

**ADMINISTRATIVE ORDER NO. 97-061
EFFECTIVE JANUARY 1, 1998**

**OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CHAPTER 436, DIVISION 045**

REOPENED CLAIMS PROGRAM

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

Authority for Rules

436-045-0001 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.

Purpose

436-045-0002 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 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

Applicability of Rules

436-045-0003 (1) These rules are effective January 1, 1998, 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 1-1-88.

(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

Definitions

436-045-0005 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 pursuant to ORS 656.278.

(3) "Compliance" means the Compliance Section of the Workers' Compensation

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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.

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
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Administration of Rules

436-045-0006 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

Administrative Review

436-045-0008 (1) Any party as defined by ORS 656.005(21) 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 said hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 20 days of receipt by the aggrieved person of notice of the proposed order or assessment. No hearing shall be granted unless the request is mailed or delivered to the administrator within said 20 days of receipt of notice.

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(2) Any party as described in section (1) aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (1), where such action or order qualifies for review by hearing before the director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(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 action or order is contested and is mailed or delivered to the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing shall be conducted by the director or the director's designee.

(c) Any order in a contested case issued by another person on behalf of the director is a proposed order subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

Stat. Auth.: ORS 656.704, ORS 656.726(3) and ORS 656.745

Stats. Implemented: ORS 656.236, ORS 656.289, ORS 656.625, ORS 656.704, ORS 656.726(8) and ORS 656.745

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Amended 11-30-90 as WCD Admin. Order 22-1990, eff. 12-26-90

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Criteria for Eligibility

436-045-0010 (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; and

(b) Verifiable compensation paid in accordance with the order or award.

(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

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Limitation of Program

436-045-0020 (1) Reimbursement shall be limited to the monies available in the Workers' Benefit Fund.

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

Dispositions

436-045-0025 (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.

(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.

Stat. Auth.: ORS 656.236, ORS 656.289 and ORS 656.625

Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.625

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Amended 12-13-91 as WCD Admin. Order 14-1991, eff. 1-1-92
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Reimbursement

436-045-0030 (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, 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.

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(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 the amount reimbursed and to verify that the closing report (Form 2066) 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

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

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

(d) 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.

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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