

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Workers' Benefit Fund Claims Program
Oregon Administrative Rules
Chapter 436, Division 150**

Effective January 2, 2006

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NOTE: Bold bars in the right margins mark substantive revisions to the previously published rules.

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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

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OAR 436-150**

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
WORKERS' BENEFIT FUND CLAIMS PROGRAM**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 150**

436-150-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.726(4) and section 6, chapter 974, Oregon Laws 2001.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0002 Purpose

The purpose of these rules is to establish guidelines for regulating, managing, and disbursing moneys in the Workers' Benefit Fund for the purpose of advancing funds to injured workers who have not received payment of compensation due from an insurer in default.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0003 Applicability of Rules

(1) These rules carry out the provisions of section 6, chapter 974, Oregon Laws 2001.

(2) 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.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0005 Definitions

As used in OAR 436-150-0001 through 436-150-0040, unless the context requires otherwise:

(1) "Compensation," for the purposes of this program, means temporary and permanent disability due injured workers pursuant to ORS chapter 656, and out-of-pocket expenses for injured workers in accordance with OAR 436-009-0025, such as prescription and mileage reimbursements. Compensation does not include amounts payable to providers, or benefits payable pursuant to claim settlements or claim disposition agreements.

(2) "Default" means an insurer has failed to make payments of compensation due injured workers pursuant to ORS chapter 656 for which there is no dispute over the right of the worker to receive such compensation or the amount therein.

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

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

(5) "Insurer" means a guaranty contract insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state.

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(6) "Oregon Insurance Guaranty Association" or "OIGA" means the association created by ORS 734.550.

(7) "Paying Agency" means the insurer, or the insurer's authorized representative, responsible for paying compensation due under ORS chapter 656.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0006 Administration of Rules

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

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0008 Administrative Review

(1) Any party as defined by ORS 656.005, and including the Oregon Insurance Guaranty Association, 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.

(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 date of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date 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) of this rule, may request 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 656.445, 656.726(4)
Stats. Implemented: ORS 656.445, 656.704, 656.740, OL 2005 ch 26
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02
Amended 12/3/03 as WCD Admin. Order 03-078, eff. 1/1/04
Amended 10/19/05 as WCD Admin. Order 05-070, eff. 1/2/06

436-150-0010 Criteria for Eligibility

(1) In order for the director to authorize expenditures from the Workers' Benefit Fund Claims Program there must be:

(a) Verification from an authority from the insurer's state of domicile that the insurer responsible for payment of compensation is in default, such as a notice of voluntary or involuntary rehabilitation, conservatorship, or other information indicating the insurer cannot or will not make payments of compensation; and

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(b) An order of the director authorizing disbursements to injured workers from the Workers' Benefit Fund Claims Program. The order shall specify the qualifying claims, duration of payment obligation, and maximum expenditure limitation. The maximum expenditure limitation may not exceed the amount of securities on deposit for the insurer pursuant to ORS 731.628.

(2) When expenditures are authorized pursuant to section (1) of this rule, the paying agency shall provide the director with sufficient information, as specified in OAR 436-150-0030(2), to enable the director to advance funds to eligible injured workers.

(3) To be eligible for payment under the program:

(a) Compensation must be due and payable pursuant to ORS chapter 656; and

(b) There must be an effective guaranty contract or record of insurance policy on file with the director by the insurer covering the employer on the date of injury.

(4) Payments to eligible injured workers in accordance with these rules shall be applied toward the insurer's payment obligations under ORS chapter 656 and will be deducted from compensation due, pursuant to ORS 734.570.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0020 Limitation of Program

(1) Payment of compensation shall be limited to the amount of securities on deposit for the insurer pursuant to ORS 731.628 and only to the extent the monies are available in the Workers' Benefit Fund.

(2) Payments for individual claims shall be limited to compensation that becomes due and payable during the period of default.

(3) Notwithstanding any other provision of these rules, the director may, in the director's discretion, authorize additional benefits for specific claims in cases of extreme hardship.

(4) 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.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0030 Payment of Benefits

(1) Payment of compensation may be made by the director after receipt of documentation that compensation is due and payable.

(2) Documentation to support payment from the Workers' Benefit Fund Claims Program shall be submitted by the paying agent to include, but not be limited to:

(a) Insurer name, address, and policy number;

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- (b) Injured worker name, address, insurer claim number, Workers' Compensation Division claim number, and date of injury;
- (c) Employer name and address;
- (d) Amount, duration, and purpose of compensation due;
- (e) Amounts payable for support pursuant to ORS 656.236, along with supporting documentation; and
- (f) Any other information deemed necessary by the director.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0040 Accounting and Repayment of Payment of Benefits

(1) The director shall establish an account of record to monitor all expenditures and transactions relating to the Workers' Benefit Fund Claims Program and these rules. The accounting shall provide a detailed record of payments to each injured worker and the respective insurer responsible for the claim to include, but not be limited to, information as specified in OAR 436-150-0030(2).

(2) When the obligation to make payment of compensation is assumed by the Oregon Insurance Guaranty Association (OIGA) due to the insolvency of an insurer, the OIGA shall reimburse the Workers' Benefit Fund for all moneys advanced to injured workers for covered claims, as specified by OAR 734.510(4) and these rules. The OIGA shall reimburse the director within 60 days of receipt of sufficient information necessary to support the covered claims. All moneys received from the OIGA by the director shall be placed into the Workers' Benefit Fund.

(3) If an insurer defaults in its payments to injured workers, but later resumes its obligation to make payments, the insurer shall reimburse the director for any moneys paid to the injured worker. Such payment shall be in such amounts and at such intervals as prescribed by an order of the director. Failure of the insurer to comply with the order of the director may result in civil penalty pursuant to ORS 656.745.

(4) Any dispute over an amount owing the director in accordance with these rules shall be resolved pursuant to OAR 436-150-0008(2).

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

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

Certificate and Order for Filing Permanent Administrative Rules
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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.