

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF INSURANCE AND FINANCE
OF THE STATE OF OREGON

RECEIVED

Dec 18 3 21 PM '87

BARBARA
SECRETARY

In the Matter of the Amendment)
of Rules Governing Claims)
Administration (OAR Chapter 436,)
Workers' Compensation Division,)
Division 60).)

ORDER OF ADOPTION
OF TEMPORARY RULE

The Director of the Department of Insurance and Finance, pursuant to the rulemaking authority in ORS 656.726(3)(a); and in accordance with the procedure provided by ORS 183.335, amends OAR Chapter 436, Workers' Compensation Division, Division 60, Claims Administration.

The amendment is being adopted by Temporary Rule, as provided by ORS 183.335(5) and (6), without prior notice. Statement of Findings: I conclude that failure to act promptly will result in serious prejudice to employers through additional or improper premium charges; to workers whose rights under the worker's compensation law could be jeopardized and to insurers and self-insured employers from paying additional or unnecessary costs or from being penalized for improper claims processing.

The need for such rules is to provide: (1) A policy and procedure on how the employer will pay the amount of \$500 per claim for a nondisabling claim in accordance with ORS 656.262(5), and (2) A policy and procedure on how the costs of the arbitration proceeding shall be shared by the parties in accordance with ORS 656.307(2).

IT IS THEREFORE ORDERED:

(1) OAR Chapter 436, Divisions 60-055 and 60-185 as set forth in Exhibit "A" attached hereto, certified a true copy and hereby made a part of this order are temporarily adopted effective January 1, 1988.

(2) A certified true copy of the Order of Adoption and these Rules, Exhibit "A", with Exhibit "B" consisting of the Citation of Statutory Authority, Statement of Need and Documents Relied Upon, hereby made a part of this Order, be filed with the Secretary of State.

(3) A copy of the Rules and attached Exhibit "B" be filed with the Legislative Counsel, pursuant to the provisions of ORS 183.715 within 10 days after filing with the Secretary of State.

Dated this 18 day of December, 1987.

DEPARTMENT OF INSURANCE AND FINANCE


Theodore R. Kulongoski, Director

DISTRIBUTION: A thru N; P thru V;
Y thru AA; plus CC
and LL

1023c/k1c

EXHIBIT "A"

OREGON ADMINISTRATIVE RULES
CHAPTER 436. WORKERS' COMPENSATION DIVISION
DIVISION 60: CLAIMS ADMINISTRATION

PAYMENT OF MEDICAL SERVICES ON NONDISABLING CLAIMS; EMPLOYER/INSURER RESPONSIBILITY

436-60-055 Pursuant to ORS 656.262(5) the costs of medical services for nondisabling claims, in amounts not to exceed \$500 per claim, may be paid by the employer if the employer so chooses. Such choice does not relieve the employers of their claim reporting requirements or the insurers of their responsibility to determine entitlement to benefits and process the claims accurately and timely. Also, when paid by the employer, such costs cannot in any way be used to affect the employer's experience rating modification or otherwise charged against the employer. To enable the Department to ensure these conditions are met, insurers and employers must comply with the following process and procedures:

(1) Notwithstanding the choice made by the employer pursuant to section (2) of this rule, the employer and insurer shall process the nondisabling claims in accordance with all statutes and rules governing claims processing. The employer, however, shall reimburse the medical service costs paid by the insurer if the employer has chosen to make such payments. The method and manner of reimbursement by the employer shall be established in the written agreement required by Section (2) of this rule, prior to any payments being made by the employer. In no case, however, shall the employer have less than 30 days to reimburse the insurer.

(2) Prior to the commencement of each policy year, the insurer shall send a notice to the insured or prospective insured, advising of the employer's right to reimburse medical service costs up to \$500 on nondisabling claims. The Notice, in a form and format prescribed by the Director by way of bulletin, shall advise the employer that one of the following choices are available for making such reimbursement and the effect of such choice:

(a) To reimburse up to \$500 in medical service costs on all nondisabling claims. This choice would be made by an endorsement issued by the insurer, resulting in proper application of appropriate premium rate adjustments, if any. The endorsement and rate adjustments are subject to approval by the Insurance Division.

(b) To reimburse up to \$500 in medical service costs on a pre-selected number of nondisabling claims without regard to the dollar amount of those costs. This choice would be made by written agreement between the employer and the insurer, the agreement becoming part of the permanent record of the employer's losses.

(c) To reimburse up to \$500 in medical service costs on the nondisabling claims up to a pre-determined total dollar amount without regard to the number of nondisabling claims. This choice would be made by written agreement between the employer and the insurer, the agreement becoming part of the permanent record of the employer's losses.

(d) To reimburse up to \$500 in medical service costs on those non-disabling claims chosen by the employer at the time a claim is accepted and determined nondisabling by the insurer. This method shall be made by written agreement between the employer and the insurer and as prescribed in section (3) of this rule, the agreement becoming part of the permanent record of the employer's losses; or

(e) Not to reimburse the medical service costs of any nondisabling claim.

(3) When selecting to reimburse medical service costs as provided in section (2)(d) of this rule the following process shall be followed: At the time the employer receives notice from the insurer indicating the claim is accepted and nondisabling, the employer shall determine and notify the insurer of their intention to reimburse up to \$500 medical service costs on the claim. The time frame for the employer to notify the insurer of the intention to make such reimbursement shall be established in the written agreement required in paragraph (2)(d) of this rule. The form used to notify the insurer of the employer's intention shall be provided to the employer by the insurer. The minimum information that must be included in the notice is:

(a) That it is a notice of the employer's election to reimburse the claim costs;

(b) The name and address of the employer;

(c) The claimant's name and Social Security Number, the date of injury and the claim number;

(d) The insurer's name and address.

(4) If the employer fails to reimburse the insurer in accordance with the agreement, the insurer shall advise the employer in writing that future delinquencies in payment will result in the costs being charged to the employer. If a subsequent delinquency occurs, the insurer shall send another written notice. Any delinquency thereafter shall void the agreement for the remainder of that policy period. The provisions of this section shall be included in the Notice and written agreements required pursuant to section (2) of this rule.

(5) Insurers shall maintain records of amounts reimbursed by employers for medical services on nondisabling claims. Insurers, however, shall not modify an employer's experience rating or otherwise make charges against the employer for any medical services reimbursed by the employer. For employers on retrospective rated plans, medical costs paid by the employer on

nondisabling claims shall be included in the retrospective premium calculation, but the amount paid by the employer shall be applied as credits against the resulting retrospective premium.

(6) If a claim changes from a nondisabling to a disabling claim and the insurer has recovered reimbursement from the employer for medical costs prior to the change, the insurer shall exclude those amounts reimbursed from any experience rating, retrospective rating, or other individual or group rating plans of the employer.

(7) Insurers who do not comply with the requirements of this rule or in any way prohibit an employer from making a selection pursuant to section (2) of this rule, shall be subject to a penalty as provided by OAR 436-60-200(5).

(8) Self-insured employers shall maintain records of all amounts paid for medical services on nondisabling claims in accordance with OAR 436-50-220. When reporting loss data for experience rating, the self-insured may exclude costs for medical services paid on nondisabling claims in amounts not to exceed \$500 per claim.

Hist: Filed 12-20-87 as WCD Admin. Order 10-1987, effective 1-1-88
(Temporary)

ARBITRATION PROCEEDINGS COSTS ALLOCATION

436-60-185 (1) The cost of the arbitration proceedings conducted by the Board pursuant to ORS 656.307 and OAR 438-14 shall be equally shared between the insurers involved in the arbitration proceedings as identified by the "Arbitrator's Decision" issued pursuant to OAR 438-14-025.

(2) When the "Arbitrator's Decision" is received by Compliance, a copy of the Order shall be forwarded to the Department's Fiscal Section for collection.

Hist: Filed 12-20-87 as WCD Admin. Order 10-1987, effective 1-1-88
(Temporary)

01052/klc

EXHIBIT "B"

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF INSURANCE AND FINANCE
OF THE STATE OF OREGON

In the Matter of the Amendment)	Statutory Authority,
of Rules Governing Claims)	Statement of Need,
Administration (OAR Chapter 436)	Principal Documents Relied
Workers' Compensation Division,)	Upon, and Statement of Fiscal
Division 60).)	Impact

1. Citation of Statutory Authority. The Statutory Authority for promulgation of these rules is ORS 656.726(3)(a).
2. Need for Rules. The need for such rules is:
 - a. To prescribe policy and procedures for employers choosing to pay medical service costs as provided by ORS 656.262(5) to ensure such costs are not charged to or affect employers' premium, while still ensuring that claims are processed accurately and timely and workers' rights are not jeopardized; and
 - b. To prescribe policy and procedure on how the costs of arbitration proceedings held pursuant to ORS 656.307(2) are to be shared among the parties to the proceedings.
3. Principal Documents Relied Upon.
 - a. ORS Chapter 656.262(5) and 656.307(2)
 - b. SAIF Corporation's testimony on the proposed rules governing Claims Administration regarding Payment of Medical Services OAR 436-60-050.
SAIF Corporation letter dated 12-4-87 concerning OAR 436-60-050 and signed by John Gilkey, Policy Underwriting Manager.
Liberty Northwest Insurance Corporation's testimony on the proposed rules governing Claims Administration regarding the payment of medical services, OAR 436-60-050, submitted by Daryl L. Nelson, Vice President and General Counsel.

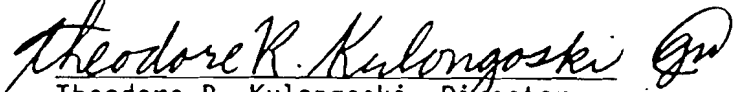
The above documents are available for public inspection at the offices of the Administrator, Workers' Compensation Division, 200 Labor and Industries Building, Salem, OR 97310, during regular business days, 8 a.m. to 5 p.m., Monday through Friday.

4. Fiscal and Economic Impact. The following entities are economically affected: (a) state agencies, in their role of employer; (b) units of local government, in their role of employer; (c) large and small private sector employers subject to the Workers' Compensation Law; (d) injured workers and (e) insurance companies and self-insured employers processing workers' compensation claims.

The economic effect of promulgating these rules should result in savings to large and small employers within the workers' compensation system. The actual amount cannot be determined, but it could be considerable.

DATED THIS 18 DAY OF DECEMBER, 1987.

DEPARTMENT OF INSURANCE AND FINANCE


Theodore R. Kulongoski, Director

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