

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



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

Effective January 2, 2006

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NOTE: Significant revisions are marked with bold lines in the right margins.

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**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

In the Matter of the Amendment of Oregon Administrative Rules)
(OAR) chapter 436, division:)
001, Procedural Rules Governing)
Rulemaking and Hearings.....05-061)
009-0008, Oregon Medical Fee and Payment.....05-062)
045-0008, Reopened Claims Program05-063)
070-0008, Workers' Benefit Fund Assessment05-064)
075-0008, Retroactive Program05-065)
080-0070, Noncomplying employers.....05-066)
085-0008, Premium Assessment.....05-067)
140-0008, Construction Carve-Out Programs05-069)
150-0008, Workers' Benefit Fund Claims Program..05-070)
))
In the Matter of the Repeal of Oregon Administrative)
Rules (OAR) chapter 436, division:)
130, Rehabilitation Facilities05-068)

**ORDER OF
ADOPTION**

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436.

On August 12, 2005, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking/Hearing* and *Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0000, and posted copies to its Web site. The Secretary of State included notice of the public hearing in its September 2005 *Oregon Bulletin*.

On September 26, 2005, a public hearing was held as announced. In addition, the record was held open for written testimony through September 30, 2005. The Workers' Compensation Division received written testimony about proposed revisions to this rule. A summary of this testimony and the agency's responses are on file and available for public inspection upon request during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405.

RULE SUMMARY

The Workers' Compensation Division has amended OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150. Most of the changes are related to passage of House Bill 2091 (Oregon Laws 2005, chapter 26), which moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. The division has repealed several rules

**Order of Adoption
OAR 436-045**

in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. In addition, OAR 436-001 has been reorganized to place rules in a sequence more aligned with the sequence of appeals and hearings.

The Workers' Compensation Division has repealed OAR chapter 436, division 130, "Rehabilitation Facilities," in its entirety. ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

FINDINGS

Having reviewed and considered the record and being fully informed, I make the following findings:

- a) The applicable rulemaking procedures have been followed.
- b) These rules are within the director's authority.
- c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT

- 1) Amendments to OAR chapter 436, as set forth in Exhibit "A", are attached, incorporated by reference, and **adopted on this 19th day of October 2005, to be effective January 2, 2006.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.
- 3) A copy of the amended rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

DATED this 19th day of October 2005.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Under the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 947-7810.

Distribution: WCD-ID, NM, ML, S0, S1, S2, S3, S4, S5, S6, S7, S8

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

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

436-045-0001 Authority for Rules

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

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

436-045-0002 Purpose

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

Stat. Auth.: ORS 656.625 and ORS 656.726
Stats. Implemented: ORS 656.625 and ORS 656.726
Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88.
Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98
Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0003 Applicability of Rules

(1) These rules are effective January 1, 2002, and shall apply to all requests for reimbursement from the Reopened Claims Program.

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

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

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

Stat. Auth.: ORS 656.625
Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.625
Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88
Amended 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp
Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90
Amended 12-13-91 as WCD Admin. Order 14-1991, eff. 1-1-92
Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98
Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0005 Definitions

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 656.726
 Stats. Implemented: ORS 656.726
 Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88
 Amended 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp
 Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90
 Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98
 Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0006 Administration of Rules

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

Stat. Auth.: ORS 656.704 and ORS 656.726
 Stats. Implemented: ORS 656.704 and ORS 656.726
 Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88
 Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98

436-045-0008 Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

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

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(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing of the proposed order or assessment. No hearing shall be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing of the proposed order or assessment.

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (1), a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.704, 656.726(4), 656.745
 Stats. Implemented: ORS 656.236, 656.289, 656.625, 656.704, OL 2005 ch 26, 656.726(8), 656.740, 656.745
 Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88
 Amended 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp
 Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90
 Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98
 Amended 12/3/03 as WCD Admin. Order 03-072, eff. 1/1/04
 Amended 10/19/05 as WCD Admin. Order 05-063, eff. 1/2/06

436-045-0010 Criteria for Eligibility

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

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

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

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

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

Stat. Auth.: ORS 656.625
 Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.625
 Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88
 Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98
 Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0020 Limitation of Program

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

(2) In the event of insufficient funds in the Workers' Benefit Fund, the director shall have final authority to determine an equitable distribution which will proportionately distribute the available funds among the claims having qualified for reimbursement under the Program.

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

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

436-045-0025 Dispositions

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

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

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

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

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

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

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

Stat. Auth.: ORS 656.236, ORS 656.289 and ORS 656.625
 Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.625
 Hist: Filed 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp
 Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90
 Amended 12-13-91 as WCD Admin. Order 14-1991, eff. 1-1-92
 Amended 12/4/97 as WCD Admin. Order 97-061, eff. 1/1/98
 Amended 12/6/01 as WCD Admin. Order 01-062, eff. 1/1/02

436-045-0030 Reimbursement

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

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

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

(b) Payment certification statement.

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

(3) Periodically Compliance shall audit the physical file of the paying agent to validate

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the amount reimbursed and to verify that the closing report is correct. Reimbursement shall not be approved if, upon such audit, it is found:

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

(b) Payments of temporary disability compensation were made for periods of time during which the worker did not qualify as a "worker" pursuant to ORS 656.005(30); or

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

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

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

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

Stat. Auth.: ORS 656.625

Stats. Implemented: ORS 656.625

Hist: Filed 12-18-87 as WCD Admin. Order 8-1987, eff. 1-1-88.

Amended 6-18-90 as WCD Admin. Order 10-1990, eff. 7-1-90 Temp

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

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Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the
PERMANENT Rule(s) adopted on

October 19, 2005 by the
Date prior to or same as filing date

Department of Consumer and Business Services
Workers' Compensation Division
Agency and Division

OAR chapter 436
Administrative Rules Chapter No.

Fred Bruyns (503) 947-7717
Rules Coordinator Telephone

350 Winter Street NE; Salem OR 97301-3879, PO Box 14480, Salem OR 97309-0405
Address

to become effective January 2, 2006 Rulemaking Notice was published in the September 2005 *Oregon Bulletin*.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: 436-001-0023, 436-001-0027, 436-001-0252, 436-001-0259, 436-001-0296

AMEND: 436-001-0003, 436-001-0004, 436-001-0030, 436-001-0170, 436-001-0225, 436-001-0240,
436-001-0265, 436-001-0300, 436-009-0008, 436-045-0008, 436-070-0008, 436-075-0008,
436-080-0070, 436-085-0008, 436-140-0008, 436-150-0008

REPEAL: 436-001-0001, 436-001-0007, 436-001-0008, 436-001-0110, 436-001-0150, 436-001-0160,
436-001-0185, 436-001-0201, 436-001-0210, 436-001-0226, 436-001-0260, 436-130-0000,
436-130-0010, 436-130-0020, 436-130-0030, 436-130-0040, 436-130-0050, 436-130-0060,
436-130-0070, 436-130-0080, 436-130-0090, 436-130-0100

AMEND AND RENUMBER:

From 436-001-0000 to 436-001-0009
From 436-001-0155 to 436-001-0019
From 436-001-0275 to 436-001-0246

ORS 656.726(4)
Statutory Authority

Other Authority

ORS 656.704, Enrolled House Bill 2091 – OL 2005, chapter. 26; OL 1999, chapter 273, section 1
Statutes being Implemented

RULE SUMMARY

The Workers' Compensation Division has amended OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150. Most of the changes are related to passage of House Bill 2091 (Oregon Laws 2005, chapter 26), which moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. The division has repealed several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of

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PERMANENT ADMINISTRATIVE RULES

hearings. In addition, OAR 436-001 has been reorganized to place rules in a sequence more aligned with the sequence of appeals and hearings.

The Workers' Compensation Division has repealed OAR chapter 436, division 130, "Rehabilitation Facilities," in its entirety. ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

/s/ John L Shilts

Authorized Signer

10/19/05

Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

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