabling claim with the first ~~time-loss~~disability check or earliest written correspondence. For nondisabling claims, ~~the information page~~Form 3283, "A Guide for Workers Recently Hurt on the Job," ~~Form 3283,~~ may be provided in ~~lieu~~ place of Form 1138, unless the worker specifically requests Form 1138;~~.~~

(~~4~~b) ~~The insurer must provide~~ Form 3283 to ~~their~~ its insured employers. ~~The employer must provide the Form 3283 to the worker at the time a worker files a claim for workers' compensation benefits. The~~ Form 3283 may be printed on the back of ~~the~~ Form 801~~.~~;

(~~5~~c) ~~The insurer must provide the~~ Form 3058, "Notice to Worker," ~~Form 3058,~~ or ~~its~~ an equivalent form to the worker with the initial notice of acceptance ~~on~~ of the claim under OAR 436-060-0140(6~~7~~). If an equivalent form is provided, it~~For the purpose of this rule, an equivalent to the Form 3058~~ must include all of the ~~statutory and rule requirements~~information included on Form 3058~~.~~; and

(~~6~~d) The ~~Additional~~ additional notices ~~the insurer must send to a worker are contained in~~required under OAR 436-060-0018, 436-060-0030, 436-060-0035, 436-060-0095, 436-060-0105, 436-060-0135, 436-060-0140, and 436-060-0180.

(4~~7~~) Notice of change of processing location.

When ~~an~~ the insurer changes claims processing locations, service companies, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, email address, and mailing address of the new claim processor.

(5~~8~~) Notice of change in rate of compensation and benefit amounts.

When the insurer changes the rate of compensation, the wage used to calculate benefit amounts, or the method of calculation used to determine benefits, ~~The~~ the insurer must provide ~~the worker~~ a written ~~n~~ explanation of any change to the worker and the worker's attorney, if any. ~~in the wage used that differs from what was initially reported in writing to the insurer. Prior to~~

(6) Notice of wage used to calculate benefits at closure.

Before closure of a disabling claim ~~claim closure on a disabling claim,~~ ~~the~~ the insurer must send a notice to the worker ~~a notice~~that:

(a) ~~documenting~~ Documents the wage upon which benefits were based;

(b) Informs the worker that ~~. W~~work disability, if applicable, will be determined when the claim is closed; and~~.~~

(c) The notice must also eExplains how the worker can appeal the insurer's wage calculation if the worker disagrees with the wage.

Statutory authority: ORS 656.331, 656.704, 656.726(4), and 656.745
Statutes implemented: ORS 656.331, 656.704, and 656.726(4)
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0017 Release of Claim Documents

(1) Definitions.

For the purpose of this rule:

(a) "Documents" means the written records making up, or relating to, the worker's claim, includincluding e, but are not limited to:

(A), mMedical records;

(B) , vVocational records;,

(C) written and automated pPayment ledgers for both time losstemporary disability and medical services;,

(D) pPayroll records;,

(E) rRecorded statements;,

(F) iInsurer generated records, (insurer generated records exclude excluding a claims examiner's generated file notes, such as documentation or justification concerning setting or adjusting reserves, claims management strategy, or any privileged communications;)

(G), Aall forms on the claim required to be filed with the director;,

(H) nNotices of closure, ; and

(I) Eelectronic transmissions, and correspondence between the insurer, service providers, claimant, the division director, or the Workers' Compensation Board.

(b) "Possession" means Any documents 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 generated or received by the insurer five or more working days prior tobefore the mailing date of mailinga request for copies of claims documents are considered to be in the insurer's or service company's possession, shall be considered as part of the insurer's claim record even though if the documents may have not have yet reached the insurer's insurer's or service company's claim file.

(2) Date of receipt.

The insurer or service company must date stampdisplay evidence of the initial date of receipt on each document upon receipt with the date it is receivedin its possession.

(a) The ~~date stamp~~evidence must include the month, day, year of receipt, and name of the company~~,~~.

(b) Acceptable evidence under this section includes, but is not limited to, a machine produced date stamp or the data automatically produced by ~~unless the document already contains the date information and name of recipient company, as in faxes, e-mail and other~~ electronic~~ally~~ transmi~~tted communications~~ssion.

(3) Requests for claims documents.

~~A request for copies of claim documents must be submitted to the insurer, self-insured employer, or their respective service company, and copied simultaneously to defense counsel, if known.~~

~~(4)~~ The insurer or service company must ~~furnish~~provide, without ~~cost~~charge, legible copies of documents in its possession relating to a claim, upon request of the ~~claimant~~worker, ~~claimant's~~ worker's attorney or ~~claimant's~~ worker's beneficiary, at times other than those provided for under ORS 656.268 and OAR chapter 438, as provided in this rule.

(a) A request for copies of claim documents must be submitted to the insurer or service company, and copied simultaneously to the insurer's defense counsel, if known.

(b) Except as provided in OAR 436-060-0180, an initial request by anyone other than the ~~claimant~~ worker or ~~claimant's~~ worker's beneficiary must be accompanied by an ~~worker signed~~ attorney ~~retention~~ retainer agreement or a medical release that has been signed by the worker.

(A) The signed medical release must be ~~in a form or format as the director may provide by bulletin~~ provided using Form 2476, "Request for Release of Medical Records for Oregon Workers' Compensation Claim," or an equivalent form.

(B) Information not otherwise available through this release, but relevant to the claim, may only be obtained in compliance with applicable state or federal laws.

(c) If the worker or beneficiary is represented by an attorney:

(A) The documents must be mailed directly to the worker's or beneficiary's attorney;

(B) The insurer is not required to provide copies to both the worker or beneficiary and the attorney; however, the insurer must inform the worker or beneficiary that the documents were mailed to the attorney if the documents were requested by the worker or beneficiary; and

(C) If the worker or beneficiary changes attorneys, the insurer must provide the new attorney with copies upon request.

(d)~~Upon the request of the claimant's attorney, a request for documents shall be considered~~ If the worker or beneficiary's attorney makes an ongoing request for ~~future~~ documents:

(A) The insurer must provide all new documents received and generated by the insurer for 180 days after the initial mailing date under section (~~7~~4) of this rule, or until a hearing is requested before the Workers' Compensation Board~~.~~; and

(B) The insurer must provide ~~such~~ new documents to ~~claimant~~the worker's attorney every 30 days. If ~~, unless~~ the attorney requests that specific documents ~~are requested sooner by the attorney. Such~~ be sent more frequently, those documents must be provided within the time -frame ~~of~~ specified in section (~~7~~4) of this rule.

(e) The insurer must provide to the worker or the worker's attorney the entire health information record in its possession, except the following, may be withheld:

(A) Information obtained from someone other than a health care provider under a promise of confidentiality and access to the information would likely reveal the source of the information;

(B) Psychotherapy notes;

(C) Information compiled for use in a civil, criminal, or administration action or proceeding; or

(D) Information that must be withheld under federal regulation.

(f) ~~(5) Once~~ If a hearing is requested before the Workers' Compensation Board, the release of documents is controlled by OAR chapter 438 until~~. This rule applies subsequently if~~ the hearing request is withdrawn or ~~when~~ the hearing record is closed, provided a request for documents is renewed.

~~**(6)** Upon request, the entire health information record in the possession of the insurer will be provided to the worker or the worker's representative. This includes records from all healthcare providers, except that the following may be withheld:~~

~~(a) Information that was obtained from someone other than a healthcare provider under a promise of confidentiality and access to the information would likely reveal the source of the information,~~

~~(b) Psychotherapy notes,~~

~~(c) Information compiled for use in a civil, criminal, or administration action or proceeding; and~~

~~(d) Other reasons specified by federal regulation.~~

(~~7~~4) Time frame to provide documents.

The insurer must ~~furnish~~ provide copies of documents requested under this rule within the following time -frames:

(a) -Copies of ~~The~~ documents from~~of~~ files that are ~~open and closed files, or microfilmed files~~ not archived must be mailed within 14 days of receipt of a request;~~, and~~

(b) ~~c~~Copies of documents ~~of~~ from archived files must be mailed within 30 days of receipt of a request;~~.~~

(c~~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; and~~.~~

(ed) If no documents are in the insurer's does not possession any documents at the time the request is received,:

(A) The insurer must mail any documents relating to the claim it receives to the requestor within the 14 days of receipt of the documents; and

(B) The request will be considered ongoing for 90 days.

within which to provide copies of documents starts when the insurer does receive some documentation on the claim if that occurs within 90 days of receipt of the request.

(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. The insurer is not required to furnish copies to both the claimant or beneficiary and the attorney. However, if a claimant or beneficiary changes attorneys, the insurer must furnish the new attorney copies upon request.

(9) The director may assess a civil penalty against an insurer who fails to furnish documents as required under this rule. The matrix attached to these rules in Appendix "A" will be used in assessing penalties.

(105) Complaints of violation.

Rule violation complaints Complaints about a violation of the rules regarding release of requested claims documents must be made in writing, mailed or delivered to the division within 180 days of the request for documents, and must include a copy of the request submitted under section (3) of this rule.

(a) When notified by the director that a complaint has been filed, the insurer must mail or deliver a written responsed in writing to the division. The response must be mailed or delivered to the director within 14 days of the mailing date of the divisiondirector's inquiry letter. A copy of the response, including any attachments, must be sent simultaneously mailed to the requester of claim documents.

(b) If the division director does not receive a timely response or the insurer provides an inadequate response (e.g., failing to answer specific questions or provide requested documents), a the director may assess a civil penalty may be assessed against the insurer under OAR 436-060-0200 against the insurer. Assessment of a penalty does not relieve the insurer of the obligation to provide a response.

(6) Failure to provide documents.

The director may assess a civil penalty against an insurer that fails to provide documents as required under this rule. The matrix attached to these rules in Appendix "A" will be used in assessing penalties.

Statutory authority: ORS 656.360, 656.362, ORS656.704, 656.726(4), and 656.745
Statutes implemented: ORS 656.360, and 656.362 ORS 656.704, and 656.726(4)
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16

Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0018 Nondisabling/Disabling Reclassification

(1) General.

When If the insurer changes the classification of an accepted claim, :

the insurer must submit an "Insurer's Report," Form 440-1502, indicating a change in status, to the director within 14 days from the date of the new classification. (a) The insurer must notify the director under OAR 436-060-0011;

(b) The insurer must A notice of change of classification must be communicatedsend the worker and the worker's attorney, if any, by issuing a "Modified Notice of Acceptance." This explainingnotice must include an explanation of the change in status and must be sent to the director, the worker, and the worker's attorney if the worker is represented.; and

(c) If the claim qualifies for closure, the insurer must close the claim under ORS 656.268(5).

(2) Reclassification of a nondisabling claim.

The insurer must reclassify a nondisabling claim to disabling:

(a) within Within 14 days of receiving information that:: any condition already accepted meets the disabling criteria in this rule. A claim is disabling if any of the following criteria apply:

(aA) Temporary disability is due and payable; or

(bB) The worker is medically stationary within one year of the date of injury and the worker will be entitled to an award of permanent disability; or

(cC) The worker is not medically stationary, but there is a reasonable expectation that the worker will be entitled to an award of permanent disability when the worker does become medically stationary; or.

(3b) Under ORS 656.262 (6)(b)(F) and (7)(a) the insurer must issue a Modified Notice of Acceptance and change the classification from nondisabling to disabling Uupon acceptance of a new or omitted condition that meets the disabling criteria in this rule.

(34) Worker request for reclassification.

A worker may request for the insurer to review the classification of a nondisabling claim under ORS 656.277 ifIf a the claim has been classified as nondisabling for one year or less after the date of acceptance and the worker believes the claim was or has become disabling.,

(a) the The requestworker may request reclassification by submitting a written request for review of the classification status review must be made to the insurer in writing. under ORS 656.277.

(5b) Within 14 days of receipt of the worker's request, the insurer must review the claim and,:

(aA) If the classification is changed to disabling, provide notice under this rule; or

(bB) If the insurer believes evidence supports denying the worker's request to reclassify the claim, the insurer must send a "Notice of Refusal to Reclassify" to the worker and the worker's attorney, if the worker is representedany. The notice must include the following statement, in bold print:

"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 or you will lose your right to appeal. The address and telephone number of the Workers' Compensation Division are: [INSURER: Insert current address and telephone number of the Workers' Compensation Division, Appellate Review Unit, here.]."

(6c) A If the worker dissatisfied disagrees with the insurer's decision in the Notice of Refusal to Reclassify, the worker may appeal to the director under section (7) of this rule. :

(A) Such The appeal must be made no later than the 60th day after the mailing date of the Notice of Refusal to Reclassify is mailed;. and

(B) The appeal must include a copy of the insurer's Notice of Refusal to Reclassify.

(d) If the insurer does not respond to the worker's request for reclassification within 14 days of receipt of the worker's request,:

(A) The worker may request review by the director under section (7) of this rule as if the insurer issued a Notice of Refusal to Reclassify;

(B) The director may assess civil penalties under OAR 436-060-0200;

(C) The director may assess an attorney fee under ORS 656.386(3); and

(e) If the worker is represented by an attorney, and the attorney is instrumental in obtaining an order from the director that reclassifies the claim from nondisabling to disabling, the director may award the attorney a reasonable assessed attorney fee under ORS 656.277.

(47) Time frame for aggravation rights.

A claim for aggravation under ORS 656.273 must be filed within five years after:

(a) The first valid closure of a claim that isFor claims that are reclassified from nondisabling to disabling within one year from the date of acceptance, the aggravation rights begin with the first valid closure of the claim; or.

(8b) The date of injury of a For claims that are is not reclassified from nondisabling to disabling within one year from the date of acceptance., the aggravation rights continue to run from the date of injury.

(59) Claims for aggravation on nondisabling claims.

When a claim has been classified as nondisabling for at least one year after the date of acceptance, a worker who believes the claim was or has become disabling may submit a claim for aggravation according to the provisions of under ORS 656.273.

(10) Failure of the insurer or self-insured employer to respond timely to a request for reclassification may result in the assessment of penalties under OAR 436-060-0200 or attorney fees under ORS 656.386(3).

(116) Reclassification of a disabling claim.

Notwithstanding (12), once If a claim has been accepted and classified as disabling: for more than one year from date of acceptance,

(a) Aall aspects of the claim are classified as disabling and remain disabling. may not be reclassified, unless:

(A) The claim has been classified as disabling for less than one year from date of acceptance;

(B) The insurer determines the criteria for a disabling claim were never satisfied; and

(C) The insurer has notified the worker and the worker's attorney, if any, by issuing a Modified Notice of Acceptance. The Modified Notice of Acceptance must advise the worker that he or she has 60 days from the date of the notice to appeal the decision;

(b) Any subsequently acceptedadditional conditions or aggravations subsequently accepted must be processed according to provisions governingas disabling claims; and,

(c) Claim closure must be processed including closure under ORS 656.268.

(12) If a claim has been classified as disabling and the insurer determines the criteria for a disabling claim were never satisfied, the insurer may reclassify the claim to nondisabling. The insurer must notify the worker and the worker's representative, if applicable, by issuing a Modified Notice of Acceptance.

(a) The Modified Notice of Acceptance must advise the worker that he or she has 60 days from the date of the notice to appeal the decision.

(b) Appeals of such reclassification decisions are made to the Appellate Review Unit for issuance of a Director's Review order.

(137) Appeal of insurer's classification decision.

If a worker disagrees with an insurer's decision to not reclassify the worker's claim from nondisabling to disabling, or to reclassify the claim from disabling to nondisabling, the worker may appeal the decision by requesting review by the director:

(a) The worker's appeal request must be in writing and mailed to the director within 60 days from the date of the insurer's notice.;

(b) The worker may use Form 2943, "Worker Request for Claim Classification Review," the form specified by the director for requesting review of the insurer's claim classification decision; and.

~~(14)~~ (c) The worker does not need to be represented by an attorney to appeal the insurer's reclassification decision under section (3) or (6) of this rule. If a worker appeals an insurer's reclassification decision:

(A) The worker's appeal ~~under section (6) or (12)~~ must be copied to the insurer;~~.~~

~~(15) A worker need not be represented by an attorney to appeal the insurer's classification decision.~~

(~~16~~B) The director will acknowledge receipt of the ~~request~~ appeal in writing to the ~~injured~~ worker, the worker's attorney, if any, and the insurer, and initiate the review~~.~~;

~~(17)~~

(C) Within 14 days of the director's acknowledgement~~,~~:

(i) ~~t~~The insurer must provide the director and all other parties with the complete medical record and all official actions and notices on the claim. The director may impose penalties against an insurer under OAR 436-060-0200 if the insurer fails to provide claim documents in a timely manner; and~~.~~

(~~18~~ii) ~~Within the same 14 days, t~~The worker may submit any additional evidence for the director to consider. Copies must be provided to all other parties at the same time~~.~~;

(~~19~~D) After receiving and reviewing the required documents, the director will issue an ~~Director's Review~~ order~~.~~:

(~~20~~i) 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.~~; and

(~~21~~ii) The director may reconsider, abate, or withdraw any ~~Director's Review~~ order before the order becomes final by operation of law.

Statutory authority.: ORS 656.268, 656.277, 656.386, 656.726, and 656.745
Stats. Implemented: ORS 656.210, 656.212, 656.214, 656.262, 656.268, 656.386, 656. 273, 656.277, and 656.745~~, and 656.726~~
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0019 Determining and Paying the Three-~~-~~Day Waiting Period

(1) Determining the three-day waiting period.

~~Under ORS 656.210 and 656.212, t~~The three-~~-~~day waiting period is three consecutive calendar days, beginning with the first day the worker ~~loses time~~leaves work or loses wages ~~from work~~ as a result of the compensable injury, subject to the following:

(a) If the worker leaves work, but returns and completes the work shift without loss of wages, that day ~~shall~~is not ~~be~~ considered to be the first day of the three-~~-~~day waiting period~~.~~;

(b) If the worker leaves work, but returns and completes the work shift and receives reduced wages, that day ~~shall be~~is considered to be the first day of the three-day waiting period~~.~~;

(c) If the worker leaves work and does not complete the work shift, that day ~~shall be~~is considered to be the first day of the three-~~-~~day waiting period, even if there is no loss of wages~~.~~;

(d) If the worker leaves work or loses wages during a work shift that extends into another calendar day, the first day of the three-day waiting period is the date the employer uses for payroll purposes.~~For the purpose of this rule, an attending physician's or authorized nurse practitioner's authorization~~

(2) Authorization of temporary disability.

Authorization of temporary disability under OAR 436-010-0210 is not required to begin the three-day waiting period.~~; however, the waiting period would not be due and payable unless authorized.~~

(~~2~~3) Paying the three-day waiting period.

~~Under ORS 656.210(3), n~~No temporary disability ~~payment~~compensation is due the worker ~~for temporary total disability suffered during~~for the ~~first three calendar days after the worker leaves work as a result of a compensable injury~~three-day waiting period, unless temporary disability is authorized under OAR 436-010-0210, and:

(a) T~~t~~he worker is totally disabled after the injury, and the total disability continues for a period of 14 consecutive days; or

(b) ~~unless t~~The worker is admitted as an inpatient to a hospital within 14 days of the first onset of total disability. ~~For the purpose of this rule, admittance as an inpatient to a hospital can be any time following the date of the injury, but must be within 14 days of the first onset of total disability to waive the three day waiting period.~~

(~~3~~4) Amount due when the three-day waiting period is payable.

If compensation is due and payable for the three-~~-~~day waiting period under section (3) of this rule~~,~~:

(a) If~~the worker must be paid for one-half day for the initial work day lost if~~ the worker ~~leaves the job~~left work during the first half of the shift on the first day of the three-day waiting period, and ~~does~~did not return to complete the shift, the worker must be paid compensation for one half of that day; or~~.~~

(b) If ~~No compensation is due for the initial day of the waiting period if~~ the worker ~~leaves the job~~left work during the second half of the shift on the first day of the three-day waiting period, the worker is not due compensation for that day;~~.~~

(~~4~~5) If the worker is employed with varying days off or a cyclic work schedule.

If a worker is employed with varying days off or a cyclic work schedule~~s~~, the three-~~-~~day waiting period ~~shall~~ must be determined using the work schedule of the week the worker ~~begins~~ first ~~losing time~~leaves work or loses wages as a result of the injury.

(6) If the worker is no longer employed with the employer at injury.

If the worker is no longer employed with the employer at injury, or does not have an established schedule when the worker begins losing time/leaves work or loses wages, the three--day waiting period and scheduled days off shall must be based on the work schedule of the week the worker was injured.

Statutory authority: ORS 656.210, 656.212, 656.704, and 656.726(4)
Statutes implemented: ORS 656.210, 656.212
Hist: Amended 10/26/04 as WCD Admin. Order 04-064, eff. 1/1/05
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0020 Payment of Temporary Total Disability Compensation

(1) Employer payment of temporary disability.

An employer may pay temporary disability compensation under ORS 656.262(4) with the approval of the insurer. under ORS 656.262(13)If the insurer approves an employer to make such payment:.

(a)Making such payments does not constitute a waiver or transfer of tThe insurer's duty continues to be responsible for to determineing the worker's entitlement to benefitscompensation, or responsibility for the claim toand ensure ensuring timely benefit payment of compensations.;

(b) The employer must provide the insurer with adequate payment documentation that is adequate to meet as the insurer's may require to meet its responsibilities.; and

(c) The insurer must reimburse the employer for any temporary disability compensation paid to the worker under this section.

(2) Persons who have withdrawn from the workforce.

Under ORS 656.005(30), nNo temporary disability is due and payable for any period of time in which the person has withdrawn from the workforce. For the purpose of this rule, a person who has withdrawn from the workforce, includes, but is not limited to:

(a) A person who, prior tobefore reopening under ORS 656.267, 656.273 or 656.278, was not working and had not made reasonable efforts to obtain employment, unless such efforts would be futile as a result of the compensable injury.

(b) A person who was a full--time student for at least six months in the 52 weeks prior tobefore the date of -injury who elects to return to school full time, unless the person can establish a prior customary pattern of working while attending school. For purposes of this subsection, "full time" is defined as twelve or more quarter hours or the equivalent.

(3) Authorization of temporary disability compensation.

No compensation is due and payable after the worker's attending physician or authorized nurse practitioner ceases to authorize temporary disability, or for any period of time when temporary disability benefits are not authorized by a medical service provider under ORS 656.245(2)(b). Temporary disability compensation is authorized when:

(a) The medical service provider provides the insurer or employer with oral or written verification of the worker's inability to work;

(b) Documents in the insurer's possession at claim closure reasonably reflect the worker's inability to work. For the purposes of this rule "documents" and "possession" have the same meaning as in OAR 436-060-0017(1); or

(c) The director determines, at reconsideration of claim closure, there is sufficient contemporaneous medical documentation to reasonably reflect the worker's inability to work under ORS 656.268.

(~~3~~4) Lack of verification of inability to work.

No temporary disability is due and payable for any period of time ~~where~~ during which the insurer has requested from the worker's attending physician or authorized nurse practitioner verification of the worker's inability to work and the physician or authorized nurse practitioner cannot verify it ~~under ORS 656.262(4)(d)~~, unless the worker has been unable to receive treatment for reasons beyond the worker's control.

(a) Before withholding temporary disability under this section, the insurer must ~~inquire of~~ask the worker whether a reason beyond the worker's control prevented the worker from receiving treatment.

(A) If no valid reason is found or the worker ~~refuses to~~does not respond or cannot be located, the insurer must document its file regarding those findings.

(B) The insurer must provide the ~~division~~ director a copy of the documentation within 20 days, if requested.

(b) If the attending physician or authorized nurse practitioner is unable to verify the worker's inability to work, the insurer may stop temporary disability payments and, in place of the scheduled payment, must send the worker an explanation for stopping the temporary disability payments.

(c) When verification of temporary disability is received from the attending physician or authorized nurse practitioner, the insurer must pay temporary disability within 14 days of receiving the verification of any authorized period of ~~time loss~~temporary disability, unless otherwise denied.

~~**(4)** Authorization from the attending physician or authorized nurse practitioner may be oral or written. The insurer at claim closure, or the division at reconsideration of the claim closure, may infer authorization from such medical records as a surgery report or hospitalization record that reasonably reflects an inability to work because of the compensable claim, or from a medical report or chart note generated at the time of, and indicating, the worker's inability to work. No compensation is due and payable after the worker's attending physician or authorized nurse practitioner ceases to authorize temporary disability or for any period of time not authorized by the attending physician or authorized nurse practitioner under ORS 656.262(4)(g).~~

(5) Suspension of benefits.

An insurer may suspend temporary disability benefits without authorization from the ~~division~~director ~~under ORS 656.262(4)(e)~~ when all of the following circumstances apply:

(a) The worker has missed a regularly scheduled appointment with the attending physician or authorized nurse practitioner;~~.~~

(b) The insurer has sent a ~~certified~~ letter by certified mail to the worker and a letter to the worker's attorney, at least ~~ten~~ 10 days in advance of a rescheduled appointment, stating that the appointment has been rescheduled with the worker's attending physician or authorized nurse practitioner; stating the time and date of the appointment; and giving the following notice, in prominent or bold face type:

"You must attend this appointment. If there is any reason you cannot attend, you must tell us before the date of the appointment. If you do not attend, your temporary disability benefits will be suspended without further notice, as provided by ORS 656.262(4)(e)."

(c) The insurer verifies that the worker has missed the rescheduled appointment;~~.~~ and

(d) The insurer sends a letter to the worker, the worker's attorney and the division giving the date of the regularly scheduled appointment that was missed, the date of the rescheduled appointment that was missed, the date of the letter being the day benefits are suspended, and the following notice, in prominent or bold face type:

"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 if you failed to attend. Since you failed to attend the new appointment, your temporary disability benefits have been suspended. In order to resume your benefits, you must schedule and attend an appointment with your doctor who must verify your continued inability to work."

(6) Verbal release to work.

If temporary disability benefits end because the insurer or employer ~~:~~

~~(a) Speaks by telephone with the attending physician or authorized nurse practitioner, or the attending physician's or authorized nurse practitioner's office, and~~ negotiates a verbal release of the worker to return to any type of work~~-~~ with the worker's attending physician or authorized nurse practitioner~~as a result, when no return to work was previously authorized~~,~~;~~ and

~~(b) T~~the worker has not already been informed of the release by the attending physician or authorized nurse practitioner or returned to work, ~~; then~~

~~(c) Th~~the insurer must:

(~~A~~a) Document the facts;

(~~B~~b) Communicate the release to the worker by mail within ~~7~~ seven days. The communication to the worker of the negotiated return~~-~~-to~~-~~-work release may be contained in an offer of modified employment; and

(~~C~~c) Advise the worker of their reinstatement rights under ORS chapter 659A.

(7) Temporary disability from two or more claims.

When a worker is due concurrent temporary disability under ORS 656.210 or ORS 656.212 is due the worker as a result of two or more accepted claims:

(a) , The director may order one of the insurers to pay the entire amount of temporary disability due; or make a pro rata distribution between two or more of the insurers;

(b) the The insurers may petition request for the divisiondirector to make a pro rata distribution of compensation due under ORS 656.210 and 656.212. The request must be in writing, and The the insurer must provide a copy of the request to the worker, and the worker's attorney, if anyrepresented. ;

(c) The divisiondirector's pro rata order shall does not apply to:

(A) any Any periods of interim compensation payable under ORS 656.262; or

(B) Any and also does not apply to benefits due under ORS 656.214 and or 656.245. ;

(d) Claims subject to the pro rata order approved by the division must be closed under OAR 436-030 and ORS 656.268, when appropriate;.

The insurers shall not unilaterally prorate temporary disability without the approval of the division, except as provided in section (8) of this rule. The division may order one of the insurers to pay the entire amount of temporary disability due or make a pro rata distribution between two or more of the insurers. (e) The pro rata distribution ordered by the divisiondirector shall beonly applies effective only forto benefits due as of the date all claims involved are in an accepted status. The order pro rating compensation will not apply to periods where any claim involved is in a deferred status;.

(f) The insurers may not prorate temporary disability without the approval of the director, except

(8) Wwhen concurrent temporary disability is due the worker as a result of two or morethe accepted claims involving involve the same worker, the same employer, and the same insurer. , the insurer may make a pro rata distribution of compensation due under ORS 656.210 and 656.212 without an order by the division. When the insurer prorates temporary disability under this subsection The the worker must receive compensation at the highest temporary disability rate of the claims involved.

(89) Premature closure.

If a closure under ORS 656.268 has been found to be premature and there was an open ended authorization of temporary disability at the time of closure, the insurer must begin payments under ORS 656.262, including retroactive periods, and pay temporary disability for as long as authorization exists or until there are other lawful bases to terminate temporary disability.

(109) Incorrectly denied claims.

If a denied claim has been determined to be compensable by final order, the insurer must begin temporary disability payments under ORS 656.262, including retroactive periods, if the time loss authorization for temporary disability was open ended at the time of denial, and there are no other lawful bases to terminate temporary disability.

Statutory authority: ORS 656.210(2), 656.245, 656.262~~, 656.307(1)(c)~~, ~~656.704,~~ and 656.726(4)
Statutes implemented: ORS 656.210, 656.212, 656.262 ~~(Oregon Laws 2009, ch. 526)~~, 656.307(1)(c)~~, 656.704, 656.726(4)~~
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0025 Rate o~~O~~f Temporary Disability Compensation

~~(1) The rate of compensation shall be based on the wage of the worker at the time of injury, except in the case of an occupational disease, for which the rate of compensation will be based on the wage as outlined in ORS 656.210(2)(d)(B).~~ (1) Continuation of wages, insured employers.

An e~~E~~mployer~~s~~ ~~shall~~ may not continue to pay wages in ~~lieu~~ place of ~~statutory~~ temporary ~~total~~ disability ~~payments~~benefits ~~due~~. However, with the consent of the worker, ~~under ORS 656.018(6)~~ the employer ~~is not precluded from~~may ~~supplement~~pay the worker amounts in addition to~~ing~~ the ~~amount of~~ temporary ~~total~~ disability benefits due the worker, if:

(a) The employer ~~paid the worker. Employers must~~ ~~separately~~ identif~~y~~ies ~~workers' compensation~~temporary disability benefits separately from other payments; and

(b) The employer ~~shall~~ does not withhold ~~have~~ payroll deductions ~~withheld~~ from ~~such~~ the temporary disability benefits.

(2) Continuation of wages, self-insured employers.

Notwithstanding section (1) of this rule, ~~under ORS 656.262(4)(b),~~ a self-insured employer may continue to pay the same wage ~~with normal deductions withheld (e.g. taxes, medical, and other voluntary deductions)~~ at the same pay interval that the worker received at the time of injury. Such payment qualifies as timely payment of temporary disability under ORS 656.210 and 656.212. If the self-insured employer continues to pay wages in place of temporary disability benefits under this section:

(a) Normal deductions including but not limited to, taxes, benefits, and voluntary deductions, must be withheld;~~If the pay interval or amount of wage changes (excluding wage increases), the worker must be paid temporary disability as otherwise prescribed by the workers' compensation law.~~

(b) The claim must~~The claim shall~~ be classified as disabling~~.~~;

(c) The self-insured employer must report to the division the rate and duration of temporary ~~total~~ disability that would have ~~otherwise~~ been paid had wages not continued ~~wages not occurred and the period of disability will be reported to the division.~~; and

(d) If the pay interval changes or the amount of wages decreases, the worker must be paid temporary disability as otherwise prescribed by the workers' compensation law.

(3) Rate of compensation, generally.

Except when payments are made under section (2) of this rule, the worker must receive compensation as calculated under ORS 656.210 during the period of temporary total disability, subject to the following:

(a) The benefits of a worker who incurs an injury must be based on the worker's wages at the time of injury;

(b) The benefits of a worker who incurs an occupational disease must be based on the worker's wages at the time there is medical verification that the worker is unable to work because of the disability caused by the occupational disease. If the worker is not working at the time that there is medical verification that the worker is unable to work because of the disability caused by the occupational disease, the benefits must be based on the worker's wages at the worker's last regular employment;

(c) The benefits of a worker who was employed in multiple jobs at the time of injury, and who is eligible for supplemental disability under ORS 656.210(2)(b) and OAR 436-060-0035, must be based on the worker's earnings from all eligible subject employment under OAR 436-060-0035;

(d) For a worker with a cyclic schedule, the cycle must be considered to have no scheduled days off; and

(e) When a work shift extends into another calendar day, the date of injury used to determine the wage under this section is the date the employer used for payroll purposes.

~~(3) The rate of compensation for regularly employed workers shall be computed as outlined in ORS 656.210 and this rule. "Regularly employed" means actual employment or availability for such employment.~~

~~(a) Monthly wages shall be divided by 4.35 to determine weekly wages. Seasonal workers paid monthly must have their weekly wages determined under OAR 436-060-0025(5).~~

~~**(b) For workers employed through union hall call board insurers must compute the rate of compensation on the basis of a five-day work week at 40 hours a week, regardless of the number of days actually worked per week.**~~

~~**(4) The insurer shall resolve wage disputes by contacting the employer to confirm the correct wage and then contacting the worker with that information. If the worker does not agree with the wage calculated by the insurer, the worker may request a hearing with the Hearings Division of the Workers' Compensation Board.**~~

(4~~5~~) Rate of compensation, irregular wages.

If~~The rate of compensation for~~ a worker~~s regularly employed, but paid on other than a daily or weekly basis, or employed with~~ receives irregular wages, or receives earnings that are not based on wages alone,~~unscheduled, irregular or no earnings~~ the insurer must calculate the worker's rate of compensation under section (3) of this rule based on the weekly average of the worker's total earnings for the period up to 52 weeks before the date of injury or verification of disability caused by occupational disease. ~~shall be computed on the wages determined by this rule.~~

(a) "Total earnings" means all wages, salary, commission and other remuneration for services rendered under the worker's wage earning agreement with the employer.

(A) The insurer must include a reasonable value of any in-kind considerations as part of total earnings only if the considerations will not continue during the period of disability.

(B) The insurer must not include expenses incurred due to the job and reimbursed by the employer (e.g., meals, lodging, per diem, equipment rental) as part of total earnings.

(a) For workers employed seasonally, on call, paid hourly, paid by piece work or with varying hours, shifts or wages:

(bA) If, on the date of injury or verification of disability caused by occupational disease, the worker had been employed by the employer at injury for four weeks or more, the insurer must average the workers' total earnings for the period up to 52 weeks of employment before the date of injury or verification of disability caused by occupational disease, subject to the following:

(A) The insurer may not include any gap in employment of more than 14 days that was not anticipated in the wage earning agreement, when calculating the average earnings; and

(B) If the worker's wage earning agreement changed due to reasons other than only a change in rate of pay, including but not limited to a change of hours worked or a change of job duties, in the 52 weeks before the date of injury or verification of disability caused by occupational disease, the insurer must average earnings only for the weeks worked under the most recent wage earning agreement; and

(C) For the purposes of this section, a job assignment from a temporary service provider or worker leasing company as defined in OAR 436-050 is not considered to be a new wage earning agreement.

Insurers must use the worker's average weekly earnings with the employer at injury for the 52 weeks prior to the date of injury. For workers with multiple employers at the time of injury who qualify under ORS 656.210(2)(b) and OAR 436-060-0035, insurers shall average all earnings for the 52 weeks prior to the date of injury. For workers employed less than 52 weeks or where extended gaps exist, insurers must use the actual weeks of employment (excluding any extended gaps) with the employer at injury or all earnings, if the worker qualifies under ORS 656.210(2)(b) and OAR 436-060-0035, up to the previous 52 weeks.(c) For the purpose of this rule, gaps shall not be added together and must be considered on a claim-by-claim basis; the determination of whether a gap is extended must be made in light of its length and of the circumstances of the individual employment relationship itself, including whether the parties contemplated that such gaps would occur when they formed the relationship. ForIf, on the date of injury or verification of disability caused by occupational disease, the worker had been s employed by the employer at injury for less than four weeks, or the worker's wage earning agreement had been in place less than four weeks, the insurers shall must use base the rate of compensation on the intent of the worker's -wage earning agreement in place at the time of injury, as confirmed by the employer and the worker. For the purpose of this section, the wage earning agreement may be either oral or in writing.

~~(B)(i) Where there has been a change in the wage earning agreement due only to a pay increase or decrease during the 52 weeks prior to the date of injury, insurers must use the worker's average weekly hours worked for the 52 week period, or lesser period as required in (5)(a)(A) of this section, multiplied by the wage at injury to determine the worker's current average weekly earnings.~~

~~(ii) Where there has been a change in the wage earning agreement due to a change of hours worked, change of job duties, or for other reasons either with or without a pay increase or decrease, during the 52 weeks prior to the date of injury, insurers must average earnings for the weeks worked under the most recent wage earning agreement, calculated by the method described in (5)(a)(A).~~

~~(iii) For workers employed less than four weeks under a changed wage earning agreement as described in this subsection, insurers must use the intent of the most recent wage earning agreement as confirmed by the employer and the worker.~~

(5) Rate of compensation, regular wages.

If a worker receives regular wages, the insurer must calculate the worker's rate of compensation as outlined in ORS 656.210. To determine the worker's weekly wage:

(a) Daily wages must be multiplied by the number of days per week the worker was regularly employed;

(b) Monthly wages must be divided by 4.35; or

(c) Wages for other pay intervals must be calculated on an equivalent basis.

~~(iv) For determining benefits under this rule for occupational disease claims, in place of "the date of injury," insurers must use the wage at the date of disability if the worker was working at the time of medical verification of the inability to work. If the worker was not working due to the injury at the time of medical verification of the inability to work insurers must use the wage at the date of last regular employment.~~

~~(b) For workers employed through a temporary service provider on a "temporary basis," or a worker-leasing company as defined in OAR 436-050, insurers will determine the weekly wage by the method provided in subsection (a) of this section. However, each job assignment shall not be considered a new wage earning agreement.~~

~~(c) For workers paid salary plus considerations (e.g. rent, utilities, food, etc.) insurers must compute the rate on salary only if the considerations continue during the period the worker is disabled due to the injury. If the considerations do not continue, the insurer must use salary plus a reasonable value of those considerations. Expenses incurred due to the job and reimbursed by the employer (e.g. meals, lodging, per diem, equipment rental) are not considered part of the wage.~~

~~(d) Earnings from a second job will be considered for calculating temporary partial disability only to the extent that the post-injury income from the second job exceeds the pre-injury income from the second job (i.e., increased hours or increased wage).~~

~~(e) For workers employed where tips are a part of the worker's earnings insurers must use the wages actually paid, plus the amount of tips required to be reported by the employer~~

~~under section 6053 of the Internal Revenue Code of 1954, as amended, or the amount of actual tips reported by the worker, whichever amount is greater.~~

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

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

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

(6~~i~~) Workers with no wages.

If the ~~Covered~~ worker~~s~~ is ~~with no wage earnings such~~ ~~as~~a volunteer~~s~~, ~~, jail~~ inmate~~s~~, or other covered worker that receives no wage earnings, ~~etc.,~~the insurer must ~~must have their benefits computed~~calculate the rate of compensation based on the ~~same~~ assumed wage ~~as that~~ used to determine ~~upon which~~ the employer's premium ~~is based~~.

~~(j) For workers paid by commission only or commission plus wages insurers must use the worker's average commission earnings for previous 52 weeks, if available. For workers without 52 weeks of earnings, insurers must use the assumed wage on which premium is based. Any regular wage in addition to commission must be included in the wage from which compensation is computed.~~

(~~k~~7) Owners and corporate officers.

~~For~~If the worker~~s~~ ~~who are~~ is a sole proprietor~~s~~, partner~~s~~, officer~~s~~ of a corporation~~s~~, or limited liability company member~~s including managers~~, the insurer~~s~~ must ~~use~~ calculate the rate of compensation based on the assumed wage ~~on which~~used to determine the employer's premium ~~is based~~.

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

~~(m) For workers with cyclic schedules, insurers must average the hours of the entire cycle to determine the weekly wage. For purposes of temporary disability payments, the cycle shall be considered to have no scheduled days off. For example: A worker who works ten hours for seven days, has seven scheduled days off, then repeats the cycle, is considered to have a 14 day cycle. The weekly wage and payment schedule would be based on 35 hours a week with no scheduled days off.~~**(8) Wage disputes.**

If the worker disputes the wage used to calculate the rate of compensation, the insurer must attempt to resolve the dispute by contacting the employer to confirm the correct wage and then contacting the worker with that information. If the worker still does not agree with the wage calculated by the insurer, the worker may request a hearing under OAR 436-060-0008.

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

Statutory authority: ORS 656.210(2), 656.704, and 656.726(4)
Statutes implemented: ORS 656.210, 656.704~~, 656.726(4)~~
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0030 Payment of Temporary Partial Disability Compensation

(1) Rate of temporary partial disability.

The amount of temporary partial disability compensation due a worker ~~shall~~ must be determined by multiplying the worker's rate of compensation for temporary total disability by the percentage of wages lost by the worker post injury.

(a) To calculate the rate of temporary disability, the insurer must:

(~~a~~A) Subtract the worker's~~ing~~ post-injury ~~wage earnings~~wages ~~by the worker~~ from any kind of work from

~~(b)~~ t~~T~~he worker's wages at the time of injury ~~used to compute the rate of compensation at the time of injury~~under OAR 436-060-0025;~~ then~~

(~~c~~B) ~~Dividing~~ Divide the difference ~~by the wage earnings used in~~under ~~subsection~~ paragraph (~~b~~A) by the worker's wages at the time of injury under OAR 436-060-0025 to arrive at the percentage of loss of wages; ~~then~~and

(~~d~~C) Multiply~~ing~~ the worker's current rate of ~~temporary total disability~~ compensation for temporary total disability~~rate~~ by the percentage of loss of wages in ~~subsection~~paragraph (B) ~~(c)~~.

(b) As used in this rule "post-injury wages" means the sum of:

(A) The wages the worker could have earned by accepting a job offer, or actual wages earned, whichever is greater;

(B) Any unemployment benefits received; and

(C) Any wages received for paid leave, except wages paid in addition to temporary disability compensation with the worker's consent under OAR436-060-0025(1);

(c) Wages from a secondary employer must only be included in post-injury wages to the extent that the wages from the secondary employer post-injury exceed the wages from the secondary employer at the time of injury.

(~~2~~d) ~~Notwithstanding section (1), for~~If the worker's ~~whose~~ rate of temporary total disability compensation is based on an assumed wage, the rate of temporary partial disability ~~"post-injury wage earnings" will~~ must be calculated by ~~that proportion~~

ofmultiplying the rate of temporary total disability by the assumed wage which the hours worked during the period of temporary partial disability represent as a percentage of the hours worked prior to the injurylost by the worker post injury.

(32) If the worker returns to employment.

AnThe insurer shall must stop cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) from the date an injured worker begins wage earningreturns to regular or modified employment, prior to claim closure, unless the worker refuses modified work under ORS 656.268(4)(c)(A) through (F)..

(a) If the worker is with a new employer, and upon request of the insurer asks the worker to provide wage information, it shall be the worker's is responsibility responsible to for provide providing documented evidence of the amount of any wages being earned; and.

(b) If the worker fails Failure to provide documentationdo so shall be cause for, the insurer to may assume that post-injury wages are the same as or higher than the worker's wages at time of injury.

(4) For the purpose of section (5) of this rule:

(a) "Commute" means the lesser of the distance traveled from the worker's residence at the time of injury to the work site or the worker's residence at the time of the modified work offer to the work site;

(b) "Where the worker was injured" means the location where the worker customarily reported or worked at the time of injury; and

(c) "Temporary employees" has the same meaning as defined in OAR 436-050-0420.

(53) If the worker fails to begin employment. Under ORS 656.325(5)(a), an

Except when the worker refuses modified work under ORS 656.268(4)(c), the insurer shall ceasemust stop paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment whenfrom the date an injured worker fails to begin wage regular or modified earning employment, and the under the following conditions have been met:

(a) The employer or insurer:

(A) Notifies the attending physician or authorized nurse practitioner of the physical tasks to be performed by the injured worker;

(B) Notifies the attending physician or authorized nurse practitioner of the location of the modified work offer; and

(C) Asks the attending physician or authorized nurse practitioner if the worker can, as a result of the compensable injury, physically commute to and perform the job.

(b) The attending physician or authorized nurse practitioner has agreeds the employment appears to be within the worker's capabilities, and considering the compensable injury the worker is physically able to commute the lesser of:

~~the commute is within the physical capacity of the worker~~(A) The distance from the worker's residence at the time of injury to the work site; or

(B) The distance from a worker's residence at the time of the modified work offer to the work site; and

(c) The employer or insurer has confirmed the offer of employment in writing to the worker stating:

(A) The beginning time, date and place;

(B) The duration of the job, if known;

(C) The wages;

(D) An accurate description of the physical requirements of the job;

(E) That the attending physician or authorized nurse practitioner has found the job to be within the worker's capabilities and the commute to be within the worker's physical capacity;

(F) The worker's right to refuse the offer of employment without termination of temporary total disability if any of the following conditions apply:

(i) The offer is at a site more than 50 miles from the location where the worker was injured or where the worker customarily reported for work,~~where the worker was injured,~~ unless the work site is less than 50 miles from the worker's residence, or the job at the time of injury involved multiple or mobile work sites as established by the intent of the employer and worker at the time of hire or ~~as established by~~ the employment pattern ~~prior to~~before the injury;

~~was that the job involved multiple or mobile work sites and the worker could be assigned to any such site. Examples of such sites include, but are not limited to logging, trucking, construction workers, and temporary employees;~~

(ii) The offer is not with the employer at injury;

(iii) The offer is not at a work site of the employer at injury;

(iv) The offer is not consistent with existing written shift change policy or common practice of the employer at injury or aggravation; or

(v) The offer is not consistent with an existing shift change provision of an applicable union contract; and

(G) The following notice, in prominent or bold face type:

"If you refuse this offer of work for any of the reasons listed in this notice, you should write to the insurer or employer and tell them your reason~~(s)~~ for refusing the job. If the insurer reduces or stops your temporary total disability and you disagree with that action, you have the right to request a hearing. To request a hearing you must send a letter objecting to the insurer's action~~(s)~~ to the Worker's Compensation Board, 2601 25th Street SE, Suite 150, Salem, Oregon 97302-1282."

(~~6~~4) If the worker has been terminated from employment.

~~Under ORS 656.325(5)(b), t~~The insurer ~~shall cease~~must stop paying temporary total disability compensation and start paying temporary partial disability compensation ~~under section (1)~~ as if the worker had begun the employment ~~when~~ from the date the worker's attending physician or authorized nurse practitioner approves employment in a modified job that would have been offered to the worker if the worker had not been terminated from employment for violation of work rules or other disciplinary reasons, under the following conditions:

(a) The employer has a written policy of offering modified work to injured workers;

(b) The insurer has written documentation of the hours available to work and the wages that would have been paid if the worker had returned to work in order to determine the amount of temporary partial disability compensation under section (1) of this rule;

(c) The attending physician or authorized nurse practitioner has been notified by the employer or insurer of the physical tasks to be performed by the injured worker; and

(d) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities.

(~~7~~5) If the worker is in violation of federal immigration law.

~~Under ORS 656.325(5)(c), the~~ The insurer ~~shall cease~~must stop paying temporary total disability compensation and start paying temporary partial disability compensation ~~under section (1)~~ as if the worker had begun the employment when the attending physician or authorized nurse practitioner approves employment in a modified job whether or not such a job is available if the worker is a person present in the United States in violation of federal immigration laws, under the following conditions:

(~~a~~a) The insurer has written documentation of the hours available to work and the wages that would have been paid if the worker had returned to work in order to determine the amount of temporary partial disability compensation under section (1) of this rule;

(~~b~~b) The attending physician or authorized nurse practitioner has been notified by the employer or insurer of the physical tasks that would have been performed by the injured worker; and

(~~c~~c) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities.

(6~~8~~) If the modified job no longer exists or offer is withdrawn.

Temporary partial disability must be paid at the full temporary total disability rate as of the date a modified job no longer exists or the job offer is withdrawn by the employer.

(a) This section applies to situations including ~~includes~~, but ~~is~~ not limited to, termination of temporary employment, layoff, or plant closure.

(b) A~~A~~ worker who has been released to and doing modified work at the same wage as at the time of injury from the onset of the claim is subject to this section ~~shall be included in this section~~.

(c) For the purpose of this rule, when a worker who has been doing modified work quits the job, or the employer terminates the worker for violation of work rules or other disciplinary reasons, it is not a withdrawal of a job offer by the employer, but ~~shall~~ must be considered the same as the worker refusing wage earning employment under ORS 656.325(5)(a).

(d) This section does not apply to those situations described in sections (~~5~~3), (~~6~~4), and (~~7~~5) of this rule.

(7~~9~~) Termination of temporary partial disability.

When the worker's disability is partial only and temporary in character, temporary partial disability compensation under ORS 656.212 ~~shall~~ must continue until:

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

(b) The compensation is terminated by order of the ~~division~~director or by claim closure ~~by the insurer~~ under ORS 656.268; or

(c) The compensation is lawfully suspended, withheld or terminated for any other reason.

~~(10) In determining failure on the part of the worker in section (5) and for purposes of subsection (1)(a), "post-injury wages" are the wages the worker could have earned by accepting a job offer, or actual wages earned, whichever is greater, and any unemployment, sick or vacation leave payments received.~~

(8~~11~~) Verbal release to work.

If temporary disability benefits end because the insurer or employer ~~:~~

~~(a) Speaks by telephone with the attending physician or authorized nurse practitioner, or the attending physician's or authorized nurse practitioner's office, and~~ negotiates a verbal release of the worker to return to any type of work with the worker's attending physician or authorized nurse practitioner ~~as a result, when no return to work was previously authorized;~~, and

~~(b) T~~the worker has not already been informed of the release by the attending physician or authorized nurse practitioner or returned to work~~;~~, ~~then~~

~~(c) T~~the insurer must:

(~~A~~a) Document the facts;

(~~B~~b) Communicate the release to the worker by mail within ~~7~~ seven days; the communication to the worker of the negotiated return to work release may be contained in an offer of modified employment; and

(~~C~~c) Advise the worker of their reinstatement rights under ORS chapter 659A.

(9~~12~~) Changes in the rate of compensation.

When the insurer stops paying temporary total disability compensation and starts paying temporary partial disability compensation, or otherwise changes the ~~The insurer must provide~~

~~the injured worker and the worker's attorney a written notice of the reasons for changes in the~~ compensation rate or~~, and~~ the method of computation of benefits under this rule, the insurer must send written notice to the worker and worker's attorney under OAR 436-060-0015.~~, whenever a change is made.~~

Statutory authority: ORS 656.212, 656.704, and 656.726(4)
Statutes implemented: ORS 656.212, 656.268, 656.325(5), 656.704, 656.726(4)
~~, and section 12 (4)(c), chapter 865, Oregon Laws 2001~~
Hist: Amended 12/5/05 as WCD Admin. Order 05-077, eff. 1/1/06
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

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

(1) Definitions.

For the purpose of this rule:

~~(a) "Assigned processing administrator" is the company or business that the director has selected and authorized to process and pay supplemental disability benefits on behalf of the director, when the insurer has elected not to process and pay these benefits.~~

(~~b~~a) "Primary job" means the job at which the injury occurred, or the job where the worker was employed at the time of medical verification that the worker is unable to work because of disability caused by occupational disease~~.~~;

(~~c~~b) "Secondary job" means any other job~~(s)~~ held by the worker in Oregon subject employment at the time of injury~~.~~;

(~~d~~c) "Temporary disability" means wage loss replacement for the primary job.

(~~e~~d) "Supplemental disability" means wage loss replacement for the secondary job~~(s)~~ that exceeds the temporary disability, up to, but not exceeding, the maximum established by ORS 656.210~~.~~; and

~~(f) "Verifiable documentation" means information that provides:~~

~~(A) Identification of the Oregon subject employer(s) and the time period that establishes the worker held the secondary job, in addition to the primary job, at the time of injury; and~~

~~(B) Adequate information to calculate the average weekly wage in accordance with OAR 436-060-0025.~~

(~~g~~e) "Insurer" has the same meaning as OAR 436-060-0005(10), and also includes service compan~~y~~ies.

(2) Election to process and pay supplemental disability.

An insurer may elect to be responsible for payment and processing of supplemental disability benefits to a worker employed in more than one job at the time of injury. The insurer must report their election to the director under OAR 436-060-0011(12).

(a) The election must be made by the insurer, and applies to all service companies an insurer may use for processing claims.

(b) The election remains in effect for all supplemental disability claims the insurer receives until the insurer changes its election. An insurer may change its election once after the director's first audit of supplemental disability payments made by the insurer and once each following year.

(c) If the insurer has elected to process and pay supplemental disability benefits:

(A) The insurer must determine the worker's ongoing entitlement to supplemental disability;

(B) The insurer must pay the worker supplemental disability benefits simultaneously with any temporary disability benefits due;

(C) The insurer must maintain a record of supplemental disability benefits paid to the worker, separate from temporary disability benefits paid as a result of the job at injury; and

(D) The director will reimburse the insurer for supplemental disability paid under OAR 436-060-0500.

(d) If the insurer has elected not to process and pay supplemental disability benefits:

(A) The director will select an assigned processing administrator who is authorized to process and pay supplemental disability benefits on behalf of the director;

(B) The assigned processing administrator must determine the worker's ongoing entitlement to supplemental disability and must pay the worker supplemental disability benefits due once each 14 days; and

(C) The insurer and assigned processing administrator must cooperate and communicate, as necessary, to coordinate benefits due.

(i) The assigned processing administrator must provide the insurer with any verifiable documentation of wages from a secondary job received from the worker; and

(ii) The insurer and assigned processing administrator must retain documentation of shared information.

(3~~2~~) Eligibility for supplemental disability.

A worker who was employed at one or more secondary jobs with Oregon subject employers at the time of injury or medical verification of an occupational disease may be eligible to receive supplemental disability if:

(a) The worker provides notification of the secondary job to the insurer within 30 days of the insurer's receipt of the initial claim;

(b) The rate of compensation for wages at the primary job under OAR 436-060-0025 is less than the maximum temporary disability rate established under ORS 656.210; and

(c) The worker provides verifiable documentation of the wages from any secondary jobs at the time of injury or medical verification of an occupational disease within 60 days of

the mailing date of the request for documentation sent under section (4) of this rule. For each secondary job, the documentation must:

(A) Identify the Oregon subject employer for each secondary job;

(B) Establish that the worker held the secondary job, in addition to the primary job, at the time of injury or medical verification of occupational disease; and

(C) Provide adequate information to calculate the average weekly wage under OAR 436-060-0025.

(4) Determination of eligibility.

Upon receiving notification of a worker's secondary job The the insurer must determine shall establish the temporary disability rate by multiplying the weekly wage, determined under OAR 436-060-0025, from the primary employer by 66 2/3% (.6667). the rate of temporary disability compensation for wages at the primary job under OAR 436-060-0025, and:

(a) If the result rate of temporary disability compensation meets or exceeds the maximum temporary disability rate, the worker is not eligible for supplemental disability benefits.; or

(b) If the rate of temporary disability is less than the maximum temporary disability rate, the worker may be eligible for supplemental disability benefits.

(3) If the worker may be eligible for supplemental disability benefits, the insurer must:

(A) Within five business days of receiving notice or knowledge of employment in addition to the primary job on a claim on which the temporary disability rate for the primary job does not meet or exceed the maximum rate, the insurer mustSend the worker a request for verifiable documentation of the worker's wages from any secondary jobs within five business days of notice or knowledge that the worker may be eligible for supplemental disability benefits;:

(ai) The Send the worker an initial notice request must informing the worker what type of information verifiable documentation the worker must submit to the insurer or the assigned processing administrator, must receive to determine the worker's eligibility for supplemental disability;.

(ii) The request must clearly state that if the insurer or assigned processing administrator does not receive the required

(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 noticerequest, or the insurer will determine the worker's temporary disability rate based only on the job at which the injury occurred, and the worker shall will be found ineligible for supplemental disability;.

(cB) If the insurer has elected not to process and pay supplemental disability benefits under section (2) of this rule, the insurer must also send a Ccopy of the request to the assigned processing administrator,. In addition to the requirements of this section, if

~~the insurer has elected not to process and pay supplemental disability benefits. T~~the ~~notice~~ request must also:

(i) ~~contain~~ Contain the name, address, email address, and telephone number of the assigned processing administrator; ~~, and~~

(ii) ~~must c~~Clearly advise the worker that the verifiable documentation must- be sent to the assigned processing administrator~~.~~; and

(C) The insurer or assigned processing administrator must determine the worker's eligibility for supplemental disability within 14 days of:

(i) Receipt of the worker's verifiable documentation; or

(ii) The end of the 60-day period in the insurer's request, if the worker does not provide verifiable documentation~~;~~.

(~~4~~c) ~~The initial notice in section (3) must inform the worker that if the verifiable documentation is not received, the insurer will determine the worker's temporary disability rate based only on the job at which the injury occurred.~~ Any delay in the payment of a higher disability rate because of the worker's failure to provide verifiable documentation under this ~~paragraph~~ section will not result in a penalty under ORS 656.262(11).

(5) Notification of eligibility determination.

~~Within 14 days of receiving the worker's verifiable documentation, t~~The insurer or the assigned processing administrator must determine the worker's eligibility for supplemental disability and must communicate the ~~decision~~ determination to the worker and the worker's ~~representative~~attorney, if any, in writing. If the worker is found ineligible for supplemental disability, t~~T~~he letter must also advise the worker of the reason why ~~he/she is~~they are not eligible, and ~~when that is the decision and~~ how to appeal ~~the decision,~~ if the worker disagrees with the ~~decision~~determination.

~~(6) A worker is eligible if:~~

~~(a) The worker was employed at the secondary job by an Oregon subject employer at the time of the injury,~~

~~(b) The worker provides notification of a secondary job to the insurer within 30 days of the insurer's receipt of the initial claim, and~~

~~(c) The worker's temporary disability rate from wages at the primary job does not meet or exceed the maximum rate under section (2) of this rule.~~

(~~7~~6) Calculation of supplemental disability.

The insurer or the assigned processing administrator must calculate supplemental disability for an eligible worker by adding the weekly averages of the worker's wages from each secondary job as calculated under OAR 436-060-0025. For the purposes of calculating and payment of supplemental disability:

(a) The total rate of supplemental disability may not exceed the difference between the maximum rate of temporary disability under ORS 656.210(1) and the rate of compensation for wages under the worker's primary job;

(b) No supplemental disability is due for jobs where the rate of compensation is based on an assumed wage; ~~adding all earnings the worker received from all subject employment, except the assumed wage from secondary employment for Oregon subject volunteers, under ORS 656.210(2)(a)(B).~~

(c) In no case ~~shall~~ may an eligible worker receive less compensation than would be paid if based solely on wages from the primary employer;~~.~~

(d) The worker's scheduled days off for the primary job must be used to calculate and pay supplemental disability; and

~~(8) If the temporary disability rate from the primary employer does not meet or exceed the maximum rate, the insurer or the assigned processing administrator must combine the weekly wages, determined under OAR 436-060-0025, for each employer and multiply by 66 2/3% (.6667) to establish the combined disability rate up to the maximum rate. This is the base amount on which the worker's combined benefits will be calculated.~~

~~(9)~~ (e) No three-day waiting period applies to supplemental disability benefits.

~~**(10)** The worker's scheduled days off for the job at which the injury occurred shall be used to calculate and pay supplemental disability.~~

(~~11~~7) Partial disability.

~~To establish the combined partial disability benefits w~~When ~~the~~ a worker who is eligible to receive supplemental disability benefits has post-~~-~~injury wages from either the primary job~~,~~ or any secondary job:

(a) ~~the~~ The insurer or the assigned processing administrator must calculate the rate of temporary partial disability due the worker under OAR 436-060-0030 ~~use all post injury wages from both primary and all secondary employers. The insurer or the assigned processing administrator must calculate the amount due the worker~~ based on the worker's wages from both the primary and secondary jobs;

(b) The insurer or the assigned processing administrator must calculate the amount of supplemental disability by subtracting the ~~combined wages at injury and combined post injury wages using the temporary partial disability calculation in OAR 436-060-0030. The insurer or the assigned processing administrator must then calculate the amount~~ rate of partial disability due ~~from~~ based on wages from only the primary job ~~based only on the primary wages at injury and the primary post injury wages. That amount shall be subtracted~~ from the total ~~amount~~ rate of compensation due the worker;~~; the remainder is the supplemental disability amount.~~

~~(12)~~ (c) If the worker receives ~~post~~ post-injury wages from ~~the~~ the secondary job equal to or greater than the secondary wages at the time of injury, no supplemental disability is due~~.~~; and

~~(13)~~ (d) If the worker returns to a job not held at the time of the injury, the insurer or the assigned processing administrator must process supplemental disability under the same terms, conditions and limitations as OAR 436-060-0030.

(~~14~~8) If temporary disability is not due from the primary job.

Supplemental disability may be due on a nondisabling claim even if temporary disability is not due from the primary job.

(a) ~~The~~ A nondisabling claim will not change to disabling status due to payment of supplemental disability.

(b) When supplemental disability payments cease on a nondisabling claim, the insurer or the assigned processing administrator must send the worker written notice advising the worker that their supplemental disability payments have stopped and of the worker's right to appeal that action to the Workers' Compensation Board within 60 days of the notice, if the worker disagrees.

~~(15) If the insurer has elected to process and pay supplemental disability under ORS 656.210(5)(a), the insurer must determine the worker's on-going entitlement to supplemental disability and must pay the worker supplemental disability simultaneously with any temporary disability due. Reimbursement for supplemental disability paid will be made under OAR 436-060-0500.~~

~~(16) If the insurer has elected not to process and pay supplemental disability, the assigned processing administrator must determine the worker's on-going entitlement to supplemental disability and must pay the worker supplemental disability due once each 14 days.~~

(~~17~~9) Worker's responsibilities.

A worker who is eligible for supplemental disability under ~~section (5) of~~ this rule has an on-going responsibility to provide information and documentation to the insurer or the assigned processing administrator, even if temporary disability is not due from the primary job.

~~(18) If the insurer has elected not to process and pay supplemental disability, the insurer must cooperate and communicate with the assigned processing administrator and both must retain documentation of shared information, as necessary, to coordinate benefits due.~~

~~(19) Supplemental disability applies to occupational disease claims in the same manner as to injury claims. Supplemental disability benefits for an occupational disease shall be based on the worker's combined primary and secondary wages at the time there is medical verification the worker is unable to work because of the disability.~~

~~(20) When an insurer elects to pay supplemental disability under ORS 656.210(5)(a) and OAR 436-060-0010(20) and receive reimbursement under OAR 436-060-0500, the insurer must maintain a record of supplemental disability paid to the worker, separate from temporary disability paid as a result of the job at injury.~~

(~~21~~10) Hearings.

If a worker disagrees with the insurer's or the assigned processing administrator's decision about the worker's eligibility for supplemental disability or the rate of supplemental

disability, the worker may request a hearing under OAR 436-060-0008~~before the Hearings Division of the Workers' Compensation Board~~.

(a) If the worker ~~chooses to~~ requests a hearing on the insurer's decision concerning the worker's eligibility for supplemental disability, the worker must submit an appeal of the insurer's or the assigned processing administrator's decision within 60 days of the notice in section (5) of this rule.

(b) ~~However, t~~The insurer for the primary job is not required to contact the secondary job employer. The worker is responsible to provide any necessary documentation.

(~~22~~11) Sanctions.

An insurer ~~who~~ that elects not to process and pay supplemental disability benefits may be sanctioned upon a worker's complaint if the insurer delays sending necessary information to the assigned processing administrator and that delay causes a delay in the worker receiving supplemental disability benefits.

(~~23~~12) Third party recovery.

In the event of a third party recovery~~,~~:

(a) ~~previously~~ Previously reimbursed supplemental disability benefits are a portion of the paying agency's lien~~.~~; and

~~(24)~~ (b) Remittance on recovered benefits ~~shall~~ must be made to the department in the quarter following the recovery in amounts determined in accordance with ORS 656.591 and ORS 656.593.

Statutory authority: ORS 656.210~~, 656.704,~~ and 656.726(4)
Statutes implemented: ORS 656.210, 656.212, 656.325(5), 656.704, 656.726(4)
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0040 Payment of Permanent Partial Disability Compensation

(1) General.

A ~~P~~permanent partial disability award exceeding $6,000 may be paid monthly by the insurer. If it is paid monthly, it must be paid at 4.35 times the weekly temporary disability rate at the time of closure. A permanent partial disability award less than $6,000 must be paid under OAR 436-060-0060.

(2) Reopened claims.

If a claim is reopened as a result of a new medical condition, or an aggravation of the conditions resulting from the worker's compensable injury:~~the worker's accepted condition(s) and temporary disability is due~~

(a)~~,~~ ~~any~~ Any permanent partial disability benefits due must continue; and

(b) If any temporary disability benefits are due, permanent partial disability benefits must~~to~~ be paid concurrently. ~~with temporary disability benefits.~~

(3) Training programs.

If the worker begins a training program after claim closure, the insurer must suspend the payment of any work disability award, but continue to pay any impairment award.

~~(4)~~ The insurer must stop temporary disability compensation payments and resume any award payments suspended under ORS 656.268(10) upon the worker's completion or ending of the training, unless the worker is not then medically stationary. ~~If no award payment remains due, temporary disability compensation payments must continue pending a subsequent claim closure.~~

Statutory authority: ORS ~~656.268(10), 656.704, and~~ 656.726(4)
Statutes implemented: ORS 656.216, ORS 656.268(10), 656.704, and 656.726(4)
Hist: Amended 12/5/05 as WCD Admin. Order 05-077, eff. 1/1/06
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0045 Payment of Compensation ~~D~~during Worker Incarceration

(1) General.

A worker is not eligible to receive temporary disability compensation for periods of time during which the worker is incarcerated for commission of a crime. All other compensation benefits must be provided the worker as if the worker were not incarcerated, except as provided in OAR 436-120. For the purpose of this rule:

(a) A worker is incarcerated for commission of a crime when:

(A) In pretrial detention~~,~~; or

(B) Imprisoned following conviction for a crime; and~~.~~

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

(2) Initiation of payments after incarceration.

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

(3) Right to claim closure.

A worker who is incarcerated ~~shall have~~has the same right to claim closure under ORS 656.268 as a worker who is not incarcerated. Any permanent disability awarded must be paid the same as if the worker were not incarcerated.

Statutory authority: ORS 656.160, 656.704, and 656.726(4)
Statutes implemented: ORS 656.160, 656.704, and 656.726(4)
Hist: Amended 10/26/04 as WCD Admin. Order 04-064, eff. 1/1/05
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0055 Payment of Medical Services on Nondisabling Claims; Employer/Insurer Responsibility

~~Under ORS 656.262(5) the director will establish the maximum reimbursable amount for medical services. The maximum reimbursable amount will be published annually by Bulletin No. 345. The costs of medical services for nondisabling claims must first be paid by the insurer. Then the insurer may be reimbursed by the employer if the employer so chooses. Such choice does not relieve the employers of their claim reporting requirements or the~~

~~insurers of their responsibility to determine entitlement to benefits and process the claims accurately and timely. Also, when paid by the employer, such costs cannot in any way be used to affect the employer's experience rating modification or otherwise be charged against the employer. To enable the director to ensure these conditions are met, insurers and employers must comply with the following process and procedures:~~

(1) General.

Notwithstanding the choice made by the employer under ~~section (2) of~~ this rule, the employer and insurer must process ~~the~~ nondisabling claims in accordance with all statutes and rules governing claims processing. The employer, however, may reimburse the medical service costs paid by the insurer ~~if the employer has chosen to make such payments. The method and manner of reimbursement by the employer shall be~~ as prescribed in section (3) of this rule.

~~In no case, however, shall the employer have less than 30 days to reimburse the insurer.~~

(2) Notice to employers.

~~Prior to~~Before the ~~commencement~~ beginning of each policy year, the insurer must ~~send a notice to~~notify the insured or prospective insured employer~~, advising~~ of the employer's right to reimburse medical service costs on accepted, nondisabling claims up to the maximum amount as published in Bulletin 345~~established by the director on accepted, nondisabling claims~~. The notice must advise the employer:

(a) Of the procedure for making such payments as outlined in section (3) of this rule;

(b) Of the general impact on the employer if the employer chooses to make such payments;

(c) That the employer is choosing not to participate if the employer does not respond in writing within 30 days of receipt of the insurer's notice;

(d) That the employer's written election to participate in the reimbursement program remains in effect, without further notice from the insurer, until the employer advises otherwise in writing or is no longer insured by the insurer; and

(e) That the employer may participate later in the policy period upon written request to the insurer, however, the earliest reimbursement period ~~shall be~~is the first completed period, established under subsection (3)(a) of this rule, following receipt of the employer's request.

(3) Procedure for reimbursement.

If the employer wishes to ~~make such~~ reimburse~~ment~~ the medical service costs paid by the insurer, and has~~so~~ advised~~s~~ the insurer of their election to participate in the reimbursement program in writing under section (2) of this rule~~, the procedure for reimbursement shall be~~:

(a) Within 30 days following each three month period after policy inception or a period mutually agreed upon by the employer and insurer, the insurer must provide the employer with a list of all accepted nondisabling claims for which payments were made during that period and the respective cost of each claim;~~.~~

(b) The employer, no later than 30 days after receipt of the list, must identify those claims and the dollar amount the employer wishes to pay for that period and reimburse the insurer accordingly. The employer and insurer may, by written agreement, establish a period in excess of 30 days for the employer to reimburse the insurer;~~.~~

(c) Failure by the employer to reimburse the insurer within the 30 days allowed by subsection ~~(3)~~(b) ~~of this rule shall~~ will be deemed notice to the insurer that the employer does not wish to make a reimbursement for that period; and~~.~~

~~(d) Notwithstanding subsection (3)(b) of this rule, the employer and insurer may, by written agreement, establish a period in excess of thirty (30) days for the employer to reimburse the insurer.~~

(~~e~~d) The insurer ~~shall~~ must continue to bill the employer for any payments made on the claims within 27 months of the inception of the policy period. Any further billing and reimbursement will be made only by mutual agreement between the employer and the insurer.

(4) Records.

The i~~I~~nsurer~~s~~ must maintain records of amounts reimbursed by employers for medical services on nondisabling claims. For medical service costs reimbursed under this rule:

(a) The ~~Insurers~~insurer~~, however,~~ ~~shall~~ may not modify an employer's experience rating or otherwise make charges against the employer based on the costs ~~for any medical services reimbursed by the employer~~; and~~.~~

(b) If the~~For~~ employer is~~s~~ on a retrospective rated plan~~s~~, the medical costs paid by the employer on nondisabling claims must be included in the retrospective premium calculation, but the insurer must apply the amount paid by the employer ~~shall be applied~~ as credits against the resulting retrospective premium.

(5) Reclassified claims.

If a claim changes from a nondisabling to a disabling claim and the insurer has recovered reimbursement from the employer for medical costs billed by the insurer ~~prior to~~before the change, the insurer ~~shall~~ must exclude those amounts reimbursed from any experience rating, or other individual or group rating plans of the employer. If the employer is on a retrospective rated plan, the premium must be calculated~~ion~~ ~~shall be~~ as provided in section (4) of this rule.

(6) Penalties.

Insurers ~~who~~ that do not comply with the requirements of this rule or in any way prohibit an employer from reimbursing the insurer under section (3) of this rule, ~~shall~~ may be subject to a penalty as provided by OAR 436-060-0200(7).

(7) Self-insured employers.

Self-insured employers must maintain records of all amounts paid for medical services on nondisabling claims ~~in accordance with~~under OAR 436-050-0220. When reporting loss data for experience rating, the self-insured may exclude costs for medical services paid on

nondisabling claims in amounts not to exceed the maximum amount published in Bulletin 345~~established by the director~~.

Statutory authority: ORS 656.262(5), 656.704, 656.726(4), and 656.745
Statutes implemented: ORS 656.262(5) (ch. 518, OL 2007), 656.704, and 656.726(4)
Hist: Amended 11/1/07 as WCD Admin. Order 07-064, eff. 1/1/08
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0060 Lump Sum Payment of Permanent Partial Disability Awards

(1) General.

~~Under ORS 656.230, in all cases w~~Whe~~re~~n an award for permanent partial disability ~~does not exceed~~is $6,000 or less, the insurer must pay ~~all of~~ the total amount of the award to the worker in a lump sum. When the award for permanent partial disability exceeds $6,000, ~~the insurer may approve an application from~~ the worker or worker's ~~representative~~ attorney ~~for~~ may request a lump sum payment of all or part of the award. The insurer may only deny the request for lump sum payment if any of the following apply:

(a) The worker has not waived the right to appeal the adequacy of the award;

(b) The award has not become final by operation of law;

(c-) The payment of compensation has been stayed pending a request for hearing or review under ORS 656.313; or

(d) The worker is enrolled and actively engaged in training according to the rules adopted ~~pursuant to~~under ORS 656.340 and 656.726. For dates of injury ~~prior to~~before January 1, 2005, the insurer may not approve a request for lump sum payment of unscheduled permanent disability. For dates of injury on or after January 1, 2005, the insurer may not approve a request for lump sum payment of work disability when the worker:

(A) Has been found eligible for a vocational training program and will start the program within 30 days of the date of the decision on the lump sum request;

(B) Is actively enrolled and engaged in a vocational training program under OAR 436-120; or

(C) Has temporarily withdrawn from ~~such~~ a vocational training program.

(2) Application for approval.

When an insurer receives a request for a lump sum ~~application~~ payment from the worker or the worker's ~~representative~~attorney, the insurer must send ~~the lump sum application,~~ Form 1174, "Application for Approval of Lump-sum Payment of Award," to the requestor within ~~ten~~ 10 business days.

(3) Reopening of claims.

For the purpose of this rule, each opening of the claim is considered a separate claim and any subsequent permanent partial disability award from a claim reopening is a new and separate award. Additional award of permanent partial disability obtained through the appeal process is considered part of the total cumulative award for the open period of that claim.

(4) Approved requests.

If the insurer ~~agrees~~ approves ~~with~~ the worker's request for lump sum payment of a permanent partial disability award in excess of $6,000, ~~they~~the insurer must make the lump sum payment within 14 days of receipt of the signed application.

(5) Denied requests.

If the insurer ~~disagrees with~~denies the worker's request for lump sum payment of a permanent partial disability award in excess of $6,000, the insurer must respond to the requestor within 14 days of receiving the request explaining the reason for denying the lump sum request.

(6) Claim disposition agreements.

A lump sum payment ordered in a litigation order or ~~which~~ that is a part of a ~~C~~claim ~~D~~disposition ~~A~~agreement under ORS 656.236 does not require further approval by the insurer.

(7) Partial payments.

When a ~~partial~~lump sum payment for only part of an award is approved by the insurer, it ~~shall~~ must be paid in addition to the regularly scheduled monthly payment. The remaining balance ~~shall~~ must be paid under ORS 656.216. Denial or partial approval of a request does not ~~prevent~~ preclude another request by the worker for a lump sum payment of all or part of any remainder of the award, provided additional information is submitted.

Statutory authority: ORS 656.704 and 656.726(4)
Statutes implemented: ORS 656.230, 656.704, and 656.726(4)
Hist: Amended 12/15/08 as WCD Admin. Order 08-065, eff. 1/1/09
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0095 Medical Examinations; Suspension of Compensation; and Independent Medical Examination Notice

(1) General.

A worker must submit to independent medical examinations reasonably requested by the insurer or the director.

(a) The conditions of the examination must be consistent with conditions described in OAR 436-010-0265.

(b) If ~~The division will suspend compensation by order~~the worker refuses or fails to submit to, or otherwise obstructs, an independent medical examination reasonably requested by the insurer or the director under ORS 656.325(1), the director may suspend compensation by order:

(A) ~~under conditions set forth in this rule.~~ The worker must have the opportunity to dispute the suspension of compensation ~~prior to~~before the director will issu~~ance~~e ~~of~~ the order~~.~~; and

(B) Compensation will be suspended until the examination has been completed. The worker is not entitled to compensation during or for the period of suspension ~~when~~

~~the worker refuses or fails to submit to, or otherwise obstructs, an independent medical examination reasonably requested by the insurer or the director under ORS 656.325(1)~~. ~~Compensation will be suspended until the examination has been completed. The conditions of the examination shall be consistent with conditions described in OAR 436-010-0265.~~

(c) Any action of a worker's observer allowed under OAR 436-010-0265(5) ~~friend or family member which~~ that obstructs the examination ~~shall~~ may be considered an obstruction of the examination by the worker for the purpose of this rule.

(d) The ~~division~~director may determine whether special circumstances exist that would not warrant suspension of compensation for failure to attend or obstruction of the examination.

~~**(2)** The division will consider requests to authorize suspension of benefits on accepted claims, deferred claims and on denied claims in which the worker has appealed the insurer's denial.~~

(~~3~~2) Number of examinations.

~~A worker must submit to independent medical examinations reasonably requested by the insurer or the director.~~ The insurer may request no more than three separate independent medical examinations for each opening ~~period~~ of a claim, except as provided under OAR 436-010. Examinations after the worker's claim is closed are subject to limitations in ORS 656.268(8).

(~~4~~3) Scheduling and notice to worker.

The insurer may contract with a third party to schedule independent medical examinations. ~~If the third party notifies the worker of a scheduled examination on behalf of the insurer, the appointment notice is required to be sent on the insurer's stationery and must conform with the requirements of OAR 436-060-0095(5).~~

~~(5) If~~When an examination is scheduled by the insurer, or by ~~another~~ a third party at the request of the insurer~~,~~:

(a) ~~the~~ The worker and the worker's attorney, if any, ~~shall~~ must be simultaneously notified in writing of the scheduled medical examination ~~under ORS 656.331.~~;

(b) The notice ~~shall~~ must be ~~sent~~ mailed at least 10 days ~~prior to~~before the examination;~~.~~

(c) If the third party notifies the worker of a scheduled examination on behalf of the insurer, the appointment notice must be sent on the insurer's stationery; and

(d) The notice sent for each appointment, including those which have been rescheduled, must contain the following:

(~~a~~A) The name of the examiner or facility;

(~~b~~B) A statement of the specific purpose for the examination and, identification of the medical specialties of the examiners;

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

(~~d~~D) The first and last name of the attending physician or authorized nurse practitioner and verification that the attending physician or authorized nurse practitioner was informed of the examination by, at least, a copy of the appointment notice, or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;

(~~e~~E) If applicable, confirmation that the director has approved the examination;

(~~f~~F) A statement ~~That~~ that the reasonable cost of public transportation or use of a private vehicle will be reimbursed and that, when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed. A request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance;

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

(~~h~~H) A statement that ~~That~~ the worker has the right to have an observer present at the examination, but the observer may not be compensated in any way for attending the exam; however, for a psychological examination, the notice must explain that an observer is allowed to be present only if the examination provider approves the presence of an observer; and

(~~i~~I) The following notice in prominent or bold face type:

"You must attend this examination. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend and do not have a good reason for not attending, or you fail to cooperate with the examination, your workers' compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.325 and OAR 436-060. You may be charged a $100 penalty if you fail to attend without a good reason or if you fail to notify the insurer before the examination. The penalty is taken out of future benefits.

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. If you have questions about your rights or responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 or the Ombudsman for Injured Workers at 1-800-927-1271."

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

(~~a~~A) Form 3921, "Request for Reimbursement of Expenses," or ~~A~~ a similar form for requesting reimbursement; and

(bB) The director's brochureForm 3923, Form 440-3923, "Important Information about Independent Medical Exams.."

(74) Reimbursement of costs.

The insurer must reimburse the worker for a reasonable cost of public transportation or use of a private vehicle and, when necessary, a reasonable cost of child care, meals, lodging and other related services.

(a) To be reimbursed, the worker must submit a request for reimbursement accompanied by a sales slip, receipt or other evidence necessary to support the request.

(b) If an advance of these costs is necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance;.

(c) Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Services, are considered to be reasonable comply withunder this rule.

(85) Requests to authorize suspension.

The director will consider requests to authorize suspension of benefits on accepted claims, deferred claims, and denied claims in which the worker has appealed the insurer's denial. 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 in the same manner as for a summons. The request must include the following information:

(a) That the insurer requests suspension of benefits compensation under ORS 656.325 and OAR 436-060-0095;

(b) The claim status and any accepted or newly claimed conditions;

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

(d) The dates of any prior independent medical examinations the worker has attended in the current open period of the claim and the names of the examining physicians or facilities, or a statement that there have been no prior examinations, whichever is appropriate;

(e) A copy of any approvals given by the director for more than three independent medical examinations, or a statement that no approval was necessary, whichever is appropriate;

(f) Any reasons given by the worker for failing to comply, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;

(g) The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the exam received by the insurer from the worker or the worker's representative attorney will be sufficient documentation with which to request suspension;

(h) A copy of the ~~letter~~ notice required in section (3~~5~~) and a copy of any written verification received under subsection (5~~8~~)(g) of this rule;

(i) Any other information ~~which~~ that supports the request; and

(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~~6) Effective date of suspension.

If the ~~division~~ director ~~consents to~~authorizes the suspension of~~d~~ compensation, the suspension ~~shall~~ will be effective from the date the worker fails to attend an examination or such other date the ~~division~~director deems appropriate until the date the worker undergoes an examination scheduled by the insurer or director. Any delay in requesting consent for suspension may result in authorization being denied or the date of authorization being modified.

(~~10~~7) Reinstatement of benefits.

The insurer must assist the worker in meeting requirements necessary for the resumption of compensation payments. When the worker has undergone the independent medical examination, the insurer must verify the worker's participation and reinstate compensation effective the date of the worker's compliance.

(~~11~~8) Claim closure.

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 under OAR 436-030-0034(~~7~~8).

(~~12~~9) Denial of suspension.

If the ~~division~~director denies the insurer's request for suspension of compensation, the insurer will be ~~it shall promptly~~ notif~~y~~ied ~~the insurer~~ of the reason for denial. Failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(~~13~~10) Other actions by the director.

The ~~division~~director may also take the following actions concerning the suspension of compensation:

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

(b) Order payment of compensation previously suspended ~~where~~ when the ~~division~~director finds the suspension to have been made in error; and~~.~~

(c) Re-evaluate the necessity of continuing a suspension.

(~~14~~11) Final orders.

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~~.

Statutory authority: ORS 656.325, 656.704, and 656.726(4)
Statutes implemented: ORS 656.325, 656.704, and 656.726(4)
Hist: Amended 3/1/11 as Admin. Order 11-052, eff. 4/1/11
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

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

(1) General.

The ~~division~~ director ~~will~~ may suspend compensation by order when the worker commits insanitary or injurious acts that imperil or delay recovery; refuses to submit to medical or surgical treatment reasonably required to promote recovery; or fails or refuses to participate in a physical rehabilitation program.

(a) ~~under conditions set forth in this rule.~~ The worker must have the opportunity to dispute the suspension of compensation ~~prior to~~before ~~issuance of~~ the director will issue an order.

(b) The worker is not entitled to compensation during or for the period of suspension ~~under ORS 656.325(2).~~ ~~when the worker commits insanitary or injurious acts which imperil or retard recovery; refuses to submit to medical or surgical treatment reasonably required to promote recovery; or fails or refuses to participate in a physical rehabilitation program.~~

(2) Notice to worker.

The insurer must demand in writing the worker either immediately cease all actions which imperil or ~~retard~~ delay recovery or immediately begin to change the inappropriate behavior, and participate in activities needed to help the worker recover from the injury. ~~Such actions include insanitary or injurious practices, refusing essential medical or surgical treatment, or failing to participate in a physical rehabilitation program.~~ Each time the insurer sends such a notice to the worker, the written demand must contain the following information, and a copy ~~shall~~ must be sent simultaneously to the worker's attorney and attending physician:

(a) A description of the unacceptable actions;

(b) Why such conduct is inappropriate, including the fact that the conduct is harmful or ~~retards~~ delays the worker's recovery, as appropriate;

(c) The date by which the inappropriate actions must stop, or the date by which compliance is expected, including what the worker must specifically do to comply; and,

(d) The following notice of the consequences should the worker fail to correct the problem, in prominent or bold face type:

"If you continue to do insanitary or injurious acts beyond the date in this letter, or fail to consent to the medical or surgical treatment which is needed to help you recover from your injury, or fail to participate in physical rehabilitation needed to help you recover as much as possible from your injury, then we will request the suspension of your workers' compensation benefits. In addition, you may also have any permanent disability award reduced in accordance with ORS 656.325 and OAR 436-060."

(3) Failure or refusal to accept medical treatment.

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

(4) Request for suspension of benefits.

The insurer must verify whether the worker complied with the request for cooperation on the date specified in subsection (2)(c) of this rule. If the worker initially agrees to comply, or complies and then refuses or fails to continue doing so, the insurer is not required to send further notice before requesting suspension of compensation.

(~~5~~a) ~~-~~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, if any, by registered or certified mail or by personal service as for a summons.

(b) The request must include the following information:

(~~a~~A) That the request for suspension is made in accordance with ORS 656.325 and OAR 436-060-0105;

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

(~~c~~C) Any reasons offered by the worker to explain the behavior, or a statement that the worker has not provided any reasons, whichever is appropriate;

(~~d~~D) How, when, and with whom the worker's failure or refusal was verified;

(~~e~~E) A copy of the ~~letter~~ notice required in section (2) of this rule;

(~~f~~F) Any other relevant information including, but not limited to; chart notes, surgical or physical therapy recommendations/prescriptions, and all recommendations from the attending physician or authorized nurse practitioner ~~recommendations~~; and

(~~g~~G) 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

authorizes suspension of your compensation and you do not correct your unacceptable actions or show us a good reason why they should be considered acceptable, we will close your claim."

(6c) Any delay in obtaining confirmation or in requesting consent for the suspension of compensation may result in authorization being denied or the date of authorization being modified by the date of actual confirmation or the date the request is received by the division.

((d7) -If the divisiondirector concurs with the requestapproves authorization of suspension of compensation:

(A) , it shall issue aAn order will be issued suspending compensation from a date established under subsection (52)(c) of this rule until the worker complies with the insurer's request for cooperation. Where the worker is suspended for a pattern of noncooperation, the divisiondirector may require the worker to demonstrate cooperation before restoring reinstating compensation;.

(B) (8) The insurer must make all reasonable efforts to assist the worker to reinstate benefits when the worker demonstrates the willingness to make such efforts;.

(C) The insurer must monitor the claim to determine if and when the worker complies with the insurer's requests.;

(i) When cooperation resumes, payment of compensation must resume effective the date cooperation was resumed;.

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

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

(D) The director may modify or set aside the suspension order before or after filing of a request for hearing;.

(E) The director may order payment of compensation previously suspended where the director finds the suspension to have been made in error;.

(F) The director may re-evaluate the necessity of continuing a suspension; and.

(11) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(12) The division may also take the following actions concerning the suspension of compensation:

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

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

(c) Reevaluate the necessity of continuing a suspension.

(G13) AnThe order will 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.

(e) If the director denies the insurer's request for suspension of compensation, the insurer will be notified of the reason for denial. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(154) Requests to reduce benefits.

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

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

(aA) Specify the basis for the request;

(bB) Include all supporting documentation;

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

(dD) Include the following notice in prominent or bold face type:

"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."

(b15) The divisiondirector shall will promptly make a decision on a request to reduce benefits and notify the parties of the decision. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the request to reduce benefits.

Statutory authority: ORS 656.325, 656.704, and 656.726(4)
Statutes implemented: ORS 656.325, 656.704, and 656.726(4)
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

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

(1) Worker's responsibility to assist in investigation.

A worker must submit to and fully cooperate with in person or telephone interviews and other formal or informal information gathering techniques reasonably requested by the insurer. Interviews may be recorded on audio or video by one or more of the parties if prior written notice is given of the intent to record an interview.

(2) Request to suspend compensation.

~~-~~The insurer may request for the director to suspend compensation by order w~~W~~hen the worker refuses or fails to cooperate in an investigation of an initial claim for compensation, a claim for a new medical condition, a claim for an omitted medical condition, or an aggravation claim as required by ORS 656.262(14), under the following conditions:~~,~~

~~the division will suspend compensation under ORS 656.262(15) by order under conditions set forth in this rule. The division may determine whether special circumstances exist that would not warrant suspension of compensation for failure to cooperate with an investigation. The worker must have the opportunity to submit information disputing the insurer's request for suspension of compensation prior to issuance of the order.~~

(~~2~~a) ~~A worker must submit to and fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques reasonably requested by the insurer. For the purposes of this rule, "personal and telephonic interviews" may be audio or video taped by one or more of the parties if prior written notice is given of the intent to record or tape an interview.~~

~~(3) The division will consider requests for suspension of benefits under ORS 656.262(15) only after the insurer has notified the injured worker in writing of the worker's obligation to cooperate as required by section (4) of this rule and only in claims where there has been no acceptance or denial issued.~~

~~(4) For suspension of benefits to be granted under this rule, t~~The insurer must notify the worker in writing that an interview or deposition has been scheduled, or of other investigation requirements:

~~, and must give the worker at least 14 days to cooperate.~~ (A) The notice must be sent to the worker and copied to the worker's attorney, if any~~represented~~, an~~an~~d must contain the following:

(i) ~~advise the worker of t~~The date, time and place of the interview;

(ii) ~~and/or a~~Any other reasonable investigation requirements;~~.~~

(iii) ~~If the insurer contracts with a third party, such as an investigation firm, to investigate the claim, the notice shall be on the insurer's stationery and must conform with the requirements of this section. The notice must inform the worker t~~That the interview, deposition, or any other investigation requirements are related to the worker's compensation claim; and~~.~~

(iv) ~~The notice must also contain t~~The following statement in prominent or bold face type:

"The workers' compensation law requires injured workers to cooperate and

assist the insurer or self-insured employer in the investigation of claims for compensation. Injured workers are required to submit to and fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques. If you ~~fail to~~do not reasonably cooperate with the investigation of this claim, payment of your compensation benefits may be suspended and your claim may be denied in accordance with ORS 656.262 and OAR 436-060."

(B) If the insurer contracts with a third party to investigate the claim, the notice must be on the insurer's stationery and must meet the requirements of this section; and

(C) The worker must be given 14 days to cooperate with the notice.

(~~5~~b) The director will consider requests to authorize suspension of benefits only after the worker has been given at least 14 days to cooperate with the notice under subsection (a) of this rule; and under the following conditions:

(A) The director will only consider requests in claims on which no acceptance or denial has been issued;

(B) The worker must have the opportunity to submit information disputing the insurer's request for suspension of compensation before the director will issue an order;

(C) The director may determine whether special circumstances exist that would not warrant suspension of compensation for failure to cooperate with an investigation;

(D) The insurer must make the request to suspend benefits to the director in writing, and must~~The request for suspension must be sent to the division after the 14 days in section (4) have expired. Any delay in requesting suspension may result in authorization being denied.~~ send ~~A~~ a copy of the request, including all attachments, ~~must be sent~~ simultaneously to the worker and the worker's attorney, if any by registered or certified mail or by personal service~~.~~;

(E) The insurer's request must include the following information sufficient to show the worker's failure to cooperate:

(~~a~~i) That the insurer requests suspension of benefits under ORS 656.262(15) and this rule;

(~~b~~ii) Documentation of the specific actions of the worker or worker's ~~representative~~ attorney that prompted the request;

(~~c~~iii) Any reasons given by the worker for failure to comply, or a statement that the worker has not given any reasons~~, whichever is appropriate~~;

(~~d~~iv) A copy of the notice required in section (~~4~~2) of this rule; and

(~~e~~v) All other pertinent information, including, but not limited to, a copy of the claim for a new or omitted condition when that is what the insurer is investigating;~~.~~

(~~6~~c)~~ ~~ After receiving the insurer's request to suspend benefits, ~~as required in section (5) of this rule, ~~the ~~division~~director will ~~promptly ~~notify all parties that:

(A) ~~the ~~The worker's benefits will be suspended in five working days unless:

(i) ~~the ~~The worker or the worker's attorney contacts the division by telephone or mails a letter documenting that the failure to cooperate was reasonable; ~~ ~~or

(ii) ~~unless t~~The insurer notifies the division that the worker is now cooperating~~.~~;

(B) ~~The notice of the division will also advise that ~~T~~t~~he insurer's obligation to accept or deny the claim within 60 days is suspended unless the insurer's request is filed with the division after the 60 days to accept or deny the claim has expired~~.~~;

(d) ~~(7) ~~If the worker cooperates ~~after the insurer has requested suspension~~within five days of the director's notice under subsection (c), the insurer must notify the ~~division ~~director immediately to withdraw the suspension request. Upon receiving the insurer's notification:~~.~~

(A) The ~~division ~~director will notify all the parties of the withdrawal~~.~~; and

~~ ~~(B) The director may issue a~~A~~n order ~~may be issued ~~identifying the dates during which the insurer's obligation to accept or deny the claim was suspended;~~.~~

(~~8~~e) If the worker contacts the divisions and documents the failure to cooperate was reasonable within five days of the director's notice under subsection (c), the ~~division~~director will not suspend payment of compensation. However, an order may be issued identifying the dates during which the insurer's obligation to accept or deny the claim was suspended; and~~.~~

(~~9~~f) If the worker has not cooperated with the investigation, or documented that the failure to cooperate was reasonable within five days of the director's notice under subsection (c), the ~~division ~~director will issue an order suspending all or part of the payment of compensation to the worker~~. ~~:

(A) The suspension of compensation will be effective from the fifth working day after the date of the director's notice ~~is provided by the division as required by~~under subsection (c)~~(6) of this rule.~~, and ~~ The suspension of compensation shall ~~will remain in effect until the worker cooperates with the investigation~~.~~;

(B) If the ~~The ~~worker begins cooperating with the investigation, the ~~and ~~insurer must ~~notify the division ~~reinstate the worker's benefits immediately~~immediately~~; or~~ when the worker cooperates with the investigation.~~

(C) If the worker makes no effort to ~~reinstate compensation~~cooperate within 30 days of the date of the notice, the insurer may deny the claim under ORS 656.262(15) and OAR 436-060-0140~~(10)~~(8).

(~~10~~3) Request for penalty against worker's attorney.

~~ Under ORS 656.262 (14), a~~An insurer ~~who ~~that ~~believes ~~believes that a worker's attorney's unwillingness or unavailability to participate in an interview is unreasonable may notify the

director in writing and the ~~division~~director will consider assessment of a civil penalty against the attorney of not more than $1,000.

(a) The worker's attorney must have the opportunity to dispute the allegation ~~prior to~~before ~~the issuance of~~ a penalty is assessed.

~~Notice under this section must be sent to the division.~~ (b) A copy of the notice must be sent simultaneously to the worker and the worker's attorney. Notice to the division by the insurer must contain the following information:

(~~a~~A) What specific actions of the attorney prompted the request;

(~~b~~B) Any reasons given by the attorney for failing to participate in the interview; and

(~~c~~C) A copy of the request for interview sent to the attorney.

(~~11~~4) Failure to comply with this rule.

Failure to comply with the requirements of this rule will be grounds for denial of the insurer's request. Any delay in requesting suspension under section (2) of this rule may result in authorization being denied.

Statutory authority: ORS 656.704 and 656.726(4)
Statutes implemented: ORS 656.262 ~~(Oregon Laws 2009, ch. 526)~~, 656.704, 656.726(4)
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0137 Vocational Evaluations for Permanent Total Disability Benefits; and Suspension of Compensation

(1) Requests for vocational evaluations.

A worker receiving permanent total disability benefits must attend a vocational evaluation reasonably requested by the insurer or the director.~~.~~

(2) Allowed number of vocational evaluations.

The insurer may request no more than three separate vocational evaluations without authorization from the director. ~~, except as provided under this rule.~~

~~(2) When the insurer has obtained the three vocational evaluations allowed under ORS 656.206 and wishes to require the worker to attend an additional evaluation, the insurer must first request authorization from the director.~~ Insurers that fail to ~~first request~~obtain authorization from the director for additional vocational evaluations may be assessed a civil penalty.

(a) ~~The process for~~To request~~ing~~ authorization the insurer must: ~~is as follows:~~

(~~a~~A) ~~The insurer must s~~Submit a written request for authorization ~~to the director in a form and format as prescribed by the director~~ that ~~, which~~ includes ~~but is not limited to~~:

(i) ~~the~~ The reasons for an additional vocational evaluation;

(ii) T~~t~~he conditions to be evaluated;

(iii) The dates, times, places, and purposes of previous evaluations;

(iv) C~~c~~opies of previous vocational evaluation notification letters to the worker; and

(v) ~~any~~ Any other information requested by the director; ~~; and~~

(~~b~~B) P~~The insurer must p~~rovide a copy of the request to the worker and the worker's attorney, if any.

(~~3~~b) The director will review the request and determine if additional information is needed.

~~-~~(A) Upon receipt of a request for additional information from the director, the parties will have 14 days to respond.

(B) If the parties do not provide the requested information, the director will approve or disapprove the request for authorization based on available information.

(~~4~~c) The director's decision approving or denying more than three vocational evaluations may be appealed to the Hearings Division ~~of the Workers' Compensation Board~~ within 60 days of the order.

(~~5~~d) ~~-~~For purposes of determining the number of insurer required vocational evaluations, any evaluations scheduled but not completed are not counted as a statutory vocational evaluation.

~~**(6) The insurer may contract with a third party to schedule vocational evaluations. If the third party notifies the worker of a scheduled evaluation on behalf of the insurer, the third party must send the notice on the insurer's stationery and the notice must conform with the requirements of OAR 436-060-0137(7).**~~

(~~7~~3) Notice to worker.

The insurer must notify the worker of the evaluation ~~notice must be sent to the worker~~ at least 10 days ~~prior to~~before the date of evaluation.

(a) The notice sent for each evaluation, including ~~those which~~evaluations that have been rescheduled, must contain the following:

(~~a~~A) The name of the vocational assistance provider or facility;

(~~b~~B) A statement of the specific purpose for the evaluation;

(~~c~~C) The date, time and place of the evaluation;

(~~d~~D) The first and last name of the attending physician or authorized nurse practitioner or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;

(~~e~~E) If applicable, confirmation that the director has approved the evaluation;

(~~f~~F) Notice to the worker that the reasonable cost of public transportation or use of a private vehicle will be reimbursed; when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed; a request for

reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request; should an advance of costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance; and

(~~g~~G) The following notice in prominent or bold face type:

"You must attend this vocational evaluation. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the evaluation. If you ~~fail to~~do not attend or ~~fail to~~do not cooperate, or do not have a good reason for not attending, your compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.206 and OAR 436-060. If you have questions about your rights or responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or the Ombudsman for Injured Workers at 1-800-927-1271."

(b) The insurer may contract with a third party to schedule vocational evaluations. If the third party notifies the worker of a scheduled evaluation on behalf of the insurer, the third party must send the notice on the insurer's stationery and the notice must meet the requirements of this section.

(~~8~~4) Reimbursements of costs.

The insurer must pay the costs of the vocational evaluation and related services ~~reasonably~~ necessary to allow the worker to attend the evaluation, including a reasonable cost of public transportation or use of a private vehicle, and when necessary, a reasonable cost of child care, meals, lodging and other related services. Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Services, comply with this rule.

(~~9~~5) Suspension of compensation.

When the worker refuses or fails to attend, or otherwise obstructs, a vocational evaluation reasonably requested by the insurer or the director~~ under ORS 656.206~~, the ~~division~~director may suspend the worker's compensation by order, under the following conditions:~~.~~

~~(10)~~ (a) 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;~~.~~

(b) The request must include the following information:

(~~a~~A) That the insurer requests suspension of benefits under ORS 656.206 and OAR 436-060-0137;

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

(~~c~~C) The dates of any prior vocational evaluations the worker has attended and the names of the vocational assistance provider or facilities, or a statement that there have been no prior evaluations, whichever is appropriate;

(~~d~~D) A copy of any approvals given by the director for more than three vocational evaluations, or a statement that no approval was necessary, whichever is appropriate;

(~~e~~E) Any reasons given by the worker for failing to attend, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;

(~~f~~F) The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the vocational evaluation received by the insurer from the worker or the worker's ~~representative~~ attorney will be sufficient documentation with which to request suspension;

(~~g~~G) A copy of the letter required in section (~~7~~3) of this rule and a copy of any written verification received under ~~subsection~~ paragraph (~~10~~F) of this subsection~~(f)~~;

(~~h~~H) Any other information ~~which~~ that supports the request; and

(~~i~~I) 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."

~~(11) If the insurer fails to comply with this rule, the division may deny the request for suspension.~~

(~~12~~c) If the ~~division~~director suspends compensation:

(A) ~~, the~~ The suspension will be effective from the date the worker fails to attend a vocational evaluation or such other date the ~~division~~director ~~deems~~ determines is appropriate until the date the worker attends the evaluation;~~.~~

(B) The worker is not entitled to compensation during or for the period of suspension; ~~.~~

~~Any delay in requesting suspension may result in suspension being denied or the date of suspension being modified.~~

(~~13~~C) The insurer must assist the worker to meet requirements necessary for the resumption of compensation payments. When the worker has attended the vocational evaluation, the insurer must verify the worker's participation and resume compensation effective the date of the worker's compliance; ~~.~~

(~~14~~D) The ~~division~~director may ~~also:~~

~~(a) M~~modify or set aside the suspension order before or after filing of a request for hearing;

(~~b~~E) The director may ~~Order~~ order payment of compensation previously suspended where the ~~division~~director finds the suspension to have been made in error; ~~or~~and

(~~c~~F) The director may ~~R~~re-evaluate the necessity of continuing a suspension;~~.~~

(d) If the insurer fails to comply with this rule, the director may deny the request for suspension. Any delay in requesting suspension may result in suspension being denied or the date of suspension being modified; and

(~~15~~e) ~~-~~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~~.

Statutory authority: ORS 656.726
Statutes implemented: ORS 656.206)
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0140 Acceptance or Denial of a Claim

(1) Claim investigations.

~~-~~The insurer is required to conduct a "reasonable" investigation based on all available information in ~~ascertaining~~ determining whether to deny a claim.

(a) A reasonable investigation is whatever steps a reasonably prudent person with knowledge of the legal standards for determining compensability would take in a good faith effort to ascertain the facts underlying a claim, giving due consideration to the cost of the investigation and the likely value of the claim.

(~~2~~b) In determining whether an investigation is reasonable, the director will only look at information contained in the insurer's claim record at the time of denial. The insurer may not rely on any fact not documented in the claim record at the time of denial to establish that an investigation was reasonable.

(~~3~~2) Notice to worker.

The insurer must give the ~~claimant~~worker written notice of acceptance or denial of a claim within the following time frames:

(a) For claims with a date of injury before January 1, 2002, within ~~-~~90 days ~~after~~ of:

(A) ~~the~~ The employer's notice or knowledge of an initial claim;

(B) ~~or t~~The insurer's receipt of a ~~form~~ Form 827 signed by the worker or the worker's ~~representative~~attorney, and the worker's attending physician indicating an aggravation claim; or

(C) ~~written~~ Written notice of a new medical condition claim~~; for claims with a date of injury prior to January 1, 2002; or~~

(b) For claims with a date of injury on or after January 1, 2002, within 60 days after:

(A) ~~the~~ The employer's notice or knowledge of an initial claim

(B) ~~or th~~The insurer's receipt of a ~~form~~ Form 827 signed by the worker or the worker's ~~representative~~ attorney and the worker's attending physician indicating an aggravation claim; or

(C) ~~written~~ Written notice of a new medical or omitted condition claim; or

~~for claims with a date of injury on or after January 1, 2002; or~~

(c) For claims with any date of injury, if ~~90 days after the employer's notice or knowledge of the claim if~~ the worker challenges the location of an independent medical examination under OAR 436-010-0265 and the challenge is upheld, ~~regardless of the date of injury~~within 90 days after the employer's notice or knowledge of the claim.

(~~4~~3) Penalty for untimely acceptance and denials.

The director may assess a penalty under OAR 436-060-0200 against any insurer delinquent in accepting or denying a claim beyond the ~~days~~ time frame required ~~in~~ under section (~~3~~2) of this rule ~~in excess of 10 percent of their total volume of reported disabling claims during any quarter.~~

(~~5~~4) Notice of acceptance.

A notice of acceptance must comply with ORS 656.262(6)(b) and ~~the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law,~~ OAR chapter 438. It must include a current mailing date, be addressed to the worker, be copied to the worker's ~~representative~~attorney, if any, and the worker's attending physician, and describe to the worker:

(a) What conditions are compensable;

(b) Whether the claim is disabling or nondisabling;

(c) The Expedited Claim Service, of hearing and aggravation rights concerning nondisabling injuries including the right to object to a decision that the injury is nondisabling by requesting the insurer review the status;

(d) The employment reinstatement rights and responsibilities under ORS chapter 659A;

(e) Assistance available to employers from the Re-employment Assistance Program under ORS 656.622;

(f) That claim related expenses paid by the worker must be reimbursed by the insurer when requested in writing and accompanied by sales slips, receipts, or other reasonable written support, for meals, lodging, transportation, prescriptions and other related expenses. The worker must be advised of the two year time limitation to request reimbursement as provided in OAR 436-009-0025~~(1)~~ and that reimbursement of expenses may be subject to a maximum established rate;

(g) That if the worker believes a condition has been incorrectly omitted from the notice of acceptance, or the notice is otherwise deficient, the worker must first communicate the objection to the insurer in writing specifying either that the worker believes the condition has been incorrectly omitted or why the worker feels the notice is otherwise deficient; and

(h) That if the worker wants the insurer to accept a claim for a new medical condition, the worker must put the request in writing, clearly identify the condition as a new medical condition, and request formal written acceptance of the condition.

(5~~6~~) Notice of acceptance, fatal claims.

In the case of a ~~On~~ fatal claim~~s~~, the notice must be addressed "to the estate of" the worker and the requirements ~~in~~ of subsection (~~5~~4)(a) through (h) of this rule ~~shall~~ must not be included.

(~~7~~6) Initial, updated, and modified notices of acceptance.

(a) The first acceptance issued on the claim must contain the title "Initial Notice of Acceptance" near the top of the notice. Any notice of acceptance must contain all accepted conditions at the time of the notice.

(b) When an insurer closes a claim, it must issue an "Updated Notice of Acceptance at Closure" under OAR 436-030-0015. ~~Additionally, when reopening a claim, the notice of acceptance must specify the condition(s) for which the claim is being reopened.~~ To correct an omission or error in an "Updated Notice of Acceptance at Closure", under OAR 436-030-0015(1)(c)(D), the insurer must add the word "Corrected" to the notice.

(c) ~~Under ORS 656.262(6)(b)(F) the insurer must modify acceptance from time to time as medical or other information changes.~~ An insurer must issue a "Modified Notice of Acceptance" (MNOA) when ~~they~~ the insurer:

(~~a~~A) Accept~~s~~ a new or omitted condition~~:~~ on a nondisabling claim, while a disabling claim is open or after claim closure;

(~~b~~B) Accepts an aggravation claim;

(~~c~~C) Changes the disabling status of the claim; or

(~~d~~D) Amends a notice of acceptance, including correcting a clerical error, except for an error or omission on an "Updated Notice of Acceptance at Closure."

~~(8) Notwithstanding OAR 436-060-0140(7)(d), to correct an omission or error in an "Updated Notice of Acceptance at Closure"(UNOA), under OAR 436-030-0015(1)(c)(D), the insurer must add the word "Corrected" to the UNOA.~~

(7~~9~~) Acceptance of new or omitted conditions.

When an insurer accepts a new or omitted condition on a closed claim, the insurer must reopen the claim and process it to closure under ORS 656.262 and 656.267. When a claim is reopened, the notice of acceptance must specify the conditions for which the claim is being reopened.

(~~10~~8) Notice of denial to worker.

~~-~~A notice of denial must comply with ~~the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law,~~ OAR chapter 438, and must:

(a) Specify the factual and legal reasons for the denial, including the worker's right to request a ~~W~~worker ~~R~~requested ~~M~~medical ~~E~~examination and a specific statement indicating if the denial was based in whole or part on an independent medical examination, under ORS 656.325, and one of the following statements, as appropriate:

(A) "Your attending physician agreed with the independent medical examination report"; ~~or~~

(B) "Your attending physician did not agree with the independent medical examination report"; or

(C) "Your attending physician has not commented on the independent medical examination report"; and

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

(c) If the denial is under ORS 656.262(15), it must inform the worker that a hearing may occur sooner if the worker requests an expedited hearing under ORS 656.291; and.

(d) If paragraph (108)(a)(B) of this rule above applies, the denial notice must also include the division's Wweb-site address and toll free phone Infoline number for the worker's use in obtaining a brochure about the Wworker Rrequested Mmedical Eexamination.

(911) Notice of denial to provider of medical services and health insurance.

The insurer must send notice of the denial to each provider of medical services, and health insurance as defined under ORS 731.162, when compensability of any portion of a claim for medical services is denied when any of the following applies:

(a) The denial is sent to the worker;

(b) Within 14 days of receipt of any billings from medical providers not previously notified of the denial. The notice must advise the medical provider of the status of the denial; or

(c) Within 60 days of the date when compensability of the claim has been finally determined or when disposition of the claim has been made. The notification must include the results of the proceedings under ORS 656.236 or 656.289(4) and the amount of any settlement.

(102) Payment of compensation.

The insurer must pay compensation due under ORS 656.262 and 656.273 until the claim is denied, except where there is an issue concerning the timely filing of a notice of accident as provided in ORS 656.265(4). The employer may elect to pay compensation under this section in lieu of the insurer doing so. The insurer must report to the division payments of compensation made by the employer as if the insurer had made the payment.

(113) Medical benefits and funeral expenses.

Compensation payable to a worker or the worker's beneficiaries while a claim is pending acceptance or denial does not include:

(a) tThe costs of medical benefits; or

(b) burialThe cost of final disposition of the body or funeral expenses.

Statutory authority: ORS 656.704 and 656.726(4)
Statutes implemented: ORS 656.262 (Oregon Laws 2009, ch. 526), 656.325, 656.704, and 656.726(4)
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0147 Worker Requested Medical Examination

(1) Eligibility.

The director ~~shall~~ will determine the worker's eligibility for a ~~W~~worker ~~R~~requested ~~M~~medical ~~E~~examination ~~(Exam)~~ under ORS 656.325(1). The worker is eligible for an exam if:

(a) ~~the~~ The worker has made a timely request for a Workers' Compensation Board hearing on a denial of compensability as required by ORS 656.319(1)(a); ~~and~~

(b) ~~the~~ The denial was based on one or more ~~I~~independent ~~M~~medical ~~E~~examination reports; and

(c) ~~with which the~~ The attending physician or authorized nurse practitioner ~~disagreed~~did not concur with the report or reports.

(2) Request for exam.

The worker must submit a request for the exam to the ~~director~~division. A copy of the request must be sent simultaneously to the insurer ~~or self-insured employer~~. The request must include:

(a) The name, address, and claim identifying information of the ~~injured~~ worker;

(b) A list of physicians, including name~~(s)~~ and address~~(es)~~, who have previously provided medical services to the worker on th~~is~~e claim, or who have previously provided medical services to the worker related to the claimed condition~~(s)~~;

(c) The date the worker requested a hearing and a copy of the hearing request;

(d) A copy of the insurer's denial letter; and

(e) Document~~(s)~~ that demonstrate that the attending physician or authorized nurse practitioner did not concur with the independent medical examination report or reports~~(s)~~.

(3) Required documentation.

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:

(a) Acted as the worker's attending physician or authorized nurse practitioner;

(b) Provided medical consultations or treatment to the worker;

(c) Examined the worker at an independent medical examination requested by the insurer under ORS 656.325; or

(d) Reviewed the worker's medical records on th~~is~~e claim. ~~For the purpose of this rule, "Attending Physician" and "Independent Medical Examination" have the meanings defined in OAR 436-010-0005 and 436-010-0265(1), respectively~~.

(4) Penalty for failure to provide documentation.

Failure to provide the required documentation described in section (3) of this rule in a timely manner ~~will~~ may subject the insurer to civil penalties under OAR 436-060-0200.

(5) Selection of physicians.

The director will notify all parties in writing of the physician selected, or will provide the worker or the worker's ~~representative~~ attorney a list of appropriate physicians.

~~(6)~~ If the director provides a list of physicians, the following applies:

(a) The worker's or the worker's ~~representative's~~ attorney's response must be in writing, signed, and ~~received by~~delivered to the director within ~~ten business~~14 days of the mailing date of ~~providing~~ the list~~.~~;

(b) The worker or the worker's ~~representative~~ attorney may eliminate the name of one physician from the list~~.~~;

(c) If the worker or the worker's ~~representative~~ attorney does not respond as provided in this section, the director will select a physician~~.~~; and

(d) The director will notify the parties in writing of the physician selected.

(~~7~~6) Scheduling the exam.

The worker or the worker's ~~legal~~ ~~representative~~ attorney ~~shall~~ must schedule the exam with the selected physician and notify the insurer and the Workers' Compensation Board of the scheduled exam date within 14 days of the notification date in section (~~6~~5) of this rule. An unrepresented worker may consult with the ~~Injured Worker~~ Ombudsman for Injured Workers for assistance.

(~~8~~7) Required medical records.

The insurer must send the physician the worker's complete medical and diagnostic record on ~~this~~ the claim and the original questions asked of the independent medical examination~~(s)~~ physician~~(s)~~ no later than 14 days ~~prior to~~before the date of the scheduled exam. If the diagnostic records are not in the insurer's possession, the insurer must request that the medical provider send the diagnostic records to the selected physician at least 14 days ~~prior to~~before the scheduled exam.

(~~9~~8) Exam questions.

The worker, or the worker's ~~representative~~attorney, ~~shall~~ must communicate questions related to the compensability denial in writing to be answered by the physician at the exam to the physician at least 14 days ~~prior to~~before the scheduled date of the exam. An unrepresented worker may consult with the ~~Injured Worker~~ Ombudsman for Injured Workers for assistance.

(~~10~~9) Physician's response.

Upon completion of the exam the physician must address the original independent medical examination~~(s)~~ questions and the questions from the worker or the worker's ~~representative~~ attorney under section (~~9~~8) of this rule and send the report to the worker's ~~legal representative~~attorney, if any, or the worker, and the insurer within ~~5 working~~14 days.

(~~11~~10) Payment of physician.

The insurer must pay the physician selected under this rule in accordance with OAR 436-009. ~~Delivery of m~~Medical services to ~~injured~~ workers ~~shall be~~must be delivered in accordance with OAR 436-010.

(~~12~~11) Failure to attend exam.

If the worker ~~fails to~~does not attend the scheduled ~~W~~worker ~~R~~requested ~~M~~medical ~~E~~exam, the insurer must pay the physician for the missed exam~~ination~~ under OAR 436-009-0010(13). The insurer is not required to pay for another exam~~ination~~ unless the worker did not attend the missed examination for reasons beyond the worker's reasonable control.

(~~13~~12) Reimbursement for services.

The insurer must reimburse the worker for all necessary related services under ORS 656.325(1).

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.325(1)~~, 656.704, and 656.726(4)~~
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0150 Timely Payment of Compensation

(1) General.

Benefits are ~~deemed~~ considered 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. Payments due on a weekend or legal holiday under ORS 187.010 and 187.020 may be paid on the last working day before, or the first working day after, the weekend or legal holiday. Subsequent payments may revert back to the payment schedule in place before the weekend or legal holiday.

(2) Holidays.

For the purpose of this rule, legal holidays in the State of Oregon are:

(a) Each Sunday;

(b) New Year's Day on January 1;

(c) Martin Luther King, Jr.'s Birthday on the third Monday in January;

(d) Presidents Day, for the purpose of commemorating Presidents Washington and Lincoln, on the third Monday in February;

(e) Memorial Day on the last Monday in May;

(f) Independence Day on July 4;

(g) Labor Day on the first Monday in September;

(h) Veterans Day on November 11;

(i) Thanksgiving Day on the fourth Thursday in November; ~~and~~

(j) Christmas Day on December 25.

(k) Each time a holiday, other than Sunday, falls on Sunday, the succeeding Monday~~ is a legal holiday.~~;

(l) Each time a holiday falls on Saturday, the preceding Friday~~ is a legal holiday.~~; and

~~(l)~~(m)~~ Additional legal holidays include~~ ~~e~~Every day appointed by the Governor as a legal holiday and every day appointed by the President of the United States as a day of mourning, rejoicing or other special observance only when the Governor also appoints that day as a holiday.

(3) Withheld compensation.

Compensation withheld under ORS 656.268(13) and (14), and ORS 656.596(2), will not be considered late if the insurer notifies the worker in writing why benefits are being withheld and the amount that must be offset before any further benefits are payable.

(~~3~~4) Timely payment of temporary disability.

First payment of ~~time loss~~temporary disability compensation must be timely. ~~An insurer's performance is in compliance when 90 percent of payments are timely.~~ The director may assess a penalty under OAR 436-060-0200 against an insurer ~~falling~~that does not ~~-~~ make the first payment of temporary disability under the time frames of this section, or does not accurately report timeliness of first payment information~~below these norms during any quarter~~.

(a) ~~**(4)** Compensation withheld under ORS 656.268(13) and (14), and 656.596(2), will not be deemed untimely if the insurer notifies the worker in writing why benefits are being withheld and the amount that must be offset before any further benefits are payable.~~

~~**(5)** Timely~~The first payment of temporary disability benefits ~~means the insurer has made payment~~ must be made no later than the 14th day after:

(~~a~~A) The date of the employer's notice or knowledge of the claim and of the worker's disability, if the attending physician or authorized nurse practitioner has authorized temporary disability compensation. Temporary disability accrued before the date of the employer's notice or knowledge of the claim~~ will be~~ is due within 14 days of claim acceptance;

(~~b~~B) The date the attending physician or authorized nurse practitioner authorizes temporary disability, if the authorization is more than 14 days after the date of the employer's notice or knowledge of the claim and of the worker's disability;

(~~c~~C) The start of authorized vocational training under ORS 656.268(10), if the insurer has previously closed the claim;

(~~d~~D) The date the insurer receives medical evidence supported by objective findings that shows the worker is unable to work due to a worsening of the compensable condition under ORS 656.273;

(~~e~~E) The date of any ~~division~~ director's order, including, but not limited to, a reconsideration order, that orders payment of temporary disability. If the insurer has

appealed a reconsideration order, the appeal stays payment of temporary disability benefits except those that accrue from the date of the order, under ORS 656.313;

(F~~f~~) The date of a notice of claim closure issued by the insurer that finds the worker entitled to temporary disability;

(~~g~~G) The date a notice of closure is set aside by a reconsideration order;

(~~h~~H) The date any litigation authorizing retroactive temporary disability becomes final. Temporary disability accruing from the date of the order must begin no later than the 14th 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 signature date, and from the courts, it is the date of the appellate judgment;

(~~i~~I) The date the ~~division~~director refers a claim to the insurer for processing under ORS 656.029;

(~~j~~J) The date the ~~division~~director refers a noncomplying employer claim to an assigned claims agent under ORS 656.054;~~ or~~

(~~k~~K) The date a claim disposition agreement is disapproved by the Worker's Compensation Board or ~~Administrative Law Judge~~administrative law judge, if temporary disability benefits are otherwise due;

(~~l~~L) The date the ~~division~~director designates a paying agent under ORS 656.307;

(~~m~~M) The date a claim is reclassified from nondisabling to disabling, if temporary disability is due and payable; ~~and~~or

(~~n~~N) The date an insurer voluntarily rescinds a denial of a disabling claim.

(b) Subsequent payments of temporary disability benefits must:~~(6)~~

(A) ~~Temporary disability must be paid to within seven days of the date of payment~~Be made ~~-~~at least once each 14 days, unless the employer is making payments under OAR 436-060-0020(1) and the payments are made concurrently with the payroll schedule of the employer; and~~.~~

(B) Include all benefits due for the period ending no more than seven days before the payment date;

~~When making payments under OAR 436-060-0020(1), the employer may make subsequent payments of temporary disability concurrently with the payroll schedule of the employer, rather than at 14-day intervals.~~

(~~7~~5) Timely payment of permanent disability.

(a) The first payment of ~~Permanent~~ permanent disability must be paid no later than the 30th day after:

(~~a~~A) The date of a notice of claim closure issued by the insurer;

(~~b~~B) The date of any litigation order that orders payment of permanent total disability. Permanent total disability 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~~ signature date, and from the courts, it is the date of the appellate judgment;

(~~c~~C) The date of any ~~division~~director's order, including, but not limited to, a reconsideration order, that orders payment of compensation for permanent disability;

(~~d~~D) The date any litigation order authorizing permanent partial disability becomes final;

(~~e~~E) The date a claim disposition agreement is disapproved by the Workers' Compensation Board or ~~Administrative Law Judge~~administrative law judge, if permanent disability benefits are otherwise due; or

(~~f~~F) The date authorized training ends if the worker is medically stationary and any previous award remains unpaid, under ORS 656.268(10) and OAR 436-060-0040(3~~2~~).

(b) Subsequent payments of permanent disability must be made on a regular and predictable monthly schedule.

(A) The insurer may adjust the monthly payment schedule, but must inform the worker or beneficiary before making the adjustment.

(B) No payment period may exceed one month without the director's approval.

(~~8~~6) Timely payment of fatal benefits.

(a) The first payment of f~~F~~atal benefits under ORS 656.204 must be paid no later than the 30th day after:

(~~a~~A) The date of a notice of acceptance issued by the insurer; or

(~~b~~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~~ signature date, and from the courts, it is the date of the appellate judgment.

~~(9)~~ (b) ~~The insurer must make s~~Subsequent payments of ~~permanent disability and~~ fatal benefits must be made on a regular and predictable monthly schedule.~~in monthly sequence.~~

(A) The insurer may adjust the monthly payment ~~dates~~schedule, but must inform the beneficiary before making the adjustment.

(B) No payment period may exceed one month without the ~~division's~~ director's ~~prior~~ approval.

(~~10~~7)~~(a)~~ Notice to worker or beneficiary regarding payments.

The insurer must provide an explanation in writing to the worker or beneficiary when the benefit amount, time period covered, or payment schedule changes, and must:

(a) When paying temporary disability benefits the insurer must nNotify the worker or beneficiary in writing of the specific purpose of the payment and the time period covered by that the each payment of temporary disability benefits covers; and.

(bb) When issuing the initial payment of permanent disability or fatal benefits the insurer must nNotify the worker or beneficiary in writing of the specific purpose of the payment, the schedule of future payments, and the time period each payment will cover with the first payment of permanent disability or fatal benefits. The insurer is not required to provide an explanation in writing with each subsequent permanent disability or fatal benefit payment.

(c) The insurer must provide an explanation in writing to the worker or beneficiary when the benefit amount, time period covered, or payment schedule changes.

(118) Maintenance of records.

The insurer must maintain records of compensation paid for each claim where in which benefits are due and payable.

(129) Request for reimbursement.

If the worker submits a request for reimbursement of multiple items and full reimbursement is not made, the insurer must provide specific reasons for non-payment or reduction of each item.

(1310) Claim disposition agreements.

Payment of a Any amounts due under a cClaim Disposition disposition Agreement agreement must be paid made no later than the 14th day after the Workers' Compensation Board or Administrative Law Judgeadministrative law judge mails provides notice of its approval under OAR 438-009-0028 of the agreement to the parties, unless otherwise stated in the agreement.

(1411) Claims under other jurisdictions.

Under ORS 656.126(6), wWhen a worker has a claim under the workers' compensation law of another state, territory, province or foreign nation for the same injury or occupational disease as the claim filed in Oregon:

(a) The worker is entitled to the full amount of compensation due under Oregon law;

(b) The total amount paid or awarded under the other jurisdiction's law must be credited against the compensation due under Oregon law;

(c) If -Oregon compensation is more than the compensation paid or awarded under another the other jurisdiction's law, for the same injury or occupational disease, or compensation paid the worker under another law is recovered from the worker for the same injury or occupational disease, the insurer must pay any unpaid compensation to the worker up to the amount required by the claim under Oregon law;

(d) Upon learning that the worker has a claim under the jurisdiction of another workers' compensation law, the insurer must request written documentation of the amount paid or awarded to the worker; and

(e) Payment under this section is due within 14 days of receipt of written documentation supporting the underpayment of Oregon compensation.

Statutory authority: ORS ~~656.704 and~~ 656.726(4)
Statutes implemented: ORS 656.126, 656.262(4), 656.268(10), 656.273, 656.278, 656.289, 656.307, and 656.313~~, 656.704, and 656.726(4)~~
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0153 Electronic Payment of Compensation

(1) General.

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.

(a) The worker's consent must be obtained ~~prior to~~before initiating electronic payments.

(b)The consent ~~and~~ may be written or verbal. The insurer must provide the worker a written confirmation when consent is obtained verbally.

(c) The worker may discontinue receiving electronic payments by notifying the insurer in writing.

(d) An employer making payments under OAR 436-060-0020(1) may assume the worker consents to having benefits paid through a direct deposit system if that is the method the employer usually uses to pay the worker's wages.

(2~~2~~) Cardholder agreement for ATM or debit cards.

The worker must receive a copy of the cardholder agreement outlining the terms and conditions under which an automated teller machine card or debit card has been issued ~~prior to~~before or at the time the initial electronic payment is made.

(3~~3~~) Instrument of payment.

The instrument of payment must be negotiable and payable to the worker for the full amount of the benefit paid, without cost to the worker. ~~The worker must be able to make an initial withdrawal of the entire amount of the benefit paid without delay or cost to the worker.~~

Statutory authority: ORS 656.726(4)
Statutes implemented: ORS 656.262(4) and 84.013
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0155 Penalty to Worker for Untimely Processing

(1) General.

~~Under ORS 656.262(11), the director may require the insurer to pay an additional amount to the worker as a penalty and an attorney fee to the worker's attorney when~~ If the insurer unreasonably delays or unreasonably refuses to pay compensation, attorney fees or costs, or unreasonably delays acceptance or denial of a claim:

(a) The director may require the insurer to pay:

(A) A penalty of up to 25 percent of the amounts then due to the worker, determined by the matrix attached to these rules in Appendix "B" and the following:

(i) When there are no "amounts then due" upon which to assess a penalty, no penalty will be issued under this rule; and

(ii) If the worker has not provided sufficient information to assess a penalty, the director may assess a civil penalty under OAR 436-060-0200 instead; and

(B) A fee to the worker's attorney under ORS 656.262(11) and OAR 436-001-0420.

~~(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 within 180 days of the alleged violation. Attorney fees will be awarded under OAR 436-001-0400 to 436-001-0440.~~

(b~~3~~) ~~-~~For the purpose of this rule, and the matrix attached to these rules in Appendix "B,"~~,~~ a "violation" is: ~~section, "violation" is either:~~

(~~a~~A) The ~~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 within 180 days of the date payment was due; or~~

(~~b~~B) ~~A~~ A continuous ~~nonpayment or~~ underpayment, such as with yearly cost of living increases for temporary disability compensation. In the case of a continuous underpayment, ~~. In these instances, a request for penalty must be mailed or delivered to the director within 180 days of the date of the last underpayment. A~~all prior underpayments will be considered as one violation, regardless of when the first underpayment occurred; or ~~.~~

(C) The late issuance of an acceptance or denial notice under OAR 436-060-0140(2).

(2) Requests for penalties and attorney fees.

Requests for penalties and attorney fees under this rule must:

(a) Be made in writing;

(b) State, in the request, what benefits have been delayed or remain unpaid; and

(c) Be mailed or delivered to the division within 180 days of the date of the alleged violation. For the purposed of this rule, the date of the alleged violation is:

(A) For the late payment or nonpayment of any single payments, the date payment was due;

(B) For a continuous underpayment, the date of the last underpayment; or

(C) For a late issuance of an acceptance or denial notice, the date the notice was due under OAR 436-060-0140(2).

(~~4~~3) Required response from the insurer.

When notified by the director that additional amounts may be due the worker as a penalty under this rule~~,~~:

(a) ~~the~~ The insurer must respond in writing to the division:~~.~~

(A) The response must include a reason for the delay, and any additional information or documentation requested by the director;

(B) The response must be mailed or delivered to the division within 21 days of the mailing date of the ~~division~~director's inquiry letter; and ~~, with~~

(C) ~~copies~~ Copies of the response, including any attachments, must be ~~sent~~ simultaneously sent to the worker and the worker's attorney, ~~(~~if any ~~represented)~~;~~.~~

(b) If ~~an~~ the insurer fails to ~~respond or~~ meet the requirements of this section, the director may assess an additional civil penalty ~~provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), the director may assess a civil penalty~~ under OAR 436-060-0200.

~~In addition, the director may assess a $50.00 civil penalty under OAR 436-060-0200 if the insurer does not provide copies of the response to the worker or attorney timely.~~

~~**(5)** When no written reason for delay is provided by the insurer as required in section (4) and no reason for the delay is evident from the worker's or division's records, the director will consider the delay unreasonable, unless the worker has provided insufficient information to assess a penalty. In such cases, the director may assess a civil penalty under OAR 436-060-0200.~~

(4~~6~~) Jurisdiction over proceedings.

The director ~~will~~ has exclusive jurisdiction ~~only consider a penalty issue~~ when ~~re~~ the assessment and payment of penalties and attorney fees ~~additional amounts~~ described in ORS 656.262(11) ~~is~~are the ~~sole~~ only issues of ~~any~~ the proceedings between the parties. The director will not issue an order assessing a penalty or attorney fee under this rule when the same parties have initiated proceedings before the Hearings Division.

(a) If the director receives a request for penalties and attorney fees under this rule, and is aware of proceedings between the parties before the Hearings Division, the director will refer the request to the Hearings Division.

(b) ~~If a proceeding on any other issue is initiated before the Hearings Division of the Workers' Compensation Board between the same parties before the director issues an order under this section, and the director is made aware of the proceeding, jurisdiction over the penalty proceeding before the director will immediately rest with the Hearings Division and the director will refer the proceedings to the Hearings Division.~~ If the director has not been made aware of the proceeding before the Hearings Division and issues a penalty order that becomes final, the director's penalty will stand.

~~(7) The director will use the matrix attached to these rules in Appendix "B" in assessing penalties. When there are no "amounts then due" upon which to assess a penalty, no penalty will be issued under this rule.~~

(5~~8~~) Timely payment of penalties.

Penalties ordered under this rule must be paid to the worker no later than the 30th day after the date of the order, unless the order is appealed. If the order is appealed and later upheld, the penalty will be due within 14 days of the date the order upholding the penalty becomes final. If the insurer does not pay penalties in a timely manner the insurer will be subject to civil penalties under OAR 436-060-0200.

(6~~9~~) Dispute resolution.

-Disputes regarding unreasonable delay or unreasonable refusal to pay compensation, attorney fees or costs, or unreasonable delay in acceptance or denial of a claim may be resolved by the parties.

(a) In cases where the ~~parties wish to resolve such disputes and the assessment and payment of additional amounts under ORS 656.262(11) is the sole issue of a proceeding between the parties,~~ director has exclusive jurisdiction under section (4) of this rule, and the violation~~(s)~~ occurred within the last 180 days as described in sub~~ accordance with~~ section (~~3~~2)(c) of this rule, then the parties must submit a stipulation to the division for approval. The stipulation must specify:

(~~a~~A) The benefits, attorney fees, or costs delayed and the amounts;

(~~b~~B) The time period~~(s)~~ involved;

(~~c~~C) If applicable, the name of the medical provider~~(s)~~ and the date~~(s)~~ of service~~(s)~~ relating to medical bills;

(~~d~~D) The amount of the penalty not to exceed 25 percent of the amount of compensation delayed; and

(~~e~~E) The attorney fees, if applicable.

(b) Any other agreements between the parties to pay a penalty or attorney fee must have a stipulation approved by the director to be acknowledged as a violation as it applies to the matrix in Appendix "B" of these rules.

(~~10~~c) Payment of ~~the~~ a penalty due under this section is due within 14 days after the date the ~~division~~director approves the stipulation, unless otherwise stated in the stipulation. If the insurer does not pay penalties in a timely manner the insurer will be subject to civil penalties under OAR 436-060-0200.

~~(11) Any other agreements between the parties to pay a penalty or attorney fee without a stipulation approved by the division will not be acknowledged as a violation as it applies to the matrix attached to these rules.~~

Statutory authority: ORS 656.262(11), 656.704, 656.726(4), and 656.745
Statutes implemented: ORS 656.262(11), and 656.704~~, and 656.726(4)~~
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0160 Use of Sight Draft to Pay Compensation Prohibited

Insurers ~~shall~~ may not use a sight draft to pay any benefits or payments due a worker or beneficiary under ORS chapter 656. ~~Such benefits include temporary disability, permanent disability and reimbursement of costs paid directly by the worker.~~

Statutory authority: ~~ORS 656.704 and~~ 656.726(4)
Statutes implemented: ~~ORS 656.704 and~~ 656.726(4)
Hist: Amended 10/2/02 as WCD Admin. Order 02-059, eff. 11/1/02
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0170 Recovery of Overpayment of Benefits

(1) Benefits paid a worker.

An i~~I~~nsurer~~s~~ may only recover overpayment of benefits paid to a worker as specified by ORS 656.268(14), unless authority is granted by an ~~Administrative Law Judge~~administrative law judge or the Workers' Compensation Board.

(2) Benefits due a worker.

An i~~I~~nsurer~~s~~ may recover an overpayment from any benefits currently due on any claim the worker has with that insurer. The ~~Insurers~~ insurer must explain in writing the reason, the amount, and the method of recovery to the worker and the worker's attorney, if any, or to the worker's ~~survivors~~beneficiaries.

(3) Permanent partial disability offsets.

When overpaid benefits are offset against monthly permanent partial disability award payments, the insurer must recover the benefits ~~recovery shall be~~ from the total amount of the award. The insurer must pay out ~~with~~ the remainder of the award ~~being paid out~~ at 4.35 times the temporary total disability rate, or at least ~~and no less than~~ $108.75, starting with the first month's payment.

Statutory authority: ORS ~~656.704 and~~ 656.726(4);
Statutes implemented: ORS 656.268(13~~2~~) and (14)~~, 656.704, and 656.726(4)~~
Hist: Amended 10/26/04 as WCD Admin. Order 04-064, eff. 1/1/05
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

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

(1) For the purpose of this rule:

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

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

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

(2) General.

The ~~division~~director will designate by order which insurer must pay a claim if the employers and insurers admit that the claim is otherwise compensable, and where there is an issue regarding:

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

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

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

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

(3) Own motion claims.

With the consent of the Workers' Compensation Board, ~~Own~~ own ~~Motion~~ motion claims under ORS 656.278(1) are subject to ~~the provisions of~~ this rule.

(4) Determination of compensability.

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

(a) For the purposes of this rule, insurers identified in a potential responsibility dispute under ORS 656.307 must, upon request, share claim related medical reports and other information ~~without charge~~ pertinent to the injury without charge in order to expedite claim processing.

(b) The act of the worker applying for compensation benefits from any employer identified as a party to a responsibility dispute ~~shall~~ constitutes authorization for the involved insurers to share the pertinent information in accordance with the criteria and restrictions provided in OAR 436-060-0017 and 436-010-0240.

(c) Copies of claims documents must be mailed under the time frames established in OAR 436-060-0017(4).

(d) ~~No~~ An insurer ~~who~~ that shares information ~~in accordance with~~under this rule ~~shall~~ bears ~~any~~ no legal liability for disclosure of the~~such~~ information.

(5) Notification of affected insurers.

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

(a) Name of employer;

(b) Name of insurer;

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

(d) Claim number, if assigned.

(6) Request for designation of a paying agent.

Upon deciding that the responsibility for an otherwise compensable injury cannot be determined, the insurer must request designation of a paying agent ~~by~~ from ~~writing to~~ the ~~division~~director in writing and ~~send~~mail~~ing~~ a copy of the request to the worker and the worker's ~~representative~~attorney, if any.

-(a) The insurer may not ~~request shall not be contained in or~~ attach~~ed~~ the request to, or include the request in, any form or report the insurer is required to submit under OAR 436-060-~~0010~~ 0011 or in the denial letter to the worker required by OAR 436-060-0140.

(b) The~~Such a~~ request, or agreement to designation of a paying agent, is not an admission that the insurer is responsible for the compensable injury;~~injury is compensably related to that insurer's claim;~~ it is solely an assertion that the injury is compensable against a subject Oregon employer.

(c) The insurer's written request ~~to the division~~ must contain the following information:

(~~a~~A) Identification of the compensable injur~~y(ies)~~ies or occupational diseases;

(~~b~~B) That the insurer is requesting designation of a paying agent under ORS 656.307;

(~~c~~C) That the insurer acknowledges the ~~injury~~ claim is otherwise compensable;

(~~d~~D) That responsibility is the only issue;

(~~e~~E) Identification of the specific claims or exposures involved by:

(~~A~~i) Employer;~~,~~

(~~B~~ii) Insurer;~~,~~

(~~C~~iii) Date of injury or specific period of exposure~~,~~; and

(~~D~~iv) Claim number, if assigned;

(~~f~~F) Acknowledgment that medical reports and other material pertinent to the injury have been provided to the other parties; and

(~~g~~G) Confirmation the worker has been advised of the actions being taken on the worker's claim.~~.~~

(~~7~~d) The ~~division~~director will not designate a paying agent whe~~re~~n:

(A) It has not been determined if ~~there remains an issue of whether~~ the injury is compensable against a subject Oregon employer~~,~~; ~~or~~

(B) An insurer included in the question of responsibility opposes designation of a paying agent because it has received no claim; or

(C) ~~if the~~ The 60 day appeal period of a denial ~~has~~ expired ~~without~~and:

(i) ~~a~~ No request for hearing had ~~being~~ been received by the Board; -or

(ii) ~~the division receiving a~~No request for a designation of paying agent order had

been received by the director., or if an insurer included in the question of responsibility opposes designation of a paying agent because it has received no claim.

(87) Failure to respond to request for clarification.

When notified by the divisiondirector 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 divisiondirector, the worker, the other insurers involved and other interested parties within 21 days of the mailing date of the notification. If an insurer fails to respond timely or provides an inadequate response (e.g., failing to answer specific questions or provide requested documents), the director may assess a civil penalty will be assessed under OAR 436-060-0200.

(98) Insurer responsibilities.

Insurers receiving notice from the divisiondirector of a worker's request for designation of a paying agent must immediately process the request in accordance with sections (4) through (6) of this rule.

(109) Factors for designation.

Upon receipt of written acknowledgment from the insurers that the only issue is responsibility for an otherwise compensable injury claim, the divisiondirector will issue an order designating a paying agent under ORS 656.307. The divisiondirector will designate the insurer with the lowest compensation considering the following factors:

(a) The claim with the lowest temporary total disability rate.;

(b) If the temporary total disability rates and the rates per degree of permanent disability are the same, the earliest claim.;

(c) If there is no temporary disability or the temporary total disability rates are the same, but the rates per degree of permanent disability are different, the claim with the lowest rate per degree of permanent disability.;

(d) If one or more claims have disposed of benefits in accordance with ORS 656.236(1), the claim providing the lowest compensation not released by the claim disposition agreement.;

(e) If one claim is under o"Own Mmotion" jurisdiction, tthe Own Motionhat claim, even if it is not the claim with the lowest temporary total disability rate.; and

(f) If more than one claim is under "Oown Mmotion" jurisdiction, the Oown Mmotion claim with the lowest temporary total disability rate.

(1110) Referral to the Worker's Compensation Board.

By copy of its order, the divisiondirector will refer the matter to the Workers' Compensation Board to set a proceeding under ORS 656.307 to determine which insurer is responsible for paying benefits to the worker.

(1211) Responsibilities of designated paying agent.

-The designated paying agent must process the claim as an accepted claim through claim closure under OAR 436-030-0015 ~~(9)~~ unless it is relieved of the responsibility by an order of the ~~A~~administrative ~~L~~law ~~J~~judge or resolution through mediation or arbitration under ORS 656.307(6).

(a) The parties to an order under this section ~~shall~~ may not settle any part of a claim under ORS 656.236 or 656.289, except to resolve the issue of responsibility, unless prior approval and agreement is obtained from all potential responsible insurers.

(b) Resolution of a dispute by mediation or arbitration by a private party cannot obligate the Consumer and Business Services Fund without the director's prior approval.

(c) The Consumer and Business Services Fund ~~shall not be~~is not obligated when one party declines to participate in a legitimate settlement conference under an ORS 656.307 order.

(d) Compensation paid under the order must include all benefits, including medical services, provided for a compensable injury to a subject worker or the worker's beneficiaries. The payment of temporary disability due must be for periods subsequent to periods of disability already paid by any insurer.

(~~13~~12) Change in compensability or claims status.

After a paying agent is designated, if any of the insurers determine compensability ~~is or will~~may be an issue at hearing, the~~y~~ insurer must notify the ~~division~~director.

(a) Any insurer must notify the ~~division~~ director and all parties to the order of any change in claim acceptance status after the designation of a paying agent.

(b) When the ~~division~~ director receives notification of a change in the acceptance of a claim or notification that compensability is an issue after designation of a paying agent, the ~~division~~director ~~shall~~ will order termination of any further benefits due from the original order designating a paying agent.

Statutory authority: ORS 656.307~~, 656.704~~, 656.726(4), and 656.745
Statutes implemented: ORS 656.307 ~~,~~and 656.308~~, 656.704, and 656.726(4)~~
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

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

(1) General.

An order of the director under ORS 656.307 and OAR 436-060-0180 applies only to the period ~~prior to~~before the order of the ~~Administrative Law Judge~~administrative law judge determining the responsible paying party. Payment of compensation made ~~there~~after ~~shall~~ the order may not be recovered from the Consumer and Business Services Fund, unless the director concludes payment was made before the ~~Administrative Law Judge~~administrative law judge's order was received by the paying agent designated under OAR 436-060-0180. ~~Any monetary adjustment necessary a~~After the ~~Administrative Law Judge~~administrative law

judge's order, any necessary monetary adjustments ~~shall~~ must be ~~handled~~ made under OAR 436-060-0195.

(2) Determination of benefits paid.

When all litigation on the issue of responsibility is final, the insurer ultimately held to be responsible must, ~~prior to~~before paying any compensation, contact any nonresponsible insurer to ~~learn~~ determine what compensation has already been paid. When contacted by the responsible insurer, the nonresponsible insurer must provide the requested information necessary for the responsible insurer to make a timely payment to the worker, medical providers or others, but in any case no later than 20 days after the date of ~~the notification~~contact. Failure to respond to the responsible insurer's inquiry in a timely manner may result in non-reimbursement otherwise due from the responsible insurer or from the Consumer and Business Services Fund.

(3) Reimbursement of nonresponsible insurers.

The responsible insurer must reimburse any nonresponsible insurers for compensation the nonresponsible insurer paid ~~which~~ that the responsible insurer is responsible for, but has not already paid, within 30 days of receiving ~~sufficient~~ enough information to ~~adequately~~ determine the benefits paid and the relationship to the conditions~~(s)~~ involved. Any balance remaining due the worker, medical providers or others must be paid in a timely manner under OAR 436-009 and 436-060-0150. Payment of compensation ~~which~~ that results in duplicate payment to the worker, medical providers or others as a result of failing to contact the nonresponsible insurer ~~shall~~ does not release the responsible insurer from the requirement to reimburse any nonresponsible insurers for its costs.

(4) Direction of unresolved adjustments.

The ~~division~~ director ~~shall~~ may direct any necessary monetary adjustment between the parties ~~involved which~~that is not otherwise ordered by the ~~Administrative~~ administrative ~~Law~~ law ~~Judge~~ judge or voluntarily resolved by the parties.~~,~~ The director ~~but shall~~will not order an insurer to pay compensation ~~over and beyond~~above that required by law, as it relates to the insurer's claim, except in the situation described in section (3) of this rule. Any insurer that ~~Failure~~ fails to make monetary adjustments within 30 days of an order by the ~~division~~director ~~will~~ may be subject ~~the insurer~~ to civil penalties under OAR 436-060-0200. Only compensation paid as a result of an order by the director under OAR 436-060-0180 and consistent with this rule ~~shall be~~is recoverable from the Consumer and Business Services Fund when such compensation is not reimbursed to the nonresponsible insurer by the responsible insurer.

(5) Unnecessary costs.

When the ~~division~~director determines improper or untimely claim processing by the designated paying agent has resulted in unnecessary costs, the ~~division~~director may deny reimbursement from the responsible insurer and the Consumer and Business Services Fund.

Statutory authority: ORS ~~656.704 and~~ 656.726(4);
Statutes implemented: ORS 656.307(3)~~, 656.704, and 656.726(4)~~
Hist: Amended 12/5/05 as WCD Admin. Order 05-077, eff. 1/1/06
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0195 Miscellaneous Monetary Adjustments a~~A~~mong Insurers

(1) General.

The director may order monetary adjustments between insurers ~~under authority provided by ORS 656.726(4) and 656.202~~ whe~~n~~re a ~~claimant~~worker has a right to compensation, but there is a dispute between insurers that does not fall under the director's authority in ORS 656.307 and OAR 436-060-0190.

~~Any failure to obtain reimbursement from an insurer under this rule shall not be recoverable from the Consumer and Business Services Fund. The purpose of this rule is to ensure the claimant properly receives all compensation due under the workers' compensation law, but is not unduly compensated for more than the law intended.~~

(a) ~~(2)~~ When any litigation on the issues in question is final, insurers must make any necessary monetary adjustments ~~among~~ between themselves, consistent with the determination of coverage for compensation paid to the worker, medical providers, and others for which they are responsible ~~and payment has not already been made~~, within 30 days of receiving ~~sufficient~~ enough information to ~~adequately~~ determine the benefits paid and the relationship to the condition~~(s)~~ involved.

(b) Any balance due after making such adjustments must be paid in a timely manner to the worker, medical providers and other partie~~s~~s under OAR 436-009 and 436-060-0150.

(c) Any failure to obtain reimbursement from an insurer under this rule is not recoverable from the Consumer and Business Services Fund.

(~~3~~2) Obligation to process claims.

-The ~~division~~director may direct any necessary monetary adjustment between parties, but ~~shall~~ will not order an insurer to pay compensation ~~over and beyond~~above that required by law, as it relates to the insurer's claim, except whe~~n~~re an insurer unduly compensates a ~~claimant~~worker while having knowledge such compensation has already been paid by another insurer. ~~Notwithstanding~~However, each insurer has its own independent obligation to process its claim and pay ~~interim~~ compensation due until the claim is either accepted or denied. When notified by the ~~division~~director 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, the other insurers involved and other interested parties within 21 days of the mailing date of the notification.

(~~4~~3) Failure to make adjustments.

Failure to respond to the ~~division~~director's inquiries or make monetary adjustments within 30 days of an order by the ~~division~~director will subject the insurer to civil penalties under OAR 436-060-0200.

(~~5~~4) Unnecessary costs.

When the ~~division~~director determines improper or untimely claim processing by an insurer resulted in unnecessary costs, the ~~division~~director may deny monetary adjustment between the insurers.

Statutory authority: ORS 656.704, 656.726(4), and 656.745

Statutes implemented: ORS 656.704 and 656.726(4)
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

436-060-0200 Assessment of Civil Penalties

(1) Penalties for inducing failure to report claims.

The director ~~through the division and under ORS 656.745 will~~ may assess a civil penalty against an employer or insurer that intentionally or repeatedly induces ~~claimant~~workers ~~for compensation~~ to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades ~~claimant~~workers to accept less than the compensation due or makes it necessary for ~~claimant~~workers to resort to proceedings against the employer to secure compensation due.

(~~2~~a) A penalty under this section ~~(1)~~ will only be assessed after all litigation on the matter has become final by operation of the law.

(b) For the purpose of this section ~~(1)~~:

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

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

(~~3~~2) Penalties for failure to comply with statutes, rules, and orders.

~~Under ORS 656.745, t~~The director may assess a civil penalty against an employer or insurer that does not comply with the rules and orders of the director regarding reports or other requirements necessary to carry out the purposes of ~~the Workers' Compensation Law~~ORS chapter 656. Except as provided in ORS 656.780, the director may assess a civil penalty against a service company only for claims processing violations identified in the director's annual audits of claims processing performance. The director may assess only one penalty for each separate violation by an employer, insurer, or service company identified in an annual audit.

(~~4~~3) Penalties for failure to meet time frame requirements.

The director may assess a civil penalty of up to $2,000 ~~to~~against an employer or insurer that does not meet the time-frame requirements in OAR 436-060-0010, 436-060-0011, 436-060-0017, 436-060-0018, 436-060-0030, 436-060-0060, 436-060-0140, 436-060-0147, 436-060-0155 and 436-060-0180. The director may assess a civil penalty of up to $2,000 to a service company failing to meet the time-frame requirements, only for violations identified in the director's annual audits of claims processing performance. The director may assess only one penalty for each separate violation by an employer, insurer, or service company identified in an annual audit.

(4~~5~~) Penalties for use of sight draft to pay compensation.

The director may assess a civil penalty of up to $2,000 ~~to a~~ against an~~An~~ insurer that willfully violates OAR 436-060-0160 ~~will be assessed a civil penalty of up to $2,000~~.

(~~6~~5) Penalties for inaccurate reporting of first payment timeliness.

The director may assess a civil penalty of $500 against ~~An~~ an insurer that does not accurately report timeliness of first payment information to the division, ~~may be assessed a civil penalty by the director of $500 for reporting inaccurate information~~ plus $50 for each violation, ~~or~~ up to $10,000 in the aggregate for all violations within any three month period. The director may assess this civil penalty to the service company processing the insurer's claims if the violations were identified in the director's annual audits of claims processing performance. The director may assess only one penalty for each separate violation by an insurer or service company identified in an annual audit. For the purposes of this section, a violation consists of each situation ~~where~~ in which a first payment was reported to have been made timely, but was found upon audit to have actually been late.

(~~7~~6) Penalties for failure to comply with claims processing requirements.

Notwithstanding section (3) of this rule, the director may assess civil penalties of up to $2,000 against an employer, insurer, or service company for each violation of ~~that does not comply with~~ the claims processing requirements of ORS chapter 656, OAR chapter 436 and ~~rules and~~ orders of the director.

(a) Penalties assessed for all violations will not exceed ~~may be assessed a civil penalty of up to $2,000 for each violation or~~ $10,000 in the aggregate ~~for all violations~~ within any three month period.

(b) For the purpose of this section, the statutory claims processing requirements include but are not limited to, ORS 656.202, 656.210, 656.212, 656.228, 656.234, 656.236, 656.245, 656.262, 656.263, 656.264, 656.265, 656.268, 656.273, 656.307, 656.313, 656.325, and 656.331.

(~~8~~7) Penalties for misrepresentation to obtain claims records.

The director may assess a civil penalty of $1,000 against a~~A~~ny employer or insurer that misrepresents ~~themselves~~ itself in any manner to obtain workers' compensation claims records from the director, or that uses such records in a manner contrary to these rules.~~, is subject to a civil penalty of $1,000 for each occurrence.~~ In addition the director may suspend or revoke~~,~~:

(a) ~~the director may s~~A~~uspend or revoke a~~n employer's or insurer's access to workers' compensation claims records for such time as the director may determine; or~~.~~

(b) Any other person's access to workers' compensation claims records ~~Any other person~~if the director~~-~~ determin~~es~~ed ~~to~~ they have misrepresented themselves or ~~who uses~~used records in a manner contrary to these rules. ~~will have access to these records suspended or revoked for such time as the director may determine.~~

~~(9) For the purpose of section (7), statutory claims processing requirements include but are not limited to, ORS 656.202, 656.210, 656.212, 656.228, 656.234, 656.236, 656.245, 656.262, 656.263, 656.264, 656.265, 656.268, 656.273, 656.307, 656.313, 656.325, 656.331, and 656.335.~~

~~(10) In arriving at the amount of penalty, the division may consider, but is not limited to:~~

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

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

~~(c) Prior performance in meeting the requirements outlined in this section.~~

(~~11~~8) Performance audits.

~~Insurer performance data is reviewed every quarter based on reports submitted by the insurer during the previous calendar quarter.~~Insurers will be subject to periodic performance audits. Civil penalties ~~will~~ may be issued for each ~~of the performance~~ areas where the insurer's performance ~~percentages~~ falls below the acceptable standards ~~of performance as~~ set forth in these rules and orders of the director. ~~The standard for reporting claims to the division will allow insurers to report claims by filing a Form 1502 accompanied by a Form 827 where the Form 801 is not available. Penalties will be issued in accordance with the matrix set forth in Appendix "C."~~

(9) Considerations for assessing penalties.

In arriving at the amount of penalty under this rule, the director may consider, but is not limited to:

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

(b) The ratio of the volume of violations to the average volume of violations for all insurers; and

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

(~~12~~10) Penalty to worker's attorney for failure to cooperate with insurer's investigation.

~~Under ORS 656.262(14),~~The director may assess a civil penalty not to exceed $1,000 against a~~n injured~~ worker's attorney that is unreasonably ~~not~~ unwilling or unavailable to participate in an insurer's interview as required by ORS 656.262(14)~~t a time reasonably chosen by the insurer within 14 days of the request for interview may be assessed a civil penalty not to exceed $1,000 if the director finds the attorney's actions unreasonable~~.

Statutory authority~~.~~: ORS 656.704 and 656.726(4)
Statutes implemented: ORS 656.202, 656.210, 656.212, 656.228, 656.234, 656.236, 656.245, 656.262 ~~(Oregon Laws 2009, ch. 526)~~, 656.263, 656.264, 656.265, 656.268, 656.273, 656.307, 656.313, 656.325, 656.331~~, 656.335~~, 656.704, 656.726(4), and 656.745
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

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

(1) Right to request penalties and attorney fees.

If the insurer fails to pay amounts due on a disputed claims settlement within five business days of receipt of notice from the worker that the payment is late, the worker or worker's attorney may request penalties and attorney fees.

(2) Requirements for requests.

Requests for penalties and attorney fees under this ~~section~~ rule must be in writing, state what payments were delayed or remain unpaid, and be mailed or delivered to the division within 180 days of the date of notice to the insurer. In order to be awarded an attorney fee the attorney must submit a signed, current retainer agreement.

(3) Required response from the insurer.

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.

(a) The response must include any information or documentation requested by the director.

(b) The response must be mailed or delivered to the division within 14 days of the date of the ~~division~~director's inquiry letter~~,~~; and

(c) ~~with c~~Copies of the response, including any attachments, must be sent simultaneously to the worker and the worker's attorney, if any ~~(if represented)~~.

(4) Failure to respond.

If ~~an~~ the insurer fails to meet the requirements of section (3) of this rule, the director may assess additional ~~respond, provides an inadequate response (e.g. fails to answer specific questions or provide requested documents), or fails to timely provide copies of the response to the worker or attorney,~~ civil penalties ~~may be assessed~~ under OAR 436-060-0200.

(5~~4~~) Penalty and fee amounts.

The penalty and fee will be based on the amounts allocated to the worker and the attorney in the settlement agreement as prescribed in ORS 656.262(12)(b). Penalties will be issued in accordance with the matrix set forth in Appendix "~~D~~C."

(6~~5~~) Timely payment of penalties.

Penalties and attorney fees ordered under this rule must be paid to the worker and attorney no later than the 30th day after the date of the order, unless the order is appealed. If the order is appealed and later upheld, the penalty and attorney fee will be due within 14 days of the date the order upholding the penalty becomes final. Failure to pay penalties and attorney fees in a timely manner ~~will~~ may subject the insurer to civil penalties under OAR 436-060-0200.

Statutory authority~~.~~: ORS 656.726(4);
Statutes implemented: ORS 656.262 ~~(Oregon Laws 2009, ch. 526)~~
Hist: Adopted 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17

436-060-0500 Reimbursement of Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) General.

When an insurer elects to pay supplemental disability due a worker with multiple jobs at the time of injury, the director ~~shall~~ will~~pay~~ reimburse~~ment of~~ the supplemental amount quarterly, after receipt and approval of documentation of compensation paid by the insurer or

the service company. The director will reimburse the insurer, in care of a the service company, if applicable.

(2) Requests for reimbursement.

Requests for reimbursement must be submitted on Form 3504, "Supplemental Disability Benefits Quarterly Reimbursement Request," and must include at least:

(a) Identification and address of the insurer responsible for processing the claim;

(b) The worker's name, WCD file number, date of injury, sSocial sSecurity number, and the insurer claim number;

(c) Whether the claim is disabling or nondisabling;

(d) The primary and secondary employer's' legal names;

(e) The primary and secondary employer's' WCD registrationpolicy numbers;

(f) The weekly wage of all jobs at the time of the injury separated by employer;

(g) The start and end dates for the period(s) of supplemental disability due and payable to the worker. Dates must be inclusive (e.g., 1-16-02 through 1-26-02);

(h) The amount of supplemental disability paid for the periods in subsection (2)(g);

(i) The quarter and year in which the payment was made;

(j) A signed payment certification statement verifying the payments; and

(k) Any other information the director requires.

(3) Administrative fee.

In addition to the supplemental disability reimbursement, the divisiondirector shall calculate and thewill pay the insurer shall be paid an administrative fee based on the annual claim processing administrative cost factor, as published in Bulletin 316.

(4) Repayment of invalid or incorrect payments.

The director may require the insurer to repay reimbursements made for invalid or incorrect payments.

(a) The director may pPeriodically the division will audit the physicalinsurer's files of the insurer responsible for processing the claim to validate the amount reimbursed.

(b) Invalid amounts include, but are not limited toReimbursement will be disallowed and repayment will be required if, upon such audit, it is found:

(aA) Payments exceedinged statutory amounts due the insurer, excluding reasonable overpayments, as determined by the divisiondirector;

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

(cC) Payments of compensation havethat were not been documented, as required by OAR 436-050; or

(D) Amounts in a third-party recovery that result in overpayment..

(5) Benefits due workers of a noncomplying employer.

Supplemental disability benefits due subject workers of an noncomplying employer who is in a noncomplying status as defined in ORS 656.052 are not eligible for separate reimbursement under this rule, but remain a cost recoverable from the employer as provided by ORS 656.054(2).

(6) Claim disposition agreements and stipulated claims settlements.

Claim dDispositions agreements or Sstipulated- claims Ssettlements, under ORS 656.236 or 656.289, which that include amounts for supplemental disability benefits due to multiple jobs, are not eligible to receive reimbursement from the Workers' Benefit Fund unless they receive written confirmation from the director made with the priorbefore the disposition or settlement is written approvededal by the Worker's Compensation Board. of the director.

(a) To receive written confirmation of a proposed disposition or settlement, the insurer must submit a request to the division. The request for written confirmation Requests for written approval of proposed dispositions must include:

(A) A copy of the proposed disposition or settlement that specifies the exact amount of the proposed contribution to be made from the Workers' Benefit Fund;

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

(C) Any other information required by the director.

(b) The director will not approve confirm the disposition for reimbursement if the proposed contribution exceeds a reasonable projection of that claim's future liability to the Workers' Benefit Fund.

Statutory authority: ORS 656.704, 656.726(4);
Statutes implemented: ORS 656.210, 656.704, and 656.726(4)
Hist: Amended 10/12/15 as WCD Admin. Order 15-062, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

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

(1) General.

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) Requirements for requests-.

Requests for reimbursement must be filed within one year of the mailing date of the final order upholding the notice of closure and include:

(a) Sufficient information to identify the insurer and the injured worker;

(b) The net dollar amount of permanent total disability benefits paid. ("Net dollar amount" means the total compensation paid less any recoveries, including, but not limited

to, third party recoveries~~y~~ or amounts reimbursable from the Retroactive Program or Reopened Claims Program~~.)~~; and

(c) A statement certifying that payment has been made.

(3) Moneys due under Retroactive or Reopened Claims Programs.

If any of the money~~ie~~s are due under the Retroactive Program or Reopened Claims Program, any reimbursement request must be submitted under OAR 436-075 or OAR 436-045~~, respectively~~.

Statutory authority: ORS 656.726(4);
Statutes implemented: ORS 656.206 and~~,~~ 656.605
Hist: Amended 12-1-2009 as WCD Admin. Order 09-057, eff. 1-1-2010
Amended 11/28/16 as WCD Admin. Order 16-055, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf .

APPENDIX "A"
436-060-0017 Matrix for Assessing Penalties

VIOLATION NUMBER

NUMBER OF DAYS LATE	1	2	3	4	5+
1-7	$0	$100	$250	$500	$1,000
8-14	$100	$250	$500	$1,000	$1,000
15-21	$250	$500	$1,000	$1,000	$1,000
22+	$500	$1,000	$1,000	$1,000	$1,000

APPENDIX "B"
436-060-0155 Matrix for Assessing Penalties

VIOLATION NUMBER

NUMBER OF DAYS LATE	1	2	3	4
1-2	0%	10%	20%	25%
3-7	5%	15%	25%	
8-14	10%	20%	25%	
15-21	15%	25%		
22 +	25%			

~~APPENDIX "C"~~
~~436-060-0200 Matrix for Assessing Penalties~~

~~**Number of Quarters Below Standard Performance Level Per Year**~~

~~CATEGORY~~	~~1~~	~~2~~	~~3~~	4
~~Timely Filing of Claim (Form 1502)~~	~~$100 each violation~~	~~$175 each violation~~	~~$250 each violation~~	~~$350 each violation~~
~~Notice of Closure Issued Timely~~	~~$100 each violation~~	~~$175 each violation~~	~~$250 each violation~~	~~$350 each violation~~
~~Accept/Deny Timely~~	~~$100 each violation~~	~~$175 each violation~~	~~$350 each violation~~	~~$700 each violation~~
~~1st Payment Timely~~	~~$100 each violation~~	~~$175 each violation~~	~~$350 each violation~~	~~$700 each violation~~

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CLAIMS ADMINISTRATION

APPENDIX "~~D~~C"

436-060-0400 Matrix for Assessing Penalties

SETTLEMENT PROCEEDS ALLOCATED TO ~~CLAIMANT~~WORKER/ATTORNEY

NUMBER OF DAYS LATE	PENALTY ASSESSMENTS AND ATTORNEY FEES
1-2	5%
3-7	10%
8-14	15%
15-30	20%
31+	25%

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

In the Matter of the Amendment of Oregon Administrative Rules (OAR): **436-060, Claims Administration**	))))	**ORDER OF ADOPTION No. 16-055**

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 procedures in ORS 183.335, amends OAR chapter 436, division 060.

On Sept. 15, 2016 , 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 website. The Secretary of State included notice of the public hearing in its October, 2016 *Oregon Bulletin*. On Oct. 24, 2016, a public hearing was held as announced. The record remained open for written testimony through Oct. 28, 2016.

SUMMARY OF RULE AMENDMENTS

The agency has amended OAR 436-060, "Claims Administration," to:

- Improve the clarity of the rules through improved organization, plain language, repeal of obsolete or redundant provisions, and definition of terms;
- Clarify procedures for requesting administrative review by the director;
- Clarify procedures for obtaining public records;
- State that a worker may choose a medical service provider, attending physician or authorized nurse practitioner under ORS 656.245, 656.260, OAR 436-010 and 436-015, and if an employer restricts that choice, the director may impose a civil penalty of up to $2000;
- Require an employer to provide form 801 to a worker upon receiving notice or knowledge of an accident that may involve a compensable injury;
- Require that electronic forms, when allowed, must include the same fields and elements as their paper counterparts;
- Specify that Form 1502, "Insurer's Report," must include the employer's policy number;
- Require the insurer to provide an email address with the information it sends to the worker when it changes claims processing location, service company, or self-administration;
- Provide that an electronically produced date is acceptable evidence of initial date of receipt;
- Provide that an insurer must respond to a worker's request for reclassification of a nondisabling claim within 14 days of the receipt of the request;

- Explain that if the worker is represented by an attorney, and the attorney is instrumental in obtaining an order from the director that reclassifies the claim from nondisabling to disabling, the director may award the attorney a reasonable assessed attorney fee under ORS 656.277;
- Provide that if an insurer fails to respond to a worker's request for reclassification of a nondisabling claim within 14 days of the receipt of the request, the worker may request review by the director as if the insurer issued a Notice of Refusal to Reclassify;
- Explain that the insurer must reimburse the employer for any employer-paid temporary disability benefits;
- Streamline process for calculating the rate of temporary total disability (TTD) compensation by:
  - Providing that for all workers with irregular wages, or earnings that are not based on wages alone, the rate of TTD must be calculated based on the worker's total earnings for the period up to 52 weeks before the date of injury, with some restrictions; and
  - Providing the insurer may not include any gap in employment of more than 14 days that was not anticipated in the wage earning agreement, when calculating the average earnings;
  - Removing the provision that the rate of TTD for workers employed through union hall call boards must be computed based on a forty-hour work week;
- Clarify how to calculate temporary partial disability (TPD), the conditions requiring payment of TPD, and required notice to the worker and the worker's attorney when the insurer stops paying TTD and starts paying TPD;
- Clarify procedures for an insurer's election to process and pay or not to process and pay supplemental disability (SD) compensation, eligibility criteria for SD, procedures for processing SD requests, and calculation and payment of SD;
- Provide that an insurer or assigned processing administrator must determine a worker's eligibility for SD within 14 days of receipt of a worker's verifiable documentation, or the end of the 60-day period in the insurer's request for documentation if the worker does not provide verifiable documentation, and notify the worker of the determination;
- Clarify requirements related to independent medical exams, including reimbursement of a worker's costs to attend the exam;
- Provide that if a worker begins cooperating with an insurer's investigation after payment of compensation to the worker has been suspended, the insurer is not required to notify the director, but must immediately reinstate the worker's benefits;
- Clarify requirements related to vocational evaluations of workers receiving permanent total disability, including reimbursement of a worker's costs to attend the evaluation;
- Clarify that a condition for eligibility for a worker requested medical exam is that the denial is based on one or more independent medical exam reports with which the worker's attending physician "did not concur;"
- Increase the number of days the worker or the worker's representative has to respond to the director's list of appropriate physicians for a worker requested medical exam from 10 to 14 days of the mailing date of the notice providing the list;

- Implement the change from quarterly to annual performance audits by:
  - Clarifying provisions for auditing insurers' claims processing performance;
  - Removing provisions for quarterly performance targets and penalties; and
  - Deleting the matrix for assessing penalties for number of quarters below standard performance level per year;
- Clarify requirements for timely payment of permanent disability and fatal benefits;
- Clarify requirements for payment of compensation when a worker has a claim under the workers' compensation law of another state, territory, province or foreign nation for the same injury or occupational disease as the claim filed in Oregon;
- Provide that an employer may assume that a worker consents to having temporary disability benefits paid through a direct deposit system if that is the method the employer usually uses to pay the worker's wages;
- Remove the requirement that a worker must be able to make an initial withdrawal of the entire amount of an electronic deposit of compensation;
- Clarify requirements for requesting, processing, and issuing a penalty payable to a worker when the insurer unreasonably delays or unreasonably refuses to pay compensation, attorney fees or costs, or unreasonably delays acceptance or denial of a claim;
- Require that insurers involved in claim responsibility disputes must mail claim documents to the other insurers under the time frames in OAR 436-060-0017; and
- Specify that amounts in a third-party recovery that result in overpayment of a worker are considered invalid payments of supplemental disability.

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, division 060 are adopted as **administrative order No. 16-055 on this 28th day of November, 2016, to be effective Jan. 1, 2017.**
2) A certified copy of the adopted rules will be filed with the Secretary of State.
3) A copy of the adopted 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 28th day of November, 2016.

/s/ Louis Savage
Louis Savage, 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, 503-947-7810.

Distribution: Workers' Compensation Division e-mail distribution lists, including advisory committee members and testifiers

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

FILED
11-28-16 3:14 PM
ARCHIVES DIVISION
SECRETARY OF STATE

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

Department of Consumer and Business Services, Workers' Compensation Division — 436
Agency and Division — Administrative Rules Chapter Number

Fred Bruyns — (503) 947-7717
Rules Coordinator — Telephone

PO Box 14480, Salem, OR 97309-0405
Address

To become effective 01/01/2017 Rulemaking Notice was published in the October 2016 Oregon Bulletin.

RULE CAPTION

Amendment of rules governing claims administration

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

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

436-060-0011

AMEND:

436-060-0003, 436-060-0005, 436-060-0008, 436-060-0010, 436-060-0015, 436-060-0017, 436-060-0018, 436-060-0019, 436-060-0020, 436-060-0025, 436-060-0030, 436-060-0035, 436-060-0040, 436-060-0045, 436-060-0055, 436-060-0060, 436-060-0095, 436-060-0105, 436-060-0135, 436-060-0137, 436-060-0140, 436-060-0147, 436-060-0150, 436-060-0153, 436-060-0155, 436-060-0160, 436-060-0170, 436-060-0180, 436-060-0190, 436-060-0195, 436-060-0200, 436-060-0400, 436-060-0500, 436-060-0510, 436-060-0009

REPEAL:

436-060-0001, 436-060-0002, 436-060-0006

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

656.210, 656.264, 656.265, 656.726(4)

Other Authority:

Statutes Implemented:

ORS 656, primarily 656.206, 656.210, 656.212, 656.262, 656.264, 656.265, 656.268, 656.307, 656.325, 656.704, 656.740, 656.745

RULE SUMMARY

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