

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 080, RULE 0070**

NONCOMPLYING EMPLOYERS

**REIMBURSEMENT OF ASSIGNED CLAIMS AGENT FOR CLAIMS COSTS FOR INJURED
WORKERS OF NONCOMPLYING EMPLOYERS**

PROPOSED 8/12/05

The Workers' Compensation Division received no public testimony regarding the proposed amendment of this rule. The [Notice of Proposed Rulemaking Hearing](#) and [Statement of Need and Fiscal Impact](#) follow this rule.

436-080-0070 Reimbursement of Assigned Claims Agent for Claims Costs for Injured Workers of Noncomplying Employers

(1) When an assigned claims agent pays compensation to a claimant or incurs other costs on a claim referred to it under ORS 656.054, the assigned claims agent shall report the payment to the department as established by contract with the assigned claims agent. Any amounts received by the assigned claims agent and reported to the department under subsections (5) and (6) of this rule will be offset against such expenditures. Subject to section (3) of this rule, costs incurred by the assigned claims agent for which reimbursement will be allowed include:

(a) All compensation paid claimant.

(b) All expenses incurred for medical services.

(c) Attorney fees paid to the claimant in addition to any compensation, and sums assessed under ORS 656.382(3) and paid by the assigned claims agent, but not fees and sums paid under ORS 656.262 (11) and 656.382(1).

(d) A reasonable amount for administrative costs at a rate proposed by the assigned claims agent and approved by the director prior to June 30 of each year. Late requests for increase on the rate of reimbursement, if approved, shall be effective on the date the request was received by the director.

(2) The department will review the request and issue the reimbursement out of the Workers' Benefit Fund.

(3) The department will conduct an annual audit of the noncomplying employer claim files processed by the assigned claims agent to validate the amount reimbursed pursuant to section (1) of this rule. Reimbursement shall not be allowed, if, upon such audit, any of the following are found to apply:

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

(b) Compensation has been paid negligently for treatment of any condition unrelated to the compensable condition;

(c) The compensability of an accepted claim is questionable and the rationale for acceptance has not been reasonably documented in accordance with generally accepted claims management procedures;

(d) The separate payments of compensation have not been documented in accordance with generally accepted accounting procedures; or

(e) The payments were made pursuant to a disposition agreement as provided by ORS 656.236 without the prior approval of the department.

(4) **Under ORS 656.054 and 656.704(2), [T]the assigned claims agent may appeal any disapproval of reimbursement made by the department under this rule [pursuant to ORS 183.310 to 183.550 and as provided by OAR 436-080-0008] as provided in OAR 436-001.**

(5) When a damage action is brought against a noncomplying employer or an action is brought against a third party by an employee of a noncomplying employer or the employee's beneficiaries, or by the assigned claims agent as the paying agency for such an employee, as authorized by ORS 656.576 to 656.595, the assigned claims agent shall report the commencement and termination of such action to the department. Thereafter, at the end of each calendar year, the assigned claims agent shall report the status of all such actions that are pending.

(6) When an action against an employer, or third party is settled or if damages are recovered, the assigned claims agent shall report within (30) days to the department the amount of the recovery retained by the assigned claims agent under ORS 656.593(1)(c).

(7) The Business Administration Division of the department is responsible for collecting from noncomplying employers those costs incurred by the Workers' Benefit Fund for which the assigned claims agent is entitled to reimbursement from the department under this rule. The Business Administration Division will inform each noncomplying employer of the liability under ORS 656.054(3) and keep the employer advised of costs incurred by the assigned claims agent.

Stat. Auth.: ORS 656.054, ORS 656.726
Stats. Implemented: ORS 656.054
Hist: WCB 10-1970, f. & ef. 7-24-70;
WCB 4-1973 (Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88
Amended 12/22/89 as WCD Admin. Order 4-1989, effective 1-1-90
Amended 01/10/92 as WCD Admin. Order 3-1992, effective 2/1/92
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04
Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

Dept of Consumer and Business Services, Workers' Compensation Division		OAR CHAPTER 436	
Agency and Division		Administrative Rules Chapter Number	
Fred Bruyns		(503) 947- 7717 Fax (503) 947-7581	
Rules Coordinator		Telephone	
PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879			
Address			
		Room F (basement, Labor & Industries Building)	
September 26, 2005	10:00 a.m.*	350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing date	Time	Location	Hearings Officer

***NOTE: The hearing will begin at 10:00 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through September 30, 2005.**

**The site of the hearing is accessible for individuals with mobility impairments.
Auxiliary aids for persons with disabilities are available upon advance request.**

RULEMAKING ACTION

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

AMEND: OAR chapter 436, division 001; OAR 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: OAR 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: OAR 436-001-0000 to 0009, 436-001-0155 to 0019, 436-001-0275 to 0246

ORS 656.726(4)
Stat. Auth.

Other Authority
ORS 656.704, Enrolled House Bill 2091 – Oregon Laws 2005, chapter. 26
Stats. Implemented

RULE SUMMARY

The Workers' Compensation Division proposes to amend 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.

- House Bill 2091 (Oregon Laws 2005, chapter 26) 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. These proposed adoptions and amendments reflect that change. The Workers' Compensation Division proposes to repeal several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. The Workers' Compensation Division proposes to amend and renumber some rules in OAR 436-001 to place rules in a sequence more aligned with the sequence of appeals and hearings.

Notice of Proposed Rulemaking Hearing

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The Workers' Compensation Division proposes to repeal OAR chapter 436, division 030, "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.

Request for public comment: The Workers' Compensation Division requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business.

Address questions to:

Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers' Compensation Division's Web site: <http://wcd.oregon.gov/policy/rules/rules.html#proprules> or from WCD Publications, 503-947-7627 or fax 503-947-7630.

September 30, 2005
Last Day for Public Comment

/s/ John L Shilts
Authorized Signer and Date

8/12/05

John L. Shilts, Administrator, Workers' Compensation Division
Printed name

*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 pm 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 pm on the preceding workday.

Distribution: WCD-ID, S, T, U, AT, CE, EG, IA, LU, LL, NM, CI, ML, MR, VR, S0, S1, S2, S3, S4, S5, S6, S7, S8

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services,
Workers' Compensation Division

OAR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

In the Matter of)	
The Amendment of OAR:)	
436-001, Procedural Rules Governing Rulemaking and Hearings)	
436-009-0008, Oregon Medical Fee and Payment)	Statutory Authority,
436-045-0008, Reopened Claims Program)	Statutes Implemented,
436-070-0008, Workers' Benefit Fund Assessment)	Statement of Need,
436-075-0008, Retroactive Program)	Principal Documents Relied Upon,
436-080-0070, Noncomplying employers)	Statement of Fiscal Impact
436-085-0008, Premium Assessment)	
436-140-0008, Construction Carve-Out Programs)	
436-150-0008, Workers' Benefit Fund Claims Program)	
The Repeal of:)	
436-130, Rehabilitation Facilities)	

Statutory Authority: ORS 656.726(4)

Other Authority:

Statutes Implemented: ORS 656.704, Enrolled House Bill 2091 – Oregon Laws 2005, chapter 26

Need for the Rule(s): These proposed rule changes implement changes to Oregon laws brought about by passage of House Bill 2091.

Documents Relied Upon: House Bill 2091; rulemaking advisory committee meeting records and issues documents. These records are available for public inspection in the Administrator's Office, Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879, upon request and between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please call (503) 947-7717 to request copies.

Fiscal and Economic Impact: House Bill 2091 (Oregon Laws 2005, chapter 26) 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. This streamlines the hearing process such that all hearings, regardless of the disputed issue, will be processed by the Workers' Compensation Board. The related proposed rule changes do not substantially alter the actions required of the parties to a hearing, and should not have any significant economic impact on any persons or businesses, including small businesses. The Workers' Compensation Division estimates a savings to the Department of Consumer and Business Services, Premium Assessment Operating Account, during the 2005-2007 biennium of \$277,500. This savings estimate was prepared during analysis of House Bill 2091 and is not altered by proposed rule changes.

ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1. The repeal of OAR 436-130 will not have any fiscal impact on any party.

Administrative Rule Advisory Committee consulted: Yes, 7/20/2005

/s/ John L. Shilts

8/12/05

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name