

**ADMINISTRATIVE ORDER NO. 7-1985
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**WORKERS' COMPENSATION DEPARTMENT
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 120**

VOCATIONAL ASSISTANCE TO INJURED WORKERS

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EXHIBIT "A"

**OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 120**

436-120-001 Authority for Rules

(1) The Director has adopted OAR 436-120 by the Director's authority under ORS 656.340, ORS 656.726(3) and section 15, chapter 600, Oregon Laws 1985.

(2) An order of a division, issued under the Director's authority to administer ORS chapter 656 and rules adopted under that chapter, shall be considered an order of the Director.

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436-120-002 Purpose of Rules

The purpose of these rules is to prescribe:

(1) The terms of eligibility for vocational assistance to workers with a claim for a disabling compensable injury, and the nature and extent of the assistance, pursuant to ORS 656.012(2)(c), 656.268(1) and 656.340;

(2) The standards, conditions and procedures for authorizing insurers and vocational rehabilitation organizations to be providers of vocational assistance, for certifying vocational assistance staff, and for suspending and revoking authorizations and certifications, pursuant to ORS 656.340;

(3) Terms of payment by insurers for requested services of vocational assistance providers, pursuant to ORS 656.258 and 656.340;

(4) Recordkeeping and reporting requirements for insurers, to assist the Department in monitoring their compliance with ORS 656.340;

(5) Procedures for resolving dissatisfaction of workers about vocational assistance actions, including procedures for the administrative review by the Director under ORS 656.283; and

(6) The terms of reimbursement to insurers for vocational assistance costs paid for injuries that were sustained prior to January 1, 1986, pursuant to section 15, chapter 600, Oregon laws 1985.

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436-120-003 Applicability of Rules

(1) These rules govern vocational assistance pursuant to the Workers' Compensation Law on and after January 1, 1986, under each claim of a worker, without regard to the date of injury except as these rules provide otherwise.

(2) Under these rules a claim for aggravation will be considered a new claim. However, a reference to "pre- 1986 injuries" relates to injuries sustained before January 1, 1986, and encompasses both original claims and claims for aggravation of such injuries.

(3) Vocational assistance to a worker will be due at any given time with respect only to one claim of the worker. If a dispute arises about which claim gives rise to the vocational assistance pursuant to these rules, the Director will designate by an order which claim is responsible.

(4) The Director may modify or waive provisions of these rules if the Director finds that necessary to prevent manifest injustice or exceptional hardship to a worker from a strict construction of those provisions, or from an error by an insurer, a vocational rehabilitation organization or the Department.

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Amended 12/4/81 as WCD Admin. Order 4-1981. eff. 1/1/82
Amended 12/29/82 as WCD Admin Order 11-1982. eff. 1/1/83 (Temporary)
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436-120-005 Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Administrative approval" means an approval or finding in a particular matter by the administrator of Rehabilitation Review Division of the Workers' Compensation Department, or the administrator's delegate for the matter.

(2) "Commuting distance" means the maximum one-way distance a worker could reasonably be expected to travel each workday between the worker's residence and place of work.

(3) "Direct employment plan" means the kind of return to work plan described in OAR 436-120-030(2).

(4) "Direct worker purchases" has the meaning given in OAR 436-120-150(1).

(5) "Division" refers to a division of the Workers' Compensation Department ("Department").

(6) "Employer" means, in the context of the job where an original claim or a claim for aggravation occurred, the person in whose employ the worker sustained the injury or made the claim for aggravation, respectively.

(7) "Employment" used with certain modifiers has the following meanings:

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(a) "Suitable employment" means employment of the kind for which the worker has the necessary knowledge skills and abilities; located where the worker customarily worked, or within commuting distance of either the worker's residence at the time of claim or current residence; and providing a wage as close as possible to the wage currently being paid for employment which is the regular employment for the worker. In the context of a return-to-work plan, "suitable employment" also includes the objective that the employment be as close as possible in nature to the regular employment for the worker.

(b) "Regular employment" means employment of the kind the worker held at the time of the injury or the claim for aggravation, whichever gave rise to the eligibility for vocational assistance; or held customarily at that time.

(c) "Modified employment" means regular employment which has been changed to accommodate the worker's limitations.

(d) "New employment" means employment of a kind which differs from regular employment and modified employment.

(e) "Insurer" means a guaranty contract insurer or a self-insured employer, and may include, except where the context requires otherwise, a vocational assistance provider with respect to any function the insurer requested the provider to perform. "The insurer" refers to whichever insurer has the worker's claim.

(f) "Job analysis" means a detailed description, or making the description, of the demands, physical and otherwise, of a job or occupational goal.

(g) "Job development" means locating, or assisting a worker to locate, prospective employers, and assisting the worker in return-to-work activity, including assistance in arranging a wage subsidy or worksite modification.

(h) "Job search skills" means the ability to write resumes, locate suitable employment, complete employment applications and interview for employment, and other abilities relating to looking for suitable employment.

(i) "Labor market survey" means information compiled, or the compiling activity, to determine the availability, currently or expected at a specific future time, of suitable employment for a worker, obtained from direct contact with employers, from the Employment Division of the Department of Human Resources, from others having actual labor market information, or from other recently completed surveys of this kind.

(j) "On-the-job evaluation" means evaluating a worker's work traits, aptitudes, limitations, potentials and habits in an actual job experience where the following conditions are met:

- (a) The job experience is primarily for the worker's benefit;
- (b) The job experience will not necessarily result in a permanent job with that employer.
- (c) The employer does not expect a substantial gain from the worker's activity; and
- (d) The worker does not displace another worker.

(k) "Reimburse" or a derivative, refers to payment to an insurer by the Department, from the Administrative Fund of the vocational assistance costs paid by the insurer for pre-1986

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injuries pursuant to OAR 436-120-220, OAR 436-120-250 and section 15, chapter 600, Oregon Laws 1985.

(15) "Return-to-work follow-up" means contact with a worker after the return to work to determine if the worker still is employed and if further vocational assistance is needed, while the worker remains eligible, to help continue the employment.

(16) "Return-to-work plan" means either the program of vocational assistance designed to result in the return to work of an injured worker, or the document which establishes and governs that program. A return-to-work plan may be either a "direct employment plan" or a "training plan."

(17) "Rule" means a portion of Oregon Administrative Rules (OAR) which is uniquely identified by a three-part number chapter number - rule division number - rule suffix number. Portions of a rule are identified by suffixes to the three-part rule number. For example, subsection (a) of section (3) of rule 436-120-030 is referred to as OAR 436-120-030(3)(a). "These rules" means all of the rules in Division 120 of OAR Chapter 436.

(18) "Sheltered workshop" means a facility established and operated to provide evaluation, vocational training and employment opportunities for disabled and severely handicapped individuals.

(19) "Training" means one or more of the services under subsections (a) to (f) of OAR 436-120-030(3). "Training plan" means the kind of return-to-work plan described in that section.

(20) "Transferable skills" means the knowledge, skills and abilities which make a worker employable in new employment. More general characteristics such as aptitudes or interests do not, by themselves, constitute transferable skills. "Knowledge," "skills" and "abilities" have meanings as follows:

(a) "Knowledge" means an organized body of factual or procedural information derived from the worker's education, training and experience.

(b) "Skills" means mental and physical proficiency.

(c) "Abilities" means the mental and physical capability to apply the worker's knowledge and skills.

(21) "Vocational assistance" means any of the services, goods, allowances and temporary disability compensation under these rules for assisting in the return to work of an injured worker. The term does not include activities for determining a worker's eligibility for vocational assistance.

(22) "Vocational assistance provider" means an insurer which provides vocational assistance by its own staff, or a vocational rehabilitation organization. "The vocational assistance provider" refers to whichever insurer or vocational rehabilitation organization is providing vocational assistance to a particular worker.

(23) "Vocational assistance staff" means an individual or individuals who provide vocational assistance as a staff member of a vocational assistance provider. The term does not include an individual exclusively performing clerical or administrative functions not unique to vocational assistance.

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(24) "Vocational evaluation" of a worker means determining the nature and extent of vocational assistance needed by the worker to achieve earlier return to work or to obtain suitable employment, by means of performing, or engaging others to perform, vocational testing, work evaluation, on-the-job evaluation, functional capacities evaluation, psychological evaluation, other evaluations of like character, job analysis and labor market survey, or any one or more of these as necessary.

(25) "Vocational rehabilitation organization" means an organization other than an insurer, or individual other than a staff member of a vocational assistance provider, that engages in providing vocational assistance under assignments from one or more insurers.

(26) "Vocational testing" means measuring intelligence, aptitudes, achievements, abilities, interests and personality, or any one or more of these, by using standard and generally accepted measures.

(27) "Work adjustment" means a closely supervised, remedial work experience which has been individually designed to improve a worker's work habits, attitudes and behaviors relating to work.

(28) "Work evaluation" means using standardized work samples and psychometric tests, in a systematic and comprehensive process, to determine a worker's vocational abilities and needs.

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Amended 12/4/81 as WCD Admin Order 4-1981. eff. 1/1/82
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436-120-010 Rehabilitation Review Division

The Rehabilitation Review Division is established within the Department for the following principal purposes:

(1) Assuring that injured workers receive timely and appropriate vocational assistance pursuant to ORS 656.340 and these rules.

(2) Assisting to prevent or resolve dissatisfaction of workers about vocational assistance matters, and assisting in the administrative review by the Director under ORS 656.283 of vocational assistance matters.

(3) Collecting system-wide data on vocational assistance for use and dissemination by the Department.

(4) Maintaining the integrity of the Department's reimbursement of vocational assistance costs paid by insurers for pre-1986 injuries.

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436-120-020 Reinstatement Rights; Responsibilities of Insurer and Worker

(1) The insurer shall inform a worker of the employment reinstatement rights and responsibilities of the worker under ORS chapter 659 and this rule, and the insurer's responsibility under ORS 656.340 to make the reinstatement demand on behalf of the worker. This information shall be given at the time of:

(a) Claim acceptance, per ORS 656.262(6);

(b) Contact of the worker under OAR 436-120-060 about need for vocational assistance per ORS 656.340(2); and

(c) Receiving knowledge of the attending physician's release of the worker to return to work, per ORS 656.340(3).

(2) Subsection (1) (c), section (3) and section (4) of this rule apply only to workers who have been found eligible for vocational assistance.

(3) The worker shall inform the insurer within two working days of being advised of the attending physician's release of the worker to return to work.

(4) The insurer, within two working days of receiving knowledge from any source of the attending physician's release shall make demand on the employer for reinstatement of the worker. This shall be considered a demand of the worker under ORS 659.415 and 659.420. To the extent possible under the insurer's knowledge of the release, the insurer shall make an effective demand in accordance with those statutes and the rules adopted thereunder by the Bureau of Labor and Industries.

(5) Nothing in this rule affects the responsibility of the attending physician under ORS 656.252 to advise the insurer and the worker within five days of the date the worker is released to return to work.

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436-120-030 Kinds of Vocational Assistance

The following kinds of vocational assistance are available under the terms of these rules:

(1) Vocational evaluation. A vocational evaluation as defined in OAR 436-120-005(24) shall be provided if the insurer determines from a review of the existing file information and contacts with the worker, employers and physicians, or any of these, that the existing information is insufficient to determine the nature and extent of vocational assistance needed by the worker to achieve earlier return to work or to obtain suitable employment.

(2) Direct employment plan. A direct employment plan assists a worker to achieve earlier return to work, or to obtain suitable employment, with the help of one or more direct employment services as follows:

(a) Development of the direct employment plan.

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- (b) Employment counseling.
- (c) Job starch skills instruction.
- (d) Job development.
- (e) Return-to-work follow-up.
- (f) Labor market survey.
- (g) Job analysis.

(h) Other services of a direct employment nature. For pre-1986 injuries, administrative approval that the services provide necessary direct employment assistance is required.

(3) Training plan. A training plan assists a worker to obtain suitable employment when a direct employment plan is not sufficient for that purpose, other than by reason of the condition of the labor market. A training plan consists of one or more of the kinds of training described in this section, together with plan development, progress monitoring and, as necessary, one or more of the direct employment services under section (2) of this rule. The kinds of training are as follows:

(a) "On-the-job training." This is a wage-paying job furnishing instruction in job skills to qualify the worker for the continuation of permanent, suitable employment with the employer providing the job and the training. During the training the wages are subsidized as specified by a contract between the employer and the insurer, and the temporary disability compensation payable to the worker is reduced as provided in ORS 656.212.

(b) "Skills training." This teaches the worker job skills in a self-contained program under the auspices of a community college, but with the training site at the location of an employer who teaches the skills on behalf of the college under the following conditions:

(A) The employer makes no guarantee of employing the worker when the training is completed;

(B) The worker does not displace another worker.

(C) No wage is paid to the worker,

(D) The employer does not expect a substantial gain from the activity of the worker.

(E) The activity is primarily for the worker's benefit: and

(F) The employer has a sufficient number of employes to accomplish the regular work of the employer and the training of the worker.

(c) "Sheltered workshop training."

(d) "Basic education." This raises the worker's relatively low level of education so the worker can obtain suitable employment directly or through participation in other training.

(e) "Formal training." This teaches the worker job skills in a vocational school, community college or other post-secondary educational facility.

(f) Other services of a training nature. For pre-1986 injuries, administrative approval that the services provide necessary training assistance is required.

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(4) Direct worker purchases. The purchases described in OAR 436-120-150 may be provided to a worker in conjunction with the plans and services under sections (1) to (3) of this rule, or to meet the requirements of obtained employment

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436-120-040 Becoming Eligible for Vocational Assistance

A worker will become eligible for vocational assistance if all of the following conditions are met:

(1) The worker has sustained a disabling injury which is or is claimed to be compensable.

(2) The worker, because of the injury, needs vocational assistance:

(a) To achieve a return or an earlier return to work with the employer, or

(b) To obtain suitable employment because the worker is not able to return to work with the employer.

(3) The worker is available in Oregon for vocational assistance. However, this does not preclude furnishing services at sites outside of Oregon if the insurer finds that more effective in the particular circumstances.

(4) None of the conditions under OAR 436-120-090 for end of eligibility:

(a) Applies under the current opening of the claim:

(b) Has previously caused an end of eligibility under the current opening of the claim, except as provided under OAR 436-120.095; or

(c) Has previously caused an end of eligibility under a previous opening of the claim and reasonably still applies to the determination of eligibility under the current opening of the claim.

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436-120-060 Contact of Worker. Determination of Eligibility and Start of Vocational Assistance

(1) The insurer shall contact a worker with a claim for a disabling compensable injury to determine the need for vocational assistance and to inform the worker of that purpose. This contact shall occur within five days after the earliest of the following:

(a) Having knowledge of the worker's likely need for vocational assistance from a medical or investigation report or otherwise.

(b) The 60th consecutive day the worker has been off work since the date of the injury or claim for aggravation.

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(c) The 120th day from the date of the injury or claim for aggravation if the worker then is not working or is receiving temporary partial disability payments under ORS 656.212, and a determination under ORS 656.268 has not yet been made.

(2) As soon as possible, and not more than 30 days after the contact under section (1) of this rule, the insurer shall determine whether the worker is eligible for vocational assistance. The individual making this determination for the insurer shall hold certification under OAR 436-120-200.

(3) Upon determining the worker is eligible the insurer shall select a vocational assistance provider and cause vocational assistance to begin.

(4) If the worker has been determined ineligible, and the insurer subsequently receives knowledge of the worker's likely need for vocational assistance, the insurer shall then redetermine, by certified staff, whether the worker is eligible.

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436-120-070 Selection of Vocational Assistance Provider, Payment for Services of Provider

(1) The insurer may provide vocational assistance by its own certified staff if the insurer holds authorization as a vocational assistance provider under OAR 436-120-200.

(2) The insurer may assign a worker for one or more vocational assistance services to a vocational rehabilitation organization, or another insurer, holding authorization as a vocational assistance provider under OAR 436-120-200. The insurer may also utilize an authorized vocational assistance provider, instead of the insurer's own certified staff, for determining a worker's eligibility for vocational assistance.

(3) The selection of a vocational assistance provider for a worker is at the discretion of the insurer, except that it shall take into consideration the ability of the provider to meet the apparent needs of the worker for specific vocational Assistance services. Upon an objection by the worker to the insurer's first selection of a provider, whether it be the insurer itself or another provider, the insurer without Unreasonable delay shall assign the worker to another provider. An objection of the worker to any selection of a provider after the first selection shall be resolved pursuant to OAR 436-120-210. Nothing in this section precludes an effort by the insurer to ascertain the reason for the worker's objection and to attempt to resolve the worker's dissatisfaction.

(4) In accordance with ORS 656.258, if the insurer assigns a worker to a vocational assistance provider for vocational assistance services or determining the worker's eligibility for vocational assistance, the insurer shall pay, within 60 days of receipt, the provider's billings duly rendered under the agreement between the insurer and the provider. The insurer shall not deny payment on the grounds that the worker was not eligible for the assistance, if the provider performed the services in good faith without knowledge of the ineligibility.

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436-120-090 End of Eligibility for Vocational Assistance

The eligibility of a worker for vocational assistance will end if any of the following conditions applies:

- (1) No further vocational assistance is available because of the conditions and limits for vocational assistance under these rules.
- (2) The worker without reasonable cause has failed to inform the insurer pursuant to OAR 436-61-020 of the attending physician's release.
- (3) The worker's lack of suitable employment is no longer due to the injury. Under ORS 656.268(2), however, if the attending physician has approved the worker's return to regular employment and there is a labor dispute in progress at the place of employment, the refusal of the worker to return to that employment will not cause the loss of any vocational assistance available under these rules.
- (4) The worker has been employed in suitable employment after the injury or claim for aggravation for 60 days, or such longer period as may be required under OAR 436-120-100(3) to complete return-to-work follow-up.
- (5) The worker's suitable employment after the injury or claim for aggravation ended for a reason unrelated to the injury.
- (6) The worker has refused an offer of suitable employment, or has failed to fully participate in available light-duty work intended to result in suitable employment.
- (7) The worker has declined vocational assistance, has become unavailable in Oregon for vocational assistance, or has retired.
- (8) The worker has failed, after written warning, to fully participate in a vocational evaluation required by the insurer, or to provide requested information which is material to such an evaluation.
- (9) The worker has failed, after written warning, to cooperate in the development of a return-to-work plan.
- (10) The worker has failed, after written warning, to fully participate in an established return-to-work plan.
- (11) The worker has stopped attending training without notifying either the vocational assistance provider or the insurer.
- (12) The worker's lack of suitable employment cannot be resolved by currently providing vocational assistance.
- (13) The worker has misrepresented a matter which was material to the provision of vocational assistance.
- (14) The worker has been determined under ORS 656.268 to have no permanent disability. However, a subsequent stipulation that permanent disability exists will, unless its

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terms provide otherwise, rescind the end of eligibility under this section, and no interruption in eligibility will be considered to have occurred.

(15) The insurer has denied the claim under which the eligibility was determined.

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436-120-095 Restoring Eligibility for Vocational Assistance

(1) If the circumstances which caused the end of eligibility of a worker under section (7) or (12) of OAR 436-120-090 had a reasonable cause but have changed so that there would no longer be a cause for such an ending of eligibility, the insurer may restore the eligibility of the worker. No interruption in eligibility will be considered to have occurred.

(2) Except as provided in section (1) of this rule, a worker will not again become eligible, under the current opening of a claim, after eligibility has once ended under OAR 436-120-090.

Hist: Filed 12/12/85 as WCD Admin. Order 7-1985. eff. 1/1/86

436-120-100 Direct Employment Plan-Conditions; Limitations

(1) The insurer shall offer a direct employment plan to an eligible worker if the insurer finds one or more direct employment services necessary and sufficient for the worker to achieve earlier return to work or to obtain suitable employment. A finding that direct employment services are sufficient to obtain suitable new employment also requires a finding that the worker has the transferable skills for the new employment.

(2) In selecting vocational objectives for a direct employment plan the preference shall be suitable employment with the employer where the worker sustained the injury or made the claim for aggravation, whichever applies to the current opening of the claim. This preference applies whether the objective be regular, modified or new employment. The insurer shall choose services with that objective until suitable employment with a new employer appears more feasible.

(3) The insurer shall provide return-to-work follow-up during the first 60 days after the worker becomes employed and for as long thereafter, while direct employment services are available under section (S) of this rule, as the insurer finds necessary to help continue the employment.

(4) Direct employment services shall not be provided to a worker after the insurer has found that the obstacle to obtaining suitable employment is the condition of the labor market rather than the worker's disability. This can only be found by establishing that:

(a) The worker's permanent limitations have been defined, as evidenced by a determination under ORS 656.268 or otherwise;

(b) The worker has adequate job search skills; and

(c) Positions of suitable employment exist in a reasonable quantity, regardless of whether the positions are currently available.

(5) Except as provided in section (6) of this rule, direct employment service shall not be provided to a worker after four months from the earliest Determination Order, Opinion and

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Order of a Referee, Order on Review by the Board, decision of the Court of Appeals or stipulation which grants or continues a permanent disability award after the latest opening of the worker's claim. However, if there has been no previous eligibility under that claim opening, the four months will start to run upon the insurer's determining that the worker is eligible.

(6) Section (5) of this rule does not apply to Labor market surveys or job analyses as parts of a vocational evaluation, or to return-to-work follow-up during the first 60 days after the worker becomes employed. Direct employment services may be available beyond the expiry date under section (5) if circumstances caused the worker to have received less than the normal extent of services and to need further services. For pre-1986 injuries such additional services require administrative approval.

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Renumbered from OAR 436-61-141.5/1/85
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436-120-110 Direct Employment Plan-Return-To-Work Plan: Supporting Information; Responsibilities of Worker

(1) If the insurer is developing a direct employment plan, the worker shall cooperate with the insurer in the development of the plan. The return-to-work plan shall contain all of the following.

(a) One or more vocational objectives constituting suitable employment and also representing other such vocational objectives which may be developed in the course of the plan.

(b) A List of the specific services required to reach the objectives.

(c) A starting date and projected ending date of the plan. The plan shall be started on the date indicated, but not earlier than the date the plan has been signed by the worker and the vocational assistance provider, and approved by the insurer.

(d) A statement of the responsibilities of the worker and the vocational assistance provider.

(e) The signatures of the worker, the vocational assistance provider and the insurer, acknowledging their agreement with the plan and completing its development.

(2) If the insurer finds it appropriate to make changes in the return-to-work plan with respect to vocational objectives not represented in the previous plan, or with respect to kind of vocational assistance, the insurer shall prepare a revised plan complete with signatures.

(3) The insurer shall prepare supporting information for the plan, including all of the following:

(a) A description of the worker's current medical condition, relating the worker's limitations to the vocational objectives.

(b) A description of the worker's education and work history, including job durations and wages.

(c) A description of the worker's transferable skills, if new employment is a vocational objective, relating the skills to the new employment and also to the education and work history.

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- (d) The results of vocational testing, if any, which relate to the vocational objectives.
 - (e) A summary of labor market information which relates to the vocational objectives.
 - (f) If a pre-1986 injury, a description of the efforts made to obtain reinstatement of the worker with the employer. This description shall include the consideration given to possible employer assistance under the rules for the Workers' Reemployment Reserve.
 - (g) Other information which is relevant and material.
- (4) When the worker returns to work before end of vocational assistance eligibility, the insurer shall obtain a job analysis and review the suitability of the job in the light of the most recent evaluation of the worker's physical capacities. The job analysis shall be made, and signed, by the vocational assistance provider and based on a visit to the worksite, unless the worksite is not reasonably accessible. A review of an existing job description may constitute part of the job analysis.
- (5) The responsibilities of the worker are to maintain contact with the vocational assistance provider as required in the plan, and to fully participate in plan services.

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Amended 12/12/85 as WCD Admin. Order 7-1985. eff. 1/1/86

436-120-120 Training Plan-Conditions; Limitations

- (1) The insurer shall offer a training plan to an eligible worker if the insurer finds that:
 - (a) A direct employment plan is not sufficient for the worker to obtain suitable employment, other than because of the condition of the labor market; and
 - (b) One or more kinds of training are sufficient for obtaining suitable employment.
- (2) The insurer's selection of the particular vocational objectives and training shall attempt to minimize the length and cost of training to prepare the worker for suitable employment.
- (3) Basic education shall be limited to a duration of six months, and on-the-job training or skills training to a duration of 12 months.
- (4) Training of any and all kinds, including but not limited to basic education, shall be limited to an aggregate duration of 16 months, other than for a worker with an exceptional disability. Disability involving the complete loss, or loss of use, of two or more limbs will be considered exceptional, and such extent of disability shall be the standard for determining whether other disabilities are exceptional under this section. For pre-1986 injuries the determination of whether a disability is exceptional requires administrative approval.
- (5) On-the-job training shall be the first option the insurer shall consider in developing a training plan. Skills training shall be considered before formal training.
- (6) The insurer shall provide direct employment services through the last two months of training.
- (7) The insurer is not required to provide any further training to a worker who has

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completed one training plan, unless the additional training is found necessary because of changes in the worker's limitations or because of the inadequacy of the previous plan to prepare the worker for suitable employment. For pre-1986 injuries the additional training requires administrative approval.

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**436-120-130 Training Plan-Return-to-Work Plan; Supporting Information;
Responsibilities of Worker and Provider**

(1) If the insurer is developing a training plan, the worker shall cooperate with the insurer in the development of the plan. The return-to-work plan shall contain all of the following:

(a) Each of the items listed in OAR 436-120-110(1). However, the vocational objectives shall be specific and in accordance with OAR 436-120-120(2), rather than representative.

(b) Identification of each training facility.

(c) The starting and ending dates for training.

(d) The curriculum for the training, grouped by term or program.

(2) If the insurer finds it appropriate to make changes in the return-to-work plan with respect to vocational objective or kind of vocational assistance, the insurer shall develop a revised plan complete with signatures.

(3) The insurer shall prepare supporting information for the plan, including both of the following:

(a) Each of the items listed in OAR 436-120-110(3).

(b) A job analysis made, and signed, by the vocational assistance provider and based on a visit to a worksite comparable to what the worker could expect at the completion of training.

(4) The responsibilities of the worker are as follows:

(a) The worker shall maintain contact with the vocational assistance provider as required in the plan, and fully participate in plan services.

(b) In formal training, the worker shall take the maximum courseload consistent with the worker's capabilities. This normally will be at least 15 credit hours per term or nine hours per summer term, or the equivalent courseload at the particular training facility. Normally, 12 credit hours will be an acceptable courseload for one term if the worker has reduced capabilities because of medical problems, prolonged time since last attending school or need of remedial education. To the extent feasible the courses shall relate to the vocational objective.

(c) The worker shall provide specific training and grade reports as required by the insurer or section (5) of this rule.

(5) For pre-1986 injuries the worker and vocational assistance provider shall also have all of the following responsibilities:

(a) The worker shall provide to the vocational assistance provider, by the fifth day of

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each month, a written training report about the previous month which documents attendance, training progress, and problems or special needs.

(b) The worker shall forward each grade report to the vocational assistance provider within 10 days of the worker's receipt of the report.

(e) The vocational assistance provider shall visit each training site to establish the curriculum and assist the worker in enrollment. The provider shall contact the worker, trainers and training facility counselors to the extent considered necessary to assure that the worker's participation and progress in the training meet the requirements of these rules and is satisfactory to achieve the training plan objective. If the training site is outside of Oregon or is otherwise not reasonably accessible, telephone contact should be used. If the vocational assistance provider fails to reasonably verify the worker's participation and progress in accordance with this subsection and additional costs thereby result, the insurer may be required to bear the additional costs, including additional costs under OAR 436-120.230(4).

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436-120-140 Training Plan-End of Training Other than by Completion

(1) The insurer shall end training if any of the following applies:

(a) The insurer determines that the work which is the vocational objective could not be performed adequately by the worker because of a change to capabilities or otherwise.

(b) The worker's performance in the training falls below the level which is satisfactory to obtain employment in the field which is the vocational objective. In an academic program, failure for two consecutive grading periods to maintain at least a 2.00 cumulative grade point average, or failure for two grading periods to complete the minimum credit hours required under the training plan, is prima facie evidence of unsatisfactory performance.

(c) The worker has failed to cooperate in meeting the requirements of the training plan.

(d) The worker is not enrolled and actively engaged in the training. However, none of the following will be considered as ending the worker's training status:

(A) A regularly scheduled break of not more than six weeks between fixed school terms.

(B) A break of not more than two weeks between the end of one kind of training and the start of another kind, such as on-the-job training, for which the starting date is flexible.

(C) A period of illness or of accident recuperation which does not prevent completion of training by the planned date.

(e) The worker has obtained suitable employment.

(f) Any of the conditions under OAR 436-120-090 for ending eligibility applies.

(2) In the case of a worker who is enrolled and actively engaged in training, the insurer shall give written warning of an anticipated ending of training under section (1) of this rule. This shall state the reason, the relevant and material rules and the corrective action needed within a specified time to avoid the ending of training. Normally the warning shall be given at least 10

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days before the anticipated ending of training. If the worker's performance in training falls below the level which is satisfactory, the warning shall be given at the end of the first grading period of unsatisfactory performance.

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436-120-150 Direct Worker Purchases

(1) The insurer shall offer goods, services and allowances, called "direct worker purchases," to an eligible worker as provided in this rule. Direct worker purchases shall be offered if, and as, the insurer finds them to be necessary elements of a vocational evaluation, direct employment services or training services: or, necessary to the worker's participation in those services: or, necessary to meet the requirements of obtained employment. In making this determination of necessity, the insurer shall consider, among all factors, the anticipated financial obligations of the worker as compared with obligations before the claim, and the current, after-tax, family income, including temporary disability compensation, as compared with income before the claim. Except for purchases under subsections (2)(a) and (c) of this rule, the anticipated obligations must be found greater, or the current income less, to find the purchases necessary. The worker shall provide the information reasonably requested for determining necessity.

(2) All of the kinds of direct worker purchases are categorized below, with their conditions and limits. Also, for pre-1986 injuries, OAR 436-120-220(5) prescribes further conditions for some purchases over \$500. "Direct worker purchases" includes partial purchase, least, rental and payment. The categories of direct worker purchases are as follows:

(a) Tuition, fees, books and supplies for training or studies. The items shall have been identified as mandatory by the instructional facility or employer, whichever applies, and shall pertain to one of the following:

(A) Training.

(B) Under a direct employment plan, a class necessary to meet the requirements of an available job.

(C) Vocational or academic studies, or basic education, for a worker not medically stationary, to enable earlier return to work of a worker not needing training, or earlier completion of training of a worker not yet capable of fully participating in training.

(b) Travel expenses for transportation, meals and lodging required for participation in vocational assistance. Conditions and rates for payment of travel expenses are as follows:

(A) Transportation. Costs shall be paid at public transportation rates when public transportation is available. Otherwise, private car mileage shall be paid, at \$.14 per mile. Mileage payment in conjunction with moving expenses shall be allowed only for one car and for a single one-way trip. Costs incidental to the private car mileage, such as parking fees, also shall be paid.

(B) Meals, nonovernight travel. Actual meal costs up to a total of \$10 shall be paid for a day during which the worker was away from home for at least 10 hours.

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(C) Meals and lodging, overnight travel. This travel requires the insurer's prior authorization for the specific trip. Actual lodging costs up to \$25.50 per day, with receipts, shall be paid. Actual meal costs, with no receipts required, shall be paid up to \$4 for breakfast, \$4.50 for lunch and \$10 for dinner.

(D) Special travel costs. Payment shall be made in excess of the amounts specified in paragraphs (A), (B) and (C) of this subsection when special transportation or lodging is necessary because of the physical needs of the worker, or when the insurer finds that prevailing costs in the travel area are substantially higher than average.

(c) Tools and equipment for training or obtained employment. The items shall be limited to those which are mandatory for the training or initial employment, such as starter sets- Purchases shall not include what the trainer or employer ordinarily would provide, what the worker possesses or, in the case of obtained employment, what the worker could reasonably be expected to provide.

(d) Clothing required for participation in vocational assistance or for obtained employment. Purchases shall not include what the trainer or employer would provide. In determining whether a purchase is necessary, the insurer shall consider the, clothing the worker possesses and the appropriateness for the plan's vocational objective of the clothing proposed for purchase. Purchases for training shall be limited to the specialized clothing not possessed by the worker but required for the job which is the vocational objective.

(e) Moving expenses. Payment requires that the worker have obtained employment outside commuting distance, or that moving is the most feasible and economical way for the worker to participate in training. Payment shall be limited to covering the moving of household goods weighing in total not more than 10,000 pounds. In determining the necessity of paying moving expenses the insurer shall consider the possible availability of employment which does not require moving, or which requires less than the proposed moving distance. The insurer shall inform the worker that payment for moving expenses is limited to a single one-way trip, unless an exception is made for unusual circumstances. For pre-1986 injuries the exception requires administrative approval.

(f) Second residence allowance. The purpose of the second residence must be to enable the worker to participate in training outside commuting distance. The allowance shall equal the rental expense reasonably necessary, plus not more than \$100 per month toward all other expenses, excluding refundable deposits, of the second residence which are additional to the continuing expenses of the primary residence.

(g) Rental allowance for primary residence. This allowance shall be limited to first and last months' rent and requires the worker to have changed residence for training or obtained employment.

(h) Medical examinations and psychological evaluations. Payment requires that these be for conditions not related to the compensable injury and for determining the worker's ability to participate in vocational assistance.

(i) Dental work, and eyeglasses, hearing aids and other prosthetic devices. Payment requires that these be for conditions not related to the compensable injury and for enabling the worker to obtain suitable employment.

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(j) Dues and fees of a Labor union. Payment shall be limited to initiation fees, or back dues and one month's current dues, of a labor union which is the bargaining agent for the employment obtained by the worker.

(k) Car repairs, including necessary replacement parts. Payment for car repairs requires that there be no reasonable alternative for enabling the worker to participate in vocational assistance or accept an available job. The car must already be in generally good condition and usable, after the repairs, for the reasonable duration of vocational assistance. Only one car may be the subject of repairs. Car repair costs normally are limited to \$800.

(l) Car rental, lease or purchase. This requires that there be no reasonable alternative for enabling the worker to participate in vocational assistance or accept an available job. The cost under this category normally is limited to \$2,000. For pre-1986 injuries administrative approval is required, and the request for approval shall explain why the preferred alternative of paying up to \$800 for car repair costs is not feasible.

(m) Child and disabled adult care services. These are payable, at rates not exceeding prevailing rates if the services are required for the worker to participate in vocational assistance.

(n) Living expense allowance during vocational evaluation. This allowance requires that the worker be involved in a vocational evaluation at least five hours daily for four or more consecutive days, and not be receiving temporary disability payments or equivalent income. Permanent partial disability award payments will be disregarded. The allowance shall not exceed what the worker would receive for temporary total disability if the worker's claim were reopened.

(o) Work adjustment cost. Payment normally is limited to covering necessary work adjustment activity for eight weeks. For pre-1986 injuries administrative approval is required for a longer period.

(p) Any other direct worker purchase the insurer considers necessary under the standards of section (I) of this section. For pre-1986 injuries administrative approval is required beyond a total of 5500 for this category.

(3) Administrative approvals under this rule will be based on whether the purchases are necessary under the standards of section (1) of this rule. The insurer's request for administrative approval shall be accompanied by information showing such necessity.

(4) Direct worker purchases shall not include purchase of real property, payment of fines or other penalties, or payment of additional driver's license costs attributable to problems with driving record.

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Amended 12/12/85 as WCD Admin. Order 7-1985. eff. 1/1/86

436-120-160 Notices to Worker and Department

(1) The insurer shall so notify a worker in writing, by means of the return-to-work plan or otherwise, whenever the insurer:

(a) Determines under OAR 436-120-060 that the worker is eligible or ineligible for vocational assistance. However, no notice of ineligibility is required if the worker was deter-

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mined ineligible because of return to regular employment with the employer.

(b) Determines the kind of vocational assistance to be provided.

(c) Selects a vocational assistance provider.

(d) Determines starting or ending dates for training.

(e) Denies particular or further vocational assistance, and the worker then indicates dissatisfaction about the nature or extent of vocational assistance which will be provided.

(f) Ends training, whether or not the insurer anticipates resumption of training.

(g) Ends eligibility for vocational assistance.

(2) A warning of anticipated ending of training other than by completion as planned shall be given as provided under OAR 436.120-140(2).

(3) Every notice stating the worker's ineligibility for vocational assistance, denying particular or further vocational assistance, or ending eligibility for vocational assistance, shall contain a brief explanation of the decision, a citation of the relevant and material rules, and an explanation of the worker's appeal rights. The equivalent of the following shall be used to explain the appeal rights: "If you disagree with this decision, you should contact (use appropriate reference to the insurer). If you remain dissatisfied, you should contact Rehabilitation Review Division, Workers' Compensation Department, (use appropriate mailing address)."

(4) Every notice shall be dated and shall state the effective date of the action of which notice is given.

(5) The insurer shall give the same written notice to the Department as to the worker, unless the Director prescribes otherwise. The Director will also prescribe the time and place for giving the notice to the Department.

(6) The Director may prescribe other specific contents for the notices required under this rule.

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Amended 12/12/85 as WCD Admin. Order 7-1985. eff. 1/1/86

436-120-170 Filing of Status Report. Return-to-Work Plan and Supporting Information; Review

(1) The insurer shall file a status report with Rehabilitation Review Division for each worker whom the insurer was required under OAR 436-120-060 to contact about need for vocational assistance. The report shall provide information about the determination of vocational assistance eligibility and the development of a return-to work plan, and other information prescribed by the Director. The insurer shall make the filing as indicated for the first to occur of the following:

(a) The development of a return-to-work plan or the completed negotiation of a wage subsidy contract under the Workers' Reemployment Reserve rules. The filing shall be within ten days after the signing of, and shall be accompanied by, the plan or contract.

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(b) The 135th day after the date of injury or claim for aggravation. The filing shall be no later than that 135th day.

(c) For a pre-1986 injury, the submission of the insurer's first reimbursement request under the claim. The filing shall accompany the request.

(2) The insurer shall make subsequent filings of status reports as prescribed by the Director.

(3) The insurer shall complete the development of a return-to-work plan no later than four months after the determination of eligibility under OAR 436-120-060, and shall file the plan with Rehabilitation Review Division within ten days after such completion. Upon the insurer's request with justification, however, the division may allow more than four months for completion of plan development.

(4) If the plan is subsequently changed with respect to vocational objective or kind of vocational assistance, the insurer shall file the amended plan with Rehabilitation Review Division within ten days after completing the development of the amended plan. Related vocational objectives developed in the course of a direct employment plan, as provided in OAR 436-120-110(1)(a), will not require filing of an amended plan.

(5) Unless the Director prescribes otherwise and so notifies the insurer, an insurer shall include with its filings of return-to-work plans the supporting information for the plan. In determining whether a particular insurer will not be required to file the supporting information, the Director will consider the Department's findings on conformance to these rules of previous plan and plan support filings of the insurer or the insurer group with which the insurer is affiliated.

(6) To the extent the Director considers necessary, Rehabilitation Review Division will review return-to-work plans and the supporting information for conformance to these rules. If the Division notifies an insurer that a plan or its supporting information does not conform to these rules, the insurer shall respond with appropriate changes or reasons why no change should be made. Pursuant to OAR 436-120-210(6), the Director may order the insurer to provide specified vocational assistance.

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436-120-180 Informing Worker of Rights and Responsibilities

(1) The insurer shall inform a worker, at the indicated times, of the following matters:

(a) The worker's rights and responsibilities, and the procedures for resolving any dissatisfaction of the worker with an action of the insurer or the Department, regarding vocational assistance. This information shall be given no later than the time the insurer informs the worker of the eligibility determination.

(b) Employment reinstatement matters, as provided under OAR 436-120-020.

(c) The assistance available to employers from the Workers' Reemployment Reserve. This information shall be given at the time of acceptance of the claim or claim for aggravation.

(2) The Director may prescribe, as the means for satisfying some or all of the

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requirements of this rule, that the insurer furnish workers with specified written material at specified times.

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436-120-190 Other Obligations of insurers and the Department

(1) The insurer shall provide the information the Department needs under these rules about specific claims and about the insurer's vocational assistance program including vocational assistance cost information, as prescribed by the Director.

(2) Upon written request by a worker, a worker's authorized representative or a worker's attending physician, that individual may review the vocational file of the insurer or the Department. The insurer may review the Department's file.

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436-120-200 Authorization of Vocational Assistance Providers: Certification of Vocational Assistance Staff

(1) A vocational assistance provider must hold an authorization from the Director under this section. To become authorized the provider shall meet the requirements prescribed by the Director for its technical services and its vocational assistance staff shall each hold certification by the Director under section (8) of this rule. The provider also shall meet other applicable state and federal business requirements.

(2) The application of a vocational assistance provider for authorization shall be as prescribed by the Director, and shall include the provider's roster of certified staff and proposal for its technical services. The authorization will limit the provider to providing specified kinds of services, as determined by the Director's evaluation of the proposal for technical services and of the certifications of staff. An insurer making the prescribed application by April 1, 1986, and receiving approval of that application, will be considered to have been an authorized vocational assistance provider from January 1, 1986.

(3) The Director is not obligated to look beyond the completed application and the Department's certification records to approve or deny authorization. The Director may, subject to appeal under ORS 656.704(2), deny, suspend or revoke the authorization of a vocational assistance provider if the Director finds:

- (a) The application is not adequately supported by the proposal for technical services and by the certifications of staff;
- (b) The proposal for technical services does not reflect the applicant's true capabilities;
- (c) The provider has failed to maintain certified staff as indicated in its proposal for technical services:

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(d) The provider has failed to maintain on file with Rehabilitation Review Division a correct current roster of certified staff.

(e) The provider has failed to meet applicable state or federal business requirements;

(f) The provider has committed fraud or misrepresentation, or has made a serious error or omission, in connection with an application or report, or the business activities or responsibilities of the provider or its staff under these or other rules of the Department:

(g) The provider has with knowledge and intent provided or withheld any vocational assistance in violation of these rules, or any employer assistance in violation of the Workers' Reemployment Reserve rules; or

(h) The provider has failed to submit timely, adequate and accurate reports to an insurer or the Department, as applicable.

(4) Immediately upon a suspension or revocation of the authorization of a vocational assistance provider, insurers shall reassign the affected workers to other authorized providers.

(5) The Department periodically will provide to insurers and vocational assistance providers a list of authorized providers. The list will include the date of authorization or change in authorization status, and the kinds of services for which the provider is authorized.

(6) To maintain its authorization, a vocational assistance provider shall apply before the expiry of the existing authorization for continuation of its authorization, as prescribed by the Director. The Director will not require a continuation of a provider's authorization more often than annually. Denial of continuation of an authorization will be considered a revocation.

(7) Vocational assistance staff, and individuals making determinations of a worker's eligibility for vocational assistance, are each required to hold a certification from the Director under section (8) of this rule. Each vocational assistance provider shall maintain on file with Rehabilitation Review Division a correct current roster of certified staff.

(8) To become certified, an individual shall furnish an application with documentation, as prescribed by the Director, which demonstrates that the individual meets the requirements under section (9) of this rule.

(9) The qualification requirements for an individual to become certified are stated below in subsections (a) to (d). Equivalent experience, as determined by the Director, may be substituted for a required degree. The Director will make all of the evaluations of qualifications, including the determinations on whether particular experience is related to vocational rehabilitation.

(a) Full certification. This allows the individual to provide all vocational assistance services except vocational testing and work evaluation. Full certification requires a master's degree in vocational rehabilitation: or, a master's degree in a field related to vocational rehabilitation, and one year of experience demonstrating a working knowledge of vocational evaluation and development of individualized return-to-work plans; or, a bachelor's degree, and two years of such experience. Regardless of the foregoing qualification requirements, an individual will be considered qualified for full certification if accredited as a "Certified Rehabilitation Counselor (CRC)" by the Commission on Rehabilitation Counselor Certification: as a "Certified Insurance Rehabilitation Specialist (CIRS)" by the Certified Insurance

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Rehabilitation Specialist Commission: or as a "Certified Vocational Evaluation Specialist (CVE)" or "Certified Work Adjustment Specialist (CWA)" by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(b) Conditional certification. This allows the individual to provide, under the conditions specified in this subsection the same services as allowed by full certification or certification for work evaluation, respectively. The following conditions apply to conditional certification:

(A) The individual shall work under the direct supervision of a designated staff individual who holds full certification or certification for work evaluation, respectively, and who cosigns all vocational and billing reports of the conditionally certified individual.

(B) The vocational assistance staff of the provider must comprise at least one individual with full certification or certification for work evaluation for each individual with the respective conditional certification.

(C) With respect to full certification services, the individual shall have the same education as for full certification but may lack up to two years of the qualifying experience. The deficit in qualifying experience will be canceled at the rate of one month for each conforming direct employment or training plan developed by the individual for return to work with a new employer, and filed with Rehabilitation Review Division. Upon the cancellation of the entire deficit within two years under the conditional certification, as then verified to the Director by the supervising counselor or counselors, the individual will receive full certification. Otherwise, the conditional certification will expire at the end of two years, and the conditions for subsequent certification will be based on the Director's evaluation of further qualifications needed.

(D) With respect to work evaluation services, the individual shall have the same education as for regular certification but may lack up to one year of the qualifying experience. The deficit in qualifying experience will be canceled at the rate of one month for each work evaluation completed by the individual and cosigned by the supervising staff individual. Upon the cancellation of the entire deficit within one year under the conditional certification, as then verified to the Director by the supervising staff individual or individuals, the individual will receive certification for work evaluation. Otherwise, the conditional certification will expire at the end of one year, and the conditions for subsequent certification will be based on the Director's evaluation of further qualifications needed.

(c) Limited certification. This allows the individual to determine a worker's eligibility for vocational assistance and to provide the following direct employment services: assistance to achieve earlier return to work with the employer where the worker sustained the injury or made the claim for aggravation: job search skills instruction: job development: return-to-work follow-up, labor market survey and job analysis. This certification requires a high school diploma or the equivalent, and one year of experience demonstrating a working knowledge of processing worker's compensation claims, or in any one or more of job development, employe recruitment and selection, job search skills instruction or a related field.

(d) Certification for work evaluation. This certification requires a master's degree with an emphasis on work evaluation; or, a master's degree in counseling, psychology or a closely related discipline, and one year of experience in work evaluation: or, a bachelor's degree, and two years of experience in work evaluation. In addition, the individual shall hold authorization by the appropriate bodes other than the Department to administer the relevant tats

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(10) To do vocational testing but make no analysis of the test results in terms of implications for vocational assistance, an individual does not need certification under section (8) of this rule but shall hold authorization by the appropriate bodies other than the Department to administer the relevant tests. A vocational assistance provider which administers vocational tests shall maintain documentation of this authorization.

(11) The following applies to individuals holding the indicated certification immediately before January 1, 1986:

(a) An individual then holding level A certification will automatically receive full certification on January 1, 1986.

(b) An individual then holding level C certification will automatically receive limited certification on January 1, 1986.

(c) An individual then holding certification for work evaluation will continue to hold that certification on January 1, 1986.

(d) An individual then holding conditional level B, regular level B or conditional level A certification will continue to hold that certification on January 1, 1986. The individual may apply at any time before January 1, 1988, for recertification under the current rules. If such recertification does not occur the existing certification will automatically expire on December 31, 1987.

(12) The Director may, subject to appeal under ORS -656.704(2), deny, suspend or revoke the certification of an individual if the Director finds that the individual:

(a) Has committed fraud or misrepresentation, or has made a serious error or omission, in connection with an application or report, or the vocational assistance activities or responsibilities of a vocational assistance provider under these or other rules of the Department, or under a comparable program in another state;

(b) Has undertaken the responsibility for vocational assistance to a worker despite having a material conflict of interest, or relevant and material prejudice, concerning the worker,

(c) Has with knowledge and intent provided or withheld any vocational assistance in violation of these rules, or any employer assistance in violation of the Workers' Reemployment Reserve rules;

(d) Has engaged in collusion to submit false or misleading information to an insurer, a vocational assistance provider or the Department;

(e) Has engaged in collusion to violate these rules or other rules of the Department;

(f) Has willfully or negligently divulged a professional secret concerning a worker, or

(g) Has otherwise failed to meet generally accepted standards of conduct in the vocational rehabilitation profession.

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436-120-210 Resolving Vocational Assistance Disputes; Director's Reviews and Orders

(1) Under ORS 656.283, a worker must first apply to the Director for administrative review of a vocational assistance matter before requesting a hearing on the matter. An order of the Director under section (5) of this rule constitutes such a review,

(2) A worker who is dissatisfied with an action of the insurer in a vocational assistance matter should first attempt to resolve the matter with the insurer. The insurer shall promptly respond to the worker's request.

(3) A worker with unresolved dissatisfaction about a vocational assistance matter may request Rehabilitation Review Division to assist in resolving the matter. The request shall specify the reasons for dissatisfaction. The division will promptly respond to the request.

(4) If Rehabilitation Review Division is not otherwise able to achieve resolution of a worker's dissatisfaction about a vocational assistance matter, the division may convene a conference of the parties. The division may require attendance by particular parties. The purpose of the conference will be to provide an informal opportunity for the parties to resolve the worker's dissatisfaction.

(5) If a worker's dissatisfaction about a vocational assistance matter, expressed with reasons, has not been resolved by a conference or otherwise, the Director will review the matter and issue a written decision within a reasonable time. This decision will be the final order of the Director in the matter, as prescribed in ORS 656.283. Appeal may be made as provided in that statute, but shall not stay compliance with the order.

(6) At any time, regardless of whether a worker has made a request as described in section (3) or a conference has been convened under section (4) of this rule, the Director may order the insurer to provide specified vocational assistance in order to achieve compliance with ORS chapter 656 and these rules. For pre-1986 injuries the order may provide that reimbursement, either partially or totally, will not be made for the costs of the specified vocational assistance or the previous vocational assistance, or both. The purpose of the reimbursement denial would be that the insurer not receive reimbursement for vocational assistance provided other than in accordance with ORS chapter 656 and these rules. Appeal may be made as provided in ORS chapter 656 but shall not stay compliance with the order.

Hist: Filed 12-14-83 as WCD Admin. Order 5-1983. eff. 1-1-84
Renumbered from OAR 436-61-191. 5-1-85
Amended 12-12-85 as WCD Admin. Order 7-1985. eff. 1-1-86

436-120-220 Reimbursement of Vocational Assistance Costs for Pre-1986 Injuries

(1) This rule applies only to pre-1986 injuries, and carries out the provisions of section 15, chapter 600, Oregon laws 1985. The criteria in effect immediately before January 1, 1986, for the reimbursement of insurers' vocational assistance costs have been continued in these rules for such injuries.

(2) The Department will reimburse insurers for costs of vocational assistance with respect to pre-1986 injuries only. Reimbursement is subject to the availability of funds.

(3) The following kinds of reimbursements are the only kinds allowable under these rules:

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- (a) Reimbursement of costs of direct worker purchases under OAR 436-120-150, including necessary costs of repossession.
- (b) Reimbursement of charges for vocational assistance services of vocational assistance providers under assignments made in accordance with OAR 436-120-070, and reimbursement of costs of vocational assistance services provided by certified staff of insurers which are authorized vocational assistance providers. This subsection does not refer to charges or costs relating to determination of a worker's eligibility for vocational assistance.
- (c) Reimbursement of temporary disability compensation as provided in OAR 436-120-250.
- (d) Reimbursement for wage subsidy payments under on-the-job training contracts as described in OAR 436-120-030(3)(a).
- (4) The following procedures and conditions apply to reimbursement for costs of vocational assistance:
- (a) Reimbursement shall only be claimed and made for vocational assistance provided in accordance with ORS chapter 656 and these rules.
- (b) Reimbursement will only be made if the vocational assistance provider was appropriately authorized under OAR 436-120-200, and the providing staff had the appropriate certifications under that rule.
- (c) Reimbursement will only be made if the insurer had authorized the vocational assistance and, before the reimbursement, obtained any required administrative approvals.
- (d) Reimbursement will only be made if the insurer's request for reimbursement is accompanied by the supporting billing reports of the vocational assistance provider and, unless otherwise prescribed by the Director, the supporting vocational progress reports. These reports shall be in the form prescribed by the Director, shall provide information on the worker's vocational progress since the previous report, and shall document the kinds of services, amounts of time spent, costs paid for direct worker purchases, and charges of the provider, as well as other relevant information prescribed by the Director. Requests for reimbursement shall be made in the manner prescribed by the Director. Reimbursement to any particular insurer will be no less often than once in each calendar quarter. This subsection does not apply to reimbursement under OAR 436-120-250 of temporary disability compensation.
- (e) Reimbursement for costs exceeding the respective control figures established by the Director for individual claims will be made only with administrative approval. The Director will establish control figures for vocational assistance staff services, including travel, and for the total of direct worker purchases.

In both cases, the control figures will be separate for vocational assistance involving training and not involving training. These control figures will be set at levels sufficiently high, in the judgment of the Director, to cover at least 90 percent of the cases, according to expenditure data available to the Department or estimated where necessary. An administrative approval under this subsection will be based on whether the costs exceeding the control figure were necessary and not unreasonably high under the circumstances. This subsection does not apply to reimbursement under OAR 436-120-250 of temporary disability compensation.

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(f) The maximum reimbursable hourly rate for professional service hours of vocational assistance staff is \$48 per hour. The maximum reimbursable rate for travel time and waiting time is one-half the rate charged for professional service hours, not to exceed \$24 per hour.

(g) The Department will reimburse for travel expenses for transportation meals and lodging of vocational assistance staff in connection with providing vocational assistance. The conditions and rates for reimbursement are as follows:

(A) Transportation. Private car mileage' will be reimbursed at \$.20 per mile. Costs incidental to the private car mileage, such as parking fees, will also be reimbursed. Travel by commercial carrier will be reimbursed if justified by lower overall cost.

(B) Meals and lodging. Expenses for nonovernight travel will not be reimbursed. For overnight travel, meal and lodging expense will be reimbursed under a 24-hour allowance system. The total allowance, with receipts for commercial lodging, is \$44 for a 24-hour period of travel, increased or decreased by \$1 for each hour of travel more or less than the 24-hour period. The adjustment will be based on the number of hours after rounding to the nearest whole number. For travel without commercial lodging receipts the allowance is \$31.50, with the other conditions remaining the same.

(h) OAR 436-120-250, in addition to this rule, applies to reimbursement for temporary disability compensation.

(i) The insurer shall request reimbursement only of those costs which the insurer has paid. Reimbursed costs shall not be charged by the insurer to the insured employer as claim costs or by any other means. Reimbursements requested by the insurer before the insurer has paid the respective costs are subject to denial or recovery by the Department, in addition to any penalties under ORS chapter 656 and these rules. The insurer's payment check issued within reasonable time for the insurer's internal processing after the payment authorization will be considered payment as of the time of the authorization.

(5) Further procedures and conditions relating to reimbursement for direct worker purchases are as follows:

(a) If the amount of the purchase from a single vendor or for a single item is between \$500 and \$10,000, three competitive quotes shall be obtained. If three quotes are not available, two will suffice with documentation of the effort to obtain three quotes. If only one quote is available, administrative approval is required before making the purchase. The insurer shall keep a written record of the source of each quote received and the quoted amount.

(b) If the amount of the purchase from a single vendor exceeds \$10,000, administrative approval is required before making the purchase. All such single vendor purchases, and all single item purchases exceeding \$10,000 require purchasing by a formal bid process which includes at a minimum, establishing uniform bid specifications advertising for sealed bids, and receiving, analyzing and awarding the bid in a nondiscriminatory manner to the lowest responsible bidder.

(c) The insurer shall not issue multiple orders to circumvent the requirements of this section.

(6) The insurer shall retain right and title to the nonexpendable property paid for under this rule for the period of time that the insurer considers necessary to determine the success of

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the vocational assistance. At the end of that period the insurer shall either assign the right and title to the worker or repossess the property. The following procedures and conditions apply with respect to nonexpendable property paid for under this rule:

(a) If the cost of an individual item of property exceeds \$1,000, the insurer shall insure the property or require that insurance be carried by the worker, and shall maintain inventory control. The insurance requirement applies until the property title is assigned to the worker or the property is repossessed. Inventory record shall be kept for three years after disposition of the property.

(b) Property repossessed by the insurer shall, if feasible, be reassigned to another worker eligible for the property. Unless so reassigned, the property shall be sold within six months and the proceeds transmitted promptly to the Department. If property to which title is held by the insurer suffers an insured loss, the insurance proceeds shall be transmitted promptly to the Department.

(c) If the worker fails to meet the conditions prescribed by the insurer for the care and protection of property in the worker's custody, and the property suffers damage or loss, the insurer shall not replace it.

(7) The insurer and each vocational assistance provider shall maintain cast files, records, reports, receipts and canceled checks documenting vocational assistance costs for which reimbursement has been requested. These records shall be maintained in accordance with OAR 436-50 or for a period of three years after the last reimbursement request.

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Renumbered from OAR 436-61-300. 5/1/85
Amended 12/12/85 as WCD Admin. Order 7-1985. eff. 1/1/86

436-120-230 Temporary Disability Compensation During Training

(1) OAR 436-40 and 436-60, in addition to this rule, apply to payment of awards for permanent disability and payment of temporary disability compensation.

(2) Workers injured after December 31, 1973, are entitled to temporary disability compensation from the insurer while enrolled and actively engaged in training under these rules. During periods when the worker is not enrolled and actively engaged in the training, temporary disability compensation will not be due unless the worker is not medically stationary.

(3) If, for a worker injured after December 31, 1973, the insurer provides training after the issuance of a Determination Order, Opinion and Order of a Referee, Order on Review, or decision of the Court of Appeals, the insurer shall suspend any award payments due under the order and pay temporary disability compensation in accordance with section (2) of this rule. During periods when temporary disability compensation is not due in accordance with section (2) of this rule, the insurer shall resume any suspended award payments. Upon completion or ending of the training, unless the worker then is not medically stationary, the insurer shall stop temporary disability compensation payments and resume any suspended award payments.

(4) Temporary disability compensation paid to a medically stationary worker while the

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worker was not enrolled and actively engaged in training may be recovered through the procedure under ORS 656.268(4).

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 Amended 3-29-77 as WCD .Admin. Order 3-1976. eff. 4-1-76
 Amended 9-29-77 as WCD Admin Order 3-1977. eff. 10-4-77 (Temporary)
 Amended 2-1-78 as WCD Admin. Order 1-1978. eff. 2-1-78
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 Amended 12-12-85 as WCD Admin. Order 7-1985. eff. 1-1-86

436-120-250 Reimbursement of Temporary Disability Compensation Costs for Pre-1986 Injuries

(1) This rule applies only to pre-1986 injuries, and carries out the provisions of section 15, chapter 600, Oregon Laws 1985. The criteria in effect immediately before January 1, 1986, for reimbursement of insurers' vocational assistance costs have been continued in these rules for such injuries.

(2) Subject to all of the conditions of these rules, the Department will reimburse an insurer for the net amount of sums paid in accordance with these rules as temporary disability compensation to a worker during the time enrolled and actively engaged in training after the date the worker became medically stationary.

(3) The insurer shall make application to the Department at the end of each calendar quarter for reimbursement under this rule. The Department will approve the application and reimburse funds after deducting amounts owed the Department, if:

(a) The insurer started vocational assistance in a timely manner as provided in section (5) of this rule: and

(b) The net amount of compensation paid is verifiable upon audit by the Department.

(4) An insurer which has made a timely effort to recover overpayments as provided in OAR 436-120-230(4) may be reimbursed for unrecovered overpayments unless they resulted from the insurer's failure to monitor the training status of the worker. If the insurer recovers an overpayment after reimbursement, the insurer shall repay the Department to the extent of the recovery.

(5) In addition to any other penalties under these rules, the Department, as provided in ORS 656.728 immediately before January 1, 1986, may deny reimbursement if the insurer delayed starting vocational assistance beyond the 14th day after the insurer had receipt of a doctor's report indicating an inability of the worker to return to the former employment, or an investigation report or any other information indicating a need by the worker for vocational assistance.

(6) Whenever reimbursement is denied, the insurer shall not charge the costs of temporary disability compensation to the insured employer by means of assessment, increased premium or change in classification or experience rating, or by any other means.

(7) An insurer aggrieved by a decision of the Department under this rule may request a

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hearing in accordance with ORS 656.704(2), ORS chapter 183 and this rule. The request for hearing must be made within 30 calendar days of the date of the decision. The decision of the Department becomes a final order if not appealed within 30 calendar days. Upon receipt of a request for hearing, the Director will within 30 days affirm or change the decision. If the issues are not resolved by the Director within 30 days, the Director will submit the appeal to Hearings Division for a hearing.

(8) The conduct of hearings arising under this rule, and the judicial review by the Court of Appeals, will be as provided in ORS 183.415 through 183.495, except that:

(a) The Board may promulgate rules for the conduct of these hearings;

(b) The Order of the Referee, under the rules of the Board, will be considered the final order of the Director; and

(c) The Director will have the same right to judicial review of the Order of the Referee as any other person who is adversely affected or aggrieved by the order.

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Amended 5/22/80 as WCD Admin. Order 6-1980, eff. 6/1/80
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Renumbered from OAR 436-61-430, 5/1/85
Amended 12/12/85 as WCD Admin. Order 7-1985, eff. 1/1/86

436-120-255 Audits

Insurers, vocational rehabilitation organizations and other contractors with vocational assistance providers under these rules are subject to periodic program and fiscal audits by the Department. All reimbursements are subject to subsequent audits, and may be disallowed on any of the grounds set forth in these rules. Disallowed reimbursements may be recovered by the Department directly or from future reimbursements. If the Department finds upon audit that procedures which led to disallowed reimbursements are still being used, the Department may withhold further reimbursements until corrections satisfactory to the Department are made.

Hist: Filed 12/12/85 as WCD Admin. Order 7-1985, eff. 1/1/86

436-120-260 Hearings and Litigation on Vocational Assistance

(1) ORS 656.283 and OAR 436-120-210 prescribe conditions for a hearing on a vocational assistance matter.

(2) Insurers are responsible for defending issues involving reimbursement of vocational assistance costs by the Department whenever vocational assistance is an issue for hearing or litigation, unless the Director for good cause agrees otherwise. Insurers are also responsible for paying, without reimbursement, the costs connected with preparing for and defending such issues. The Director may deny reimbursement of vocational assistance costs for failure to comply with this section.

(3) Upon request by any party, the Department will provide a copy of relevant vocational

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assistance documents for use in a hearing.

(4) The Department will permit any of its employes to testify in a hearing on vocational assistance issues upon request by any party, without the need for subpoena or witness fee. However, the party shall be responsible for notification to the Department sufficiently timely to permit the employe's attendance.

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Amended 12/12/85 as WCD Admin. Order 7-1985, eff. 1/1/86

436-120-270 Civil Penalties; Other Sanctions

(1) An insurer failing to comply with these rules may be assessed a civil penalty of not more than \$2,000 for each violation, or \$10,000 in the aggregate for all violations within any three-month period. Each violation, or each day a violation continues, shall be considered a separate violation. These penalties shall be assessed in accordance with ORS 656.745.

(2) Under ORS 656.447 the Director may request the Insurance Commissioner to suspend or revoke the authorization of a guaranty contract insurer which has failed to comply with orders of the Director, the provisions of ORS chapter 656 or any rule promulgated pursuant to that chapter.

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