

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 009, RULE 0008**

**OREGON MEDICAL FEE AND PAYMENT RULES**

**ADMINISTRATIVE REVIEW**

**PROPOSED 8/12/05**

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

**436-009-0008 Administrative Review [and Contested Cases]**

Administrative review before the director:

(1)(a) The director has exclusive jurisdiction to resolve all disputes concerning medical fees and non-payment of compensable medical bills. A party need not be represented to participate in the administrative review before the director [except as provided in ORS chapter 183 and OAR chapter 436, division 001].

(b) Any party may request the director provide voluntary mediation after a request for administrative review or [contested case] hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, a director's order shall be issued.

(2) The medical provider, injured 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 receipt 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, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due pursuant to OAR 436-009-0030. Filing a request for

administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

(c) The director may, on the director's own motion, initiate a medical services review at any time.

(d) Under ORS 656.704(3)(c) [Oregon Laws 2005, chapter 26, section 15], [w]hen 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 [must] 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 HCFA/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 the involved parties have been provided a copy of the request for review and attached supporting documentation and, if known, [that] whether there is [no] an issue of causation or compensability of the underlying claim or condition.

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

(a) The investigation may include, but shall 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 shall have 14 days to respond.

(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.

[d) Pursuant to section (6) of this rule, within 30 days of the administrative order, any party may appeal to a contested case before the Office of Administrative Hearings.]

(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) [Contested cases] **Hearings** before [the Office of Administrative Hearings] **an administrative law judge:** [Pursuant to] **Under** [ORS 183.310 through 183.690, as modified by OAR chapter 436, division 001 and] **ORS 656.704(2)**, any party that disagrees with an action or order of the director [pursuant to] **under** these rules[,] may request a [contested case] hearing[. For purposes of these rules, "contested case" has the meaning prescribed in ORS 183.310(2) and OAR chapter 436 division 001. A party may appeal to the director as follows:

(a) The party must send a written request to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the order or other action of the director is contested and include a copy of the order being appealed.

(b) The appeal must be mailed] **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 [being appealed]. **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 pursuant to 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(15).

(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, pursuant to these rules, may request administrative review by the director. Any party may request administrative review 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.

(c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (6) of this rule.

Stat. Auth.: ORS 656.704, 656.726(4)

Stats. Implemented: ORS 656.704

Hist: Renumbered from OAR 436-010-0110(1), (2), (3), (4), and (5) to OAR 436-009-0008(2), (3), (4), and (5); from OAR 436-010-0110(6) to OAR 436-009-0008(1)(b); and,

Filed 5/3/96 as Admin. Order 96-059, eff. 6/1/96

Amended 4/3/98 as Admin. Order 98-052, eff. 7/1/98

Amended 5/27/99 as Admin. Order 99-057, eff. 7/1/99

Amended 03/15/00 as Admin. Order 00-051, eff. 04/01/00

Amended 3/8/01 as WCD Admin. Order 01-051, eff. 4/1/01

Amended 2/25/02 as WCD Admin. Order 02-052, eff. 4/1/02

Amended 5/28/03 as WCD Admin. Order 03-055, eff. 7/1/03

Amended 12/12/03 as WCD Admin. Order 03-068, eff. 1/1/04 (Temporary)

Amended 3/4/04 as WCD Admin. Order 04-054, eff. 4/1/04

Amended 3/23/05 as WCD Admin. Order 05-051, eff. 4/1/05

**Amended XX/XX/XX as WCD Admin. Order 05-XXX, eff. XX/XX/XX**

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

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

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

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

**RULEMAKING ACTION**

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

**AMEND:** OAR chapter 436, division 001; OAR 436-009-0008, 436-045-0008, 436-070-0008, 436-075-0008, 436-080-0070, 436-085-0008, 436-140-0008, 436-150-0008

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

**AMEND AND RENUMBER:** OAR 436-001-0000 to 0009, 436-001-0155 to 0019, 436-001-0275 to 0246

ORS 656.726(4)  
Stat. Auth.

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

**RULE SUMMARY**

**The Workers' Compensation Division proposes to amend OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150.**

- House Bill 2091 (Oregon Laws 2005, chapter 26) moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. These proposed adoptions and amendments reflect that change. The Workers' Compensation Division proposes to repeal several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. The Workers' Compensation Division proposes to amend and renumber some rules in OAR 436-001 to place rules in a sequence more aligned with the sequence of appeals and hearings.

Notice of Proposed Rulemaking Hearing

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**The Workers' Compensation Division proposes to repeal OAR chapter 436, division 030, "Rehabilitation Facilities," in its entirety.**

- ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

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

Address questions to:

Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail [fred.h.bruyns@state.or.us](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> or from WCD Publications, 503-947-7627 or fax 503-947-7630.

September 30, 2005  
Last Day for Public Comment

/s/ John L Shilts  
Authorized Signer and Date

8/12/05

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

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

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Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

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

Department of Consumer and Business Services,  
Workers' Compensation Division

OAR CHAPTER 436

**Agency and Division**

**Administrative Rules Chapter Number**

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

**Statutory Authority:** ORS 656.726(4)

**Other Authority:**

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

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

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

**Fiscal and Economic Impact:** House Bill 2091 (Oregon Laws 2005, chapter 26) moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. This streamlines the hearing process such that all hearings, regardless of the disputed issue, will be processed by the Workers' Compensation Board. The related proposed rule changes do not substantially alter the actions required of the parties to a hearing, and should not have any significant economic impact on any persons or businesses, including small businesses. The Workers' Compensation Division estimates a savings to the Department of Consumer and Business Services, Premium Assessment Operating Account, during the 2005-2007 biennium of \$277,500. This savings estimate was prepared during analysis of House Bill 2091 and is not altered by proposed rule changes.

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

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

*/s/ John L. Shilts*

8/12/05

\_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
John L. Shilts, Administrator, Workers' Compensation Division

Printed name