



# Oregon

John A. Kitzhaber, MD, Governor

Department of Consumer and Business Services  
Workers' Compensation Division  
350 Winter Street NE  
P.O. Box 14480  
Salem, Oregon 97309-0405  
1-800-452-0288, 503-947-7810  
[www.wcd.oregon.gov](http://www.wcd.oregon.gov)

Jan. 14, 2011

## Regarding Proposed Changes to Workers' Compensation Rules

### **Comment Period Extended**

**The last day for written comments is now Jan. 27, 2011.**

The Workers' Compensation Division proposes changes to OAR chapter 436, mainly affecting the Oregon Medical Fee and Payment Rules, OAR 436-009, plus several additional rules related to medical services in OAR 436-010 and 436-060.

**In order to allow additional time for the public to submit written testimony, the division has extended the comment period through and including Jan. 27, 2011 (formerly Jan. 20).**

Otherwise, the *Notice of Proposed Rulemaking Hearing* and *Statement of Need and Fiscal Impact* filed with the Secretary of State on Dec. 15, 2010 remain the same. Copies of these forms and complete text of the proposed rules with marked revisions are available on the division's website: [www.wcd.oregon.gov/policy/rules/rules.html#proprules](http://www.wcd.oregon.gov/policy/rules/rules.html#proprules)

- When is the hearing?** Jan. 18, 2011, 1:30 p.m.
- Where is the hearing?** Labor & Industries Building  
350 Winter Street NE, Room F, Salem, Oregon 97301
- How can I make a comment?** Come to the hearing and speak, send written comments, or do both. Send written comments to:  
Fred Bruyns, rules coordinator  
Workers' Compensation Division  
350 Winter Street NE (for courier or in-person delivery)  
PO Box 14480, Salem, OR 97309-0405  
Email - [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us)  
Phone – 503-947-7717; Fax – 503-947-7514

**The closing date for written comments is Jan. 27, 2011.**

**How can I get copies of the proposed rules?**

On the Workers' Compensation Division's Web site –  
[www.wcd.oregon.gov/policy/rules/rules.html#proprules](http://www.wcd.oregon.gov/policy/rules/rules.html#proprules)

Or call 503-947-7717 to get free paper copies

**Questions?**

Contact Fred Bruyns, 503-947-7717.



# Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services  
Workers' Compensation Division  
350 Winter St. NE  
PO Box 14480  
Salem, OR 97309-0405  
1-800-452-0288 or 503-947-7810  
[www.wcd.oregon.gov](http://www.wcd.oregon.gov)

Dec. 20, 2010

## Proposed Changes to Workers' Compensation Rules

The Workers' Compensation Division proposes changes to OAR chapter 436, mainly affecting the Oregon Medical Fee and Payment Rules, OAR 436-009, plus several additional rules related to medical services in OAR 436-010 and 436-060.

Please review the attached documents for more information about proposed rule changes and possible fiscal impacts.

The department welcomes public comment on proposed changes and has scheduled a public hearing.

**When is the hearing?** Jan. 18, 2011, 1:30 p.m.

**Where is the hearing?** Labor & Industries Building  
350 Winter Street NE, Room F (basement),  
Salem, Oregon 97301

**How can I make a comment?** Come to the hearing and speak, send written comments, or do both. Send written comments to:  
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Email - [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us)  
Phone – 503-947-7717; Fax – 503-947-7514

**The closing date for written comments is Jan. ~~20~~ 27, 2011.**

**How can I get copies of the proposed rules?**

On the Workers' Compensation Division's Web site –  
[www.wcd.oregon.gov/policy/rules/rules.html#proprules](http://www.wcd.oregon.gov/policy/rules/rules.html#proprules)

Or call 503-947-7717 to get free paper copies

**Questions?** Contact Fred Bruyns, 503-947-7717.

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

Department of Consumer and Business Services,  
Workers' Compensation Division

OAR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

Fred Bruyns  
Rules Coordinator

PO Box 14480, Salem, OR 97309-0405;  
350 Winter Street NE, Rm 27, Salem, OR 97301-3879  
Address

(503) 947- 7717  
Fax (503) 947-7514  
Telephone

**RULE CAPTION**

**Amendments to rules affecting workers' compensation medical fee schedules and medical services**

Hearing date	Time	Location	Hearings Officer
Jan. 18, 2011	1:30 p.m.*	Room F (basement), Labor & Industries Building 350 Winter Street NE, Salem, Oregon	Fred Bruyns

\*NOTE: The hearing will begin at 1:30 p.m. and end when all present who wish to testify have done so. Written testimony will be accepted through **Jan. 20, 2011**.

**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:**

**AMEND:** OAR 436-009; 436-010-0230, 436-010-0265, 436-010-0290; 436-060-0095

**REPEAL:**

ORS 656.726(4); 656.248; 656.325

Stat. Auth.

Other Authority

ORS chapter 656, primarily ORS 656.248, 656.252, 656.254, and 656.325

Stats. Implemented

**RULE SUMMARY**

Unless stated otherwise, references to "insurers" mean workers' compensation insurers and self-insured employers.

**The agency proposes to amend OAR chapter 436, division 009. These proposed rules address:**

- Adoption of updated medical fee schedules and resources for the payment of health care providers
- Data that must be included on hospital inpatient and outpatient bills
- Billing requirements and payment criteria for ambulatory surgery centers
- Health care provider and payer communication regarding medical bills, including explanations of benefits that accompany payments or denials of payment
- Inclusion of certain Healthcare Common Procedure Coding System (HCPCS) level II codes in the maximum allowable payment table (Appendix B)
- Maximum allowable payment when OAR 436-009 does not set a maximum
- Documentation of time spent with a patient when constant attendance is required, affecting physical medicine codes
- Payment for independent medical examinations
- Maximum allowable payment for drugs based on wholesale acquisition cost or average wholesale price
- Procedures and forms required for clinical justifications when health care providers prescribe certain drugs; results of failure by provider to submit timely justification
- Prescription pricing guides to be used by insurers in calculating payment for drugs

- Payment of interpreters when a worker fails to attend a medical appointment required by the insurer or the director

**The agency proposes to amend OAR chapter 436, division 010. These proposed rules address:**

- Progress reporting by a physical therapist to the worker's attending physician and the insurer
- The type and form of information the insurer must make available to the health care provider to give to the patient at a scheduled independent medical examination
- Procedures for a worker to provide comments to the director about an independent medical examination or to file a complaint
- Training requirements for health care providers to be included on the list of authorized independent medical examination providers

**The agency proposes to amend OAR chapter 436, division 060. These proposed rules address:**

- The information an insurer must include with the independent medical examination appointment notice it sends to the worker

**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 or requests for paper copies of the rules to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7514; e-mail [fred.h.bruyns@state.or.us](mailto: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>

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**Jan. 20, 2011**  
Last Day for Public Comment  
(Last day to submit written comments to the  
Rules Coordinator)

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*/s/ John L. Shilts* Dec. 15, 2010  
Authorized Signer and Date  
**John L. Shilts, Administrator, Workers' Compensation Division**  
Printed name

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\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Distribution: WCD-ID, S0, S1, S4, S7, S, U, AT, CE, EG, LU, NM, MR, TT, DC, DO, GR, MD, ND, OT, PY, M1, M2, CI; E-mail lists; and legislators under ORS 183.335(15)

**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

436

Agency and Division

Administrative Rules Chapter Number

**Amendments to rules affecting workers' compensation medical fee schedules and medical services**

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

**In the Matter of:** The amendment of  
OAR 436-009, Oregon Medical Fee and Payment Rules  
OAR 436-010, Medical Services  
OAR 436-060, Claims Administration

**Statutory Authority:** ORS 656.726(4); 656.248; 656.325

**Other Authority:**

**Stats. Implemented:** ORS chapter 656, primarily ORS 656.248, 656.252, 656.254, and 656.325

**Need for the Rule(s):** The agency is proposing changes to update the medical fee schedules as required by ORS 656.248, and to make other changes consistent with the director's responsibilities under ORS 656.726(4).

**Documents Relied Upon, and where they are available:** Advisory committee meeting records and written advice from advisory committee members. These records are available for public inspection in the Administrator's Office, Workers' Compensation Division of the Department of Consumer and Business Services, 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:** Unless stated otherwise, references to "insurers" (below) mean workers' compensation insurers and self-insured employers. The following is a list of significant estimated economic impacts on persons and organizations affected by these proposed rule changes.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

- a. The agency projects proposed rule changes would have no direct effect on state agencies, with the exception of this agency, as described below, and also with the exception of the State Accident Insurance Fund (SAIF) Corporation, and no effect on units of local government. The fiscal effect on SAIF Corporation is included with the impacts on workers' compensation insurers.
- b. Proposed changes to OAR 436-009 affecting maximum allowable payments by CPT® code are based on the relative value units published by the Centers for Medicare & Medicaid Services (CMS). CMS has substantially increased the relative value units overall. CMS also decreased its conversion factor to offset the increased relative value units. The agency has adjusted its maximum allowable payments to reinstate current payment levels, which were substantially increased in July 2010. The agency's objective is to keep overall payments under the Physician Service Categories equivalent to payments under the existing schedule. However, the changes to individual CPT® codes may result in some changes in reimbursements according to the types of services provided by the individual providers.
- c. Proposed changes to OAR 436-009 should promote communication between health care providers and payers. Insurers would have some initial costs to modify their explanations of benefits that accompany payments or denials of payment. While the changes proposed make it clear that the insurer cannot refer bill inquiries to other companies to answer, the requirement to answer physician questions relating to medical payments has not changed. There should not be any fiscal impact due to the clarification unless the insurer has not complied with the existing law. The agency projects, however, that the overall economic effect of the changes would be slightly positive by expediting appropriate payment and reducing payment disputes.

- d. Proposed changes to OAR 436-009 would set maximum allowable payments for certain CPT® codes and two HCPCS codes relating to drug testing. The agency projects that this would have no overall positive or negative fiscal impact on providers, because the agency set the price at levels commonly paid; however, providers that have been paid more than the proposed maximum allowable payment for drug testing procedures would experience a decrease in reimbursement for these services.
  - e. Proposed changes to OAR 436-009 would limit payment to 80% of a health care provider's usual fee when the rules don't set a maximum allowable payment for a specific service. This change would decrease reimbursements for those services that are currently paid at the amount charged by the provider. The paid-as-billed codes are extensive (e.g., approximately 10,000 HCPCS codes), and charged regularly by nearly all providers working within the workers' compensation system. The agency projects this change would reduce payments to providers by approximately \$4 million per year, and reduce insurers' costs by a corresponding amount.
  - f. Proposed changes to OAR 436-009 would limit reimbursement for drugs to 110% of wholesale acquisition cost (WAC) or, if the drug has no WAC, to 80% of the average wholesale price. Proposed changes also include procedures and forms required for clinical justifications when health care providers prescribe certain drugs, to promote dispensing of generic and therapeutically equivalent drugs. The agency projects these changes would reduce reimbursements to pharmacies by approximately \$1.9 million per year, and reduce insurers' costs by a corresponding amount. If a health care provider fails to provide the clinical justification, the insurer may reduce the provider's future payments on the claim by the amount the insurer paid for the drug. The agency projects a small administrative cost for providers to complete the clinical justification forms.
  - g. Proposed changes to OAR 436-009 would require insurers to pay interpreters if a worker fails to attend a scheduled appointment that has been ordered by the insurer or the director. The agency projects that this change would have a positive economic impact on interpreters at a corresponding cost to insurers.
  - h. Proposed changes to OAR 436-009 include a fee schedule for ambulatory surgery centers (ASCs) that is more consistent with schedules used by the Centers for Medicare & Medicaid Services (CMS). The agency's objective is to keep overall payments to ASCs equivalent to payments under the existing schedule. However, the CMS model may result in some changes in reimbursements according to the types of services provided by the ASC.
  - i. Proposed changes to OAR 436-010 would require physical therapists to send progress reports to the worker's attending physician and the insurer. The objective is to promote effective treatment and to expedite return to work. The agency projects that this change could reduce or increase payments to therapists to the extent improved communication affects the frequency or duration of care.
  - j. Proposed changes to OAR 436-010 and 436-060 would eliminate the requirement that independent medical examination (IME) providers give workers a survey form, though workers would still receive a brochure explaining procedures to provide comments to the director about an IME and to file a complaint, either by using the agency's website or by telephone. The agency projects that this change would slightly reduce agency costs to process IME data. Insurers and providers will be required to print the brochure from a web-based document, which will add some administrative costs to insurers and providers.
  - k. The agency projects that additional proposed rule changes should not have significant economic impacts on any persons or businesses, including small businesses.
- 2. Cost of compliance effect on small business (ORS 183.336):**
- a. **Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:** Small businesses affected by these rules are primarily medical providers, including suppliers of prosthetics and orthotics, and independent community pharmacies (according to the Oregon Board of Pharmacy, Oregon has approximately 210 independent community pharmacies). Many language interpreters are also small businesses. We estimate approximately 12,000 Oregon health care providers are small businesses, as defined in ORS 183.310(10). We do not have data showing how many small interpreter firms operate in Oregon, but estimate there are at least two hundred firms meeting the "small business" definition.
  - b. **Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:** Health care providers would assume a small administrative cost to complete clinical justification forms when prescribing certain drugs. Independent medical examination

providers would assume a small administrative cost to print certain informational materials from the agency's website. Please review additional potential impacts above, especially 1. e. and f.

- c. Equipment, supplies, labor and increased administration required for compliance:**  
None anticipated.

**How were small businesses involved in the development of this rule?**

Representatives of small businesses participated in the stakeholder advisory committee or provided written advice.

**Administrative Rule Advisory Committee consulted? Yes**

If not, why?

The agency asked the committees for advice on the economic impacts of the discussed changes, including impacts on small businesses.

*/s/ John L. Shilts*

John L. Shilts

Dec. 15, 2010

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION



**Oregon Medical Fee and Payment Rules**  
**Oregon Administrative Rules**  
**Chapter 436, Division 009**

*Proposed*

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**NOTE:** Revisions are marked as follows:

Deleted text has a "strike-through" style, as in	<del>Deleted</del>
Added text is bold and underlined, as in	<b><u>Added</u></b>

**HISTORY LINES:** These rules include only the most recent “History” lines. The history line shows when the rule was last revised and its effective date. To obtain a comprehensive history for OAR chapter 436, please call the Workers’ Compensation Division, (503) 947-7627, or visit the division’s ~~W~~website: <http://wcd.oregon.gov/policy/rules/history.html>

**The Workers' Compensation Division (WCD) adopts, by reference, the American Society of Anesthesiologists (ASA) Relative Value Guide and Current Procedural Terminology (CPT®). See OAR 436-009-0004 for details and updated citations.**

- To order the *ASA Relative Value Guide*, contact:  
American Society of Anesthesiologists  
520 N. Northwest Highway, Park Ridge, IL 60068-2573  
Phone 847-825-5586  
**Ask for: ~~2010~~2011 Relative Value Guide**
- To order the *CPT® ~~2010~~2011 or the CPT Assistant*, contact:  
American Medical Association  
515 North State Street, Chicago, IL 60610  
Phone 800-621-8335
- To order the *NUBC UB-04 Data Specifications Manual*, contact:  
National Uniform Billing Committee  
American Hospital Association  
One North Franklin, 29<sup>th</sup> Floor, Chicago, IL 60606  
[www.nubc.org](http://www.nubc.org)  
Phone 312-422-3390  
**Ask to: Become a subscriber of the NUBC UB-04 Specifications Manual**
- To order the Healthcare Common Procedure Coding System, contact:  
National Technical Information Service  
Springfield, VA 22161  
Phone 800-621- 8335  
[www.cms.hhs.gov/HCPCSReleaseCodeSets/ANHCPCS/list.asp](http://www.cms.hhs.gov/HCPCSReleaseCodeSets/ANHCPCS/list.asp)

**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 436, DIVISION 009**

**436-009-0001 Authority for Rules**

These rules are promulgated under the director's general rulemaking authority of ORS 656.726 (4) and specific authority under ORS 656.248.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248  
Hist: Amended 3/8/01 as WCD Admin. Order 01-051, eff. 4/1/01

**436-009-0002 Purpose**

The purpose of these rules is to establish uniform guidelines for administering the payment for medical benefits to injured workers within the workers' compensation system.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248  
Hist: Filed 5/3/96 as Admin. Order 96-059, eff. 6/1/96  
Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0003 Applicability of Rules**

- (1) These rules apply to all services rendered on or after the effective date of these rules.
- (2) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248  
Hist: Admin. Order 04-054 reinstated, eff. 1/3/09  
Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0004 Adoption of Standards**

(1) The director adopts, by reference, the *American Society of Anesthesiologists ASA, Relative Value Guide 2010* **2011** as a supplementary fee schedule for those anesthesia codes not found in Appendix B.

(2) The director adopts, by reference, the American Medical Association's (AMA) *Current Procedural Terminology (CPT<sup>®</sup> 2010* **2011**), Fourth Edition Revised, ~~2009~~ **2010**, for billing by medical providers. The guidelines are adopted as the basis for determining level of service.

(3) The director adopts, by reference, the AMA's *CPT<sup>®</sup> Assistant, Volume 0, Issue 04* 1990 through Volume ~~19~~ **20**, Issue 12, ~~2009~~ **2010**, ~~as a supplement for determining the level of service described by the CPT<sup>®</sup> manual guidelines.~~ If there is a conflict between the CPT<sup>®</sup> manual and CPT<sup>®</sup> Assistant, the CPT<sup>®</sup> manual shall be the controlling resource ~~to determine the level of service.~~

(4)(a)The director adopts, by reference, only the alphanumeric codes from the CMS *Healthcare Common Procedure Coding System (HCPCS)* to be used when billing for services only to identify products, supplies, and services that are not described by CPT<sup>®</sup> codes or that provide more detail than a CPT<sup>®</sup> code.

(b)The director does not adopt the HCPCS edits, processes, exclusions, color-coding and associated instructions, age and sex edits, notes, status indicators, or other policies of CMS.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**  
**WORKERS' COMPENSATION DIVISION**  
*Proposed* **OREGON MEDICAL FEE AND PAYMENT RULES**

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(5) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 control over any conflicting provision in ASA Relative Value Guide ~~2010~~ **2011**, CPT<sup>®</sup> ~~2010~~ **2011**, CPT<sup>®</sup> Assistant, or HCPCS ~~2010~~ **2011**.

Stat Auth: ORS 656.248, 656.726(4); Stats Implemented: ORS 656.248  
 Hist: Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7/1/09  
 Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0005 Definitions**

(1) Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS chapter 656 and OAR 436-010-0005 are hereby incorporated by reference and made part of these rules.

(2) "Clinic" means a group practice in which several medical service providers work cooperatively.

(3) "Fee Discount Agreement" means a direct contract entered into between a medical service provider or clinic and an insurer to discount fees to the medical service provider or clinic under OAR 436-009-0018.

(4) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; an assigned claims agent selected by the director under ORS 656.054; or, an employer or employer group that has been certified under ORS 656.430 meeting the qualifications of a self-insured employer under ORS 656.407.

(5) "Provider network" means a health service intermediary other than an MCO that facilitates transactions between medical providers and insurers through a series of contractual arrangements.

(6) Abbreviations used in these rules are either defined in the rules in which they are used or defined as follows:

(a) ANSI means the American National Standards Institute.

(b) CMS means Centers for Medicare & Medicaid Services.

(c) CPT<sup>®</sup> means Current Procedural Terminology published by the American Medical Association.

(d) DME means durable medical equipment.

~~(e) DRG means diagnosis related group.~~

~~(f)~~**(e)** EDI means electronic data interchange.

~~(g)~~**(f)** HCPCS means Healthcare Common Procedure Coding System published by CMS.

~~(h)~~**(g)** IAIABC means International Association of Industrial Accident Boards and Commissions.

~~(i)~~**(h)** ICD-9-CM means International Classification of Diseases, Ninth Revision, Clinical Modification, Vol. 1, 2 & 3 by US Department of Health and Human Services.

~~(j)~~**(i)** MCO means managed care organization certified by the director.

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~~(k)~~**(j)** NPI means National Provider Identifier.

~~(j)~~**(k)** OSC means Oregon specific code.

~~(m)~~**(l)** PCE means physical capacity evaluation.

~~(n)~~**(m)** WCE means work capacity evaluation.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.726(4)  
 Hist: Amended 12/15/08 as Admin. Order 08-063, eff. 1/1/09  
 Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0006 Administration of Rules**

Any orders issued by the division in carrying out the director's authority to enforce ORS chapter 656 and OAR chapter 436, are considered orders of the director.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.726(4)  
 Hist: Amended 3/14/06 as WCD Admin Order 06-052, eff. 4/1/06

**436-009-0008 Administrative Review Before the Director**

(1)(a) The director has exclusive jurisdiction to resolve all disputes concerning medical services including treatment, medical fees and non-payment of compensable medical bills. The director may, on the director's own motion, initiate a medical service review at any time. A party need not be represented to participate in the administrative review before the director.

(b) Any party may request the director provide voluntary alternative dispute resolution after a request for administrative review or hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, the director will put the agreement in writing; or the parties shall put any agreement in writing for approval by the director. If the dispute is not resolved through alternative dispute resolution, the director will issue an order.

(2) The medical provider, worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all MCO enrolled claims where a party disagrees with an action or decision of the MCO, the aggrieved party shall first apply to the MCO for dispute resolution within 30 days pursuant to OAR 436-015-0110. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 30 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. Administrative review by the director must be requested within 60 days of issuance of the MCO's final decision under the MCO's dispute resolution process. If a party has been denied access to the MCO dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving fee and billing disputes, the insurer shall advise the medical provider or worker that they may request review by the director.

(b) For all claims not enrolled in an MCO, or for disputes which do not involve an action or decision of the MCO:

(A) A worker must request administrative review by the director within 90 days of the date the worker knew, or should have known, there was a dispute over the provision of medical

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services.

(B) A medical provider must request administrative review within 90 days of the mailing date of the most recent explanation of benefits or a similar notification the provider received regarding the disputed service or fee.

(C) An insurer must request administrative review within 90 days of the date action on the bill was due under OAR 436-009-0030.

(D) Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

(c) An insurer may request a refund from a provider for any amount it determines was overpaid for a compensable medical service. The insurer must make the request within 180 days of the payment date. If the provider does not respond to the request, or disagrees that a service was overpaid, the insurer may request director review within 90 days of requesting the refund.

(d) Under ORS 656.704(3)(c), when there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition, the issue may first be decided by the Hearings Division of the Workers' Compensation Board.

(3) Parties must submit requests for administrative review to the director in the form and format prescribed by the director. When an insurer or the worker's representative submits a request without the required information, at the director's discretion the administrative review may not be initiated until the information is submitted. Unrepresented workers may contact the director for help in meeting the filing requirements. The requesting party must simultaneously notify all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number.

(b) Specify the issues in dispute and the relief sought.

(c) Provide the specific dates of the unpaid disputed treatment or services.

(d) If the request for review is submitted by either the insurer or medical provider, it shall state specific code(s) of service(s) in dispute and include sufficient documentation to support the review request, including but not limited to copies of original CMS bills, chart notes, bill analyses, operative reports, any correspondence between the parties regarding the dispute, and any other documentation necessary to evaluate the dispute. The insurer or medical provider requesting review shall certify that they have provided all involved parties a copy of:

(A) The request for review; and

(B) Any attached supporting documentation; and

(C) If known, an indication of whether or not there is an issue of causation or compensability of the underlying claim or condition.

(4) The division will investigate the matter upon which review was requested.

(a) The investigation may include, but not be limited to, request for and review of pertinent medical treatment and payment records, interviews with the parties to the dispute, or consultation with an appropriate committee of the medical provider's peers.

(b) Upon receipt of a written request for additional information, the party must respond

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within 14 days.

(c) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the 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.

(5) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party may also request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new information which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be mailed to the director before the administrative order becomes final.

(6) Hearings before an administrative law judge: Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules 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.

(7) Contested case hearings of sanction and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254, or 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as described in OAR 436-010-0008(14).

(8) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (7) of this rule, according to these rules, may request administrative review by the director as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

Stat. Auth.: ORS 656.704, 656.726(4); Stats. Implemented: ORS 656.704  
Hist: Amended 12/15/08 as Admin. Order 08-063, eff. 1/1/09  
Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0010      General Requirements for Medical Billings**

(1) Only treatment that falls within the scope and field of the medical provider's license

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to practice will be paid under a worker's compensation claim.

(2) Billings must include the worker's full name and date of injury, the employer's name and, if available, the insurer's claim number and the provider's NPI. If the provider does not have an NPI, then the provider must provide its license number and the billing provider's FEIN. For provider types not licensed by the state, "99999" must be used in place of the state license number. All medical providers must submit bills to the insurer or, if provided by their contract for medical services, to the managed care organization. Medical providers must submit bills on a completed current UB-04 (CMS 1450) or CMS 1500 form, except for:

(a) Dental billings, which must be submitted on American Dental Association dental claim forms;

(b) Pharmacy billings, which must be submitted on the most current National Council for Prescription Drug Programs (NCPDP) form; and

(c) EDI transmissions of medical bills under OAR 436-009-0030(3)(c).

(d) Computer-generated reproductions of forms referenced in subsections (2)(a) and (b) may also be used.

(3)(a) All original medical provider billings must be accompanied by legible chart notes documenting services that have been billed and identifying the person performing the service and license number of the person providing the service. Medical providers are not required to provide their license number if they are already providing a national identification number.

(b) When processing billings via EDI, the insurer may waive the requirement that billings be accompanied by chart notes. The insurer remains responsible for payment of only compensable medical services. The medical provider may submit their chart notes separately or at regular intervals as agreed with the insurer.

(4) When billing for medical services, a medical service provider must use codes listed in CPT<sup>®</sup> ~~2010~~ 2011 or Oregon Specific Codes (OSC) that accurately describe the service. If there is no specific CPT<sup>®</sup> code or OSC, a medical service provider must use the appropriate HCPCS code, if available, to identify the medical supply or service. Pharmacy billings must use the National Drug Code (NDC) to identify the drug or biological billed.

(a) If there is no specific code for the medical service, the medical service provider must use the appropriate unlisted code from HCPCS or the unlisted code at the end of each medical service section of CPT<sup>®</sup> ~~2010~~ 2011 and provide a description of the service provided.

(b) Any service not identifiable with a code number must be adequately described by report.

(5) Medical providers must submit billings for medical services in accordance with this section.

(a) Bills must be submitted within:

(A) 60 days of the date of service;

(B) 60 days after the medical provider has received notice or knowledge of the responsible workers' compensation insurer or processing agent; or

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(C) 60 days after any litigation affecting the compensability of the service is final, if the provider receives written notice of the final litigation from the insurer.

(b) A medical provider must establish good cause when submitting a bill later than outlined in subsection (a) of this section. Good cause may include, but is not limited to, such issues as extenuating circumstances or circumstances considered outside the control of the provider.

(c) When a provider submits a bill within 12 months of the date of service, the insurer may not reduce payment due to late billing. When a provider submits a bill over ~~twelve~~12 months after the date of service, the bill is not payable, except when a provision of subsection (a) of this section is the reason the billing was submitted after ~~twelve~~12 months.

(6) When rebilling, medical providers must indicate that the charges have been previously billed.

(7) The medical provider must bill their usual fee charged to the general public. The submission of the bill by the medical provider shall serve as a warrant that the fee submitted is the usual fee of the medical provider for the services rendered. The department shall have the right to require documentation from the medical provider establishing that the fee under question is the medical provider's usual fee charged to the general public. For purposes of this rule, "general public" means any person who receives medical services, except those persons who receive medical services subject to specific billing arrangements allowed under the law which require providers to bill other than their usual fee.

(8) Medical providers must not submit false or fraudulent billings, including billing for services not provided. As used in this section, "false or fraudulent" means an intentional deception or misrepresentation with the knowledge that the deception could result in unauthorized benefit to the provider or some other person. A request for pre-payment for a deposition is not considered false or fraudulent.

(9) When a worker with two or more separate compensable claims receives treatment for more than one injury or illness, costs must be divided among the injuries or illnesses, irrespective of whether there is more than one insurer.

(10) Workers may make a written request to a medical provider to receive copies of medical billings. Upon receipt of a request, the provider may furnish the worker a copy during the next billing cycle, but no later than 30 days following receipt of the request. Thereafter, worker copies must be furnished during the regular billing cycle.

Stat. Auth.: ORS 656.245, 656.252, 656.254; Stats. Implemented: ORS 656.245, 656.252, 656.254  
Hist: Amended 12-1-2009 as Admin. Order 09-054, eff. 1-1-2010  
Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0015      Limitations on Medical Billings**

(1) An injured worker is not liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer according to OAR chapter 436. A medical provider must not attempt to collect payment for any medical service from an injured worker, except as follows:

(a) When the injured worker seeks treatment for conditions not related to the accepted

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compensable injury or illness;

(b) When the injured worker seeks treatment that has not been prescribed by the attending physician or authorized nurse practitioner, or a specialist physician upon referral of the attending physician or authorized nurse practitioner. This would include, but not be limited to, ongoing treatment by non-attending physicians in excess of the 30-day/12-visit period or by nurse practitioners in excess of the 90-day period, as set forth in ORS 656.245 and OAR 436-010-0210;

(c) When the injured worker seeks palliative care that is either not compensable or not authorized by the insurer or the director under OAR 436-010-0290, after the worker has been provided notice that the worker is medically stationary;

(d) When the injured worker seeks treatment outside the provisions of a governing MCO contract after insurer notification in accordance with OAR 436-010-0275; or

(e) When the injured worker seeks treatment after being notified that such treatment has been determined to be unscientific, unproven, outmoded, or experimental.

(2) A medical provider may not charge any fee for completing a medical report form required by the director under this chapter or for providing chart notes required by OAR 436-009-0010(3).

(3) The medical provider may not charge a fee for the preparation of a written treatment plan and the supplying of progress notes that document the services billed as they are integral parts of the fee for the medical service.

(4) No fee is payable for the completion of a work release form or completion of a PCE form where no tests are performed.

(5) No fee is payable for a missed appointment except a closing examination or an appointment arranged by the insurer or for a Worker Requested Medical Examination. Except as provided in OAR 436-009-0070 (9)(d) and (10)(d), when the worker fails to appear without providing the medical provider at least 24 hours notice, the medical provider must be paid at 50 percent of the examination or testing fee.

(6) Under ORS 656.245 (3), the director has excluded from compensability the following medical treatment. While these services may be provided, medical providers shall not be paid for the services or for treatment of side effects.

(a) Dimethyl sulfoxide (DMSO), except for treatment of compensable interstitial cystitis;

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface EMG (electromyography) tests;

(d) Rolfing;

(e) Prolotherapy;

(f) Thermography;

(g) Lumbar artificial disc replacement, unless it is a single level replacement with an unconstrained or semi-constrained metal on polymer device and:

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- (A) The single level artificial disc replacement is between L3 and S1;
- (B) The injured worker is 16 to 60 years old;
- (C) The injured worker underwent a minimum of 6 months unsuccessful exercise based rehabilitation; and
- (D) The procedure is not found inappropriate under OAR 436-010-0230(13) or (14); and
- (h) Cervical artificial disc replacement, unless it is a single level replacement with a semi-constrained metal on polymer or a semi-constrained metal on metal device and:
  - (A) The single level artificial disc replacement is between C3 and C7;
  - (B) The injured worker is 16 to 60 years old;
  - (C) The injured worker underwent unsuccessful conservative treatment;
  - (D) There is intraoperative visualization of the surgical implant level; and
  - (E) The procedure is not found inappropriate under OAR 436-010-0230(15) or (16).
- (7) Only one office visit code may be used for each visit except for those code numbers relating specifically to additional time.
- (8) Mechanical muscle testing may be paid a maximum of three times during a treatment program when prescribed and approved by the attending physician or authorized nurse practitioner: once near the beginning, once near the middle, and once near the end of the treatment program. Additional mechanical muscle testing shall be paid for only when authorized in writing by the insurer prior to the testing. The fee for mechanical muscle testing includes a copy of the computer printout from the machine, written interpretation of the results, and documentation of time spent with the patient.
- (9)(a) When a physician or authorized nurse practitioner provides services in hospital emergency or outpatient departments which are similar to services that could have been provided in the physician's or authorized nurse practitioner's office, such services must be identified by CPT<sup>®</sup> codes and paid according to the fee schedule.
- (b) When a worker is seen initially in an emergency department and is then admitted to the hospital for inpatient treatment, the services provided immediately prior to admission shall be considered part of the inpatient treatment. Diagnostic testing done prior to inpatient treatment shall be considered part of the hospital services subject to the hospital fee schedule.
- (10) Physician assistant, authorized nurse practitioner, or out-of-state nurse practitioner fees must be paid at the rate of 85 percent of a physician's allowable fee for a comparable service. The bills for services by these providers must be marked with modifier "-81". Chart notes must document when medical services have been provided by a physician assistant or nurse practitioner.
- (11) Except as otherwise provided in OAR 436-009-0070, when a medical provider is asked to prepare a report, or review records or reports prepared by another medical provider, an insurance carrier or their representative, the medical provider should bill for their report or review of the records utilizing CPT<sup>®</sup> codes such as 99080. Refer to specific code definitions in the CPT<sup>®</sup> for other applicable codes. The billing should include documentation of the actual time

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spent reviewing the records or reports.

Stat. Auth.: ORS 656.245, 656.252, 656.254; Stats. Implemented: ORS 656.245, 656.252, 656.254  
 Hist: Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7/1/09  
 Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0018      Fee Discount Agreements**

(1) An insurer may only apply the following discounts to a medical service provider's or clinic's fee:

(a) A fee agreed to under a fee discount agreement that conforms to this rule and has been reported to the director; or

(b) A fee agreed to by the medical service provider or clinic under an MCO contract to cover services provided to a worker enrolled in the MCO.

(2) Any discount under a fee discount agreement cannot be more than 10 percent of the fee schedule.

(3) An insurer may not apply a discount under a fee discount agreement until the medical service provider or clinic and the insurer have signed the fee discount agreement. Parties to the fee discount agreement must use Form 440-3659. The form must be reproduced on the medical service provider's or clinic's letterhead. The agreement must include the following:

(a) A statement that the medical service provider or clinic understands and voluntarily agrees with the terms of the fee discount agreement;

(b) The effective and end dates of the agreement;

(c) The discount rate or rates under the agreement;

(d) A statement that the insurer or employer may not direct patients to the provider or clinic, and that the insurer or employer may not direct or manage the care a worker receives;

(e) A statement that the agreement only applies to patients being treated for Oregon workers' compensation claims;

(f) A statement that the fee discount agreement may not be amended. A new fee discount agreement must be executed to change the terms between the parties.

(g) A statement that either party may terminate the agreement by providing the other party with 30 days written notice;

(h) The name and address of the singular insurer or self-insured employer that will apply the discounts;

(i) The National Provider Identifier for the provider or clinic; and

(j) Other terms and conditions to which the medical service provider or clinic and the insurer agree and that are consistent with these rules.

(4) Once the fee discount agreement has been signed by the medical service provider or clinic and the insurer, the insurer must report the fee discount agreement to the director by completing the director's online form. The following information must be included:

(a) The insurer's name that will apply the discounts under the fee discount agreement;

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- (b) The medical service provider's or clinic's name;
- (c) The effective date of the agreement;
- (d) The end date of the agreement;
- (e) The discount rate under the agreement and;
- (f) An indication that all the terms required under section (3) of this rule are included in the signed fee discount agreement.

(5) When the medical service provider or clinic and the insurer agree to changes under an existing fee discount agreement, the parties must enter into a new fee discount agreement. Bulletin 352 provides further information on the required form.

(6) Either party to the fee discount agreement may terminate the agreement by providing 30 days written notice. The insurer must report the termination to the director prior to the termination taking effect by completing the director's online form. The following information must be reported:

- (a) The insurer's name;
- (b) The medical service provider's or clinic's name; and
- (c) The termination date of the agreement.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248  
 Hist: Adopted 12/15/08 as WCD Admin. Order 08-063, eff. 1/1/09  
 Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7/1/09

#### **436-009-0020 Hospital Fees**

(1) **For the purposes of this rule,**

**(a) Hospital inpatient services include, but are not limited to, those bills coded "0111" through "0118" in form locator #4 on the UB-04 billing form.**

**(b) Hospital outpatient services include, but are not limited to, those bills coded "0131" through "0138" in form locator #4 on the UB-04 billing form.** Hospital inpatient charges billed to insurers must include ICD-9-CM diagnostic codes. When applicable, the hospital charges must also include procedural codes. Hospitals must include their NPI on all bills. For purposes of this rule, hospital inpatient services include, but are not limited to, those bills coded "111" through "118" in space #4 on the UB-04 billing form. The audited bill must be multiplied by the hospital's adjusted cost/charge ratio to determine the allowable payment.

(2) Hospital **inpatient bills must include:**

**(a) ICD-9-CM codes;**

**(b) When applicable, procedural codes;**

**(c) The hospital's NPI; and**

**(d) The Medicare Severity Diagnosis Related Group (MS-DRG) code for those hospitals listed in Appendix A.**

~~outpatient charges billed to insurers must include revenue codes, ICD-9-CM diagnostic and procedural codes, CPT<sup>®</sup> codes, HCPCS codes, and National Drug Codes (NDC), where~~

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applicable. Hospitals must include their NPI on all bills.

(3) **Hospital outpatient bills must, when applicable, include the following:**

**(a) Revenue codes;**

**(b) ICD-9-DM diagnostic and procedural codes;**

**(c) CPT<sup>®</sup> codes and HCPCS codes; and**

**(d) The hospital's NPI.**

**(4)** Unless otherwise provided by contract, the insurer must pay **the audited bill** for hospital inpatient services at the allowable payment amount as calculated by multiplying the **amount charged by the** hospital's adjusted cost/charge ratio by the amount billed (See Bulletin 290).

~~(4)~~**(5)** The insurer must pay for hospital outpatient services as follows:

(a) For services by physicians and other medical service providers assigned a code under the CPT<sup>®</sup> and identified by the revenue codes indicating professional services (0960 through 0989), pay the lesser of:

(A) The amount assigned to the CPT<sup>®</sup> in the Facility Maximum column of Appendix B;

or

(B) The amount charged.

(b) For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology) pay the lesser of:

(A) The amount assigned to the CPT<sup>®</sup> code or the Oregon Specific Code in the Non-Facility Maximum column of Appendix B; or

(B) The amount charged.

(c) For hospital outpatient services not paid under subsection ~~(4)~~**(5)**(a) or (b) of this rule, unless otherwise provided by contract, pay the amount charged multiplied by the hospital's adjusted cost/charge ratio (~~see~~ **See** Bulletin 290).

~~(5)~~**(6)** If a hospital qualifies for a rural exemption under ~~(6)~~**(7)**(k), the insurer may only apply an MCO contract to discount the fees calculated under this rule.

~~(6)~~**(7)** Each hospital's CMS 2552 form and financial statement shall be the basis for determining its adjusted cost/charge ratio. If a current form 2552 is not available, then financial statements may be used to develop estimated data. If the adjusted cost/charge ratio is determined from estimated data, the hospital will receive the lower ratio of either the hospital's last published cost/charge ratio or the hospital's cost/charge ratio based on estimated data.

(a) The basic cost/charge ratio shall be developed by dividing the total net expenses for allocation shown on Worksheet A, and as modified in subsection (b), by the total patient revenues from Worksheet G-2.

(b) The net expenses for allocation derived from Worksheet A shall be modified by adding, from Worksheet A-8, the expenses for:

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(A) Provider-based physician adjustment;

(B) Patient expenses such as telephone, television, radio service, and other expenses determined by the department to be patient-related expenses; and

(C) Expenses identified as for physician recruitment.

(c) The basic cost/charge ratio shall be further modified to allow a factor for bad debt and the charity care provided by each hospital. The adjustment for bad debt and charity care is calculated in two steps. Step one: Add the dollar amount for net bad debt to the dollar amount for charity care. Divide this sum by the dollar amount of the total patient revenues, from Worksheet G-2, to compute the bad debt and charity ratio. Step two: Multiply the bad debt and charity ratio by the basic cost/charge ratio calculated in subsection (67)(a) to obtain the factor for bad debt and charity care.

(d) The basic cost/charge ratio shall be further modified to allow an adequate return on assets. The director will determine a historic real growth rate in the gross fixed assets of Oregon hospitals from the audited financial statements. This real growth rate and the projected growth in a national fixed weight price deflator will be added together to form a growth factor. This growth factor will be multiplied by the total fund balance, from Worksheet G of each hospital's CMS 2552 to produce a fund balance amount. The fund balance amount is then divided by the total patient revenues from Worksheet G-2, to compute the fund balance factor.

(e) The factors resulting from subsections (67)(c) and (67)(d) of this rule will be added to the ratio calculated in subsection (67)(a) of this rule to obtain the adjusted cost/charge ratio. In no event will the adjusted cost/charge ratio exceed 1.00.

(f) The adjusted cost/charge ratio for each hospital will be revised annually, at a time based on their fiscal year, as described by bulletin. Each hospital must submit a copy of their CMS 2552 and financial statements each year within 150 days of the end of their fiscal year to the Information Management Division, Department of Consumer and Business Services. The adjusted cost/charge ratio schedule will be published by bulletin twice yearly, effective for the six-month period beginning April 1 and the six-month period beginning October 1.

(g) For newly formed or established hospitals for which no CMS 2552 has been filed or for which there is insufficient data, or for those hospitals that do not file Worksheet G-2 with the submission of their CMS 2552, the division shall determine an adjusted cost/charge ratio for the hospital based upon the adjusted cost/charge ratios of a group of hospitals of similar size or geographic location.

(h) If the financial circumstances of a hospital unexpectedly or dramatically change, the division may revise the hospital's adjusted cost/charge ratio to allow equitable payment.

(i) If audit of a hospital's CMS 2552 by the CMS produces significantly different data from that obtained from the initial filing, the division may revise the hospital's adjusted cost/charge ratio to reflect the data developed subsequent to the initial calculation.

(j) Notwithstanding subsections (c) through (i) of this section the payment to out-of-state hospitals, may be negotiated between the insurer and the hospital.

(A) Any agreement for payment less than the billed amount must be in writing and signed by a hospital and insurer representative.

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(B) The agreement must include language that the hospital will not bill the worker any remaining balance and that the negotiated amount is considered payment in full.

(C) If the insurer and the hospital are unable to reach agreement within 60 days of the insurer's receipt of the bill, either party may bring the issue to the director for resolution. The director may order payment up to the amount billed considering factors such as, but not limited to, reasonableness, usual fees for similar services by facilities in similar geographic areas, case specific services, and any extenuating circumstances.

(k) Notwithstanding sections (3), ~~and (4)~~, **and (5)** of this rule, the director may exclude rural hospitals from imposition of the adjusted cost/charge ratio based upon a determination of economic necessity. The rural hospital exclusion will be based on the financial health of the hospital reflected by its financial flexibility index. All rural hospitals having a financial flexibility index at or below the median for critical access hospitals nationwide will qualify for the rural exemption. Rural hospitals that are designated as critical access hospitals under the Oregon Medicare Rural Hospital Flexibility Program are automatically exempt from imposition of the adjusted cost/charge ratio.

Stat. Auth.: ORS 656.726(4), also see 656.012, 656.236(5), 656.327(2), 656.313(4)(d)

Stats. Implemented: ORS 656.248; 656.252; 656.256

Hist: Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7/1/09

Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0022 — Ambulatory Surgical Center Fees**

~~(1) An ambulatory surgical center (ASC) is any distinct entity licensed by the state of Oregon, and operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization.~~

~~(a) Any ASC outside of Oregon must meet similar licensing requirements, or be certified by Medicare or a nationally recognized agency.~~

~~(b) ASCs must bill on CMS 1500 forms using the modifier "SG" to identify facility charges.~~

~~(2) Unless otherwise provided by contract, insurers must pay an ASC at the ASC's usual fee, or the maximum allowable amount set by the fee schedule, whichever is less.~~

~~(3) Insurers must pay ASCs using the 2006 Medicare ASC groups, except:~~

~~(a) CPT<sup>®</sup> codes 15004, 64490, 64491, 64492, 64493, 64494, and 64495 are paid as Group 1;~~

~~(b) CPT<sup>®</sup> code 11760 is paid as Group 2;~~

~~(c) CPT<sup>®</sup> code 11750 is paid as Group 3;~~

~~(d) CPT<sup>®</sup> code 25606 is paid as Group 4;~~

~~(e) CPT<sup>®</sup> codes 25607, 25608, and 25609 are paid as Group 5;~~

~~(f) CPT<sup>®</sup> codes 24357, 24358, and 24359 are paid as Group 6;~~

~~(g) Arthroscopies (CPT<sup>®</sup> codes 29819 through 29898 except 29888 and 29889) are paid as Group 6;~~

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- (h) ~~CPT<sup>®</sup> code 29828 is paid as Group 7;~~
- (i) ~~Arthroscopies (CPT<sup>®</sup> codes 29888 and 29889) are paid as Group 9; and~~
- (j) ~~Insurers must pay for services not listed in the Medicare ASC groups 1 through 9 at the provider's usual fee.~~

(4) ~~The ASC fee schedule sets the maximum allowable amounts as follows:~~

Group 1	\$ 853.28
Group 2	\$ 1,143.88
Group 3	\$ 1,307.68
Group 4	\$ 1,616.75
Group 5	\$ 1,838.68
Group 6	\$ 2,108.00
Group 7	\$ 2,551.95
Group 8	\$ 2,485.78
Group 9	\$ 3,444.43

- (5) ~~The ASC fee includes services, such as:~~
  - (a) ~~Nursing, technical, and related services;~~
  - (b) ~~Use of the facility where the surgical procedure is performed;~~
  - (c) ~~Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances, and equipment directly related to the provision of the surgical procedure;~~
  - (d) ~~Diagnostic or therapeutic services or items directly related to the provision of a surgical procedure;~~
  - (e) ~~Administrative, record keeping, and housekeeping items and services;~~
  - (f) ~~Materials for anesthesia; and~~
  - (g) ~~Supervision of the services of an anesthetist by the operating surgeon.~~
- (6) ~~The ASC fee does not include services, such as physicians' services, laboratory, x ray or diagnostic procedures not directly related to the surgical procedure, prosthetic devices, orthotic devices, durable medical equipment (DME), implants, or anesthetists' services.~~
  - (a) ~~Unless otherwise provided by contract, the insurer must pay for prosthetic devices, orthotic devices, and DMEs as provided in OAR 436-009-0080.~~
  - (b) ~~For the purpose of this rule, an implant is an object or material inserted or grafted into the body and the ASC's cost is over \$100.00. Unless otherwise provided by contract, the insurer must pay for implants at 110% of the ASC's actual cost documented on a receipt of sale.~~
- (7) ~~Unless otherwise provided by contract, when multiple procedures are performed, the highest payment group must be paid at the ASC's usual fee or the maximum allowable amount, whichever is less; each additional procedure must be paid at 50% of the ASC's usual fee or of the maximum allowable amount, whichever is less.~~

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Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
Hist: Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7/1/09  
Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0025 Reimbursement of Related Services Costs**

(1) The insurer shall notify the worker in writing at the time of claim acceptance that claim-related services, not otherwise addressed by these rules, paid by the worker will be reimbursed by the insurer as provided in this rule. The notification must include notice to the worker of the two year time limitation to request reimbursement.

(a) The worker must request reimbursement from the insurer in writing.

(b) The insurer may require reasonable documentation to support the request. Insurers shall date stamp requests for reimbursement upon receipt and shall reimburse the costs within 30 days of receiving the request and supporting documentation, if the request clearly shows the costs are related to the accepted compensable injury or disease. If the insurer cannot determine if the costs are related to the accepted compensable injury or disease, the insurer shall inform the worker what information is needed before the request for reimbursement can be processed. If additional information is needed, the time needed to obtain the information is not counted in the 30 day time frame for the insurer to issue reimbursement.

(c) Notwithstanding subsections (a) and (b) of this section, in deferred claims, requests which are at least 30 days old at the time of claim acceptance become due immediately upon claim acceptance and shall be paid within 14 days. In a claim for aggravation or a new medical condition, reimbursement of related services is not due and payable until the aggravation or new medical condition is accepted. If the claim is denied, requests for reimbursement shall be returned to the worker within 14 days.

(2) Reimbursement of the costs of meals, lodging, public transportation and use of a private vehicle shall be reimbursed as provided in this section. The maximum rate of reimbursement is limited to the rate published in Bulletin 112. When a worker has documentation of the expense which includes the date of the expense, he or she may be entitled to reimbursement for:

(a) Any meal reasonably required by necessary travel to a claim-related appointment.

(b) Lodging based on the need for overnight travel to attend the appointment. Reimbursement may exceed the maximum rate where special lodging was required or where the worker was unable to find lodging at or below the maximum rate within 10 miles of the appointment location.

(c) Mileage when using a personal vehicle based on the beginning and ending addresses. Reimbursement may exceed the maximum if special transportation is required. Public transportation will be reimbursed based on actual cost.

(d) Prescriptions and other claim-related expenses will be reimbursed based on actual cost.

(3) Requests for reimbursement of claim-related services costs must be received by the insurer within two years of the date the costs were incurred or within two years of the date the claim or medical condition is finally determined compensable, whichever date is later. The insurer may disapprove requests for reimbursement received beyond the two year period as being

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untimely requested.

(4) Requests for reimbursement denied as unreasonable or not related to the accepted compensable injury or disease shall be returned to the worker within 30 days of the date of receipt by the insurer. The insurer shall provide the worker an explanation of the reason for nonpayment and advise the worker of the right to appeal the insurer's decision by requesting administrative review before the director, under OAR 436-009-0008.

(5) Pursuant to ORS 656.325(1)(f) and OAR 436-060-0095(5)(f), the insurer shall reimburse the worker for costs related to the worker's attendance at an independent medical examination regardless of the acceptance, deferral, or denial of the claim.

Stat. Auth: ORS 656.245, 656.704, and 656.726(4)  
Stats. Implemented: ORS 656.245, 656.704, and 656.726(4)  
Hist: Amended 5/22/07 as WCD Admin. Order 07-051, eff. 7/1/07  
Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0030 Insurer's Duties and Responsibilities**

(1) The insurer must pay for medical services related to a compensable injury claim, except as provided by OAR 436-060-0055.

(2) The insurer, or its designated agent, may request from the medical provider, any and all necessary records needed to review accuracy of billings. The medical provider may charge an appropriate fee for copying documents in accordance with OAR 436-009-0070(1). If the evaluation of the records must be conducted on-site, the provider must furnish a reasonable work-site for the records to be reviewed at no cost. These records must be provided or made available for review within 14 days of a request.

(3) Insurers must date stamp medical bills and reports upon receipt and pay bills for medical services on accepted claims within 45 days of receipt of the bill, if the billing is submitted in proper form in accordance with OAR 436-009-0010(2) through (4) and clearly shows that the treatment is related to the accepted compensable injury or disease. Billings not submitted in the proper form must be returned to the medical provider within 20 days of receipt of the bill with a written explanation describing why the bill was not paid or what needs to be corrected. A request for chart notes on EDI billings must be made to the medical provider within 20 days of receipt of the bill. The number of days between the date the insurer returns the billing or requests for chart notes from the provider and the date the insurer receives the corrected billing or chart notes, shall not apply toward the 45 days within which the insurer is required to make payment.

(a) The insurer must retain a copy of each medical provider's bill received by the insurer or must be able to reproduce upon request data relevant to the bill, including but not limited to, provider name, date of service, date the insurer received the bill, type of service, billed amount, coding submitted by the medical provider as described in OAR 436-009-0010(2), and insurer action, for any non-payment or fee reduction. This includes all bills submitted to the insurer even when the insurer determines no payment is due.

(b) Any service billed with a code number commanding a higher fee than the services provided shall be returned to the medical provider for correction or paid at the value of the service provided.

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(c) When a medical provider submits a bill electronically, it shall be considered "mailed" in accordance with OAR 436-010-0005.

(4) ~~With each payment, the insurer or its representative must provide the medical provider a written explanation identifying the service(s) of benefits being paid or denied. The insurer or its representative must send the explanation to the medical provider that billed for the services. All information on the explanation must be in 10 point size font or larger.~~ If the insurer or its representative denies or reduces payment, the insurer or its representative must provide the medical provider a written explanation that includes the specific reason(s) for non-payment, reduced payment, or discounted payment for each service billed by the medical provider. The written explanation must also include:

(a) ~~An Oregon or toll-free contact phone number for the insurer for billing inquiries from medical providers;~~

**(5) The explanation of benefits must include:**

**(a) The amount of payment for each service billed. When the payment covers multiple patients, the explanation must clearly separate and identify payments for each patient;**

**(b) The specific reason for non-payment, reduced payment, or discounted payment for each service billed;**

**(c) An Oregon or toll-free phone number for the insurer or its representative, and a statement that the insurer or its representative must respond to a medical provider's payment question within 48 hours, excluding weekends and legal holidays;**

**(d) The following notice, web link, and phone number:**

**"To access information about Oregon's Medical Fee and Payment Rules, visit [www.oregonwcdoc.info](http://www.oregonwcdoc.info) or call 503-947-7606."**

**(e) Space for a signature and date; and**

~~(b)(f) A notice of right to administrative review as follows: "If you disagree with this decision about this payment, contact {insurer's name and an Oregon or toll-free contact phone number}. If you are unable to reach an agreement with {insurer's name}, you may request administrative review by the director of the Department of Consumer and Business Services. Your request for review by the director must be made within 90 days of the mailing date of this explanation. To request review, sign and date this document in the space provided, indicate which decisions you disagree with, and mail this document with supporting documentation to the Workers' Compensation Division, Medical Section, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-934-6050. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."~~ **"If you disagree with this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required**

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**supporting documentation to the Workers' Compensation Division, Medical Section, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."**

~~(e)~~ Space for the medical provider's signature and the date.

~~(5)~~**(6)** ~~At~~ **The insurer or its representative** must answer a medical provider's inquiry about a medical payment within 48 hours, not including weekends or legal holidays, of the medical provider's inquiry. **The insurer or its representative may not refer the medical provider to another entity to obtain an answer.**

**(7) An insurer or its representative and a medical service provider may agree to send and receive payment information by e-mail. Electronic records sent by e-mail are subject to the Oregon Consumer Identity Theft Protection Act ORS 646A.600 to 646A.628 and federal law.**

~~(6)~~**(8)** Payment of medical bills is required within 14 days of any action causing the service to be payable, or within 45 days of the insurer's receipt of the bill, whichever is later.

~~(7)~~**(9)** Failure to pay for medical services timely may render the insurer liable to pay a reasonable monthly service charge for the period payment was delayed, if the provider customarily levies such a service charge to the general public.

~~(8)~~**(10)** When there is a dispute over the amount of a bill or the appropriateness of services rendered, the insurer must, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each medical service code. Resolution of billing disputes, including possible overpayment disputes, must be made in accordance with OAR 436-009-0008, 436-010-0008 and 436-015.

~~(9)~~**(11)** Bills for medical services rendered at the request of the insurer and bills for information submitted at the request of the insurer, which are in addition to those required in OAR 436-010-0240 must be paid for within 45 days of receipt by the insurer even if the claim is denied.

~~(10)~~**(12)** The insurer must establish an audit program for bills for all medical services to determine that the bill reflects the services provided, that appropriate prescriptions and treatment plans are completed in a timely manner, that payments do not exceed the maximum fees adopted by the director, and that bills are submitted in a timely manner. The audit shall be continuous and shall include no fewer than 10 percent of medical bills. The insurer must provide upon request documentation establishing that the insurer is conducting a continuous audit of medical bills. This documentation must include, but not be limited to, medical bills, internal audit forms, and any medical charge summaries prepared by private medical audit companies.

~~(11)~~**(13)** The insurer must pay a medical provider for any bill related to the claimed condition received by the insurer on or before the date the terms of a disputed claim settlement (DCS) were agreed on, but was either not listed in the approved DCS or was not paid to the medical provider as set forth in the approved DCS. Payment must be made by the insurer as prescribed by ORS 656.313(4)(d) and OAR 438-009-0010(2)(g) as if the bill had been listed in the approved settlement or as set forth in the approved DCS, except if the DCS payments have already been made, the payment must not be deducted from the settlement proceeds. Payment

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must be made within 45 days of the insurer's knowledge of the outstanding bill.

~~(12)~~**(14)** Once the director has determined that an insurer's average accepted disabling claim count is 100 or higher per calendar year the insurer must report medical bill payment data to the department in subsequent years. If the insurer's claim count drops below an average of 50 accepted disabling claims, the insurer may apply to the director for exemption from the reporting requirement. See OAR 436-160 Electronic Data Interchange Medical Bill Data rules for reporting requirements.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260, 656.264  
 Hist: Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10  
 Amended 10/1/10 as Admin. Order 10-059, eff. 1/1/11

**436-009-0035      Interim Medical Benefits**

(1) Interim medical benefits are not due on claims:

(a) When the worker is enrolled in an MCO prior to claim acceptance pursuant to ORS 656.245(4)(b)(B).

(b) When the insurer denies the claim within 14 days of the employer's notice.

(c) With dates of injury prior to January 1, 2002.

(2) Interim medical benefits include:

(a) Diagnostic services required to identify appropriate treatment or prevent disability.

(b) Medication required to alleviate pain.

(c) Services required to stabilize the worker's claimed condition and to prevent further disability. Examples of such services may include, but are not limited to: antibiotic or anti-inflammatory medication; physical therapy and other conservative therapies; and necessary surgical procedures.

(3) If the medical service provider has knowledge that the worker filed a work related claim, the medical service provider shall not collect health benefit plan co-payment from the worker.

(4) The medical service provider shall submit a copy of the bill to the workers' compensation insurer in accordance with OAR 436-009-0010, and the health benefit plan(s) in accordance with the plan's requirements.

(5) The insurer shall notify the medical service provider when an initial claim is denied.

(6) When the claim is denied, the medical service provider shall first bill the health benefit plan(s) with a copy of the workers' compensation denial letter.

(7) After payment is received from the health benefit plan(s), the medical service provider may bill the workers' compensation insurer, according to OAR 436-009-0010, for any remaining balance. The provider shall include a copy of the health benefit plan(s)' explanation of benefits with the bill. If the worker has no health benefit plan, the workers' compensation insurer is not required to pay for interim medical benefits.

(8) The workers' compensation insurer shall pay in accordance with the Oregon fee rules, any amount not reimbursed by the health benefit plan within 45 days of receipt of the bill with the health plan's explanation of benefits, in accordance with OAR 436-009-0030 (**810**).

Stat. Auth: ORS 656.245, 656.704, and 656.726(4); Stat. Implemented: ORS 656.247

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Hist: Amended 3/14/06 as WCD Admin Order 06-052, eff. 4/1/06  
Amended 12/15/08 as Admin. Order 08-063, eff. 1/1/09

**436-009-0040      Calculating Medical Provider Fees**

(1) Unless otherwise provided by contract or fee discount agreement permitted by these rules, insurers must pay for medical services the lesser of:

(a) The maximum allowable payment amount for CPT<sup>®</sup> codes, **HCPCS codes**, and Oregon Specific Codes listed in Appendix B of these rules; or

(b) The provider's usual fee.

(2) **Unless otherwise provided by contract or fee discount agreement**, ~~¶~~the insurer must pay **80 percent of** the provider's usual fee when:

(a) Appendix B does not establish a maximum payment amount and the code is designated "**as 80% of billed**";

(b) The fee schedule does not establish a fixed, maximum payment amount (e.g., medical supplies); or

(c) The service is not covered by the fee schedule (e.g., dental or ambulance services).

(3) For services payable under subsection (2) of this rule or for hospital outpatient charges, an insurer may challenge the reasonableness of a provider's billing on a case by case basis by asking the director to review the billing under OAR 436-009-0008. If the director determines the amount billed is unreasonable, the director may establish a different fee to be paid to the provider based on at least one of, but not limited to, the following: reasonableness, the usual fees of similar providers, the services provided in the specific case, fees for similar services in similar geographic regions, and any extenuating circumstances.

(4)(a) When using Appendix B for calculating payment for CPT<sup>®</sup> codes, the maximum allowable payment column is determined by the location where the procedure is performed: If the procedure is performed inside the medical service provider's office, use the Non-Facility Maximum column; if the procedure is performed outside the medical service provider's office, use the Facility Maximum column. Use the Global Days column to identify the follow up days when applicable. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the Non-Facility Maximum column.

(b) When an Oregon Specific Code is assigned, the maximum allowable payment for multidisciplinary program and other services is found at the end of Appendix B, and in OAR 436-009-0060(5) and OAR 436-009-0070(12).

(c) When using the *American Society of Anesthesiologists Relative Value Guide*, a basic unit value is determined by reference to the appropriate Anesthesia code. The anesthesia value includes the basic unit value, time units, and modifying units. When the Anesthesia code is designated by IC (individual consideration), **unless otherwise provided by a contract or fee discount agreement**, the insurer must pay **80 percent of** the provider's usual fee.

Stat. Auth.: ORS 656.726(4);  
Stats. Implemented: ORS 656.248  
Hist: Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7/1/09  
Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

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**436-009-0050 CPT<sup>®</sup> Sections**

Each CPT<sup>®</sup> section has its own schedule of relative values, completely independent of and unrelated to any of the other sections. The definitions, descriptions, and guidelines found in CPT<sup>®</sup> must be used as guides governing the descriptions of services, except as otherwise provided in these rules. The following provisions are in addition to those provided in each section of CPT<sup>®</sup>.

(1) Evaluation and Management services.

(2) Anesthesia services.

(a) In calculating the units of time, use 15 minutes per unit. If a medical provider bills for a portion of 15 minutes, round the time up to the next 15 minutes and pay one unit for the portion of time.

(b) Anesthesia basic unit values are to be used only when the anesthesia is personally administered by either a licensed physician or certified nurse anesthetist who remains in constant attendance during the procedure for the sole purpose of rendering such anesthesia service.

(c) When a regional anesthesia is administered by the attending surgeon, the value must be the "basic" anesthesia value only without added value for time.

(d) When the surgeon or attending physician administers a local or regional block for anesthesia during a procedure, the modifier "NT" (no time) must be noted on the bill.

(e) Local infiltration, digital block, or topical anesthesia administered by the operating surgeon is included in the relative value unit for the surgical procedure.

(3) Surgery services.

(a) When a worker is scheduled for elective surgery, the pre-operative visit, in the hospital or elsewhere, necessary to examine the patient, complete the hospital records, and initiate the treatment program is included in the listed global value of the surgical procedure. If the procedure is not elective, the physician is entitled to payment for the initial evaluation of the worker in addition to the global fee for the surgical procedure(s) performed.

(b) When an additional surgical procedure(s) is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods will continue concurrently to their normal terminations.

(c) Multiple surgical procedures performed at the same session must be paid as follows:

(A) When multiple surgical procedures are performed by one surgeon, the principal procedure is paid at 100 percent of the maximum allowable fee, the secondary and all subsequent procedures are paid at 50 percent of the maximum allowable fee. A diagnostic arthroscopic procedure performed preliminary to an open operation, is considered a secondary procedure and paid accordingly.

(B) When multiple arthroscopic procedures are performed, the major procedure must be paid at no more than 100 percent of the value listed in these rules and the subsequent procedures paid at 50 percent of the value listed.

(C) When more than one surgeon performs surgery, each procedure must be billed

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separately. The maximum allowable fee for each procedure, as listed in these rules, must be reduced by 25 percent. When the surgeons assist each other throughout the operation, each is entitled to an additional fee of 20 percent of the other surgeon's allowable fee as an assistant's fee. When the surgeons do not assist each other, and a third physician assists the surgeons, the third physician is entitled to the assistant's fee of 20 percent of the surgeons' allowable fees.

(D) When a surgeon performs surgery following severe trauma that requires considerable time, and the surgeon does not think the fees should be reduced under the multiple surgery rule, the surgeon may request special consideration by the insurer. Such a request must be accompanied by written documentation and justification. Based on the documentation, the insurer may pay for each procedure at 100 percent.

(E) When a surgical procedure is performed bilaterally, the modifier "-50" must be noted on the bill for the second side, and paid at 50% percent of the fee allowed for the first side.

(d) When physician assistants or nurse practitioners assist a surgeon performing surgery, they must be paid at the rate of 15 percent of the surgeon's allowable fee for the surgical procedure(s). When physician assistants or nurse practitioners are the primary providers of a surgical procedure, they must be paid at the rate of 85 percent of a physician's allowable fee for a comparable service. Physician assistants and nurse practitioners must mark their bills with a modifier "-81." Chart notes must document when medical services have been provided by a physician assistant or nurse practitioner.

(e) Other surgical assistants who are self-employed and work under the direct control and supervision of a physician must be paid at the rate of 10 percent of the surgeon's allowable fee for the surgical procedure(s). The operation report must document who assisted.

(4) Radiology services.

(a) In order to be paid, x-ray films must be of diagnostic quality and include a report of the findings. Billings for 14" x 36" lateral views shall not be paid.

(b) When multiple contiguous areas are examined by computerized axial tomography (CAT) scan, computerized tomography angiography (CTA), magnetic resonance angiography (MRA), or magnetic resonance imaging (MRI), the technical component for the first area examined must be paid at 100 percent, the second area at 50 percent, and the third and all subsequent areas at 25 percent under these rules. The discount applies to multiple studies done within 2 days, unless the ordering provider provides a reasonable explanation of why the studies needed to be done on separate days. No reduction is applied to multiple areas for the professional component.

(5) Pathology and Laboratory services.

(a) The maximum allowable payment amount established in Appendix B applies only when there is direct physician involvement.

(b) Laboratory fees must be billed in accordance with ORS 676.310. If any physician submits a bill for laboratory services that were performed in an independent laboratory, the bill must show the amount charged by the laboratory and any service fee that the physician charges.

(6) Medicine services.

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(7) Physical Medicine and Rehabilitation services.

(a) Increments of time for a time-based CPT<sup>®</sup> code must not be prorated.

(b) Payment for modalities and therapeutic procedures shall be limited to a total of three separate CPT<sup>®</sup>-coded services per day. CPT<sup>®</sup> codes 97001, 97002, 97003, or 97004 are not subject to this limit. An additional unit of time (15 minute increment) for the same CPT<sup>®</sup> code is not counted as a separate code.

(c) All modality codes requiring constant attendance (97032, 97033, 97034, 97035, 97036, and 97039) are time-based. Chart notes must clearly indicate the time treatment begins and the time treatment ends for the day **or the amount of time spent providing the treatment.**

(d) CPT<sup>®</sup> codes 97010 through 97028 shall not be paid unless they are performed in conjunction with other procedures or modalities which require constant attendance or knowledge and skill of the licensed medical provider.

(e) When multiple treatments are provided simultaneously by a machine, device or table there must be a notation on the bill that treatments were provided simultaneously by a machine, device or table and there must be one charge.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248  
 Hist: Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7/1/09  
 Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0060 Oregon Specific Code, Multidisciplinary Services**

(1) Services provided by multidisciplinary programs not otherwise described by CPT<sup>®</sup> codes must be billed under Oregon Specific Codes.

(2) Treatment in a chronic pain management program, physical rehabilitation program, work hardening program, or a substance abuse program shall not be paid unless the program is accredited for that purpose by the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(a) Organizations which have applied for CARF accreditation, but have not yet received such accreditation, may receive payment for multidisciplinary programs upon providing evidence to the insurer that an application for accreditation has been filed with and acknowledged by CARF. Such organizations may provide multidisciplinary services under this section for a period of up to 6 months from the date CARF provided notice to the organization that the accreditation process has been initiated, or until such time as CARF accreditation has been received or denied, whichever occurs first.

(b) Notwithstanding OAR 436-009-0010(4), program fees for services within a multidisciplinary program may be used based upon written pre-authorization from the insurer. Programs must identify the extent, frequency, and duration of services to be provided.

(c) All job site visits and ergonomic consultations must be preauthorized by the insurer.

(3) When an attending physician or authorized nurse practitioner approves a multidisciplinary treatment program for an injured worker, he or she must provide the insurer with a copy of the approved treatment program within 14 days of the beginning of the treatment program.

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(4) Billings using the multidisciplinary codes must include copies of the treatment record which specifies the type of service rendered, the medical provider who provided the service, whether treatment was individualized or provided in a group session, and the amount of time treatment was rendered for each service billed.

(5) The table below lists the **Oregon Specific Codes for Multidisciplinary Services**.

<b>Codes</b>	<b>Maximum Allowable Payment Amount</b>	<b>Description</b>
97642	\$61.88	Physical conditioning - group - 1 hour Conditioning exercises and activities, graded and progressive
97643	\$31.28	Each additional 30 minutes
97644	\$98.60	Physical conditioning – individual 1 hour Conditioning exercises and activities, graded and progressive
97645	\$49.64	Each additional 30 minutes
97646	\$61.88	Work simulation - group 1 hour Real or simulated work activities addressing productivity, safety, physical tolerance and work behaviors
97647	\$31.28	Each additional 30 minutes
97648	\$102.00	Work simulation - individual 1 hour Real or simulated work activities addressing productivity, safety, physical tolerance and work behaviors
97649	\$51.00	Each additional 30 minutes
97650	\$55.08	Therapeutic education – individual 30 minutes Medical, psychosocial, nutritional and vocational education dependent on needs and stated goals
97651	\$27.88	Each additional 15 minutes
97652	\$36.72	Therapeutic education - group 30 minutes Medical, psychosocial, nutritional and vocational education dependent on needs and stated goals
97653	\$19.04	Each additional 15 minutes
97654	\$27.88	Professional Case Management – Individual 15 minutes Evaluate and communicate progress, determine needs/services, coordinate counseling and crisis intervention dependent on needs and stated goals (other than done by physician)
97655	\$26.52	Brief Interdisciplinary Rehabilitation Conference - 10 minutes A decision-making body composed of each discipline essential to establishing and accomplishing goals, processes, time frames and expected benefits
97656	\$53.04	Intermediate Interdisciplinary Rehabilitation Conferences - 20 minutes A decision-making body composed of each discipline essential to establishing and accomplishing goals, processes, and time frames and

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<b>Codes</b>	<b>Maximum Allowable Payment Amount</b>	<b>Description</b>
		expected benefits
97657	\$91.80	Complex Interdisciplinary Rehabilitation Conferences – 30 minutes A decision-making body composed of each discipline essential to establishing and accomplishing goals, processes, time frames and expected benefits
97658	\$46.24	Each additional 15 minutes Complex conference-up to 1 hour maximum
97659	\$116.96	Job site visit - 1 hour (includes travel) - must be preauthorized by insurer A work site visit to identify characteristics and physical demands of specific jobs
97660	\$58.48	Each additional 30 minutes
97661	\$157.76	Ergonomic consultation - 1 hour (includes travel) - must be preauthorized by insurer Work station evaluation to identify the ergonomic characteristics relative to the worker, including recommendations for modifications
97662	\$63.92	Vocational evaluation - 30 minutes Evaluation of work history, education and transferable skills coupled with physical limitations in relationship to return to work options
97663	\$31.96	Each additional 15 minutes
97664	\$86.36	Nursing evaluation - 30 minutes Nursing assessment of medical status and needs in relationship to rehabilitation
97665	\$42.84	Each additional 15 minutes
97666	\$69.36	Nutrition evaluation - 30 minutes Evaluation of eating habits, weight and required modifications in relationship to rehabilitation
97667	\$35.36	Each additional 15 minutes
97668	\$72.76	Social worker evaluation - 30 minutes Psychosocial evaluation to determine psychological strength and support system in relationship to successful outcome
97669	\$36.72	Each additional 15 minutes
97670	\$455.60	Initial Multidisciplinary conference - up to 30 minutes
97671	\$514.08	Initial Complex Multidisciplinary conference - up to 60 minutes

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.248  
 Hist: Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7/1/09  
 Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0070 Oregon Specific Code, Other Services**

(1) Except for records required in OAR 436-009-0010(3), copies of requested medical records shall be paid under OSC-R0001.

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(2) A brief narrative by the attending physician or authorized nurse practitioner, including a summary of treatment to date and current status, and, if requested, brief answers to one to five specific questions related to the attending physician's or authorized nurse practitioner's current or proposed treatment, shall be paid under OSC-N0001.

(3) A complex narrative by the attending physician or authorized nurse practitioner, may include past history, history of present illness, attending physician's or authorized nurse practitioner's treatment to date, current status, impairment, prognosis, and medically stationary information, shall be paid under OSC-N0002.

(4) Fees for a PCE and a WCE shall be based upon the type of evaluation requested and performed. The description of each level of evaluation and the maximum allowable payment shall be as follows:

(a) **FIRST LEVEL PCE:** This is a limited evaluation primarily to measure musculoskeletal components of a specific body part. These components include such tests as active range of motion, motor power using the 5/5 scale, and sensation. This level generally requires 30 to 45 minutes of actual patient contact. A first level PCE shall be paid under OSC-99196, which includes the evaluation and report. Additional 15-minute increments may be added if multiple body parts are reviewed and time exceeds 45 minutes. Each additional 15 minutes shall be paid under OSC-99193, which includes the evaluation and report.

(b) **SECOND LEVEL PCE:** This is a PCE to measure general residual functional capacity to perform work or provide other general evaluation information, including musculoskeletal evaluation. It may be used to establish Residual Functional Capacities for claim closure. This level generally requires not less than two hours of actual patient contact. The second level PCE shall be paid under OSC-99197, which includes the evaluation and report. Additional 15 minute increments may be added to measure additional body parts, to establish endurance and to project tolerances. Each additional 15 minutes shall be paid under OSC-99193, which includes the evaluation and report.

(c) **WCE:** This is a residual functional capacity evaluation, which generally requires not less than 4 hours of actual patient contact. The evaluation may include a musculoskeletal evaluation for a single body part. A WCE shall be paid under OSC-99198, which includes the evaluation and report. Additional 15 minute increments (per additional body part) may be added to determine endurance (e.g. cardiovascular) or to project tolerances (e.g., repetitive motion). Each additional 15 minutes shall be paid under OSC-99193, which includes the evaluation and report. Special emphasis should be given to:

(A) The ability to perform essential physical functions of the job based on a specific job analysis as related to the accepted condition;

(B) The ability to sustain activity over time; and

(C) The reliability of the evaluation findings.

(5) When an attorney requires a consultation with a medical provider, the medical provider shall bill under OSC-D0001.

(6) When an insurer requires a consultation with a medical provider, the medical provider shall bill under OSC-D0030.

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(7) The fee for a deposition shall be billed under OSC-D0002. This code should include time for preparation, travel, and deposition. Upon request of one of the parties, the director may limit payment of the provider's hourly rate to a fee charged by similar providers.

(8) When an insurer obtains an Independent Medical Examination (IME):

(a) The medical service provider doing the IME shall bill under OSC-D0003. This code shall be used for a report, file review, or examination;

(b) If the insurer asks the medical service provider to review the IME report and respond, the medical service provider shall bill for the time spent reviewing and responding using OSC-D0019. Billing should include documentation of time spent.

(c) Notwithstanding 436-009-0010(2), a medical service provider doing an IME may submit a bill in the form or format agreed to by the insurer and the medical service provider.

**(d) Unless otherwise provided by contract, insurers must pay for IMEs as billed.**

(9) Fees for all arbiters and panel of arbiters used for director reviews pursuant to OAR 436-030-0165 shall be established by the director. This fee determination will be based on the complexity of the examination, the report requirements, and the extent of the record review. The level of each category is determined by the director based on the individual complexities of each case as compared to the universe of claims in the medical arbiter process. When the examination is scheduled, the director shall notify the medical arbiter and the parties of the authorized fee for that medical arbiter review based on a combination of separate components.

- a) Level 1            OSC-AR001 Exam
- Level 2            OSC-AR002 Exam
- Level 3            OSC-AR003 Exam
- Limited            OSC-AR004 Exam

As determined by the director, a level 1 exam generally involves a basic medical exam with no complicating factors. A level 2 exam generally involves a moderately complex exam and may have complicating factors. A level 3 exam generally involves a very complex exam and may have several complicating factors. A limited exam generally involves a newly accepted condition, or some other partial exam.

- b) Level 1            OSC-AR011 Report
- Level 2            OSC-AR012 Report
- Level 3            OSC-AR013 Report

As determined by the director, a level 1 report generally includes standard questions. A level 2 report generally includes questions regarding complicating factors. A level 3 report generally includes questions regarding multiple complicating factors.

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- c) Level 1 OSC-AR021 File Review
- Level 2 OSC-AR022 File Review
- Level 3 OSC-AR023 File Review
- Level 4 OSC-AR024 File Review
- Level 5 OSC-AR025 File Review

As determined by the director, a level 1 file review generally includes review of a limited record. A level 2 file review generally includes review of an average record. A level 3 file review generally includes review of a large record or disability evaluation without an exam. A level 4 file review generally includes an extensive record. A level 5 file review generally includes an extensive record with unique factors.

(d) The director will notify the medical arbiter and the insurer of the approved code for each component to establish the total fee for the medical arbiter review. If a worker fails to appear for a medical arbiter examination without giving each medical arbiter at least 48 hours notice, each medical arbiter shall be paid at 50 percent of the examination or testing fee. A medical arbiter must also be paid for any file review completed prior to cancellation.

(e) If the director determines that a supplemental medical arbiter report is necessary to clarify information or address additional issues, an additional report fee may be established. The fee is based on the complexity of the supplemental report as determined by the director. The additional fees are established as follows:

Limited	OSC-AR031
Complex	OSC-AR032

(f) Prior to completion of the reconsideration process, the medical arbiter may request the director to redetermine the authorized fee by providing the director with rationale explaining why the physician believes the fee should be different than authorized.

(g) The director may authorize testing which shall be paid according to OAR 436-009.

(h) Should an advance of costs be necessary for the worker to attend a medical arbiter exam, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely as required in this subsection.

(10) A single physician selected under ORS 656.327 or 656.260, to review treatment, perform reasonable and appropriate tests, or examine the worker, and submit a report to the director shall be paid at an hourly rate up to a maximum of 4 hours for record review and examination.

(a) The physician will be paid for preparation and submission of the report. Billings for services by a single physician shall be billed under OSC-P0001 for the examination and under

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OSC-P0003 for the report.

(b) Physicians selected under OAR 436-010-0008, to serve on a panel of physicians shall each receive payment based on an hourly rate up to a maximum of 4 hours for record review and panel examination. Each physician shall bill for the record review and panel examination under OSC-P0002. The panel member who prepares and submits the panel report shall receive an additional payment under OSC-P0003.

(c) The director may, in a complex case requiring extensive review by a physician, pre-authorize an additional fee. Complex case review shall be billed under OSC-P0004.

(d) An insurer may not discount or reduce fees related to examinations or reviews performed by medical providers under OAR 436-010-0330.

(e) If a worker fails to appear for a director required examination without providing the physician with at least 48 hours notice, each physician shall bill under OSC-P0005. The insurer must pay the physician for the appointment time and any time spent reviewing the record completed prior to the examination time. The billing must document the physician's time spent reviewing the record.

(f) Should an advance of costs be necessary for the worker to attend an exam under ORS 656.327 or 656.260, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely, as required in this subsection.

(11) The fee for a Worker Requested Medical Examination shall be billed under OSC-W0001. This code shall be used for a report, file review, or examination. **Unless otherwise provided by contract, the insurer must pay the provider at the billed amount.**

(12) The table below lists the Oregon Specific Codes for Other Services.

<b>Codes</b>	<b>Maximum Allowable Payment Amount</b>	<b>Description</b>
R0001		Copies of medical records when requested shall be paid at \$10.00 for the first page and \$.50 for each page thereafter and identified on billings
N0001	\$116.28	Brief narrative by the attending physician or authorized nurse practitioner
N0002	\$231.88	Complex narrative by the attending physician or authorized nurse practitioner
99196	\$163.20	First Level PCE
99197	\$544.00	Second Level PCE
99198	\$1088.00	WCE
99193	\$54.40	Additional 15 minutes

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<b>Codes</b>	<b>Maximum Allowable Payment Amount</b>	<b>Description</b>
D0001	<u>80% as of</u> billed	Attorney consultation time
D0002	as <u>80% of</u> billed	Deposition time
D0003	as billed	Independent Medical Examination (IME) and report
D0019	<u>80% of</u> as billed	Medical service provider review and response to IME report
D0030	<u>80% of</u> as billed	Insurer consultation time
AR001	\$348.16	Level 1 arbiter exam
AR002	\$463.76	Level 2 arbiter exam
AR003	\$580.04	Level 3 arbiter exam
AR004	\$174.08	Limited arbiter exam
AR011	\$59.84	Level 1 arbiter report
AR012	\$89.76	Level 2 arbiter report
AR013	\$120.36	Level 3 arbiter report
AR021	\$59.84	Level 1 arbiter file review
AR022	\$150.28	Level 2 arbiter file review
AR023	\$360.40	Level 3 arbiter file review
AR024	\$695.64	Level 4 arbiter file review
AR025	\$928.20	Level 5 arbiter file review
AR031	\$59.84	Limited arbiter report
AR032	\$120.36	Complex arbiter report
P0001	\$290.36	Director single medical review/exam
P0002	\$290.36	Director panel medical review/exam
P0003	\$147.56	Director single medical review/report
P0004	\$348.16	Director complex case review/exam
P0005	\$147.56	Failure to appear director required examination
W0001	as billed	Worker Requested Medical Examination and report

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.248  
 Hist: Amended 12-1-2009 as Admin. Order 09-054, eff. 1-1-2010  
 Amended 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0080 Durable Medical Equipment and Medical Supplies**

(1) Durable medical equipment (DME) is equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use, could normally be rented and used by successive patients, is appropriate for use in the home, and not generally useful to a person in the absence of an illness or injury. For example: Transcutaneous Electrical Nerve Stimulation (TENS), MicroCurrent Electrical Nerve Stimulation (MENS), home traction devices, heating

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pads, reusable hot/cold packs, etc. Unless otherwise provided by contract, fees for durable medical equipment shall be paid as follows:

(a) The insurer shall pay for the purchase of all compensable DME that are ordered and approved by the physician, at ~~85% percent~~ of the manufacturer's suggested retail price (MSRP). If no MSRP is available or the provider can demonstrate that ~~85% percent~~ of the MSRP is less than ~~140% percent~~ of the actual cost to the provider, the insurer shall pay the provider ~~140% percent~~ of the actual cost to the provider for the item as documented on a receipt of sale.

(b) The DME provider is entitled to payment for any labor and reasonable expenses directly related to any subsequent modifications other than those performed at the time of purchase, or repairs. A subsequent modification is one done other than as a part of the initial set-up at the time of purchase. The insurer shall pay for labor at the provider's usual rate.

(c) The provider may offer a service agreement at an additional cost.

(d) Rental of all compensable DME shall be billed at the provider's usual rate. Within 90 days of the beginning of the rental, the insurer may purchase the DME or device at the fee provided in this rule, with a credit for rental paid up to 2 months.

(2) A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. For example: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc. Unless otherwise provided by contract, the insurer ~~shall~~ **must** pay **80 percent of the fee for a prosthetic at the provider's usual rate for a prosthetic. If the provider can demonstrate that 80 percent of the provider's usual rate is less than 140 percent of the actual cost to the provider, the insurer must pay the provider 140 percent of the actual cost to the provider for the item as documented on a receipt of sale.**

(a) Testing for hearing aids must be done by a licensed audiologist or an otolaryngologist.

(b) Based on current technology, the preferred types of hearing aids for most workers are programmable BTE, ITE, and CIC multi channel. Any other types of hearing aids needed for medical conditions will be considered based on justification from the attending physician or authorized nurse practitioner.

(c) Without approval from the insurer or director, **the payment for** hearing aids ~~should~~ **may** not exceed \$5000 for a pair of hearing aids, or \$2500 for a single hearing aid.

(3) An orthosis is an orthopedic appliance or apparatus used to support, align, prevent or correct deformities, or to improve the function of a moveable body part. For example: brace, splint, shoe insert or modification, etc. Unless otherwise provided by contract, the insurer ~~shall~~ **must** pay **80 percent of the fee for an orthosis at the provider's usual rate for an orthosis. If the provider can demonstrate that 80 percent of the provider's usual rate is less than 140 percent of the actual cost to the provider, the insurer must pay the provider 140 percent of the actual cost to the provider for the item as documented on a receipt of sale.**

(4) Medical supplies are materials that may be reused multiple times by the same person, but a single supply is not intended to be used by more than one person, including, but not limited to incontinent pads, catheters, bandages, elastic stockings, irrigating kits, sheets, and bags. Unless otherwise provided by contract, the insurer ~~shall~~ **must** pay **80 percent of the fees for** ~~medical supplies at the provider's usual rate~~ **for medical supplies.**

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(5) The worker may select the service provider, except for claims enrolled in a managed care organization (MCO) ~~where~~ when service providers are specified by the MCO contract.

(6) Except as provided in subsection (2)(c) of this rule, this rule does not apply to a worker's direct purchase of DME and medical supplies, and does not limit a worker's right to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

(7) DME, medical supplies and other devices dispensed by a hospital (inpatient or outpatient) shall be billed and paid according to OAR 436-009-0020.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248  
 Hist: Amended 5/22/07 as WCD Admin. Order 07-051, eff. 7/1/07  
 Amended 12/15/08 as Admin. Order 08-063, eff. 1/1/09

**436-009-0090 Pharmacy Fees**

(1) Except for hospital charges or unless otherwise provided by contract, insurers must pay medical providers for prescription medication at the medical provider's usual fee, or the amount set by the fee schedule, whichever is less.

(a) "AWP" means the Average Wholesale Price effective on the day the drug was dispensed.

**(b) "WAC" means the Wholesale Acquisition Cost effective on the day the drug was dispensed.**

~~(b)~~**(c)** The maximum allowable fee is calculated according to the following table:

If the drug dispensed is:	Then the maximum allowable fee is:
A generic drug <u>or brand name drug</u>	<del>83.5</del> <b>110</b> % of the dispensed drug's <del>AWP</del> <b>WAC</b> plus a \$2.00 dispensing fee
A <u>generic drug or</u> brand name drug without a <u>generic equivalent</u> <b>WAC price</b>	<del>83.5</del> <b>80</b> % of the dispensed drug's AWP plus a \$2.00 dispensing fee
A brand name drug and the prescribing health care provider has not prohibited substitution	<del>83.5</del> <b>80</b> % of the average AWP for the class of generic drugs plus a \$2.00 dispensing fee
A brand name drug the prescribing health care provider has specified that the drug may not be substituted with a generic equivalent	<del>83.5</del> % of the dispensed drug's AWP plus a \$2.00 dispensing fee

(2) All prescription medications are required medical services and do not require prior approval under the palliative care provisions of OAR 436-010-0290.

(3) Under ORS 689.515(2) licensed providers may dispense generic drugs to injured workers.

**(4) ~~(a)~~ Payment for Unless the prescription is for less than a five-day supply, the prescribing provider must submit a clinical justification for the following drugs:**

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(A) Celebrex

(B) Cymbalta

(C) Fentora

(D) Kadian

(E) Lidoderm

(F) Lyrica

(G) Oxycotin

(H) Provigil

(I) Skelaxin

, and COX-2 inhibitors is limited to an initial five-day supply unless the prescribing medical service provider writes a clinical justification for prescribing that drug rather than a less costly drug with a similar therapeutic effect.

(a)(b) The prescribing provider must submit the clinical justification may accompany the prescription and be submitted on Form 4909 by the pharmacist or may be given directly to the insurer by the medical provider.

(b)(c) If the cClinical justification means a written document from the is not submitted to the insurer within five days of the date of service by the medical service prescribing provider, stating the reason he or she believes the drug ordered is the one the patient should have the insurer may reduce the prescribing provider's future payments on the claim by the amount the insurer paid for the drug. The insurer may not reduce future payments more than 180 days after the date the clinical justification should have been completed. The insurer may not request a refund from the prescribing provider if the insurer failed to reduce payment under this rule. The justification may be included on the prescription itself and may simply be a brief statement. Insurers and self-insured employers cannot challenge the adequacy of the clinical justification. However, they can challenge whether or not the medication is excessive, inappropriate, or ineffectual in accordance with ORS 656.327.

(e)(d) An additional clinical justification is not necessary for refills of that medication required at 60-day intervals for as long as the worker is on the medication, or until the insurer advises the prescribing provider, in writing, that additional clinical justification is no longer required.

(5) Insurers shall use the prescription pricing guide published by First DataBank ~~Inc.~~, published by Hearst Corporation, RED BOOK published by Thomson Healthcare, ~~Inc.~~ Reuters, or Facts & Comparisons Medi-Span published by (a Wolters Kluwer Health, ~~Inc.~~, ~~Company~~) for calculating payments to the licensed provider. Insurers must update their source at least monthly.

(6) The worker may select the pharmacy, except for claims enrolled in a managed care organization (MCO) where pharmacy service providers are specified by the MCO contract.

(7) Except for sections 2, 3, 4 and 6 of this rule, this rule does not apply to a worker's direct purchase of prescription medications, and does not limit a worker's right to reimbursement

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for actual out-of-pocket expenses under OAR 436-009-0025.

(8) The insurer shall pay the retail-based fee for over-the-counter medications.

(9) Drugs dispensed by a hospital (inpatient or outpatient) shall be billed and paid according to OAR 436-009-0020.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248, 656.252, 656.254  
 Hist: Amended 12/15/08 as Admin. Order 08-063, eff. 1/1/09  
 Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7/1/09

#### **436-009-0095 Application of Fee Discounts**

If a medical fee is covered by multiple contracts allowed under these rules, the insurer may apply only one discount to the provider's fee. If a provider's fee is covered by multiple contracts, and one of the contracts is with a certified managed care organization for services provided to an enrolled worker, only the discount under the managed care organization's contract must be applied.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.248  
 Hist: Adopted 12/15/08 as WCD Admin. Order 08-063, eff. 1/1/09

### **Interpreter Billing Procedures**

#### **436-009-0110 Definitions for OAR 436-009-0110 through 436-009-0145**

(1) "You" and "I" mean an interpreter.

(2) "Interpreter" means a person who:

(a) Provides oral or sign language translation; and

(b) Owns, operates, or works for a business that receives income for providing oral or sign language translation. It does not include a medical provider, medical provider's employee, or a family member or friend of the patient.

(3) "Interpreter services" means the act of orally translating between a medical provider and a patient who speak different languages, including sign language. It includes time spent waiting at the location for the medical provider to examine or treat the patient.

(4) "Mileage" means the number of miles traveling from the interpreter's starting point to the exam or treatment location.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

#### **436-009-0115 Who Do I Bill for Providing Interpreter Services?**

(1) You may only bill an insurer or, if provided by contract, a managed care organization.

(2) You may only bill a patient if the insurer denies the claim.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

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**436-009-0120 What May I Bill for?**

**(1)** You may bill for:

~~(1)~~**(a)** Interpreter services; and

~~(2)~~**(b)** Mileage when your round-trip mileage is more than 60 miles.

**(2) You may bill for interpreter services and mileage under section (1) of this rule when the patient fails to attend an appointment that is required by the insurer or the director, e.g., an independent medical exam, a physician review exam, or an arbiter exam.**

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0125 What May I Not Bill for?**

You may not bill any amount for interpreter services or mileage when the patient fails to attend the appointment **when the appointment was not required by the insurer or director;** e.g., cancelled appointments or no show appointments.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0130 How Do I Bill Interpreter Services and Mileage?**

(1) You must use an invoice when billing for interpreter services and mileage;

(2) You must use a description code with each service you bill. When you bill for:

(a) Interpreter services, use the code D0004; and

(b) Mileage, use the code D0041.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0135 What Must I Include On My Invoice?**

Your invoice must include:

(1) Your company's name, the billing address, phone number, and the name of the interpreter providing the services;

(2) The patient's name, address, and phone number;

(3) The patient's workers' compensation claim number, if known;

(4) The correct codes for the billed services (D0004 or D0041);

(5) The workers' compensation insurer's name, address, and phone number;

(6) The date you provided the interpreter services;

(7) The name and address of the medical provider that conducted the exam or provided treatment;

(8) The total amount of time you provided interpreter services; and

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(9) Your mileage, if your round trip was over 60 miles.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0140 How Much May I Charge?**

You must charge your usual fee that you charge to the general public for the same service.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0145 When Must I Submit My Invoice?**

(1) You must send your invoice to the workers' compensation insurer within 60 days of:

(a) The first date of service listed on your invoice; or

(b) The date you knew or should have known the patient filed a workers' compensation claim.

(2) If you do not know the workers' compensation insurer responsible for the claim, you may contact the Department of Consumer and Business Services' Workers' Compensation Division at 503-947-7814. You may also access insurance policy information at <http://www4.cbs.state.or.us/ex/wcd/cov/index.cfm>.

(3) A bill is considered sent on the date the envelope is post-marked or the date the document is faxed.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**Payment Calculations for Interpreter Services and Mileage**

**436-009-0150 Definitions for OAR 436-009-0150 through 436-009-0195**

(1) "You" and "I" mean the insurer.

(2) "Interpreter" means a person who:

(a) Provides oral or sign language translation; and

(b) Owns, operates, or works for a business that receives income for providing oral or sign language translation. It does not include a medical provider, a medical provider's employee, or a family member or friend of the patient.

(3) "Interpreter services" means the act of orally translating between a medical provider and a patient who speak different languages, including sign language. It includes time spent waiting at the location for the medical provider to examine or treat the patient.

(4) "Mileage" means the number of miles traveling from the interpreter's starting point to the exam or treatment location.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0155      How Do I Calculate the Maximum Allowable Payment Amount?**

(1) You use the following table to calculate the maximum allowable payment:

For:	The conversion factor is:
Interpreter services	\$1.00
Mileage	\$0.50
<b><u>An exam the patient is required to attend by the insurer or the director and the patient fails to attend</u></b>	<b><u>\$0.50</u></b>
For:	The maximum allowable payment is:
An interpreter who is the only person in Oregon able to interpret a specific language	The amount billed for interpreter services and mileage

(2) You must use the following method to calculate the maximum allowable payment:

(a) For interpreter services, multiply the number of minutes billed by the conversion factor of \$1.00 with a minimum payment of \$60.00; ~~and~~

**(b) When a patient fails to attend an appointment required by the insurer or director, multiply the number of minutes billed by the conversion factor of \$0.50 with a minimum payment of \$60.00.**

~~(b)~~**(c)** For mileage, multiply the number of miles by the conversion factor of \$0.50 when the round trip mileage is more than 60 miles.

(3) When an interpreter in Oregon is the only person able to interpret a specific language the maximum allowable payment is the amount billed for interpreter services and mileage.

(4) Calculation examples:

(a) If the interpreter provides 1 hour and 35 minutes of interpreter services, the maximum allowable payment is:

$$95 \text{ minutes} \times \$1.00 \text{ (interpreter services conversion factor)} = \$95.00$$

(b) If the interpreter provides 1 hour and 20 minutes of interpreter services, and the round trip is 100 miles, the maximum allowable payment is:

$$80 \text{ minutes} \times \$1.00 \text{ (interpreter services conversion factor)} = \$80.00$$

$$100 \text{ miles} \times \$0.50 \text{ (mileage conversion factor)} = \$50.00$$

$$\text{Total maximum payment} = \$130.00$$

(c) If the interpreter provides 40 minutes of interpreter services, and the round trip is 50 miles, the maximum allowable payment is:

Use the minimum payment of \$60.00

There is no mileage allowance because the round trip is less than 60 miles.

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Total maximum payment = \$60.00

**(d) If the interpreter spends 75 minutes waiting at the provider's location for an independent medical exam that the patient fails to attend, and the round trip is 65 miles, the maximum allowable payment is:**

**Use the minimum payment of \$60.00**

**65 miles x \$0.50 (mileage conversion factor) = \$32.50**

**Total maximum payment = \$92.50**

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.245, 656.248  
Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**Payment Procedural Requirements for Interpreter Services**

**436-009-0160 What Must I Pay for?**

When the medical exam or treatment is directed to an accepted claim or condition, an independent medical exam, or a worker requested medical exam, you must pay for:

- (1) Interpreter services provided by an interpreter;
- (2) Mileage when the round-trip mileage is more than 60 miles; and

**(3) The interpreter's time spent waiting at the provider's location and mileage when the patient fails to attend an exam required by the insurer or the director.**

Stat. Auth.: ORS 656.726(4);  
Stats. Implemented: ORS 656.245, 656.248  
Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0165 How Much Do I Pay for Interpreter Services and Mileage?**

Unless otherwise provided by contract, you must pay the lesser of:

- (1) The maximum allowable payment amount; or
- (2) The interpreter's usual fee.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.245, 656.248  
Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0170 When Must I Pay An Interpreter?**

If the charge is:	Then the payment must be made:
For interpreter services or mileage provided on an accepted condition	Within 45 days of receiving the invoice, if the invoice is received within 12 months of the date of service.
For interpreter services or mileage provided on a condition that is later accepted	If the invoice is received within 12 months of the date of service, then within 14 days of the date of acceptance, or within 45 days of receiving the invoice, whichever is later.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.245, 656.248  
Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

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**436-009-0175      What If the Interpreter's Bill Does Not Provide All the Information I Need In Order to Process Payment?**

If you don't receive all the information to process payment, you must, within 20 days of receipt of the invoice, return the invoice to the interpreter with an explanation of why the invoice was returned. You must provide specific information about what you need in order to process payment.

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**436-009-0180      What Must I Include on an Explanation of Benefits?**

(1) You must provide a written explanation of benefits being paid or denied. The explanation must be sent to the interpreter.

(2) The explanation of benefits must include:

(a) The amount of payment for each service provided;

(b) The specific reason for non-payment, reduced payment, or discounted payment for each service billed;

(c) Your Oregon or toll-free phone number at which the interpreter may contact you for questions about a payment(s);

(d) Space for a signature and date.

(e) A notice of the right to administrative review as follows:

~~“If you disagree with this decision about this payment, contact {insurer's name and an Oregon or toll-free contact phone number}. If you are unable to reach an agreement with {insurer's name}, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review by the director must be made within 90 days of the mailing date of this explanation. To request review, sign and date this document in the space provided, indicate which decision you disagree with, and mail this document with supporting documentation to the Workers' Compensation Division, Medical Section, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records.”~~ “If you disagree with this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required supporting documentation to the Workers' Compensation Division, Medical Section, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records.”

Stat. Auth.: ORS 656.726(4)  
 Stats. Implemented: ORS 656.245, 656.248  
 Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

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**436-009-0185 Do I Have to Pay for Interpreter Services That Are Not Provided By An Interpreter?**

You don't have to pay for interpreter services or mileage when the services are provided by:

- (1) A family member or friend of the patient; or
- (2) The medical provider or medical provider's employee.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.245, 656.248  
Adopted 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**Sanctions and Civil Penalties**

**~~436-009-0199~~ — ~~Sanctions and Civil Penalties~~ [Moved to 436-009-9999]**

~~(1) The director may impose sanctions upon a medical provider or insurer for violation of these rules in accordance with OAR 436-010-0340.~~

~~(2) If an insurer applies a contract or fee discount agreement to a provider's bill that is incorrect, the insurer must pay the provider's bill at the provider's usual fee or according to the fee schedule, whichever is less, and the insurer may be subject to a civil penalty~~

~~(3) Although insurers may contract with provider networks for certain services, the insurer is responsible for their own actions as well as the actions of others acting on the insurer's behalf. If an insurer or someone acting on the insurer's behalf violates any provisions of these rules, the director may impose a civil penalty against the insurer.~~

~~(4) If the director finds a pattern and practice, or an egregious violation of applying incorrect discounts to providers' fees under these rules, by an insurer or someone acting on the insurer's behalf, the director may issue a civil penalty up to the amount allowed under ORS chapter 656.~~

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.245, 656.254, 656.745  
Hist: Amended 12/15/08 as Admin. Order 08-063, eff. 1/1/09  
Renumbered from 436-009-0100 5/27/10 as Admin. Order 10-052, eff. 7/1/10

**Ambulatory Surgery Center Billing Procedures**

**436-009-0200 Definitions for OAR 436-009-0205 through 436-009-0240**

**(1) "You" and "I" mean an ambulatory surgery center.**

**(2) An "ambulatory surgery center" (ASC) means:**

**(a) Any distinct entity licensed by the state of Oregon, and operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization.**

**(b) Any entity outside of Oregon similarly licensed, or certified by Medicare or a nationally recognized agency as an ASC.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
Hist:

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**436-009-0205 Who Do I Bill for Providing Medical Services?**

**You must submit bills to the insurer or, if provided by your contract for medical services, to the managed care organization.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0206 What Billing Form Must I Use?**

**Unless you submit medical bills electronically, you must bill on a CMS 1500 form. Computer-generated reproductions of the CMS 1500 form may also be used.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0207 How Do I Fill Out the CMS 1500 Form?**

**Unless different instructions are provided in the table below, use the instructions provided in the [National Uniform Claim Committee 1500 Claim Form Reference Instruction Manual](#).**

<b><u>Box Reference Number</u></b>	<b><u>Instruction</u></b>
<b><u>10d</u></b>	<b><u>May be left blank</u></b>
<b><u>11a, 11b, and 11c</u></b>	<b><u>May be left blank</u></b>
<b><u>17a</u></b>	<b><u>May be left blank if box 17b contains the referring provider's NPI</u></b>
<b><u>22</u></b>	<b><u>May be left blank</u></b>
<b><u>23</u></b>	<b><u>Not used in Oregon workers' compensation</u></b>
<b><u>24D</u></b>	<p><b><u>You must use the following codes to accurately describe the services rendered:</u></b></p> <ul style="list-style-type: none"> <li>• <b><u>CPT® codes listed in CPT® 2011;</u></b></li> <li>• <b><u>HCPCS codes; or</u></b></li> <li>• <b><u>Oregon Specific Codes (OSCs).</u></b></li> </ul> <p><b><u>If there is no specific code for the medical service:</u></b></p> <ul style="list-style-type: none"> <li>• <b><u>Use an appropriate unlisted code from CPT® 2011 ( e.g. CPT® code 21299) or an unlisted code from HCPCS (e.g. HCPCS code E1399); and</u></b></li> <li>• <b><u>Describe the service provided.</u></b></li> <li>• <b><u>You must add a modifier “-SG” to identify the facility charges under the modifier column next to the code describing the service rendered.</u></b></li> </ul>
<b><u>24I (shaded area)</u></b>	<b><u>See under box 24J shaded area.</u></b>

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<b><u>24J (non-shaded area)</u></b>	<b><u>Include the rendering provider's NPI.</u></b>
<b><u>24J (shaded area)</u></b>	<p><b><u>If you include the rendering provider's NPI in the non-shaded area of box 24J, you may leave the shaded area of box 24I and 24J blank.</u></b></p> <p><b><u>If the rendering provider does not have an NPI, then include the rendering provider's state license number and use the qualifier "0B" in box 24I.</u></b></p>

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0210 How Much Should I Charge?**

- (1) You must bill your usual fee that you charge to the general public.**
- (2) For purposes of this rule, "general public" means any person who receives medical services, unless the law requires you to bill a specific amount.**
- (3) When a patient with two or more separate compensable claims receives treatment for more than one injury or illness, you must divide the charges accordingly.**
- (4) If you provide packaged services (see Appendices C and D) with a surgical procedure, you should include the charges for the packaged services in the surgical charges.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0215 What Must Accompany My Bill?**

**You must submit legible chart notes with your bill. The chart notes must:**

- (1) Document services that have been billed; and**
- (2) Identify the person performing the service.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0220 What Am I Not Allowed to Bill for?**

**You are not allowed to bill for:**

- (1) Providing chart notes that you are required to submit with your bills.**
- (2) Completing forms that are required by the director, e.g., Form 827.**
- (3) Services that were not performed.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0225 What Services Are Included In the ASC Facility Fee?**

**(1) The following services are included in the ASC facility fee and you may not get paid separately for them:**

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- (a) Nursing, technical, and related services;**
- (b) Use of the facility where the surgical procedure is performed;**
- (c) Drugs and biologicals designated as packaged in Appendix D, surgical dressings, supplies, splints, casts, appliances, and equipment directly related to the provision of the surgical procedure;**
- (d) Radiology services designated as packaged in Appendix D;**
- (e) Administrative, record-keeping, and housekeeping items and services;**
- (f) Materials for anesthesia;**
- (g) Supervision of the services of an anesthetist by the operating surgeon; and**
- (h) Implants, unless you choose to receive separate payment for implants when your cost for the implant is over \$100.**

**(2) Packaged services identified in Appendix C or D.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
Hist:

**436-009-0230 Are There Services That I May Not Get Paid for?**

**You may not get paid when:**

- (1) You bill more than 12 months after the date of service;**
- (2) X-ray films:**
  - (a) Are not of diagnostic quality;**
  - (b) Do not include a report of findings; or**
  - (c) Are 14" x 36" lateral views;**
- (3) You provide services to a worker who is enrolled in a Managed Care Organization (MCO) and:**
  - (a) You are not a contracted facility for the MCO;**
  - (b) The MCO has not pre-certified the service provided; or**
  - (c) The surgeon is not a panel provider; or**
  - (4) The surgery provided is not for an accepted condition.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
Hist:

**436-009-0235 When Must I Submit My Bill?**

- (1) Unless you establish good cause, you must submit your bill within:**
  - (a) 60 days of the date of service; or**
  - (b) 60 days of the date you learn who is responsible for the worker's compensable claim.**

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**(2) A bill is considered submitted on the date the envelope is post-marked, the date the document is faxed, or the date the document is transmitted electronically.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
Hist:

**436-009-0240 Are There Specific Billing Requirements for Certain Services That I Need to Know?**

**(1) If you provide packaged services (see Appendices C and D) with a surgical procedure, you should include the charges for the packaged services in the surgical charges.**

**(2) Do not bill for packaged codes as separate line-item charges when the payment amount says "packaged" in Appendices C or D.**

**(3)(a) By default, charges for implants are packaged into the charges for the surgical service during which they are implanted, and you should not bill separately for implants.**

**(b) When your cost for an implant is more than \$100, you may bill for the implant as a separate line item. You must provide the insurer a receipt of sale showing your cost of the implant.**

**(c) For the purpose of these rules, an implant is an object or material inserted or grafted into the body.**

**(4) When a surgical procedure is performed bilaterally, you must add the modifier "-50" on the bill for the second side.**

**(5) When a service is provided by a physician assistant or nurse practitioner, you must add the modifier "-81" to the appropriate code. The chart notes must document when medical services have been provided by a physician assistant or nurse practitioner.**

**(6) When you receive a request for medical records, you should use the Oregon Specific Code R0001 to bill for the copies.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
Hist:

**Payment Calculation and Payment Procedural Requirements for  
Ambulatory Surgery Centers**

**436-009-0245 Definitions for OAR 436-009-0250 through 436-009-0290**

**(1) "You" and "I" mean the insurer.**

**(2) An "ambulatory surgery center" (ASC) means:**

**(a) Any distinct entity licensed by the state of Oregon, and operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization.**

**(b) Any entity outside of Oregon similarly licensed, or certified by Medicare or a nationally recognized agency as an ASC.**

**(3) Durable medical equipment (DME) is equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use, could normally**

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**be rented and used by successive patients, is appropriate for use in the home, and not generally useful to a person in the absence of an illness or injury. For example: Transcutaneous Electrical Nerve Stimulation (TENS), MicroCurrent Electrical Nerve Stimulation (MENS), home traction devices, heating pads, reusable hot/cold packs, etc.**

**(4) A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. For example: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc.**

**(5) An orthosis is an orthopedic appliance or apparatus used to support, align, prevent or correct deformities, or to improve the function of a moveable body part. For example: brace, splint, shoe insert or modification, etc.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.245, 656.248; 656.252  
Hist:

**436-009-0250      What Do I Have to Pay for?**

**(1) You may only pay for treatment that falls within the scope and field of the ASC's license to operate.**

**(2) You must pay for medical services related to a compensable injury claim, except as provided by OAR 436-060-0055.**

**(3) Even if the claim is denied, you must pay for medical services rendered at your request and for information submitted at your request, which is in addition to that required in OAR 436-010-0240.**

**(4) You must pay for:**

**(a) Surgical procedures (i.e., ASC facility fee) listed in Appendix C;**

**(b) Ancillary services listed in Appendix D that are integral to the surgical procedure; and**

**(c) Implants, either when included in the ASC facility fee or when billed separately.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.245, 656.248; 656.252, 656.262(5)  
Hist:

**436-009-0255      What Don't I Have to Pay for?**

**(1) You don't have to pay for services that have been excluded from compensability under OAR 436-009-0015, or for treatment of any of the side effects caused by the excluded services. The following are excluded services:**

**(a) Dimethyl sulfoxide (DMSO), except for treatment of compensable interstitial cystitis;**

**(b) Intradiscal electrothermal therapy (IDET);**

**(c) Surface EMG (electromyography) tests;**

**(d) Rolfing;**

**(e) Prolotherapy;**

**(f) Thermography;**

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**(g) Lumbar artificial disc replacement, unless it is a single level replacement with an unconstrained or semi-constrained metal on polymer device and:**

**(A) The single level artificial disc replacement is between L3 and S1;**

**(B) The injured worker is 16 to 60 years old;**

**(C) The injured worker underwent a minimum of six months unsuccessful exercise based rehabilitation; and**

**(D) The procedure is not found inappropriate under OAR 436-010-0230(13) or (14);**  
**and**

**(h) Cervical artificial disc replacement, unless it is a single level replacement with a semi-constrained metal on polymer or a semi-constrained metal on metal device and:**

**(A) The single level artificial disc replacement is between C3 and C7;**

**(B) The injured worker is 16 to 60 years old;**

**(C) The injured worker underwent unsuccessful conservative treatment;**

**(D) There is intraoperative visualization of the surgical implant level; and**

**(E) The procedure is not found inappropriate under OAR 436-010-0230(15) or (16).**

**(2) You don't have to pay an ASC when:**

**(a) The patient misses an appointment;**

**(b) The ASC bills more than 12 months after the date of service;**

**(c) X-ray films are not of diagnostic quality, do not include a report of findings, or the films are 14" x 36" lateral views; or**

**(d) The ASC provides services to a worker who is enrolled in a Managed Care Organization (MCO) and:**

**(A) The ASC is not a contracted facility for the MCO;**

**(B) The MCO has not pre-certified the service provided; or**

**(C) The surgeon is not a panel provider.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.245, 656.248; 656.252  
Hist:

**436-009-0260 How Much Must I Pay ASCs?**

**(1) Unless otherwise provided by contract, you must:**

**(a) Pay for surgical procedures (i.e., ASC facility fee) and ancillary services at the lesser amount of:**

**(A) The maximum allowable payment amount for the HCPCS code found in Appendix C, Column labeled "Maximum Payment with Device Included, If Any" for surgical procedures, and in Appendix D, Column labeled "Maximum Payment" for ancillary services integral to a surgical procedure; or**

**(B) The ASC's usual fee for surgical procedures and ancillary services.**

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**(b) When more than one procedure is performed in a single operative session:**

**(A) For the lower paying procedure(s), pay the surgical procedures with a "Y" in the column labeled "Subject To Multiple Procedure Discounting" in Appendix C at 50 percent of the amount listed for the HCPCS code or 50 percent of the ASC's usual fee, whichever is less.**

**(B) Pay the surgical procedures with an "N" in the column labeled "Subject To Multiple Procedure Discounting" in Appendix C at the amount listed for the HCPCS code or the ASC's usual fee, whichever is less, for the procedure(s).**

**(c) When the ASC bills separately for an implant:**

**(A) Pay for the implant at 110 percent of the ASC's actual cost documented on a receipt of sale when the implant's cost to the ASC is more than \$100; and**

**(B) Pay the surgical procedure (i.e., ASC facility fee) at the maximum allowable amount for the HCPCS code found in Appendix C, Column labeled "Maximum Payment with Separate Device Payment" or the ASC's usual fee, whichever is less.**

**(d) Durable medical equipment not listed in Appendix D:**

**(A) Pay at 85 percent of the manufacturer's suggested retail price (MSRP);**

**(B) If no MSRP is available or the ASC can demonstrate that 85 percent of the MSRP is less than 140 percent of the actual cost to the ASC, then you must pay at 140 percent of the ASC's actual cost documented on a receipt of sale;**

**(e) Pay a prosthetic or orthotic device not listed in Appendix D, at 80 percent of the ASC's usual fee;**

**(f) Pay copies of medical records you requested at \$10.00 for the first page and \$0.50 for each page thereafter.**

**(2) The surgical procedure (i.e., ASC facility fee) does not include physicians' services, laboratory, x-ray, or diagnostic procedures not directly related to the surgical procedure, prosthetic devices, orthotic devices, durable medical equipment (DME), or anesthesiologists' services.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.245, 656.248; 656.252  
Hist:

**436-009-0265 What If I Don't Receive All the Information I Need to Process the Bill?**

**(1) When you receive a bill that you cannot process because it is not submitted in the proper form or the form is not complete, you may return the bill to the ASC within 20 days of the date you received the bill with a written explanation describing why you returned the bill. You must provide specific information about what you need in order to process the bill.**

**(2) If the ASC submits its bills electronically and you want chart notes, you must, within 20 days of the date you received the bill, ask the ASC to provide them.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
Hist:

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**436-009-0270    What If I Disagree With the Billing?**

**If you disagree with the amount of a bill or the appropriateness of services rendered, you must, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each medical service code.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0275    What Discounts May I Apply Under This Fee Schedule?**

**(1) You may apply a discount to the ASC's fee if you have a contract with the ASC.**

**(2) If you have multiple contracts with the ASC, you may only apply one discount to the ASC's fee.**

**(3) If you have multiple contracts and one of the contracts is with a certified managed care organization for services provided to an enrolled worker, you may only apply the discount under the managed care organization's contract.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0280    Who Is Responsible for the Payment?**

**You are responsible for paying for medical services related to a compensable injury or illness.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0285    When Must I Pay the ASC?**

**You must pay an ASC within the later of:**

**(1) 14 days of any action causing the service to be payable; or**

**(2) 45 days of the date you received the bill.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

**436-009-0290    What Must I Tell the Provider About the Payment?**

**(1) You must provide a written explanation for services being paid or denied. You must send the explanation to the medical provider that billed for the services. All information on the explanation must be in 10 point size font or larger.**

**(2) The explanation of benefits must include:**

**(a) The amount of payment for each service billed. When the payment covers multiple patients, the explanation must clearly separate and identify payments for each patient;**

**(b) The specific reason for non-payment, reduced payment, or discounted payment for each service billed;**

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**(c) An Oregon or toll-free phone number for you or your representative, and a statement that you or your representative must respond to a medical provider's payment questions within 48 hours, excluding weekends and legal holidays;**

**(d) The following notice, web link, and phone number:**

**"To access information about Oregon's Medical Fee and Payment Rules, visit [www.oregonwcdoc.info](http://www.oregonwcdoc.info) or call 503-947-7606";**

**(e) Space for a signature and date; and**

**(f) A notice of right to administrative review as follows: "If you disagree with this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required supporting documentation to the Workers' Compensation Division, Medical Section, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."**

**(3) You or your representative must answer a medical provider's inquiry about a medical payment within 48 hours, not including weekends or legal holidays, of the medical provider's inquiry. You may not refer the medical provider to another entity to obtain an answer.**

**(4) You or your representative and an ASC may agree to send and receive payment information by e-mail. Electronic records sent by e-mail are subject to the Oregon Consumer Identity Theft Protection Act ORS 646A.600 to 646A.628 and federal law.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248; 656.252  
 Hist:

### Sanctions and Civil Penalties

**436-009-9999~~0199~~ Sanctions and Civil Penalties [Renumbered from 436-009-0199]**

**(1) The director may impose sanctions upon a medical provider or insurer for violation of these rules in accordance with OAR 436-010-0340.**

**(2) If an insurer applies a contract or fee discount agreement to a provider's bill that is incorrect, the insurer must pay the provider's bill at the provider's usual fee or according to the fee schedule, whichever is less, and the insurer may be subject to a civil penalty.**

**(3) Although insurers may contract with provider networks for certain services, the insurer is responsible for their own actions as well as the actions of others acting on the insurer's behalf. If an insurer or someone acting on the insurer's behalf violates any provisions of these rules, the director may impose a civil penalty against the insurer.**

**(4) If the director finds a pattern and practice, or an egregious violation of applying incorrect discounts to providers' fees under these rules, by an insurer or someone acting on**

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**the insurer's behalf, the director may issue a civil penalty up to the amount allowed under ORS chapter 656.**

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.245, 656.254, 656.745

Hist: Amended 12/15/08 as Admin. Order 08-063, eff. 1/1/09

Renumbered from 436-009-0100 5/27/10 as Admin. Order 10-052, eff. 7/1/10

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Appendix A:

Oregon hospitals required to include Medicare Severity Diagnosis Related Group codes on hospital inpatient bills under OAR 436-009-0020

	<u>HOSPITAL NAME</u>	<u>NPI</u>	<u>ALT NPI</u>	<u>SECOND ALT NPI</u>
<u>1</u>	<u>Adventist Medical Center</u>	<u>1801887658</u>		
<u>2</u>	<u>Ashland Community Hospital*</u>	<u>1386644029</u>	:	:
<u>3</u>	<u>Bay Area Hospital – Coos Bay</u>	<u>1225016561</u>	:	:
<u>4</u>	<u>Good Samaritan Regional Medical Center - Corvallis</u>	<u>1962453134</u>	:	:
<u>5</u>	<u>Holy Rosary Medical Center – Ontario*</u>	<u>1891891792</u>	:	:
<u>6</u>	<u>Kaiser Sunnyside Medical Center</u>	<u>1124182902</u>	:	:
<u>7</u>	<u>Legacy Emanuel Hospital &amp; Health Center</u>	<u>1831112358</u>	<u>1295756898</u>	:
<u>8</u>	<u>Legacy Good Samaritan Hospital &amp; Medical Center</u>	<u>1780608216</u>	:	:
<u>9</u>	<u>Legacy Meridian Park Hospital</u>	<u>1184647620</u>	:	:
<u>10</u>	<u>Legacy Mt. Hood Medical Center</u>	<u>1255354700</u>	:	:
<u>11</u>	<u>McKenzie-Willamette Medical Center – Springfield</u>	<u>1568413573</u>	<u>1528006301</u>	:
<u>12</u>	<u>Mercy Medical Center – Roseburg*</u>	<u>1477590198</u>	<u>1134161391</u>	:
<u>13</u>	<u>Mid Columbia Medical Center – The Dalles*</u>	<u>1306842752</u>	:	:
<u>14</u>	<u>Oregon Health &amp; Science University Hospital</u>	<u>1609824010</u>	<u>1376873570</u>	<u>1548272511</u>
<u>15</u>	<u>Providence Medford Medical Center</u>	<u>1689755670</u>	:	:
<u>16</u>	<u>Providence Milwaukie Hospital</u>	<u>1366536963</u>	:	:
<u>17</u>	<u>Providence Newberg Hospital*</u>	<u>1952482275</u>	:	:
<u>18</u>	<u>Providence Portland Medical Center</u>	<u>1003991845</u>	:	:
<u>19</u>	<u>Providence St. Vincent Medical Center</u>	<u>1114015971</u>	<u>1083866933</u>	:
<u>20</u>	<u>Rogue Valley Medical Center – Medford</u>	<u>1770587107</u>	<u>1427277086</u>	:
<u>21</u>	<u>Sacred Heart Medical Center Riverbend – Springfield</u>	<u>1083888515</u>	<u>1881928067</u>	:
<u>22</u>	<u>Sacred Heart Medical Center University Dist. – Springfield</u>	<u>1346237971</u>	<u>1164595617</u>	:
<u>23</u>	<u>Salem Hospital</u>	<u>1265431829</u>	<u>1114197894</u>	:
<u>24</u>	<u>Samaritan Albany General Hospital</u>	<u>1154372340</u>	:	:
<u>25</u>	<u>Santiam Memorial Hospital – Stayton*</u>	<u>1154302214</u>	:	:
<u>26</u>	<u>Silverton Hospital</u>	<u>1669424354</u>	:	:
<u>27</u>	<u>Sky Lakes Medical Center – Klamath Falls</u>	<u>1811130149</u>	<u>1659340370</u>	:
<u>28</u>	<u>St. Charles Medical Center – Bend</u>	<u>1982621447</u>	<u>1598839789</u>	:
<u>29</u>	<u>St. Charles Medical Center – Redmond*</u>	<u>1225056146</u>	:	:
<u>30</u>	<u>Three Rivers Community Hospital – Grants Pass*</u>	<u>1801891809</u>	<u>1598895690</u>	:
<u>31</u>	<u>Tuality Community Hospital – Hillsboro</u>	<u>1275591984</u>	<u>1336228659</u>	:
<u>32</u>	<u>Willamette Falls Hospital – Oregon City</u>	<u>1639108434</u>	:	:
<u>33</u>	<u>Willamette Valley Medical Center – McMinnville *</u>	<u>1346269982</u>	:	:

*\*Denotes hospital as rural. All of the 25 OR Critical Access Hospitals are intentionally excluded from this list.*

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**Appendix B—436-009-0040**  
**Appendices B through D**

**Oregon Workers' Compensation Maximum Allowable Payment Amounts**  
 effective July ~~April~~ 1, 2010 2011.

The Workers' Compensation Division no longer adopts the Federal Register that publishes Centers for Medicare and Medicaid Services' (CMS) relative value units (RVUs). ~~Instead, the~~ The division ~~now publishes this~~ the following ~~Appendices B~~ Appendices B to the division 436-009 ~~of chapter 436~~. that contains the maximum allowable payment amounts for services provided by medical service providers.

[Appendix B \(Physician Fee Schedule\) containing the maximum allowable payment amounts for services provided by medical service providers.](#)

[Appendix C \(ambulatory surgery center fee schedule amounts for surgical procedures\), containing the maximum allowable payment amounts for surgical procedures including packaged procedures.](#)

[Appendix D \(ambulatory surgery center fee schedule amounts for ancillary services\) containing the maximum allowable payment amounts for ancillary services integral to the surgical procedure.](#)

*Note: If the above links do not connect you to the department's website, click:*

<http://www.cbs.state.or.us/external/wcd/policy/rules/disclaimer.html>

The division used the RVUs published by CMS on its Web site under Physician Fee Schedule—January 2010 release (RVU10AR), and the conversion factors in the table below to calculate the maximum allowable payment amounts. If you have questions, call the Medical Section, 503-934-6049 ~~947-7606~~.

Service Categories	Conversion Factors
Evaluation / Management	\$75.00
Anesthesiology	\$58.00
Surgery with global period of 90 days	\$89.00
Surgery with global period of less than 90 days	\$84.50
Radiology	\$69.00
Lab & Pathology	\$60.00
Medicine	\$71.00
Physical Medicine and Rehabilitation	\$68.00

The payment amount listed in the Non-Facility Maximum Column was calculated as follows:  
 The agency identified the RVU assigned to the appropriate CPT<sup>®</sup> code and listed in CMS' Transitioned Non-Facility Total Column, and multiplied this RVU by the appropriate conversion factor.

The payment amount listed in the Facility Maximum Column was calculated as follows:  
 The agency identified the RVU assigned to the appropriate CPT<sup>®</sup> code and listed in CMS' Transitioned Facility Total Column, and multiplied the RVU by the appropriate conversion factor.

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~~When the payment amount says "NA" in the Maximum columns, the service is not expected to be provided in that setting.~~

The five character codes included in the ~~Max Payment Calculator for Oregon~~ **Workers' Compensation Maximum Allowable Payment Tables** are obtained from Current Procedural Terminology (CPT), copyright ~~2009~~ **2010** by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures.

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Link to the Maximum Allowable Payment ~~Chart~~ **Tables**: <http://www.cbs.state.or.us/wcd/policy/rules/disclaimer.html>  
Or, contact the division for a paper copy, 503-947-7717