

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

In the Matter of the Amendment of)	
Oregon Administrative Rules (OAR))	ORDER OF ADOPTION
chapter 436, division 009,)	No. 04-054
)	
Oregon Medical Fee and Payment Rules)	

The Director of the Department of Consumer and Business Services, pursuant to the general rulemaking authority under ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436, division 009, Oregon Medical Fee and Payment Rules.

On December 15, 2003, the Workers' Compensation Division filed the *Notice of Proposed Rulemaking/Hearing* with the Secretary of State to amend rules governing Oregon Medical Fee and Payment. The *Statement of Need and Fiscal Impact* accompanied the *Notice*. Copies of the *Notice* and *Statement* were mailed to interested persons and legislators in accordance with ORS 183.335(1) and OAR 436-001-0000 and posted to the Workers' Compensation Division's web site. The notice was published in the January 2004 *Oregon Bulletin*.

On January 22, 2004 a public hearing was held as announced. In addition, the record was held open for written testimony through 5:00 p.m. January 27, 2004. A written summary of testimony received and agency responses, as well as principal documents relied upon, will be on file and available for public inspection upon request during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405.

RULE SUMMARY:

These rules have been amended in part to replace temporary rules issued to implement changes in the law due to legislation passed by the 2003 Oregon Legislature. House Bill 3669 gave additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments. This bill was a result of legislative action after development of the legislative concepts by nurse practitioners and the Management Labor Advisory Committee.

In addition, these rules:

- Adopt updated medical resources.
- Incorporate data reporting requirements currently published in Bulletin 220.
- Add group nine to the fee schedule for ambulatory surgical centers.
- Require insurers and self-insured employers to keep track of dates of receipt of medical bills.
- Provide that if a provider's usual and customary fee is unreasonable, the director may determine a different fee based on criteria.
- Increase the dollar amount of each conversion factor by 2.33%, based on the annual increase in the physicians' component of the consumer price index.
- Require electronic billings to include a "zz" modifier for services that use an Oregon Specific Code.
- Modify the definitions of first and second level physical capacity evaluations and of work capacity evaluation.

Order of Adoption
OAR 436-009

- Provide that pharmacy fees shall be paid at 88% of the Average Wholesale Price (AWP) – a reduction from 95% in the current rules – with an \$8.70 dispensing fee – an increase from \$6.70 in the current rules.
- Provide that a brand name drug that has a generic equivalent will be paid at the lesser of 88% of the AWP for the brand name or 88% of the average AWP for the class of generic drug, plus dispensing fee, unless the prescribing medical provider writes “Do not substitute” or similar phrase on the prescription.
- Provide that payment for Oxycontin, Vioxx, Celebrex and Bextra is limited to an initial 5-day supply unless the prescriber writes a clinical justification for the drug.
- Define “clinical justification” and provide that insurers and self-insured employers cannot challenge the adequacy of the justification.

FINDINGS:

Having reviewed and considered the record and being fully informed, I make the following findings:

- (a) The applicable rulemaking procedures have been followed.
- (b) These rules are within the director’s authority.
- (c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT:

- A. Amendments to OAR chapter 436, division 009, as set forth in Exhibit "A", attached hereto and incorporated by reference herein, **are adopted on this 4th day of March 2004 to be effective April 1, 2004.**
- B. A certified copy of the amended rules adopted herein shall be filed with the Secretary of State.
- C. A copy of the amended rules with revision marks shall be filed with the Legislative Counsel pursuant to ORS 183.715 within ten (10) days after filing with the Secretary of State.

DATED this 4th day of March 2004.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers’ Compensation Division

Pursuant to the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers’ Compensation Division at (503) 947-7810.

Vertical bars in the right margin of the attached rule(s) indicate significant changes. |

Distribution: WCD-ID, S0, S1, S3, S4, S5, S6, S7, S8, NM

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

OREGON MEDICAL FEE AND PAYMENT RULES

EFFECTIVE APRIL 1, 2004

TABLE OF CONTENTS

Rule	Page
ORDER OF ADOPTION	i
436-009-0001 Authority for Rules	1
436-009-0002 Purpose.....	1
436-009-0003 Applicability of Rules	1
436-009-0004 Adoption of Standards	1
436-009-0005 Definitions.....	2
436-009-0006 Administration of Rules	3
436-009-0008 Administrative Review and Contested Cases	3
436-009-0010 General Requirements for Medical Billings	6
436-009-0015 Limitations on Medical Billings	7
436-009-0020 Hospital Fees.....	9
436-009-0022 Ambulatory Surgical Center Fees	11
436-009-0025 Reimbursement of Related Services Costs	12
436-009-0030 Insurer's Duties and Responsibilities	13
436-009-0035 Interim Medical Benefits	16
436-009-0040 Calculating Medical Provider Fees	17
436-009-0050 CPT [®] Sections.....	18
436-009-0060 Oregon Specific Code, Multidisciplinary Services.....	20
436-009-0070 Oregon Specific Code, Other Services	23
436-009-0080 Durable Medical Equipment and Medical Supplies	27
436-009-0090 Pharmacy Fees	28
436-009-0100 Sanctions and Civil Penalties.....	29
Appendix A 436-009-0030	33
Certificate and Order for Filing PERMANENT ADMINISTRATIVE RULES	34
Diskette Order Form	last page

The Workers' Compensation Division (WCD) adopts, by reference, parts of the Centers for Medicare & Medicaid Services Medicare Resource-Based Relative Value Scale (RBRVS), 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 **RBRVS**, contact:
United States Government Bookstore
www.nara.gov
Ask for: 68 Federal Register No. 216, November 7, 2003

- 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: 2004 Relative Value Guide

- To order the **CPT® 2004**, contact:
American Medical Association
515 North State Street
Chicago, IL 60610
Phone (800) 621-8335

- To order the **NUBC UB-92 Data Specifications Manual**, contact:
National Uniform Billing Committee
American Hospital Association
29th Floor
One North Franklin
Chicago, IL 60606
Phone (312) 422-3390
Ask to: Become a subscriber of the NUBC UB-92 Specifications Manual.

These rules (OAR 436-009), the RBRVS, and the ASA Relative Value Guide are available from WCD on diskette. See the **Order Form 440-3093** on the last page of these rules, or on the Workers' Compensation Division's Web site:

www.oregonwcd.org/policy/forms/formsbyno.html

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

**EXHIBIT "A"
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: Filed 5/3/96 as Admin. Order 96-059, eff. 6/1/96
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 services 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

436-009-0003 Applicability of Rules

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

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248
Hist: 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 3/4/04 as Admin. Order 04-054, eff. 4/1/04

436-009-0004 Adoption of Standards

(1) The director adopts, by reference, the Centers for Medicare & Medicaid Services (CMS) 2004 Medicare Resource-Based Relative Value Scale (RBRVS) Addendum B "Relative Value Units (RVUs) and Related Information" except the "status indicators," and Addendum C "Codes with Interim RVUs," 68 Federal Register No. 216, November 7, 2003 as the fee schedule for payment of medical service providers except as otherwise provided in these rules.

(2) The director adopts, by reference, the *American Society of Anesthesiologists (ASA), Relative Value Guide 2004* as a supplementary fee schedule for payment of anesthesia service providers except as otherwise provided in these rules for those anesthesia codes not found in the Federal Register.

(3) The director adopts *Current Procedural Terminology (CPT® 2004)*, Fourth Edition Revised, 2003 for billing by medical providers except as otherwise provided in these rules. The guidelines are adopted as the basis for determining level of service.

(4) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 shall control over any conflicting provision in Addenda B and C, 68 Federal Register No. 216, November 7, 2003, ASA Relative Value Guide 2004, or CPT® 2004.

Stat Auth: ORS 656.248, 656.726(4)
Stats Implemented: ORS 656.248
Hist: Filed 5/27/99 as Admin. Order 99-057, eff. 7/1/99

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

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

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.

(a) Durable medical equipment (DME) is equipment which is primarily and customarily used to serve a medical purpose, can withstand repeated use, appropriate for use in the home, and not generally useful to a person in the absence of an illness or injury.

(b) Medical supplies are expendable materials including, but not limited to, incontinent pads, catheters, bandages, elastic stockings, irrigating kits, sheets, and bags.

(c) 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. Any ambulatory surgical center outside of Oregon must meet similar licensing requirements, or be certified by Medicare or a nationally recognized agency.

(2) Abbreviations used in these rules are defined as follows:

- (a) ASA means American Society of Anesthesiologists
- (b) ASC means ambulatory surgical center
- (c) CARF means Commission on Accreditation of Rehabilitation Facilities
- (d) CMS means Centers for Medicare & Medicaid Services (formerly HCFA, Health Care Financing Administration)
- (e) CPT[®] means Current Procedural Terminology
- (f) DME means Durable Medical Equipment
- (g) DMSO means Dimethyl sulfoxide
- (h) EDI means Electronic Data Interchange
- (i) HCFA means Health Care Financing Administration (former name of CMS)
- (j) HCPCS means Healthcare Common Procedure Coding System
- (k) ICD-9-CM means International Classification of Diseases, Ninth Revision, Clinical Modification, Vol. 1, 2 & 3
- (l) JCAHO means Joint Commission on Accreditation of Healthcare Organizations
- (m) MCO means Managed Care Organization
- (n) NCPDP means National Council for Prescription Drug Programs
- (o) OSC means Oregon specific code
- (p) PCE means physical capacity evaluation
- (q) RBRVS means Medicare Resource-Based Relative Value Scale

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

(r) RVU means relative value unit

(s) WCE means work capacity evaluation

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.726(4)

Hist: Filed 5/3/96 as Admin. Order 96-059, eff. 6/1/96
Amended 10-2-96 as Admin. Order 96-069, eff. 1-1-97
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 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 3/4/04 as WCD Admin. Order 04-054, eff. 4/1/04

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 the rules adopted pursuant thereto, are considered orders of the director.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.726(4)

Hist: Filed 5/3/96 as Admin. Order 96-059, eff. 6/1/96
Amended 2/25/02 as WCD Admin. Order 02-052, eff. 4/1/02

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

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

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) 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 must first be decided by the Hearings Division of the Workers' Compensation Board.

(3) Parties shall submit requests for administrative review to the director in the form and format prescribed by the director. The requesting party shall 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.

(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 there is no 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;

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

(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 director.

(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 before the director: Pursuant to 183.310 through 183.550, 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 these rules, may request a contested case before the director. 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 within 30 days of the mailing date of the order or notice of action being appealed.

(7) Contested case hearings of sanction and civil penalties: Under ORS 656.740 (§9, ch. 170, OL 2003), 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,

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

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

436-009-0010 General Requirements for Medical Billings

(1) Only treatment that falls within the scope and field of the practitioner's license to practice will be paid under a worker's compensation claim.

(2) All medical providers shall submit bills to the insurer or managed care organization, as provided by their contract for medical services, on a current UB92 or HCFA/CMS 1500 form, except for:

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

(b) Pharmacy billings, which shall be submitted on the most current NCPDP form;

(c) EDI transmissions of medical bills pursuant to OAR 436-009-0030(3)(c). Computer-generated reproductions of these forms may also be used. Billings shall include the worker's full name, date of injury, the employer's name and, if available, the insurer's claim number.

(3)(a) All original medical provider billings shall be accompanied by legible chart notes documenting services which have been billed, and identifying the person performing the service and license number of person providing the service. Medical doctors are not required to provide their medical license number if they are already providing other identification such as a federal tax reporting identification number, or Unique Provider Identification Number (UPIN).

(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) Codes listed in CPT[®] 2004 or Oregon Specific Codes (OSC) shall be used when billing medical services. All billings shall be fully itemized and include ICD-9-CM codes. Services shall be identified by the code numbers and descriptions provided in these rules. A "zz" modifier shall be used when billing electronically for services that use Oregon Specific Codes.

(a) If there is no specific code for the medical service, the medical provider shall use the appropriate unlisted code at the end of each medical service section of CPT[®] 2004 and provide a description of the service provided.

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

(5) Billings for treatment shall be rendered at reasonable intervals not to exceed 60 days following treatment. Late billings may be subject to discounts, not to exceed 10 percent for each 30 day period or fraction thereof, beyond 60 days, provided the medical provider has notice or knowledge of the responsible workers' compensation insurer or processing agent.

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

(6) Rebillings shall indicate that the charges have been previously billed.

(7) The medical provider shall bill their usual and customary 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 shall not submit false or fraudulent billings. As used in this section, "false or fraudulent" shall mean an intentional deception or misrepresentation issued with the knowledge that the deception could result in unauthorized benefit to the provider or some other person. The medical provider shall not bill for services not provided.

(9) When a worker with two or more separate compensable claims receives treatment for more than one injury or illness costs shall 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 in no event later than 30 days following receipt of the request. Thereafter, worker copies shall be furnished during the regular billing cycle.

Stat. Auth.: ORS 656.245 (§3, ch. 811, OL 2003), 656.252, 656.254

Stats. Implemented: ORS 656.245, 656.252, 656.254

Hist: Renumbered from OAR 436-010-0010(5) and (6) to OAR 436-009-0010(1) and (2) ;
from 436-010-0040(3)(d) and (e) to 436-009-0010(3) and (4);
from 436-010-0040(7) and (9) to 436-009-0010(4) and (5);
from 436-010-0040(11) to 436-009-0010(11); and
Filed 5/3/96 as Admin. Order 96-059, eff. 6/1/96
Amended 10-2-96 as Admin. Order 96-069, eff. 1-1-97
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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 9/13/01 as WCD Admin. Order 01-058, eff. 9/17/01
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 3/4/04 as WCD Admin. Order 04-054, eff. 4/1/04

436-009-0015 Limitations on Medical Billings

(1) An injured worker shall not be liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer pursuant to OAR chapter 436. A medical provider shall 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 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 (§3, ch. 811, OL 2003)

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

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 pursuant to 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) of this rule.

(3) The preparation of a written treatment plan and the supplying of progress notes are integral parts of the fee for the medical service.

(4) No fee shall be paid 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 the department or for a Worker Requested Medical Examination. Except as provided in OAR 436-009-0070 (10)(d), when the worker fails to appear without providing the medical provider at least 24 hours notice, the medical provider shall be paid at 50 percent of the examination or testing fee. A medical arbiter may also receive payment for a file review as determined by the director.

(6) Pursuant to 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) DMSO, except for treatment of compensable interstitial cystitis,
- (b) Intradiscal electrothermal therapy (IDET),
- (c) Surface EMG (electromyography) tests,
- (d) Rolfing,
- (e) Prolotherapy, and
- (f) Thermography.

(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.

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

(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 shall be identified by CPT[®] 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 or nurse practitioner fees shall be paid at the rate of 80 percent of a physician's allowable fee for a comparable service. The bills for services by these providers shall be marked with modifier "81." Chart notes shall 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, insurance carrier or their representative, the medical provider should bill for their report or review of the records utilizing CPT[®] Codes such as 99080. Refer to specific code definitions in the CPT[®] for other applicable codes. The billing should include the actual time 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: Filed 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
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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

436-009-0020 Hospital Fees

(1) Hospital inpatient charges billed to insurers shall include ICD-9-CM diagnostic and procedural codes. Unless otherwise provided for by a governing MCO contract, insurers shall pay hospitals for inpatient services using the current adjusted cost/charge ratio (see Bulletin 290). 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 UB92 billing form. The audited bill shall be multiplied by the hospital's adjusted cost/charge ratio to determine the allowable payment.

(2) Hospital outpatient charges billed to insurers shall include ICD-9-CM diagnostic and procedural codes, CPT[®] codes, HCPCS codes, and National Drug Codes (NDC), where applicable. Unless otherwise provided for by a governing MCO contract, insurers shall pay hospitals for outpatient services according to the following: the insurer shall first separate out and pay charges for services covered under the CPT[®] and RBRVS. These charges should be subtracted from the total bill and the adjusted cost/charge ratio should be applied only to the balance. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the non-facility total column. All other charges billed using both the hospital name and tax identification number will be paid as if provided by the hospital.

(3) Each hospital's HCFA/CMS 2552 form and financial statement shall be the basis for determining its adjusted cost/charge ratio. If a current 2552 is not available, then financial

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

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 (1) the hospital's last published cost/charge ratio or, (2) 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:

(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 (3)(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 HCFA/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 (3)(c) and (3)(d) of this rule will be added to the ratio calculated in subsection (3)(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 shall submit a copy of their HCFA/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, to be effective for the six-month period beginning April 1, and to be effective for the six-month period beginning October 1.

(g) For those newly formed or established hospitals for which no HCFA/CMS 2552 has been filed, or for those hospitals that do not file Worksheet G-2 with the submission of their HCFA/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 and/or geographic location.

(h) If the financial circumstances of a hospital unexpectedly and/or dramatically change,

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

the division may revise the hospital's adjusted cost/charge ratio to allow equitable payment.

(i) If audit of a hospital's HCFA/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 cost/charge ratio shall be 1.000 for out-of-state hospitals, unless a lower rate is negotiated between the insurer and the hospital.

(k) Notwithstanding section (1) and (2) 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, as originally developed by Dr. William Cleverley. All rural hospitals having a financial flexibility index at or below the median for hospitals nationwide with a bond rating of BBB+, BBB, or BBB- 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; sec. 2, ch. 771, Oregon Laws 1991; 656.252; 656.256

Hist: Renumbered from OAR 436-010-0090(1) thru (4), (7) thru (32) to OAR 436-009-0020(1) thru (29), (32) and (33);

from OAR 436-010-0040(4)(b)(A) and (c) to OAR 436-009-0020(30) and (31);

from OAR 436-010-0047(6) and (7) to OAR 436-009-0020(34) thru (37), and;

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

Amended 10-2-96 as Admin. Order 96-069, eff. 1-1-97

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Amended 12-15-97 as WCD Admin. Order 97-056, eff. 12-15-97

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

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

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

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

436-009-0022 Ambulatory Surgical Center Fees

(1) Bills from an ASC shall be submitted on HCFA/CMS 1500 form. The modifier "SG" shall be used to identify facility charges.

(2) Fees shall be paid at the usual and customary fee, or in accordance with the fee schedule, whichever is less. For all MCO enrolled claims, payment of fees shall be as provided by the MCO contract, at the provider's usual and customary fee, or according to the fee schedule, whichever is less.

(3) Payment shall be made using the Medicare ASC groups, except:

(a) Arthroscopies (CPT[®] codes 29819 through 29898 except 29888 and 29889) are paid as Group 6.

(b) Arthroscopies (CPT[®] codes 29888 and 29889) are paid as Group 7.

(c) Procedures not listed in the Medicare ASC groups shall be paid at the provider's usual and customary rate.

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

(4) The ASC fee schedule is:

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, and 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, and anesthetists' services.

(7) When multiple procedures are performed, the highest payment group shall be paid at 100% of the maximum allowed fee. Each additional procedure shall be paid at 50% of the maximum allowed fee.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248; 656.252

Hist: Adopted 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 3/4/04 as WCD Admin. Order 04-054, eff. 4/1/04

436-009-0025 Reimbursement of Related Services Costs

(1) The insurer shall notify the worker at the time of claim acceptance that actual and reasonable costs for travel, prescriptions and other claim-related services paid by the worker will be reimbursed by the insurer upon request. 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 worker's written 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

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

compensable injury or disease, the insurer shall inform the worker what information is needed before the request for reimbursement can be processed. On 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. If there is a claim for aggravation or a new medical condition on an accepted claim, 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 reimbursed at the rate of reimbursement for State of Oregon classified employees, as published in Bulletin 112, complies with this section. Reimbursement may exceed these rates where special transportation or lodging is needed.

(3) Requests for reimbursement of 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 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, pursuant to OAR 436-009-0008.

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

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

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

Hist: Amended and renumbered from OAR 436-060-0070, 12/17/01, as WCD Admin. Order 01-064, eff. 1/1/02
Amended 3/4/04 as WCD Admin. Order 04-054, eff. 4/1/04

436-009-0030 Insurer's Duties and Responsibilities

(1) The insurer shall 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 shall furnish a reasonable work-site for the records to be reviewed at no cost. These records shall be provided or made available for review within 14 days of a request.

(3) Insurers shall 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 or 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

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

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 shall retain a copy of each medical provider's bill received by the insurer or shall 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 fee reduction other than a fee schedule 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.

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

(4) 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.

(5) Failure to pay for medical services timely may render 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.

(6) When there is a dispute over the amount of a bill or the appropriateness of services rendered, the insurer shall, 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 shall be made in accordance with OAR 436-009-0008, 436-010-0008 and 436-015.

(7) 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.

(8) The insurer shall 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 shall provide upon request documentation establishing that the insurer is conducting a continuous audit of medical bills. This documentation shall include, but not be limited to, medical bills, internal audit forms, and any medical charge summaries prepared by private medical audit companies.

(9) Insurers that had at least 100 accepted disabling claims in the previous calendar year, as determined by the director, are required to submit detailed medical service billing data to the Information Management Division of the Department of Consumer and Business Services at 350 Winter St NE, Room 300, PO Box 14480, Salem OR 97309-0405. Once an insurer has reached the minimum number of accepted disabling claims, they must continue to report in subsequent years unless there is a significant decrease below the 100 claim minimum which is expected to continue. The insurer may apply for exemption from the reporting requirement. The reporting

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

requirements are as follows:

(a) The director will notify the affected insurers when they reach the minimum. The transmission data and format requirements are included in Appendix A;

(b) The data shall include all payments made during each calendar quarter for medical services that are covered by the department's fee schedules. The following apply:

(A) Hospital Inpatient: Each hospital inpatient stay should be reported as one record summarizing all services related to the inpatient stay using provider type "HI." Report ICD-9-CM procedure code in the service code field.

(B) Hospital Outpatient: Report at the individual service-code level using provider type "HO." A service code, whether CPT, HCPCS or other, is required on all "HO" records in addition to the ICD-9-CM diagnostic code.

(C) Adjustments to payments must be associated with specific services.

(c) The affected insurers shall submit the medical data within 45 days of the end of each calendar quarter. A grace period of two calendar quarters may be granted for revised requirements and also for insurers which are newly affected by these requirements. The calendar quarter due dates are as outlined in the table below:

QUARTERLY DUE DATES Table

QUARTER	MONTH OF PAYMENT	DUE NEXT
First	January, February & March	May 15th
Second	April, May & June	August 14th
Third	July, August & September	November 14th
Fourth	October, November & December	February 14th

(d) Technical Requirements: Data for each quarter calendar year must be transmitted as an individual file. Insurers transmitting data for more than one insurer may batch multiple insurer data files in one transmission. Data must be transmitted in electronic text files either on a 3.5 inch diskette, CD, or by file transfer protocol (FTP). Contact the Information Management Division (IMD) to arrange submission by FTP files or other electronic transmission methods. The record length must be fixed, 129 bytes, no packed fields, and in conformance with the records layout in Appendix A. Diskettes must be ASCII format, high density. Diskettes and CDs must have a physical label that indicates "Medical Data," the name of the group submitting, the quarter reported, and the date the file was created. Include a cover letter in the same package with each diskette or CD. Contact IMD for e-mail cover letter instructions. The cover letter must include the label information and the following: a list of all insurance companies' data included in the transmission; number of records; a contact person's name, address, and telephone number; and any known problems with the data.

(e) Data Quality: The director will conduct electronic edits for blank or invalid data. Affected insurers are responsible for pre-screening the data they submit to check that all the required information is reported. Files which have more than five percent missing or invalid data in any field, based on initial computerized edits, will be returned to the insurer for correction and must be resubmitted within three weeks (21 days) from the date it was returned by the department.

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

(f) **Audit Quality:** The director may also conduct field audits of actual payments reported for individual claims. When an audit occurs, in order to be in compliance with this rule and OAR 436-009-0025, audited data must have no more than 15 percent inaccurate data in any field.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260, 656.264

Hist: Filed 2/23/82 as Admin. Order 5-1982, eff. 3/1/82
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Amended 9/6/88 as Admin. Order 6-1988, eff. 9/15/88
Amended 1/5/90 as Admin. Order 1-1990, eff. 2/1/90
Amended 6/20/90 as Admin. Order 6-1990, eff. 7/1/90 (Temp)
Amended 12/10/90 as Admin. Order 32-1990, eff. 12/26/90
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Amended 4/3/98 as WCD 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 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 3/4/04 as WCD Admin. Order 04-054, eff. 4/1/04

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.

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

(7) After payment is received from the health benefit plan(s), the medical service provider may bill the workers' compensation insurer, pursuant 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 (6).

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

Stat. Implemented: ORS 656.247

Hist: Filed 1/1/02 as Admin. Order 01-064 eff. 1/1/02

436-009-0040 Calculating Medical Provider Fees

(1) Medical fees shall be paid at the provider's usual and customary fee or in accordance with the fee schedule whichever is less. For all MCO enrolled claims, payment of medical fees shall be at the provider's usual and customary fee or according to the fee schedule, whichever is less, unless otherwise provided by MCO contract. Where there is no maximum payment established by the fee schedule, 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, but not limited to, the following: reasonableness, the usual and customary fees of similar providers, the services provided in the specific case, fees for similar services in similar geographic regions, and any extenuating circumstances.

(2)(a) When using RBRVS, the RVU is determined by reference to the appropriate CPT[®] code. Where the procedure is performed inside the medical service provider's office, use Year 2004 non-facility total column. Where the procedure is performed outside the medical service provider's office, use Year 2004 facility total column. Use the global column to identify the follow up days when applicable. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the Year 2004 non-facility total column. No other column applies.

(b) When an Oregon Specific Code is assigned, the RVU for multidisciplinary program services is found in OAR 436-009-0060(5), or for other services in OAR 436-009-0070 (13).

(c) When using the ASA Relative Value Guide, a basic unit value is determined by reference to the appropriate Anesthesia code. The basic unit value includes unit value, time units, and modifying units.

(3) Payment according to the fee schedule shall be determined by multiplying the assigned RVU or basic unit value by the applicable conversion factor. Where the code is designated by an RVU of "0.00" or IC (individual consideration) for Anesthesia codes, it shall be paid at the provider's usual and customary rate.

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

(4) The table below lists the conversion factors to be applied to services, assigned an RVU, rendered by all medical professionals.

Service Categories	Conversion Factors
Evaluation / Management	\$68.40
Anesthesiology	\$53.45
Surgery	\$93.66
Radiology	\$68.00
Lab & Pathology	\$60.00
Medicine	\$75.04
Physical Medicine and Rehabilitation	\$65.79
Multidisciplinary and Other Oregon-Specific Codes	\$60.00

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist: Filed 5/27/99 as Admin. Order 99-057, eff. 7/1/99
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Amended 3/4/04 as WCD Admin. Order 04-054, eff. 4/1/04

436-009-0050 CPT[®] Sections

Each CPT[®] 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[®] shall 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[®].

- (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 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 shall 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) shall 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 immediate pre-operative visit, in

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

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 shall 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 shall 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 shall be billed separately. The maximum allowable fee for each procedure, as listed in these rules, shall 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" shall be noted on the bill for the second side, and paid at 50% of the fee allowed for the first side.

(d) Physician assistants or nurse practitioners shall be paid at the rate of 10 percent of the surgeon's allowable fee for the surgical procedure(s). The bills for services by these providers shall be marked with a modifier "-81." Chart notes shall 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 shall be paid at the rate of 10 percent of the surgeon's allowable fee for the surgical procedure(s). The operation report shall document who assisted.

(4) Radiology services.

(a) In order to be paid, x-ray films must be of diagnostic quality. Billings for 14" x 36" lateral views shall not be paid. Billings for X-rays shall not be paid without a report of the findings.

(b) When multiple areas are examined by computerized axial tomography (CAT) scan,

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

magnetic resonance angiography (MRA) or magnetic resonance imaging (MRI), the first area examined shall be paid at 100 percent, the second area at 50 percent, and the third and all subsequent areas at 25 percent of these rules.

(5) Pathology and Laboratory services.

(a) The laboratory and pathology conversion factor applies only when there is direct physician involvement.

(b) Laboratory fees shall 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 shall show the amount charged by the laboratory and any service fee that the physician charges.

(6) Medicine services.

(7) Physical Medicine and Rehabilitation services.

(a) Increments of time for a time-based CPT[®] code shall not be prorated.

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

(d) CPT[®] 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 shall be a notation on the bill that treatments were provided simultaneously by a machine, device or table and there shall be one charge.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

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436-009-0060 Oregon Specific Code, Multidisciplinary Services

(1) Services provided by multidisciplinary programs not otherwise described by CPT[®] codes shall be billed under Oregon-Specific Codes. Electronic billings shall include a "zz" modifier as provided in OAR 436-009-0010.

(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 CARF or the JCAHO.

(a) Organizations which have applied for CARF accreditation, but have not yet received such accreditation, may receive payment for multidisciplinary programs upon providing

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

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.

(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**.

Codes	Relative Value	Description
97642	0.91	Physical conditioning - group - 1 hour Conditioning exercises and activities, graded and progressive
97643	0.46	Each additional 30 minutes
97644	1.45	Physical conditioning – individual 1 hour Conditioning exercises and activities, graded and progressive
97645	0.73	Each additional 30 minutes
97646	0.91	Work simulation - group 1 hour Real or simulated work activities addressing productivity, safety, physical tolerance and work behaviors
97647	0.46	Each additional 30 minutes
97648	1.50	Work simulation - individual 1 hour Real or simulated work activities addressing productivity, safety, physical tolerance and work behaviors
97649	0.75	Each additional 30 minutes
97650	0.81	Therapeutic education – individual 30 minutes Medical, psychosocial, nutritional and vocational education dependent on needs and stated goals
97651	0.41	Each additional 15 minutes

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

97652	0.54	Therapeutic education - group 30 minutes Medical, psychosocial, nutritional and vocational education dependent on needs and stated goals
97653	0.28	Each additional 15 minutes
97654	0.41	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	0.39	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	0.78	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 expected benefits
97657	1.35	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	0.68	Each additional 15 minutes Complex conference-up to 1 hour maximum
97659	1.72	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	0.86	Each additional 30 minutes
97661	2.32	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	0.94	Vocational evaluation - 30 minutes Evaluation of work history, education and transferable skills coupled with physical limitations in relationship to return to work options
97663	0.47	Each additional 15 minutes
97664	1.27	Nursing evaluation - 30 minutes Nursing assessment of medical status and needs in relationship to rehabilitation
97665	0.63	Each additional 15 minutes

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

97666	1.02	Nutrition evaluation - 30 minutes Evaluation of eating habits, weight and required modifications in relationship to rehabilitation
97667	0.52	Each additional 15 minutes
97668	1.07	Social worker evaluation - 30 minutes Psychosocial evaluation to determine psychological strength and support system in relationship to successful outcome
97669	0.54	Each additional 15 minutes
97670	6.70	Initial Multidisciplinary conference - up to 30 minutes
97671	7.56	Initial Complex Multidisciplinary conference - up to 60 minutes

Stat. Auth.: ORS 656.726(4)

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436-009-0070 Oregon Specific Code, Other Services

- (1) Copies of requested medical records shall be paid under OSC-R0001.
- (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. 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 requires not less than 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 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

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

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 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) The fee for a deposition shall be billed under OSC-D0002. This code should include time for preparation, travel and deposition. Payment of the hourly rate may be limited to a customary fee charged by similar providers.

(7) When an insurer obtains an Insurer Medical Examination (IME), the medical service provider shall bill under OSC-D0003. This code shall be used for a report, file review or examination.

(8) The fee for interpretive services shall be billed under OSC-D0004.

(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-A0001 Exam

Level 2 OSC-A0002 Exam

Level 3 OSC-A0003 Exam

Limited OSC-A0004 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.

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

- (b) Level 1 OSC-A0011 Report
- Level 2 OSC-A0012 Report
- Level 3 OSC-A0013 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.

- (c) Level 1 OSC-A0021 File Review
- Level 2 OSC-A0022 File Review
- Level 3 OSC-A0023 File Review
- Level 4 OSC-A0024 File Review
- Level 5 OSC-A0025 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 shall notify the medical arbiter and the insurer of the approved code for each component to establish the total fee for the medical arbiter review.

(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-A0031
- Complex OSC-A0032

(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 pursuant to 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.

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

(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 OSC-P0003 for the report.

(b) Physicians selected pursuant to 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) 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.

(e) 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.

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

Codes	Relative Value	Description
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	1.71	Brief narrative by the attending physician or authorized nurse practitioner
N0002	3.41	Complex narrative by the attending physician or authorized nurse practitioner
99196	2.73	First Level PCE
99197	4.87	Second Level PCE
99198	10.28	WCE
99193	0.70	Additional 15 minutes
D0001	0.00	Attorney consultation time
D0002	0.00	Deposition time
D0003	0.00	Insurer Medical Examination and report
D0004	0.00	Interpretive services
A0001	5.12	Level 1 arbiter exam
A0002	6.82	Level 2 arbiter exam

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

A0003	8.53	Level 3 arbiter exam
A0004	2.56	Level 4 arbiter exam
A0011	0.88	Level 1 arbiter report
A0012	1.32	Level 2 arbiter report
A0013	1.77	Level 3 arbiter report
A0021	0.88	Level 1 arbiter file review
A0022	2.21	Level 2 arbiter file review
A0023	5.30	Level 3 arbiter file review
A0024	10.23	Level 4 arbiter file review
A0025	13.65	Level 5 arbiter file review
A0031	0.88	Limited arbiter report
A0032	1.77	Complex arbiter report
P0001	4.27	Director single medical review/exam
P0002	4.27	Director panel medical review/exam
P0003	2.17	Director single medical review/report
P0004	5.12	Director complex case review/exam
P0005	2.17	Failure to appear director required examination
W0001	0.00	Worker Requested Medical Examination and report

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436-009-0080 Durable Medical Equipment and Medical Supplies

(1) Fees for durable medical equipment shall be paid as follows:

(a) The insurer shall pay for the purchase of all compensable DME and other devices that are ordered and approved by the physician, at 85% of the manufacturer's suggested retail price (MSR).

(b) The DME provider shall be 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. Labor shall be paid at the provider's usual and customary rate.

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

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

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

(2) Fees for all prosthetics as defined in OAR 436-010-0230 (12), orthotics, and other medical supplies shall be listed as 0.00.

(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, hearing aids should not exceed \$5000.00 for a pair of hearing aids, or \$2500.00 for a single hearing aid.

(3) The worker shall have the right to select the service provider, except for claims enrolled in a managed care organization (MCO) where service providers are specified by the MCO contract.

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

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

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436-009-0090 Pharmacy Fees

(1) Except for in-patient hospital charges, pharmacy fees shall be paid at the provider's usual and customary rate or the maximum allowable fee established by this rule, whichever is the lower.

(a) The Average Wholesale Price (AWP) effective on the day the drug was dispensed shall be used to determine the maximum allowable fee.

(b) The maximum allowable fee is determined as follows:

(A) For generic drugs and for brand name drugs without a generic equivalent, 88% of the AWP for the dispensed drug plus \$8.70 dispensing fee.

(B) For brand name drugs with a generic equivalent, if the prescribing medical service provider writes "Do not substitute" or a similar notation on the prescription, 88% of the AWP for the dispensed drug plus \$8.70 dispensing fee.

(C) For brand name drugs with a generic equivalent, if the prescribing medical service provider did not write "Do not substitute" or a similar notation on the prescription, the lower of 88% of the AWP for the dispensed drug plus \$8.70 dispensing fee, or 88% of the average AWP for the class of generic drugs plus \$8.70 dispensing fee, or, in the event that the pricing guides have not established an average AWP, 88% of the calculated average AWP of the generic drugs listed in the pricing guide plus \$8.70 dispensing fee.

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

(c) All providers who are licensed to dispense medications in accordance with their practice must be paid similarly regardless of profession.

(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) Payment for Oxycontin, Vioxx, Celebrex, and Bextra 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) The clinical justification may accompany the prescription and be submitted by the pharmacist or may be given directly to the insurer by the medical provider.

(b) Clinical justification means a written document from the medical service provider stating the reason he or she believes the drug ordered is the one the patient should have. 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.

(c) An additional clinical justification is not necessary for refills of that medication.

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

(6) The worker shall have the right to 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 shall not apply to a worker's direct purchase of prescription medications, and shall not limit a worker's right to reimbursement for actual out-of-pocket expenses pursuant to OAR 436-009-0025.

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

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

Stat. Auth.: ORS 656.726(4)

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436-009-0100 Sanctions and Civil Penalties

The director may impose sanctions upon a medical provider or insurer for violation of OAR 436-009 in accordance with OAR 436-010-0340.

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

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

Appendix A 436-009-0030**RECORD LAYOUT FOR ELECTRONIC DATA TRANSMISSION**

DESCRIPTION	ALPHA NUMERIC	POSITION	LENGTH	REQUIREMENT
Insurer's WCD number	9	1	4	Required
Insurer's claim number	X	5	20	Required
Claimant's SSN	9	25	9	Required
Date of injury (YYYYMMDD)	9	34	8	Required
Medical-only or disabling (M or D)	X	42	1	Optional
Medical provider-type	X	43	2	Required
Medical provider specialty	X	45	3	Required
Medical provider FEIN	X	48	10	Required
Medical provider other Federal Tax Reporting ID number or UPIN	X	58	9	Optional
MCO number	X	67	6	Required
ICD-9-CM diagnosis code	X	73	6	Required
Secondary ICD-9-CM diagnosis code	X	79	6	Optional
Service, drug, or procedure code	X	85	11	Required
Modifier code	X	96	2	Required
Date of service (YYYYMMDD)	9	98	8	Required
Date of payment (YYYYMMDD)	9	106	8	Required
Charge amount sign	X	114	1	Required
Charge amount	9	115	6	Required
Payment amount sign	X	121	1	Required
Payment amount	9	122	6	Required
Number of units or services	9	128	2	Required

1. Refer to Bulletin 220 for additional special field reporting instructions.

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

Appendix A 436-009-0030**RECORD LAYOUT SPECIAL FIELD REQUIREMENTS**

DESCRIPTION	Special Field Requirements
Alpha Numeric (Table Column)	X = Character or alphanumeric data: No lower-case letters; fill empty spaces with blanks and left justify. 9 = Numeric data; right justify numbers including leading zeros; fill empty spaces with zeros.
Length (Table Column)	No compressed or packed fields.
Insurer's WCD number	Workers' Compensation Division insurer number National Association of Insurance Commissioners (NAIC) number, where applicable, is included for reference.
Date of injury (YYYYMMDD)	All dates in the form YYYYMMDD, for example, February 8, 2004 would appear as "20040208."
Medical provider-type	Use code from list of provider-type codes in this appendix.
Medical provider specialty	Use code from list of provider specialty codes in this appendix.
Medical provider FEIN	Use the federal employer identification number that is used for federal tax reporting purposes.
Medical provider other Federal Tax Reporting ID number or UPIN	Report the nine-digit other federal tax reporting identification number that is used for federal tax reporting purposes, or the Unique Provider Identification Number of the individual providing the medical service.
MCO number	See instructions in Bulletin 220.
ICD-9-CM diagnosis code	See instructions in Bulletin 220.
Secondary ICD-9-CM diagnosis code	See instructions in Bulletin 220.
Service, drug, or procedure code	See instructions in Bulletin 220.
Modifier code	Optional CPT or HCPCS modifier codes are required when needed to report a modified service. Do not report physical status modifiers for anesthesia services. See instructions in Bulletin 220 for usage of adjustment modifiers "RF" and "DC" for adjustments. See instructions in Bulletin 220 for usage of modifiers "SG", "NT", "81", "50", and "ZZ".
Date of service (YYYYMMDD)	All dates in the form YYYYMMDD, for example, February 8, 2004 would appear as "20040208."
Date of payment (YYYYMMDD)	All dates in the form YYYYMMDD, for example, February 8, 2004 would appear as "20040208."
Charge amount sign	If this is a refund or other negative amount, put a minus-sign in this field, otherwise fill with a blank.
Charge amount	Rounded to the nearest whole dollar, for example, a \$300.05 payment would be shown as "000300."
Payment amount sign	If this is a refund or other negative amount, put a minus-sign in this field, otherwise fill with a blank.
Payment amount	Rounded to the nearest whole dollar, for example, a \$300.05 payment would be shown as "000300."
Number of units or services	See instructions in Bulletin 220.

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

Appendix A 436-009-0030

Data and Format Requirements:

PROVIDER TYPES: Use the following codes to describe the type of medical provider:

TABLE OF MEDICAL PROVIDER-TYPE CODES	
PROVIDER DESCRIPTION	CODE
Acupuncturist	AC
Chiropractor	CH ₁
Dentist	DE
Hospital Inpatient	HI ₁
Hospital Outpatient	HO ₁
Laboratory	LA
Medical Doctor	MD ₁
Medical Supplies	MS
Naturopath	NA
Occupational Therapist	OT
Optometrist	OP
Osteopath	OS ₁
Pharmacy	PH
Physical Therapist	PT
Physician's Assistant	PA ₁
Podiatrist	PO
Radiologist	RA
Registered Nurse Practitioner	NP ₁
Other Medical Provider	OM

1. ICD-9-CM diagnosis codes are required on records with these types.

PROVIDER SPECIALTY: If the medical provider-type is "MD", use the following codes to designate the medical provider specialty:

TABLE OF MEDICAL PROVIDER SPECIALTY CODES	
PROVIDER SPECIALTY	CODE
Anesthesiologist	ANE
Dermatologist	DER
Emergency Medicine	EMM
Family Practice	FPR
General Practice	GPR
General Surgeon	GSU
Internist ₃	INT
Neurologist	NEU
Neurosurgeon	NSU
Occupational Medicine	OCC
Ophthalmologist	OPH
Oral Surgeon	OSU
Orthopedist/Orthosurgeon	ORS
Otolaryngologist	OTO
Pathologist	PTH
Physiatrist	PMR
Plastic Surgeon	PSU
Psychiatrist	PSY
Urologist	URO
Other Surgical/non-Surgical Specialists ₁	OTH
Unknown Specialist ₂	UNK

1. Indicates provider specialty does not fit any of the above categories.
2. Indicates provider specialty cannot be determined.
3. All internal medicine specialties.

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the
PERMANENT Rule(s) adopted on

March 4, 2004 by the
Date prior to or same as filing date

Department of Consumer and Business Services
Workers' Compensation Division
Agency and Division

OAD chapter 436
Administrative Rules Chapter No.

Fred Bruyns (503) 947-7717
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to become effective April 1, 2004 Rulemaking Notice was published in the January 2004 *Oregon Bulletin*.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: OAR 436-001-0300

AMEND: OAR

436-001-0000	436-001-0160	436-009-0003	436-009-0050	436-010-0240	436-120-0340
436-001-0001	436-001-0170	436-009-0004	436-009-0060	436-010-0250	436-120-0350
436-001-0003	436-001-0185	436-009-0005	436-009-0070	436-010-0265	436-120-0360
436-001-0004	436-001-0201	436-009-0008	436-009-0080	436-010-0270	436-120-0410
436-001-0005	436-001-0210	436-009-0010	436-009-0090	436-010-0275	436-120-0500
436-001-0007	436-001-0225	436-009-0015	436-010-0003	436-010-0280	436-120-0710
436-001-0008	436-001-0226	436-009-0020	436-010-0005	436-010-0340	436-120-0720
436-001-0030	436-001-0240	436-009-0022	436-010-0008	436-120-0003	436-120-0830
436-001-0110	436-001-0260	436-009-0025	436-010-0210	436-120-0004	436-120-0840
436-001-0150	436-001-0265	436-009-0030	436-010-0220	436-120-0008	
436-001-0155	436-001-0275	436-009-0040	436-010-0230	436-120-0320	

REPEAL: OAR

436-001-0025	436-001-0090	436-001-0140	436-001-0195	436-001-0285
436-001-0045	436-001-0105	436-001-0171	436-001-0205	436-001-0295
436-001-0055	436-001-0120	436-001-0175	436-001-0231	436-010-0350
436-001-0065	436-001-0135	436-001-0191	436-001-0255	436-120-0920

ORS 656.704, 656.726(4)
Statutory Authority

ORS 183.335; OAR 137-001; OAR 436-001-0000 and 436-001-0005
Other Authority

ORS chapter 656
Statutes being Implemented

RULE SUMMARY

These rules have been amended to replace temporary rules issued to implement changes in the law due to legislation passed by the 2003 Oregon Legislature:

- Senate Bill 233 changed the time frame for appeal of a proposed order or proposed assessment of civil penalty from 60 days following the party's receipt of notice to 60 days from the date the order is mailed by the department. OAR 436-010 and 436-120 have been amended accordingly.

Certificate and Order for Filing Permanent Administrative Rules

Page 2

- Senate Bill 620 modified ORS 656.385 to require payment of fees to workers' attorneys when a worker prevails in certain medical and vocational disputes. An attorney fee matrix has been added to OAR 436-001, 010, and 120, and the maximums apply to all work the worker's attorney has done relative to the proceeding at all levels before the department, absent a showing of extraordinary circumstances.
- House Bill 2305 addresses how medical records may be released, consistent with the federal Health Insurance Portability and Accountability Act, and related changes have been made to OAR 436-010.
- House Bill 3669 gave additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments. This bill was a result of legislative action after development of the legislative concepts by nurse practitioners and the Management Labor Advisory Committee. OAR 436-009, 436-010, and 436-120 have been amended accordingly.

In addition, these rules:

436-001

- Update the rulemaking notice rule.
- Update the contested case rules to establish consistency with the Attorney General's Model Rules of Procedure applicable to hearings before the Office of Administrative Hearings, OAR 137-003. Because the model rules control, duplicative or inconsistent rules are repealed. Remaining supplementary rules have been updated. Significant changes address the filing of hearing requests; delegation of authority to the ALJ; clarifications regarding scope of review; and a new process for alternative dispute resolution.

436-009

- Adopt updated medical resources.
- Incorporate data reporting requirements currently published in Bulletin 220.
- Add group nine to the fee schedule for ambulatory surgical centers.
- Require insurers and self-insured employers to keep track of dates of receipt of medical bills.
- Provide that if a provider's usual and customary fee is unreasonable, the director may determine a different fee based on criteria.
- Increase the dollar amount of each conversion factor by 2.33%, based on the annual increase in the physicians' component of the consumer price index.
- Require electronic billings to include a "zz" modifier for services that use an Oregon Specific Code.
- Modify the definitions of first and second level physical capacity evaluations and of work capacity evaluation.
- Provide that pharmacy fees shall be paid at 88% of the Average Wholesale Price (AWP) – a reduction from 95% in the current rules -- with an \$8.70 dispensing fee – an increase from \$6.70 in the current rules.
- Provide that a brand name drug that has a generic equivalent will be paid at the lesser of 88% of the AWP for the brand name or 88% of the average AWP for the class of generic drug, plus dispensing fee, unless the prescribing medical provider writes "Do not substitute" or similar phrase on the prescription.
- Provide that payment for Oxycontin, Vioxx, Celebrex and Bextra is limited to an initial 5-day supply unless the prescriber writes a clinical justification for the drug.
- Define "clinical justification" and provide that insurers and self-insured employers cannot challenge the adequacy of the justification.
-

436-010

- Provide that a dispute may be resolved by agreement between the parties, and that the director may then issue a letter of agreement in lieu of an administrative order.
- Require that ancillary medical service providers send a copy of the treatment plan to the referring medical service provider and the insurer within seven days of starting treatment; the responsibility to sign and send a copy of the treatment plan to the insurer rests with the referring medical service provider; failure of the referring provider to do so may subject the provider to sanctions.
- Provide that, except in an emergency, drugs and medicine for oral consumption supplied by a physician's office are compensable for a maximum supply of 10 days.

Certificate and Order for Filing Permanent Administrative Rules
Page 3

- Require insurers to forward requested medical information to new attending physicians or authorized nurse practitioners within 14 days of a request.
- Require that the insurer forward a copy of the insurer medical examination report to the attending physician or authorized nurse practitioner within 72 hours of the insurer's receipt of the report.
- Require that the insurer notify the attending physician or authorized nurse practitioner, if known, and the MCO, if any, when it denies or partially denies a previously accepted claim.

436-120

- Require the insurer to notify the worker in writing, within 14 days of a request for vocational assistance when the insurer is not required to determine eligibility.
- Refer vocational professionals to the Oregon Wage Information (OWI) publication in lieu of the Oregon Automated Reporting System (OARS) Job Order Wage Report, both published by the Oregon Employment Department. The OARS publication will no longer provide job/wage data effective 4/1/04. When using the OWI wage information data, the presumed standard shall be the 10th percentile unless there is sufficient evidence that a higher or lower wage is more appropriate.
- Eliminate the requirement that vocational counselors sign statements that their eligibility determinations were based on substantial handicap assessments.
- Specify the conditions under which training may be terminated for failure to attend.
- State additional circumstances that require vocational eligibility to be redetermined.
- Provide that for workers found to have an exceptional disability or exceptional loss of earning capacity, certain fee schedule spending limits are increased by 30%.
- Increase the direct worker purchase training category fee schedule maximum by 10% due to state-wide tuition increases.
- Provide that to conduct only labor market research and/or job development does not require certification when conducted under the supervision of a certified vocational rehabilitation counselor.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the internet: <http://www.oregonwcd.org/policy/rules/rules.html#permrules>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

/s/ John L. Shilts

Authorized Signer

March 4, 2004

Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

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

