

*Proposed*  
**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 436, DIVISION 060**

**Note:** Changes are marked to show how the proposed rule wording differs from the temporary rule in effect since Oct. 1, 2020. New text | ~~deleted text~~.

**436-060-0141      Claims for COVID-19 or Exposure to SARS-CoV-2**

**(1) Definitions.**

For the purpose of this rule:

- (a) "COVID-19" means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- (b) "Isolation" means the physical separation and confinement of a person who is infected or reasonably believed to be infected with COVID-19 from nonisolated persons to prevent or limit the transmission of COVID-19 to nonisolated persons.
- (c) "Medical service provider" means a person duly licensed to practice one or more of the healing arts.
- (d) "Presumptive case" means:
  - (A) The person has not tested positive for COVID-19;
  - (B) The person has an acute illness with at least two of the following symptoms: shortness of breath, cough, fever, new loss of smell or taste, or radiographic evidence of viral pneumonia;
  - (C) There is no more likely alternative diagnosis; and
  - (D) The person, within the 14 days before illness onset, had close contact with a confirmed case of COVID-19.
- (e) "Quarantine" means the physical separation and confinement of a person who has been or may have been exposed to COVID-19 or SARS-CoV-2 and who does not show signs or symptoms of COVID-19, from persons who have not been exposed to COVID-19 or SARS-CoV-2, to prevent or limit the transmission of COVID-19 to other persons.
- (f) "SARS-CoV-2" means the strain of coronavirus that causes COVID-19.

**(2) Reasonable investigation.**

Under OAR 436-060-0140(1), insurers must conduct a "reasonable investigation" before denying any claim. For ~~all~~ claims filed on or after Feb. 1, 2021, for COVID-19 or exposure to SARS-CoV-2 ~~on and after Oct. 1, 2020~~, in addition to the requirements of OAR 436-060-0140(1), a reasonable investigation must include: the steps in subsections (a) through (d) of this section. The steps in subsections (a) through (d) are not required if the claim is denied for procedural reasons not related to the worker's exposure to COVID-19 or SARS-CoV-2 (for

ORDER NO. 20-XXX

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

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example, the claim was filed with the wrong insurer, the insurer did not provide coverage, or the worker is nonsubject).

~~(a) Investigating~~Investigate whether ~~there was or not the nature of the worker's employment resulted in a~~ likely exposure to COVID-19 or SARS-CoV-2 that arose out of and in the course of the worker's employment;

~~(b)~~ Investigate the source of the worker's exposure to COVID-19 or SARS-CoV-2, which may involve obtaining a medical or expert opinion, if, before a compensability denial is issued, the worker tests positive for COVID-19 or a medical service provider diagnoses a presumptive case of COVID-19, the insurer is aware of the test results or presumptive diagnosis, and the source of the exposure is unclear;

~~(c)~~ DeterminingDetermine whether the worker did not work for a period of quarantine or isolation -at the direction of a medical service provider, the Oregon Health Authority Public Health Division, a local public health authority as defined in ORS 431.003, or the employer, for purposes of discovering information that may be relevant to the compensability determination; and

~~(e) Obtaining a medical or other expert opinion if, before a compensability denial is issued, the worker tests positive for COVID-19 or a medical service provider diagnoses a presumptive case of COVID-19, the insurer is aware of the test results or presumptive diagnosis, and the source of the exposure is unclear; and~~

~~(d)~~ DeterminingDetermine whether medical services were required as a result of potential workplace exposure to COVID-19 or SARS-CoV-2, even if the worker ultimately did not test positive for COVID-19.

**(3) Auditing and monitoring.**

The director will audit claims for COVID-19 or exposure to SARS-CoV-2 as follows:

(a) Denied claims that were reported to the director under OAR 436-060-0011 before Oct. 1, 2020, will be audited if:

(A) The insurer had reported a total of five or more claims for COVID-19 or exposure to SARS-CoV-2 before Oct. 1, 2020, regardless of whether those claims were accepted or denied; and

(B) The denial is final by operation of law by the date of the audit.

(b) The director retains authority to audit other insurers and claims as the director determines appropriate.

(c) If the director audits a claim filed before Oct. 1, 2020, the director's audit will focus on whether a reasonable investigation was conducted as required by OAR 436-060-0140(1).

(d) If the director audits a claim filed on or after Oct. 1, 2020, but before Feb. 1, 2021, the director's audit will focus on, but not necessarily be limited to, whether the insurer complied with OAR 436-060-0141(2), effective 10/1/2020 (WCD Admin. Order 20-061).

**ORDER NO. 20-XXX**

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

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(e) If the director audits a claim filed on or after Feb. 1, 2021, the director's audit will focus on, but not necessarily be limited to, whether the insurer complied with section (2) of this rule.

(f) Failure to comply with requirements in ORS chapter 656, OAR chapter 436, or orders of the director may subject an insurer to civil penalties under ORS 656.745(2). If, as of Oct. 1, 2020, an insurer has reported to the director, as required by OAR 436-060-0011, five or more claims for COVID-19 or exposure to SARS-CoV-2, regardless of whether those claims have been accepted or denied, the director will audit the insurer's files for all denied claims for COVID-19 or exposure to SARS-CoV-2, for which the denial has become final by operation of law by the date of audit.

(a) For claims filed before Oct. 1, 2020, the director's audit will focus on whether the insurer conducted a reasonable investigation as required by OAR 436-060-0140(1).

(b) For claims filed on and after Oct. 1, 2020, the director's audit will focus on whether the insurer complied with section (2) of this rule.

(c) The director retains the authority to audit additional insurers and claim files as the director determines appropriate.

(d) Failure to comply with requirements in ORS chapter 656, OAR chapter 436, or orders of the director subjects the insurer to civil penalties under ORS 656.745(2).

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.262, 656.745

Hist: Adopted 9/30/20 as WCD Admin. Order 20-061, eff. 10/1/20 (temp)

Adopted xx/xx/xx as WCD Admin. Order 20-XXX, eff. 2/1/21