Oregon Administrative Rule Revision
Chapter 436, Division 120

Meeting Minutes
Rules Advisory Committee Meeting
January 30, 2024

Location of meeting: 350 Winter St. NE, Salem, OR; Virtual Teams meeting

Stakeholders attending:

Stakeholders (RSVP'd):	
Elaine Schooler	SAIF
Gene Hullette	Morris O. Nelson & Sons, Inc.
Jenny Bates	SAIF
Lauren Grace	Oregon Law Center
Steven Bennett	American Property Casualty Insurance Association
Shane deGraffenried-Smith	SAIF
Susan Quinones	City of Portland
Dan Schmelling	SAIF
Keith Semple	Oregon Trial Lawyers Association
Jovanna Patrick	Oregon Trial Lawyers Association
Heidi Melton	Oregon State
Kevin Anderson	SBH Legal
Connie Whelchel	KPD Insurance
John Maitland	New Seasons Market
Joe Silva	SAIF
Jenny Walsh	Providence
Julie Riddle	Enterprise Compliance
Nargess Shadbeh	Oregon Law Center

Department staff members attending:

Matt West – WCD Interim Administrator
Kirsten Schrock – Resolution Manager
Charity Steffen – Employment Services Manager
Teri Watson – Legislative Coordinator
Barb Belcher – Audit Manager
Troy Painter – Senior Auditor
Summer Tucker – Policy Analyst, Vocational Benefits Rules
Marie Rogers (Loiseau) – Rules Coordinator/Policy Analyst
Matthew Ferrell – Vocational Reviewer

Robert Crymes – Vocational Review
Kristin Anderson – Vocational Reviewer
Maria Venegas - Ombuds for Oregon Workers

Minutes: Marie Rogers (Loiseau) welcomed the committee members, asked the members to provide advice about any fiscal impacts of possible rule changes, and also to advise about effects on racial equity in Oregon. Marie called a roll of attendees, including stakeholders and State of Oregon employees.

NOTE: Additional summary minutes are included below each issue.

Issue 1

Rule: OAR 436-120-0145(2)(a) Vocational Assistance Eligibility
OAR 436-120-0175(5) Redetermining Eligibility for Vocational Assistance
OAR 436-120-0443 Training – General
OAR 436-120-0445 Training Requirements

Issue: Stakeholders have expressed an interest in allowing some vocational assistance benefits for workers who are not authorized to work in the United States. These workers are currently ineligible for vocational assistance.

Background:
For a worker to be eligible for vocational assistance, they must meet all the conditions listed in OAR 436-120-0145(2). One of the conditions for eligibility in this rule is that the worker must be authorized to work in the United States. Even if the worker meets all the other eligibility requirements, if they are not authorized, they will not be eligible for vocational assistance.

If the worker later becomes authorized to work in the United States, they can request redetermination of their eligibility under OAR 436-120-0175(5). The worker must request redetermination within six months of receipt of the notice of ineligibility or end of eligibility, and submit evidence that they are awaiting a decision by the U.S. Citizenship and Immigration Services (USCIS). The worker must provide the insurer with a copy of any decision by the USCIS within 30 days of receipt. Since the worker must request redetermination and apply for authorization to work in the United States within a six month timeframe, this may limit the number of workers who are able to access vocational assistance by requesting redetermination.

Based on ineligibility notices reported to the division, from 2013 to 2022, 3,300 claims were found ineligible for vocational assistance. Of that total, 5.79 percent (191 claims) were found ineligible based on the worker not being authorized to work in the United States.[1]

ORS chapter 656 does not require workers to be authorized to work in the United States to receive vocational assistance. However, under the Immigration Reform and Control Act of 1986 (IRCA), it is unlawful to recruit, hire, employ, or refer for employment a person known to be not authorized to work in the United States.

Some vocational assistance benefits directly relate to obtaining employment (e.g., employment counseling, job search skills instructions, and job placement assistance). Providing some of these benefits may conflict with the IRCA. However, other types of benefits, such as education or formal training, could potentially be provided.

[1] *Source: Information Technology and Research Section, Department of Consumer and Business Services Note: Some claims are found ineligible multiple times. The count of 191 claims was based on only counting one notice of ineligibility: either the most recent notice of ineligibility based on authorization status, or an earlier notice of ineligibility due to authorization status.*

Stakeholders have expressed interest in discussing whether the rule should be changed to allow providing some vocational assistance benefits to workers who are not authorized to work in the United States. For this discussion, the division invites stakeholders to provide input on what kinds of vocational benefits could be provided, or feedback on the following options. Additionally, the division invites input on whether the timeframes for requesting redetermination under OAR 436-120-0175(5) are sufficient.

For reference during discussion, the table on page **4** outlines the vocational assistance benefits available to eligible workers.

Options:

1) Amend OAR 436-120-0145 to add a new section that states a worker not authorized to work in the United States is eligible to receive training or direct worker purchases if the following conditions are met:
    - The worker is working towards becoming authorized to work in the United States, and
    - The worker meets all other eligibility requirements for vocational assistance.

2) Amend OAR 436-120-0445 and OAR 436-120-0443 to exclude the following types of benefits if a worker is not authorized to work in the United States:
    - Job placement assistance
    - On-the-job training
    - Occupational skills training

3) Amend OAR 436-120-0700 to include a new direct worker purchase category for expenses related to obtaining authorization to work in the United States. Expenses could include, but not be limited to, U.S. Citizen and Immigration service fees, or legal aid costs.

4) The same as Option 2, but include language that requires the worker to request reimbursement for the expenses.

5) Amend OAR 436-120-0175(5) to:
    - Increase the amount of time the worker has to request redetermination of their eligibility and submit evidence to the insurer that they are awaiting a decision by U.S. Citizen and Immigration Services.
    - Increase the amount of time the worker has to submit a copy of any decision by the United States Citizenship and Immigration Services.

6) Other.
7) No change.

Fiscal Impacts, including cost of compliance for small business:
Insurers, self-insured employers, and service companies would incur increased costs if workers who are not authorized to work in the United States are eligible for vocational assistance. If these workers are eligible for a training plan only, it is estimated there will be an increase in costs for:

- Vocational assistance ($226,000 - $679,000 annually)
- Temporary disability paid during a training plan ($267,000 - $800,000 annually)

Notes on estimated costs:

- The estimates are based on a range of 10 to 30 workers per year who were found ineligible for vocational assistance due to not being authorized to work in the United States.
- Vocational assistance costs were based on the average vocational assistance costs for workers on training plans from 2020-2022, approximately $22,618 per worker.
- Temporary disability was based on two-thirds of the state average weekly wage effective on July 1, 2023 ($1,295.86) and the average number of weeks that temporary disability was paid for workers on training plans in 2022 (about 31 weeks).
- Under the Immigration Reform and Control Act of 1986 (IRCA), it is unlawful to recruit, hire, employ, or refer for employment a person known to be not authorized to work in the United States. Some vocational training benefits, such as job placement services, may conflict with the IRCA. If training benefits are limited to only specific types of benefits, the actual costs of vocational assistance may be lower than these estimates.

Source: Information Technology and Research Section, Department of Consumer and Business Services

How will adoption of this rule affect racial equity in this state?
The Workers' Compensation Division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African American and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, increased access to vocational assistance benefits may benefit these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and noted that Option 4 should read "same as Option 3"—not "same as Option 2." She asked the committee for advice.
- Lauren Grace (in person) stated that she works for the farmworker program with Oregon Law Center and brought this issue forward. She stated that this issue does not only impact farmworkers. She noted that this rule impacts workers in some of the most dangerous jobs, such as agriculture, construction, and forestry. Lauren noted that vocational benefits are one of only two workers' compensation benefits that workers without authorization do not qualify for. Lauren added that when these workers are hurt at work, they are left unable to provide for their families or sometimes return to work before a doctor advises they do so. Lauren noted that clients at the Oregon Law Center who have been injured at work have reported that they feel they gave their best years to their job but are treated as

disposable because there's no way for them to return to work. Lauren noted that IRCA only partially preempts providing vocational assistance, and does not conflict with providing training benefits. Lauren added that excluding unauthorized workers from vocational benefits conflicts with the purpose of IRCA, as excluding them results in unauthorized workers being less expensive for employers. Lauren added that the lower cost associated with these workers could be seen as an incentive for employers to hire unauthorized workers. Lauren noted that Washington State and California do not exclude unauthorized workers from vocational benefits.

- Steven Bennett opposed change to this rule. Steven added that he supports giving full indemnity and medical benefits to unauthorized workers. Steven expressed concerns with spending limited workers' compensation funds on vocational benefits to unauthorized workers in Oregon's limited no fault system. Steven added that he was opposed to using workers' compensation funds on legal fees of unauthorized workers, and believed such an expense to be outside the scope of the workers' compensation system. Steven added that he understands a request to increase the amount of time to request redetermination (Option 5), but reiterated his opposition to any change.
- Shane deGraffenried-Smith commented on the number of eligibility decisions listed in the issue and noted that the numbers may be skewed. He noted that many people impacted by this rule have claims settle before going through an eligibility evaluation. He noted that this could also have an impact on the estimated financial outcome. Shane noted that, regarding Option 1, he did not believe it mattered if workers were in the process of becoming authorized. Shane added that, regarding Option 2, he would consider occupational skills training to be training. For occupational skills training, a college is involved and the worker is not employed by the employer. Shane added that, regarding Option 3 and Option 4, he did not believe the employer should be responsible for costs associated with obtaining authorization. Regarding Option 5, Shane noted that he had seen a claim spanning ten years with three eligibility evaluations taking place during the life of the claim. He noted that the worker in that instance initially did request redetermination within six months which stayed that decision; the worker then came back nine years later. It created a difficult situation to work through. He added that some training for unauthorized workers is available in the form of optional services before ever addressing eligibility. Finally, he added that he believes some workers impacted by this rule are authorized at the time of injury but are no longer authorized when it comes time to evaluate eligibility.
- Jovanna Patrick (in person) noted that many of her clients are unauthorized to work in the United States. She reiterated Shane's point that many workers are authorized to work at the time of injury but lose authorization during the life of their claim. Jovanna noted that many workers come to the United States on visas to work as farmworkers, in fish processing plants, etc. with the intention of returning home when finished working; when these workers are injured, however, they can be left unable to work. She questioned why these workers would then be excluded from training when other policies within the workers' compensation system still apply to them. She added that the goal of the system is to return the worker to pre-injury status to the extent possible and, when that is not possible, to set the worker up so they can do the next thing in life. Jovanna commented regarding an instance in which a worker authorized under a visa suffered a meniscus tear, and their claim was fully accepted. The worker's visa expired, so he was then ineligible

for retraining. That worker was left unable to return home to the job he anticipated having and was unable to reapply for a visa to work in Oregon. Jovanna then addressed earlier comment regarding indemnity and medical benefits; she stated that this is not a matter of deciding which benefits a worker can receive because of the cost to the employer. She noted that giving more indemnity benefits is not a substitute for vocational benefits. She added that these workers, following an accepted work injury, are entitled to indemnity and medical benefits, and should be entitled to at least some vocational benefits. Jovanna added that many of these claims are settled, and these workers' settlements are hurt by the inability to include vocational benefits. She commented that these workers are often newer workers earning lower wages. She added there are limitations on time loss indemnity that they can get for modified duty, and when they're not able to go to work, they are left without a job. Jovanna then addressed the wait time period; with one of her clients, he waited thirteen years for his eligibility evaluation. Jovanna noted that, if that worker had received training benefits right away, he could have worked and contributed over those years. And, if the evaluation had been handled sooner, it would have eliminated the problem of trying to make the determination so many years after the claim was filed. Jovanna added that it makes more sense for everyone, including the employer, to determine eligibility at the time the claim is closing and everyone has a handle on what is going on. Jovanna added that crafting something in rule that allows for some training or some cash out of those benefits to the workers when they can't otherwise authorize them would align with current policy and streamline the process.

- Nargess Shadbeh (in person) stated that she has practiced law on behalf of agricultural workers in Oregon for 38 years. She noted that Jovanna's example of a 13-year wait time is typical of what workers in fish processing, forestry, and field work experience. She noted that there is a connection between these manual jobs and greater instances of injury. She emphasized the importance of this issue and expressed hope that something would be done to address it.
- Connie Whelchel asked what it looks like to offer benefits without conflicting with IRCA.
- Lauren Grace (in person) noted that there is case law outlining IRCA's prohibition on job placement; however, IRCA does not prohibit skills training. In order to comply with IRCA, only partial vocational benefits would be available.
- Julie Riddle then sought clarification regarding potential consequences for employers in the event skills training were offered to a worker and that training resulted in that worker finding a new job. Julie wondered if there would be some liability on the employer or insurer under IRCA.
- Lauren Grace responded that no, there would be no such liability for the employer or the insurer offering training. Lauren again referenced case law and noted that the negative consequences would fall upon the employer who hired the worker, not the employer who offered general training through the workers' compensation system.

Vocational Assistance Benefits

Direct Employment Services*	Includes, but is not limited to:

	• Employment counseling • Job search skills instructions • Job development with related return-to-work activities • Job analysis

Training*	Includes, but is not limited to:
	• Training plan development
	• Monthly monitoring of training progress
	• Job placement services
	• Training
	  o Basic education (may be offered, with or without other training components, to raise the worker's education to a level to enable the worker to obtain suitable employment)
	  o On-the-job training
	  o Occupational skills training (offered through a community college, based on a predetermined curriculum, at the training employer's location)
	  o Formal training (may be offered through a vocational school licensed by an appropriate licensing body, community college, or other post-secondary educational facility that is part of a state system of higher education)

Direct Worker Purchases (provided only if necessary for the worker to participate in vocational assistance or meet the requirements of a suitable job)	• Tuition, fees, books, supplies for training or studies • Wage reimbursement for on-the-job training • Travel expenses for transportation, meals, and lodging • Tools and equipment • Moving expenses • Second residence allowance (for training outside a reasonable commuting distance) • Primary residence allowance (when worker must change residence for training or employment) • Medical and psychological examinations • Physical or work capacity evaluations • Living expense allowance (limited to workers involved in a vocational evaluation at least 5 hours daily for 4 or more consecutive days, and not receiving temporary disability) • Work adjustment, on-the-job evaluation, or situational assessment costs • Membership fees and occupational certifications, licenses, and related testing costs • Clothing • Child or disabled adult care services • Dental work, eyeglasses, hearing aids and prosthetic devices • Union dues and fees

	• Vehicle rental or lease • Other purchases

*When a worker is found eligible for vocational assistance, the insurer must select one category of vocational assistance (direct employment services or training).

Issue 2

Rule: OAR 436-120-0185 Choosing a Counselor

Issue: There is no required timeframe for when an insurer must provide vocational and medical information to the counselor selected to provide vocational assistance.

Background:
To determine whether a worker is eligible for vocational assistance, OAR 436-120-0115 (6) requires that an eligibility evaluation must be completed by a vocational counselor. If the worker is found eligible, OAR 436-120-0185 requires that the insurer and worker must agree on a counselor that will provide the worker vocational assistance. The person selected may be the same counselor that conducted the eligibility evaluation, or a different one. The selected counselor is responsible for creating a vocational assistance plan based on the worker's vocational and medical information.

Currently, OAR 436-120-0115 (6)(c) requires the insurer provide "all relevant vocational and medical information" to the counselor that conducts the eligibility evaluation. However, there is no requirement for providing that information to the counselor selected to provide vocational assistance.

The division has received some complaints regarding delays in receiving the documents necessary for creating the vocational assistance plan. Since the plan must be approved before the worker can receive vocational assistance benefits, delays in creating the plan can affect how soon the worker receives vocational assistance.

The division invites stakeholder feedback on including a required timeframe in rule for providing documents to the vocational counselor that creates the vocational assistance plan.

Options:
1) Revise OAR 436-120-0185 to require the insurer to send the counselor selected to provide vocational assistance all relevant vocational and medical information within 14 days of when the insurer mails notice regarding the selected counselor.

436-120-0185 Choosing a Counselor
(1) Choosing a counselor.
(a) The insurer and worker must agree on a counselor within 14 days of the worker being determined eligible for vocational assistance.
(b) When the parties agree on a counselor, the insurer must mail the worker a NOTICE OF SELECTION OF VOCATIONAL COUNSELOR.
(c) If the parties do not agree on a counselor, the insurer must notify the division within five days, and the director will select a counselor.
(2) Changing counselors.
(a) If the worker or insurer requests a change in counselor, the insurer and worker must agree on a new counselor within 14 days of the request.

(b) If the parties do not agree on a new counselor, the insurer must refer the matter to the division within five days.
(c) Any time there is a change in counselor, the insurer must mail the worker a NOTICE OF CHANGE OF VOCATIONAL COUNSELOR.

(3) Providing documents to selected counselor.
The insurer must provide the vocational counselor selected under section (1) or (2) of this rule all relevant vocational and medical information within 14 days of mailing the notice under (1)(b) or (2)(c) of this rule.

2) No change.

3) Other.

Fiscal Impacts, including cost of compliance for small business:
Adding a requirement for insurers to provide medical and vocational information to the selected vocational counselor may increase costs, if it is not already an insurer's practice to do so. Insurers may incur additional costs to collect and send vocational and medical information. The division does not have data that would allow it to estimate the extent of additional costs, but invites stakeholder input regarding costs.

How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- Steven Bennett asked how the 14-day timeline was chosen; he noted that 14 days is short notice for gathering all medical and relevant information.
- Summer Tucker responded that 14 days is a common timeframe in OAR Chapter 436 in terms of providing a response.
- Steven Bennett commented that there is a difference between merely responding and gathering all of the relevant information. He noted that this is more along the lines of discovery, which usually has a timeline of 21 to 28 days. He noted that 14 days may not be sufficient.
- Julie Riddle asked for clarification regarding the 14-day timeline. She asked if the time starts when the notice is actually mailed—not when the notice is received.
- Summer Tucker confirmed that yes, the 14-day timeline starts when the notice is mailed by the insurer.
- Julie Riddle noted that there can often be delays when using the mail.

Issue 3

Rule: OAR 436-120-0008 (1)(g) Administrative Review and Hearings

Issue: The rule does not provide a remedy if parties to a letter of agreement do not honor the conditions of the agreement.

Background:
When a worker disputes a vocational assistance matter, they are able to request administrative review by the director under OAR 436-120-0008. In general, after an administrative review, the director issues an order that resolves the dispute. However, in some cases, the parties are able to come to a mutual agreement to resolve the issue. In these cases, the director will issue a "letter of agreement" that records what the parties agreed to.

If a party does not honor a letter of agreement, currently, the rule does not address how that issue would be resolved. ORS 656.340(16)(c) provides that an agreement is subject to reconsideration under limitations prescribed by the director. However, there is no rule that describes when or how the director would reconsider a letter of agreement.

For medical disputes, OAR 436-009 and 436-010 specify the conditions where the director can revise a letter of agreement, or reinstate administrative review. Those conditions are:

- A party fails to honor an agreement;
- The agreement was based on misrepresentation;
- Implementation of the agreement is not feasible because of unforeseen circumstances; or
- All parties request revision or reinstatement of the dispute.

The division is considering adopting similar rule language that would specify when the director would revise a vocational assistance letter of agreement, or reinstate administrative review. The division invites input from stakeholders on the following draft rule language.

Options:

1) Revise OAR 436-120-0008 as follows.

436-120-0008 Administrative Review and Hearings
(1) Administrative review.

(a) A worker wanting review of any vocational eligibility evaluation or vocational assistance matter must request administrative review by the director.
(b) Under ORS 656.340(11) and OAR 436-120-0185 when the worker and insurer are unable to agree on a counselor, the insurer must request administrative review by the director.
(c) Effective vocational assistance is best realized in a nonadversarial environment. The first objective of administrative review is to bring the parties to resolution through alternative dispute resolution procedures, including mediation conferences, whenever possible and appropriate. When a dispute is not resolved through mutual agreement or dismissal, the director will close the record and issue a director's review and order.

(d) The worker's request for review must be submitted to the division no later than the 60th day after the date the worker received written notice of the insurer's action.
(e) Issues raised by the worker where written notice was not provided may be reviewed at the director's discretion.
(f) The worker, insurer, employer at injury, and provider must supply needed information, attend conferences and meetings, and participate in the administrative review process as required by the director.

(A) Upon the director's request, any party to the dispute must provide available
information within 14 days of the request.
(B) The insurer must promptly schedule, pay for, and submit to the division any
medical or vocational tests, consultations, or reports required by the director.
(C) The worker, insurer, employer at injury, or provider must simultaneously provide copies of material to the other parties to the dispute when submitting material to the division.
(D) Failure to comply with this subsection may result in the director dismissing the administrative review or deciding the issue on the basis of available information when the worker, insurer, provider, or employer at injury fails to comply without reasonable cause.

(g) The director may issue a letter of agreement as described in (new section #) of this rule when the parties resolve a dispute within the scope of these rules.

~~(A) Any agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney.~~
~~(B) The agreement will become effective on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise.~~
~~(C) The director may revise a letter of agreement.~~

(h) The parties have 60 days from the date the director's review and order is issued to request a hearing under OAR 436-001-0019.
(i) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law.
(j) A party may request reconsideration of a director's review and order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence that could not reasonably have been discovered and produced during the review.

(A) The director may grant or deny a request for reconsideration at the director's sole discretion.
(B) A request for reconsideration must be received by the division before the director's review and order becomes final or, if appealed, before the proposed and final order is issued.
(C) The parties may submit new material evidence consistent with this rule and may respond to such evidence submitted by others.

(D) Parties must simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.
(E) A request for reconsideration does not stay the 60-day time period within which the parties may request a hearing.

(New section #) Letter of Agreement

(a) A dispute may be resolved by agreement between the parties to the dispute. The agreement must be in writing and approved by the director. The director may issue a letter of agreement instead of an administrative order.

(b) A letter of agreement will become effective on the 10th day after the date the director issues the letter of agreement, unless the agreement specifies otherwise. Once the agreement is effective, the director may revise the agreement or reinstate administrative review only under one or more of the following conditions:

(A) A party fails to honor the agreement;
(B) The agreement was based on misrepresentation;
(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or
(D) All parties request revision or reinstatement of the dispute.

(c) A letter of agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney.

2) No change.
3) Other.

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- Steven Bennett questioned the degree of the problem being addressed with this proposed change. He added that, if there is an agreement and it is not being followed, it would seem reconsideration is already allowed. He expressed concern that implementing this change, if there is not a big problem at hand, would result in unintended consequences. Steven then expressed concern about the ambiguity in the following proposed language: "a party fails to honor the agreement." He noted that this could provide an easy way for people to get out of agreements to which they no longer want to be a party and may encourage disputes. He suggested changing the verbiage to specify "the opposing party fails to honor the agreement," or something similar.
- Jovanna Patrick (in person) responded to the degree of problem at hand by noting that she sees this issue in practice a handful of times a year. She added that it could be an

agreement that payments are going to be made or an agreement that an insurer is going to obtain additional documents or some other agreement. Regardless, even if this mechanism is not needed often, it is important to have a formal process and means to enforce these agreements. She added that, for unrepresented workers entering these agreements, having a process clearly stating what can be done in the event the agreement is not honored would be helpful.

Issue 4

Rule: OAR 436-120-0720 (4) Fee Schedule

Issue: The timeframe in OAR 436-120-0720 (4) for payment of vocational service bills conflicts with ORS 656.258.

Background:
The division identified that OAR 436-120-0720 (4), which requires insurers to pay for vocational assistance service bills within 30 days of receipt, is inconsistent with ORS 656.258. ORS 656.258 requires payment for vocational assistance service bills within 60 days of receipt.

Since the rule is not compliant with the timeframe stated in statute, the division intends to revise the time frame to 60 days to resolve the inconsistency between the rule and statute.

Options

1) Amend the OAR 436-120-0720 (4) as follows:

   (4) The insurer must pay, within 60~~30~~ days of receipt, the provider's bill for services provided under the insurer-provider agreement. The insurer may not deny payment on the grounds the worker was not eligible for the assistance if the provider performed the services in good faith without knowledge of the ineligibility.

2) Other.

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- No comments.

Issue 5

Rule: OAR 436-120-0115 (9) Results of the eligibility evaluation
OAR 436-120-0177 (2) Selection of a Category of Vocational Assistance

Issue: Content requirements for vocational eligibility notices are located in two rules, OAR 436-120-0115 and OAR 436-120-0177. This may be inconvenient for stakeholders to navigate, and content requirements may be missed if the reader is not aware that requirements are located in two different rules.

Background:
The division identified that content requirements for notices of vocational eligibility are located in two rules.

OAR 436-120-0115(9)(a) lists the elements that must be included in the notice of eligibility for vocational assistance, but does not include the category of vocational assistance the insurer has selected. OAR 436-120-0177(2) requires including the category of vocational assistance the insurer has selected (direct employment services or training), and the reason for the selection in notice issued under OAR 436-120-0115(9).

To ensure these notice requirements can all be found in one location, the division proposes moving the requirement in OAR 436-120-0177 (2) to OAR 436-120-0115 (9)(a).

Options:

1) Move the category selection requirement from OAR 436-120-0177(2) to OAR 436-120-0115(9)(a).

(9) Results of the eligibility evaluation.
The results of the eligibility evaluation must be mailed to the worker following the requirements for the appropriate notice under subsection (a) or (b) of this section.

(a) The NOTICE OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE must:

[paragraphs A-D omitted]

(E) Explain what the worker can do if the worker disagrees with something the insurer does; ~~and~~
(F) Explain direct employment services and state the worker is not entitled to training, if the worker is entitled to direct employment services but not training; and
(G) Include the category of vocational assistance and the reason for the selection.

436-120-0177 Selection of Category of Vocational Assistance
(1) The insurer must select one of the following categories of vocational assistance before referring a worker to a counselor:

(a) Direct employment services, if the worker has the necessary transferable skills to obtain suitable new employment.

(b) Training, if the worker needs training in order to return to employment that pays a wage significantly closer to 100 percent of the adjusted weekly wage. "Significantly closer" may vary depending on several factors, including, but not limited to: the worker's wage at injury, adaptability, skills, geographic location, limitations, and the potential for the worker's income to increase with time as the result of training.

~~(2) The insurer must notify the worker of the category selection and the reason for the selection in the NOTICE OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE issued under OAR 436-120-0115(9).~~

(~~3~~2) The insurer must reconsider the category of vocational assistance within 30 days of the insurer's knowledge of a change in circumstances including, but not limited to:

(a) A change in the worker's permanent limitations;
(b) A change in the labor market; or
(c) The category of vocational assistance proves to be inappropriate.

(3~~4~~) The insurer must notify the worker within five days if the reconsideration under section (~~3~~2) results in a change in the vocational assistance category.

2) No changes.
3) Other.

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- Shane deGraffenried-Smith commented that, by merely copying OAR 436-120-0177(2), the proposed language seems to dilute OAR 436-120-0177(2). Instead, Shane suggested leaving OAR 436-120-0177(2) where it is and adding a reference to OAR 436-120-0177(2) in OAR 436-120-0115(9)(a).

Issue 6

Rule: OAR 436-120-0820 Renewal of Certification

Issue: The rule does not require a vocational counselor, intern, or return-to-work specialist to submit Form 1880 when renewing their certification to provide vocational assistance.

Background:
Currently, individuals who conduct vocational eligibility evaluations and provide vocational assistance to injured workers must be certified by the division. OAR 436-120-0810 specifies that to be certified, applicants must submit Form 1880. Additionally, OAR 436-120-0820 states that certified individuals must renew their certification every five years by submitting documentation to the division. However, OAR 436-120-0820 does not mention submitting Form 1880 as part of the renewal process.

Form 1880 captures the individual's contact information, credentials for certification, and the individual's attestation to the accuracy of their materials. It should be used to apply for or renew certification.

To ensure consistency in the initial certification and subsequent renewal processes, the division is considering clarifying OAR 436-120-0820 to require individuals to submit Form 1880 when they renew their certification.

Options:

1) Revise OAR 436-120-0820 to require submitting Form 1880 when renewing certification.

436-120-0820 Renewal of Certification

(1) Required documentation.
A certified individual must renew their certification every five years by submitting Form 1880 and the following documentation to the division no later than 30 days before the end of the certification period:

(a) Current certification by the Commission on Rehabilitation Counselor Certification (CRCC), the Commission for Case Managers Certification (CCMC), or the Certification of Disability Management Specialists Commission (CDMSC); or

(b) Verification of a minimum of 60 hours of continuing education units under this rule within the five years before renewal.

2) No change.

3) Other.

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- No comments.

Issue 7

Rule: OAR 436-120-0003(4)(b) Submitting documents or information, calculating time

Issue: The rule does not state when a document is considered submitted if it is sent electronically.

Background:
OAR 436-120-0003(4)(a) states that documents or information that must be submitted to the division may be sent by mail, physical delivery, fax, or "any other method authorized by the director." The last option, "any other method", could include electronic submissions, such as secure email, or using the division's web portal.

Subsection (4)(b) of the rule provides when a document is considered submitted, depending on how the document is sent. For instance, if a document is mailed, it is considered submitted on the date it is postmarked. If a document is faxed, it must be received by 11:59 p.m. Pacific Time to be considered submitted on that date. However, the rule does not specify when a document sent electronically is considered to be submitted. The division is considering adding language to the rule to clarify this. The division is also considering moving the content regarding submitting documents to a separate rule (please see the Housekeeping section).

Options:

1) Revise OAR 436-120-0003(4)(b) to include electronic submissions.

(a) Documents or information required under these rules to be submitted to the division may be submitted in any of the following ways:
(A) Mailed to the division's mailing address with sufficient postage and placed in the custody of the U.S. Postal Service;
(B) Physical delivery to the division's Salem office;
(C) Faxed, if the document transmitted indicates it has been delivered by fax, is sent to the correct fax number, and indicates the date it was sent; or
(D) Any other method authorized by the director.

(b) Timeliness of any document required by these rules to be submitted to the division is determined as follows:
(A) If a document is mailed, it will be considered submitted on the date it is postmarked.
(B) If a document is faxed or submitted electronically, it must be received by 11:59 p.m. Pacific Time to be considered submitted on that date. The date and time of receipt for electronic filings is determined under ORS 84.043.
(C) If a document is delivered, it must be delivered during regular business hours and marked as received to be considered submitted on that date.

(c) Time periods allowed under these rules are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday.

In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.

2) No change.
3) Other

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- No comments.

Issue 8

Rule: OAR 436-120-0003(2)(b) Applicability of rules

Issue: The rule contains applicability language related to administrative reviews that is no longer necessary.

Background:
Effective Aug. 1, 2018, based on *Chu v. SAIF Corporation* 290 Or App 194 (2018), the division revised rules related to calculation of the weekly wage in OAR 436-120-0147. Additionally, OAR 436-120-0003(2)(b) was revised to specify that if an insurer's eligibility decision involved the weekly wage, the director's decision in an administrative review would be based on the rules in effect on the date of the director's order. This language ensured a decision of the director in an administrative review made on or after Aug. 1, 2018 would be based on the revised rules, even if an insurer's eligibility decision was issued before the 2018 rule revisions.

However, this applicability language is no longer necessary. Since administrative review can only be requested within 60 days of the insurer's eligibility decision, there should no longer be a need to specify that the revised rules will be applied in an administrative review.

Options:

1) Amend OAR 436-120-0003(2)(b) as follows:

   Except as outlined below, the director's decisions under OAR 436-120-0008 regarding eligibility will be based on the rules in effect on the date the insurer issued the notice. ~~If an eligibility decision involves the weekly wage under OAR 436-120- 0147(3)(b)(B), the director's decisions under OAR 436-120-0008 regarding eligibility will rely on OAR 436-120-0147(3)(b)(B) in effect on the date of the director's order.~~ The director's decisions regarding the nature and extent of assistance will be based on the rules in effect at the time the assistance was provided. If the director orders future assistance, such assistance must be provided in accordance with the rules in effect at the time assistance is provided.

2) No changes.

3) Other.

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- No comments.

Issue 9

Rule: OAR 436-120-0710(10) Living expense allowance
OAR 436-120-0410(3) On-the-job evaluation

Issue: Workers who are in a vocational evaluation may receive a living expense allowance if they are in the evaluation for five hours daily, for four consecutive days. However, some workers are excluded from receiving this benefit if they are in an evaluation on a different schedule.

Background:
When a worker is eligible for a vocational assistance training plan, a vocational counselor must determine the worker's vocational goals. Under OAR 436-120-0410(3), one of the methods for determining a vocational goal is completing an on-the-job evaluation. An on-the-job evaluation evaluates a worker's work traits, aptitudes, limitations, potentials, and habits in an actual job environment. Additionally, under subsection (3)(b) of the rule, the evaluation should normally be no less than five hours daily for four consecutive days, and should normally last no longer than 30 days.

Under OAR 436-120-0710, the insurer must provide direct worker purchases if necessary for the worker to participate in vocational assistance or to meet the requirements of a suitable job. Section (10) of the rule specifies that a category of direct worker purchases is a living expense allowance. This allowance provides assistance to workers who are involved in a vocational evaluation, which could include an on-the-job evaluation. The allowance payment is based on the worker's temporary total disability rate.

Consistent with OAR 436-120-0410(3)(b), OAR 436-120-0710(10) specifies that the allowance is limited to workers involved in a vocational evaluation at least five hours daily for four or more consecutive days. Since the rule limits the allowance to workers on a specific schedule, some workers are excluded from receiving the allowance, even if the total hours in evaluation are the same. For example, a worker in evaluation for 20 hours in a week over nonconsecutive days, or a worker in evaluation for 20 hours in three days, would not be eligible for the allowance.

A stakeholder submitted the following recommendations regarding the living expense allowance:

- That the criteria for living expenses should provide for prorated living expenses for workers who work less.
- Eligibility for the living expense allowance should be evaluated based on total hours a week regardless of shift length or scheduled workdays.

These recommendations would broaden the rule to include workers that are currently not eligible for the living expense allowance during a vocational evaluation.

The division invites input on the stakeholder recommendations, and the options included below.

Options:

1) Amend OAR 436-120-0710 to state the allowance will be provided to workers who are in an evaluation for at least 20 hours in one week.

2) Amend OAR 436-120-0710 to allow for a prorated allowance to workers who are in evaluation for less than 20 hours.

3) Amend OAR 436-120-0410 to provide that an on-the-job evaluation should be for no less than 20 hours in one week.

4) No changes.

5) Other.

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- Steven Bennett stated that the rules make sense as-is; he did not believe a change to be necessary. If a change is to be made, Steven believed Option 1 was the most rational approach. Steven opposed prorated allowances if people attend an evaluation for less than twenty hours and believed it made less sense to require an evaluation be twenty hours or more.
- Jovanna Patrick (in person) commented that it makes sense to prorate an allowance based on the number of hours put in during a week. She added that this aligns with the tone of current law. She referenced the recent change to the law allowing time loss for workers missing less than four hours of work for medical appointments; previously, time loss was only available for workers if they missed four hours or more of work. Jovanna noted that, given that recent removal of the four-hour requirement, it seems the same should be true here; workers should be paid commiserate of their loss. Someone who spends 19 hours should have access to an allowance just as someone with 20 hours in an evaluation. She noted that, to proceed without prorating could result in unintended consequences; for example, people with a greater understanding of the system could reap a greater benefit than those who are unaware of the technicalities under the rule. Jovanna reiterated that prorating based on the actual amount of loss makes the most sense.

Issue 10

Rule: OAR 436-120-0710(10) Living expense allowance

Issue: The language regarding the amount to be paid for the living expense allowance is unclear.

Background:
Under OAR 436-120-0710, the insurer must provide direct worker purchases if necessary for the worker to participate in vocational assistance or to meet the requirements of a suitable job. Section (10) of the rule specifies that a category of direct worker purchases is a living expense allowance. This allowance provides assistance to workers who are involved in a vocational evaluation, and are not receiving temporary disability payments.

The rule states "Payment must be based on the worker's temporary total disability rate if the worker's claim were reopened."

The intent of the rule is that the worker should receive a living expense amount that is equivalent to the worker receiving temporary total disability (TTD) payments. However, the division identified the language in the rule may be unclear. The current language may imply there is an additional calculation to determine the amount of the living expense allowance. To ensure the rule is clear, the division is considering clarifying the rule regarding the amount of the allowance.

Options:
1) Amend OAR 436-120-0710(10) to state that the amount of the allowance is equivalent to payment of temporary total disability for the duration of the evaluation.
2) Other.
3) No change.

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- No comments.

Issue 11

Rule: OAR 436-120-0710(6) Second residence allowance
OAR 436-120-0710(17) Vehicle rental or lease

Issue: The dollar amounts allowed for certain direct worker purchases may be insufficient due to inflation.

Background:
Under OAR 436-120-0710, the insurer must provide direct worker purchases if necessary for the worker to participate in vocational assistance or to meet the requirements of a suitable job. The categories of direct worker purchases are listed in sections (1) – (18) of the rule.

Under section (6) of the rule, a second residence allowance is provided to enable the worker to participate in training outside reasonable commuting distance. The allowance must equal the rental expense reasonably necessary, plus not more than $200 a month toward all other expenses of the second residence, excluding refundable deposits. This maximum for other expenses of a second residence was established in 1995.

Under section (17) of the rule, payment for a vehicle rental or lease is required when there is no reasonable alternative enabling the worker to participate in vocational assistance or accept an available job. The payment is limited to a maximum of $1,000. This maximum for vehicle rental or lease was established in 1988.

Under section (18) of the rule, payment for other purchases necessary for participation in vocational assistance is limited to $1,000. This maximum was established in 1995.

A stakeholder has recommended evaluating the limits towards the expenses in sections (6) and (17) for an increase, based on current market rates.

According to the U.S. Bureau of Labor Statistics CPI inflation calculator:
- $200 in 1995 would be approximately $408 in buying power in December 2023.
- $1,000 in 1995 would be approximately $2,041 in buying power in December 2023
- $1,000 in 1988 would be approximately $2,651 in buying power in December 2023.

Since inflation has reduced the value of the maximum amounts established in OAR 436-120-0710(6), (17) and (18), it appears that an increase would be appropriate. The division seeks input from stakeholders on increasing the maximum amounts for these purchase categories.

Options:
1) Amend OAR 436-120-0710(6), (17), and (18) to increase the dollar amount of the maximums for those sections, based on inflation as calculated by the U.S. Bureau of Labor Statistics.

2) No changes.

3) Other.

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- Julie Riddle noted that it makes sense to increase these values, but that it works off the premise that the maximum amounts in the past were appropriate, because that was about what the costs were. Julie wanted to know if there was a way to determine the average cost for these things at present. She asked if we often see people denied for exceeding the maximum.
- Summer Tucker noted that WCD may have more general data, but does not have specific data regarding the average cost of these specific items.
- Shane deGraffenried-Smith noted that it seems cost prohibitive within the current direct worker purchase (DWP) amounts to do a second residence. He did not know if it could be tied to one of the listed alternatives. He suggested that the amounts be percentages of the max DWP amount. He noted that he has seen this in practice in the past: a worker would move from a rural area to a larger metro area for training; the worker would receive some type of housing. He added that the limited amount available for DWP and the cost of tuition and other expenses prohibit that option now. Shane recalled that, most recently, a worker was receiving a small monthly amount to rent a room because that was all that could be afforded/allowed within the DWP max. Shane suggested tying it to a percentage of the max DWP and stating the amount is set aside for housing; that could be a realistic solution, as rents are really high.
- Steven Bennett asked about the cost to implement the rule.
- Jenny Bates noted that the max fee schedule would still apply; the fee schedule is not changing under this proposal.
- Steven Bennett then asked for clarification: who reimburses the maximum? If the reimbursement is more than doubling, who will pay and how much?
- Summer Tucker explained that the insurer pays the cost for vocational assistance and the fee schedule lists certain general maximums for types of services and purchases; these direct worker purchases exist within some of those larger categories.
- Steven Bennett reiterated that the reimbursement would increase and he wanted to know the amount by which it would increase.
- Summer Tucker clarified that, while the amount available to go to these certain worker purchases would increase, the general maximum in OAR 436-120-0720 would not increase. The bigger maximum of what an insurer might have to pay for vocational assistance will remain the same, but these direct worker purchases may make up more of that overall amount.
- Julie Riddle then asked about the anticipated cost for employers. She noted that, while the insurer pays for the vocational assistance benefits, the employer is responsible for the premium. She wondered about an average cost increase, if any, to premiums and other employer expenses.

- Jovanna Patrick (in person) noted that, cost aside, this is a clearly needed change for workers. At present, the rule allows for half of the spending power given to workers when the rule's current numbers were implemented. She added that there is always a certain danger in incorporating a specific number in rule because values change with inflation. Jovanna raised the potential consequences of not changing the rule: either the worker simply can't afford to engage in the vocational program and loses out on that enormous benefit because they can't afford to spend hundreds of dollars a month or they must spend their own money in order to participate in the vocational program. When a worker has been determined eligible for vocational benefits, the rule should make it so the worker need not bear the cost. The insurers and employers and premiums should carry that cost.
- Steven Bennett reiterated his preference to leave the rule unchanged; he does not see a way that a change could be made without increasing costs for insurers and ultimately employers though the premiums. He would like to see that increase quantified. Steven added that, if a change were to be made, he would prefer a new number replace the old number rather than rely on inflation; he noted that basing the figures on inflation would make it difficult to develop premium amounts for employers.
- Keith Semple acknowledged the problem for insurers and employers, but emphasized the problem for workers when we set a dollar amount and do not adjust it for many years. He added that some other benefits are indexed and he would like to see this one indexed for inflation and adjusted according to current purchase power or some metric even if it's not the one that is being proposed here.

Issue 12

Rule: OAR 436-120-0147(2)(d) and (e) Definitions
OAR 436-120-0147(3)(b)(B) Determining weekly wage

Issue: The rule does not allow including volunteer work when calculating the adjusted weekly wage. However, some volunteers are covered by workers' compensation and are potentially eligible for vocational assistance. The adjusted weekly wage is needed to determine the volunteer's eligibility for vocational assistance, but the rule does not address how to calculate an adjusted weekly wage for volunteers.

Background:
Under ORS 656.027, all workers are considered "subject workers" that are covered by Oregon workers' compensation law, unless they fall into a specific exemption. Typically, a volunteer is not considered a subject worker. However, under ORS 656.031 and ORS 656.039, an employer may elect to provide workers' compensation coverage to a volunteer, making the volunteer a subject worker. When covered by workers' compensation, volunteers may receive workers' compensation benefits, including vocational assistance.

To determine if a worker is eligible for vocational assistance, insurers must complete a vocational eligibility evaluation. The evaluation includes determining if the worker can return to a suitable job that pays a wage that is at least 80 percent of the worker's adjusted weekly wage.

Under OAR 436-120-0147, the adjusted weekly wage is calculated by determining the worker's weekly wage, and then adjusting it based on the percentage increase or decrease since the date of injury or aggravation.

The rule specifies how to determine the worker's weekly wage in section (3) of the rule. The method varies depending on whether the worker's regular employment was the "job at injury", "job at aggravation", or if the worker had more than one job. For the purpose of the rule, the terms job at injury and job at aggravation are defined as follows:

> *Job at injury*
> "….the job on which the worker originally sustained the compensable injury. For an occupational disease, the job at injury is the job the worker held at the time there is medical verification that the worker is unable to work because of the disability caused by the occupational disease. Volunteer work is not a job for purposes of this subsection.
>
> *Job at aggravation*
> "…means the job or jobs the worker held on the date of the aggravation claim or, for a worker not employed at the time of aggravation, the last job or concurrent jobs held before the aggravation. The job does not need to be subject employment. Volunteer work is not a job for purposes of this subsection.

In both definitions, it is stated that volunteer work is not a job. A similar statement is included in (3)(b)(B) of the rule, which describes one of the methods for calculating the weekly wage.

However, if the worker was injured at a volunteer job, and they are considered a subject worker under ORS 656.031 or ORS 656.039, the job at injury or aggravation could be a volunteer job. The rule does not address how to calculate the adjusted weekly wage in these cases.

If the rule is not clarified, there may be confusion about how to calculate the adjusted weekly wage when a volunteer is a subject worker. The division seeks input from stakeholders on the following options for clarifying the rule.

Options:

1) Amend OAR 436-120-0147 to state that volunteer work is only considered a job if it was the job at injury, and the employer at injury elected to have the volunteer considered a subject worker under ORS Chapter 656.

2) Amend OAR 436-120-0147 to state that the wage for a volunteer job is based on the assumed wage used to determine the employer's premium.

3) No changes.

4) Other.

Fiscal Impacts, including cost of compliance for small business:
How will adoption of this rule affect racial equity in this state?
Recommendations:
<u>Minutes</u>:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- Shane deGraffenried-Smith expressed a concern with Option 2. He noted that he knows certain policies are specifically written with an assumed wage in the policy for volunteers (e.g. firefighters). Shane noted that Option 2 could conflict with the intent of those policies, and Option 1 may be the preferred option.

Issue 13

Rule: OAR 436-120-0112(2), 436-120-0115(8), 436-120-0115(9)(a)(B), 436-120-0115(9)(a)(C), 436-120-0117(2)

Issue: The prescribed notice wording in these rules is not easily understood by workers.

Background:
In March 2022, the Workers' Compensation Division invited interested parties to an advisory committee that identified and discussed opportunities to simplify and streamline notices distributed to workers and employers. Committee members advised that revisions of the content and format of notice language that is prescribed by rule could make the notices easier to understand.

Currently, OAR chapter 436 prescribes language for 30 different notices. Many of these notices include information on the worker's rights, processes for appeals, and contact information for questions or assistance. When a rule requires that notices to workers or employers include specific wording, it is critically important that the text helps readers understand their rights and responsibilities. Failure to meet a deadline, for example, can result in suspension or termination of a worker's benefits, or loss of appeal rights.

The division drafted revised wording for review by the rulemaking advisory committee. The intent is to simplify and clarify the prescribed wording without changing the meaning.

Current wording and revised wording are presented below. These paragraphs are available with marked edits in the appendix.

OAR 436-120-0012(2)(f)

Current, Grade 15:	**Draft, revised, Grade 6**
If you disagree with this decision, you should contact [insert the person's name and the insurer name] within five days of receiving this letter to discuss your concerns. If you are still dissatisfied, you must contact the Workers' Compensation Division within 60 days of receiving this letter or you will lose your right to appeal this decision. A consultant with the division can talk with you about the disagreement and, if necessary, will review your appeal. The address and telephone number of the division are: Employment Services Team,	**If you disagree with this decision, you should contact [insert the claims examiner's name and the insurer name] within five days of receiving this letter to discuss your concerns.** **If you are still dissatisfied:** – **Contact the Workers' Compensation Division within 60 days of receiving this letter. After 60 days you will lose your right to appeal this decision.**

Workers' Compensation Division, P.O. Box 14480, Salem, Oregon 97309-0405; 1-800-452-0288.	**- A consultant with the division can talk with you about the disagreement and review your appeal, if necessary.** **- To contact the division:** **Workers' Compensation Division Employment Services Team 350 Winter Street NE PO Box 14480 Salem OR 97309-0405 800-452-0288 (toll free)**

OAR 436-120-0115(8)

Current, Grade 14: **If you have questions about the vocational assistance process, contact [use appropriate reference to the insurer]. If you still have questions contact the Workers' Compensation Division's toll free number 1-800-452-0288.**	**Draft, revised, Grade 9** **If you have questions about vocational assistance, contact:** **[Insurer name] [Insurer contact person] [Insurer address] [Insurer phone number]** **If you still have questions, call:** **Workers' Compensation Division 800-452-0288 (toll free)**

OAR 436-120-0115(9)(a)(B)

Current, Grade 15: **You have the right to request a return-to-work plan conference if the insurer does not approve a return-to-work plan within 90 days of determining you are entitled to a training plan, or within 45 days of determining you are entitled to a direct employment plan. The purpose of the conference will be to identify and remove all obstacles to return-to-work plan completion and approval. The insurer, the worker, the counselor, and any other parties involved in the return-to-work process must attend the**	**Draft, revised, Grade 9** **You have the right to request a return-to-work plan conference if the insurer does not approve a return-to-workplan:** **- Within 90 days of determining you are entitled to a training plan, or - Within 45 days of determining you are entitled to a direct employment plan.** **Conference purpose: Identify and remove obstacles to return-to-work plan completion and approval.**

conference. The insurer or the worker may request a conference with the division if other delays in the vocational assistance process occur. Your request for this conference should be directed to the Employment Services Team of the Workers' Compensation Division. The address and telephone number of the division are: Employment Services Team, Workers' Compensation Division, P.O. Box 14480, Salem, Oregon 97309-0405; 1-800-452-0288.	**Conference attendance: The insurer, the worker, the counselor, and others involved in the return-to-work process must attend.** **Other conferences: The insurer or the worker may request a conference with the Workers' Compensation Division about other delays in vocational assistance.** **To request a conference, write or call:** **Workers' Compensation Division** **Employment Services Team** **PO Box 14480** **Salem OR 97309-0405** **800-452-0288 (toll free)**

OAR 436-120-0115(9)(a)(C)(iii)

Current, Grade 14: **If you have questions about the vocational counselor selection process, contact [use appropriate reference to the insurer]. If you still have questions, call the Workers' Compensation Division at 1-800-452-0288.**	**Draft, revised, Grade 9** **If you have questions about the process for selecting a vocational counselor, contact:** **[Insurer name]** **[Insurer contact person]** **[Insurer address]** **[Insurer phone number]** **If you still have questions, call:** **Workers' Compensation Division** **800-452-0288 (toll free)**

OAR 436-120-0117(2)(c)(C)

Current, Grade 16: **If you have questions about the deferral of the process for determining your eligibility for vocational assistance, contact [use appropriate reference to the insurer]. If you still have questions contact the Workers' Compensation Division's toll free number 1-800-452-0288.**	**Draft, revised, Grade 8** **If you have questions about this deferral, contact:** **[Insurer name]** **[Insurer contact person]** **[Insurer address]** **[Insurer phone number]**

If you still have questions, call:

Workers' Compensation Division
800-452-0288 (toll free)

Options:

1) Revise notices (with additional edits based on advisory committee input)
2) Do not revise notices
3) Other

Fiscal Impacts, including cost of compliance for small business:
Insurers and self-insured employers may incur some near-term costs to revise letters and associated computer programs and templates. The agency does not have data that would allow projection of overall costs, but invites input from claims processors.

How will adoption of this rule affect racial equity in Oregon?
The Workers' Compensation Division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African American and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, streamlining of communications may benefit these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Recommendations:
Minutes:

- Summer Tucker described the issue – see above – and asked the committee for advice.
- Shane deGraffenried-Smith requested 90 days to process any mandatory language changes and to update documents and templates.

Housekeeping issues

OAR 436-120-0003
Changing the title of the rule from "General Provisions" to "Purpose and Applicability of these Rules."

Moving provisions regarding submitting documents and availability of forms to a separate rule.

OAR 436-120-0005
Clarifying that unless a term is defined in Division 120 or the context otherwise requires, the definitions of ORS chapter 656 are incorporated by reference.

OAR 436-120-0005(3)
Updating the definition of the term "Director."

OAR 436-120-0005(8) and (15), OAR 436-120-0175, OAR 436-120-0445(2)(c)(J)
Changing instances of "a worker" to "the worker", or "the worker" to "a worker."

OAR 436-120-0005 (14) and OAR 436-120-0443(12)
Updating the references to "approved training plan" to "authorized training plan."

OAR 436-120-0008(4)
Updating the reference to the "Hearings Division" to "Workers' Compensation Board."

OAR 436-120-0115(9)(a)(C)(i)
Correcting the rule to refer to "list of counselors" instead of a "list of providers."

OAR 436-120-0165(1)(c)(A)
Revising the rule to change the reference to "worksite modifications" to be singular, rather than plural.

OAR 436-120-0443(16)
Replacing the term "job placement assistance" with "direct employment services."

OAR 436-120-0840(2)(h)
Updating the rule to remove reference to "policies, guidelines, or procedures issued by the director."

Minutes:

- Summer Tucker and Marie Rogers (Loiseau) closed the meeting by thanking all committee members for their participation and invited written comment to WCD.policy@dcbs.oregon.gov by the end of the day on Tuesday, February 6, 2024.

Appendix

Revised mandatory notice wording with marked edits

OAR 436-120-0012(2)(f)

If you disagree with this decision, you should contact [insert the ~~person's~~ claims examiner's name and the insurer name] within five days of receiving this letter to discuss your concerns.

If you are still dissatisfied~~:, you must c~~

- **Contact the Workers' Compensation Division within 60 days of receiving this letter. After 60 days ~~or~~ you will lose your right to appeal this decision.**
- **A consultant with the division can talk with you about the disagreement and~~, if necessary, will~~ review your appeal, if necessary. ~~The address and telephone number of the division are~~**
- **To contact the division:**

~~Employment Services Team,~~ Workers' Compensation Division
Employment Services Team
350 Winter Street NE
P~~.~~O~~.~~ Box 14480~~,~~
Salem, ~~Oregon~~OR 97309-0405~~;~~
Phone ~~1~~ 800-452-0288(toll free)~~."~~

OAR 436-120-0115(8)(f)

~~"~~If you have questions about ~~the~~ vocational assistance ~~process~~, contact: ~~[use appropriate reference to the insurer].~~

[Insurer name]
[Insurer contact person]
[Insurer address]
[Insurer phone number]

If you still have questions, ~~contact the~~call:

Workers' Compensation Division~~'s toll free number~~
~~1~~ 800-452-0288 (toll free)~~."~~

OAR 436-120-0115(9)(a)(B)

"You have the right to request a return-to-work plan conference if the insurer does not approve a return-to-work plan:

- **Wwithin 90 days of determining you are entitled to a training plan, or**
- **Wwithin 45 days of determining you are entitled to a direct employment plan.**

Conference purpose: The purpose of the conference will be to iIdentify and remove all obstacles to return-to-work plan completion and approval.

Conference attendance: The insurer, the worker, the counselor, and any others parties involved in the return-to-work process must attend the conference.

Other conferences: The insurer or the worker may request a conference with the Workers' Compensation Ddivision ifabout other delays in the vocational assistance process occur.

Your To request for thisa conference, write or call: should be directed to the

Workers' Compensation Division
Employment Services Team of the Workers' Compensation Division. The address and telephone number of the division are: Employment Services Team, Workers' Compensation Division,
P.O. Box 14480
, Salem, ORregon 97309-0405;
1 800-452-0288 (toll free)."

OAR 436-120-0115(9)(a)(C)(iii)

"If you have questions about the process for selecting a vocational counselor selection process, contact: [use appropriate reference to the insurer].

[Insurer name]
[Insurer contact person]
[Insurer address]
[Insurer phone number]

If you still have questions, call: the

Workers' Compensation Division at 1-
800-452-0288 (toll free)."

OAR 436-120-0117(2)(c)(C)

"If you have questions about theis deferral of the process for determining your eligibility for vocational assistance, contact:

[Insurer name]
[Insurer contact person]
[Insurer address]

[Insurer phone number]

~~[use appropriate reference to the insurer].~~ If you still have questions, ~~contact the~~call:

Workers' Compensation Division~~'s toll free number~~
~~1~~ 800-452-0288 (toll free).~~"