



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services
Workers' Compensation Division
350 Winter St. NE
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Salem, OR 97309-0405
1-800-452-0288 or 503-947-7810
www.wcd.oregon.gov

October 15, 2008

Proposed Changes to Workers' Compensation Rules

The Department of Consumer and Business Services, Workers' Compensation Division proposes changes to OAR chapter 436, affecting medical fees, managed care organizations, and claims administration.

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

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

When are the hearings? Nov. 20, 2008, 5:00 p.m. and Nov. 24, 2008, 1:30 p.m.

Where are the hearings? Labor & Industries Building
350 Winter Street NE, Room 260 (2nd Floor),
Salem, Oregon 97301

How can I make a comment? Come to the hearing and speak, send written comments, or do both. Send written comments to:
Fred Bruyns, rules coordinator
Workers' Compensation Division
350 Winter Street NE (for courier or in-person delivery)
PO Box 14480, Salem, OR 97309-0405
Email - fred.h.bruyns@state.or.us
Phone - (503) 947-7717; Fax - (503) 947-7581

The closing date for written comments is Nov. 26, 2008.

How can I get copies of the proposed rules?

On the Workers' Compensation Division's Web site –
www.wcd.oregon.gov/policy/rules/rules.html#proprules

Or call (503) 947-7627 to get free paper copies

Questions? Contact Fred Bruyns, (503) 947-7717.

Proposed Permanent Rules - Workers' Compensation Medical Fees

The Workers' Compensation Division adopts rules that govern medical fees for treating injured workers in Oregon. On Oct. 15, 2008, the division filed new proposed rules to address concerns and questions about the role of preferred provider networks ("PPOs") in workers' compensation.

The proposed rules would prohibit preferred provider network discounts for medical services performed by doctors, physical therapists, and other health care providers who treat injured workers, but would still allow individual providers to offer discounts if they choose. Under the proposal, network discounts would continue to be allowed for prescription drugs and hospital services provided to injured workers.

The need for clarification in the rules became apparent earlier this year, when the division began receiving an increasing number of fee disputes between providers and insurers about discounted rates in PPO contracts. Although these contracts have had a long history in Oregon's workers' compensation system, the department's rules were silent on how they should be treated. The department on July 7 issued temporary rules that allowed payments under these contracts to continue. After studying the issue and receiving feedback from a variety of parties, the division developed the proposed rules to replace the temporary rules.

Specifically, the proposed rules do the following:

- Do not allow fee discounts for medical services that are part of contracts between providers and PPOs.
- Allow providers to enter into fee discount agreements if they choose.
- Sets requirements for those fee discount agreements, including the following:
 - The agreement must be directly between the provider and the insurer or self-insured employer and must only apply to workers' compensation.
 - The agreement must be in a standard format and registered with the Workers' Compensation Division.
 - The maximum discount allowed is 10 percent below the medical fee schedule.
 - Either party may terminate the agreement by providing 30 days written notice.
- Continue to allow discounts to providers as part of managed care organization (MCO) contracts.
- Continue to allow network discounts for durable medical equipment, ambulatory surgical centers, hospitals (excluding rural hospitals), and prescription drugs.

Next steps: Public hearings on the proposed rules are scheduled for Nov. 20 at 5 p.m. and Nov. 24 at 1:30 p.m. at the Labor and Industries Building in Salem, and the public is invited to submit written testimony on the rules through Nov. 26. Once the division reviews the public testimony, it will file the final version of the rules, which will take effect Jan. 1, 2009.

For more information or to comment on the rules: Contact Fred Bruyns, phone: 503-947-7717; fax: 503-947-7581; e-mail: fred.h.bruyns@state.or.us

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

Department of Consumer and Business Services, Workers' Compensation Division	OAR CHAPTER 436
Agency and Division	Administrative Rules Chapter Number
Fred Bruyns	(503) 947- 7717
Rules Coordinator	Telephone
PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879	Fax (503) 947-7581
Address	Telephone

RULE CAPTION

Proposed rules affecting the processing of workers' compensation claims and the payment of medical fees

11/20/08.....	5 p.m.*	Room 260 (2 nd floor) Labor & Industries Building	
11/24/08.....	1:30 p.m.*	350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing dates	Time s	Location	Hearings Officer

*NOTE: The hearing will begin at these scheduled times and end when all present who wish to testify have done so. Written testimony will be accepted through November 26, 2008.

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

RULEMAKING ACTION

ADOPT: OAR 436-009-0018, 436-009-0095, 436-015-0007, 436-060-0153

AMEND: OAR 436-009, 436-060, 436-015-0120

REPEAL:

RENUMBER:

AMEND & RENUMBER:

ORS 656.726(4)	
Stat. Auth.	
Other Authority	
ORS ch. 656, primarily 656.248, 656.252, 656.260, 656.262, and 656.264; and ORS ch. 84, primarily 84.013	
Stats. Implemented	

RULE SUMMARY

General changes to OAR chapter 436: The agency proposes clarifying and plain-language amendments, in addition to the substantive changes described below. Unless stated otherwise, references to “insurers” include self-insured employers.

The agency proposes to amend OAR chapter 436, division 009, “Oregon Medical Fee and Payment Rules.” These proposed rules describe the application of provider network contracts, fee discount agreements, and associated procedures and limitations that apply to these contracts and agreements including:

- That provider network contractual discounts may be applied to fees paid to certain medical providers;
- That provider network contractual discounts, except for managed care organization discounts, may not be applied to fees paid to a medical service provider or medical clinic, or to a rural hospital that qualifies for the rural exemption, or to certain examinations or reviews ordered by the director;
- Limitations on application of contractual discounts to a single discount if multiple contracts exist; the primacy of a managed care contract if multiple contracts exist;
- Provision for medical service providers and insurers to enter into “fee discount agreements,” subject to maximum discounts, and related procedures and reporting requirements;
- Notification requirements regarding non-payment, reduced payment, or discounted payment of medical services;
- Requirements for insurers to respond to a medical provider’s inquiries about a medical payment; and
- Sanctions and civil penalties to insurers related to the application of contractual discounts.

The agency proposes to amend OAR chapter 436, division 015, “Managed Care Organizations.” These proposed rules specify who can manage care and potential sanctions for managing care by a party that is not a certified managed care organization.

The agency proposes to amend OAR chapter 436, division 060, “Claims Administration.”

These proposed rules address reporting, notice, payment, and dispute resolution, including:

- The claim processor’s address data to be printed on insurer-generated forms;
- The insurer’s report to the division when first payment of temporary disability occurs after the insurer has filed Form 1502;
- The time allowed for an insurer to respond to notice from the director that a complaint has been filed about the insurer’s release of claim documents;
- That the Hearings Division of the Workers’ Compensation Board, not the Workers’ Compensation Division, will resolve wage disputes;
- Notice to the attending physician that the worker is engaging in behaviors that may imperil or retard recovery;
- Notice to the division when a worker, whose benefits have been suspended under OAR 436-060-0135, cooperates with the investigation;
- Time frames for payment of fatal benefits;
- Notices to the worker or beneficiaries explaining temporary disability, permanent disability, and fatal payments;
- Criteria for electronic payment of benefits; and
- Information an attorney must send to the director when requesting an attorney fee under ORS 656.262(11).

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

Address questions to:

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

Proposed rules are available on the Workers’ Compensation Division’s Web site:

<http://wcd.oregon.gov/policy/rules/rules.html#proprules>

or from WCD Publications, 503-947-7627 or fax 503-947-7630.

Nov. 26, 2008

Last Day for Public Comment

(Last day to submit written comments to the
Rules Coordinator)

/s/ Jerry Managhan (for)

10/15/08

Authorized Signer and Date

John L. Shilts, Administrator, Workers’ Compensation Division

Printed name

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

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Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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

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

OAR CHAPTER 436
Administrative Rules Chapter Number

In the Matter of the Amendment of OAR:

436-009, Oregon Medical Fee and Payment Rules
436-015, Managed Care Organizations
436-060, Claims Administration

Rule Caption:

Proposed rules affecting the processing of workers' compensation claims and the payment of medical fees

Statutory Authority: ORS 656.726(4)

Other Authority:

Statutes Implemented: ORS ch. 656, primarily 656.248, 656.252, 656.260, 656.262, and 656.264; and ORS ch. 84, primarily 84.013

Need for the Rule(s): The agency is proposing changes needed to promote stable and predictable reimbursements to health care providers to ensure access to quality care for workers' compensation patients. Proposed changes should also improve communication between all parties with an interest in workers' compensation medical care, claims management, processing complaints, and measuring insurer performance. This information sharing should improve medical outcomes and promote earlier return to work. In addition, the proposed changes, including criteria for electronic payment of benefits, should promote faster payment of benefits and attorney fees.

Documents Relied Upon, and where they are available: "Issues" documents presented to stakeholder advisory committees; advisory committee meeting records; written advice from advisory committee members and other interested parties. These records are available for public inspection in the Administrator's Office, Workers' Compensation Division of the Department of Consumer and Business Services, 350 Winter Street NE, Salem, Oregon 97301-3879, upon request and between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please call (503) 947-7717 to request copies.

Fiscal and Economic Impact, including Statement of Cost of Compliance: Unless stated otherwise, references to "insurers" (below) include "self-insured employers" and the "agency" means the Workers' Compensation Division of the Department of Consumer and Business Services. The following is a list of significant estimated fiscal/economic impacts on persons and organizations affected by OAR chapter 436:

OAR chapter 436, division 009, "Oregon Medical Fee and Payment Rules"

Proposed rules describe the application of provider network contracts, fee discount agreements, and associated procedures and limitations that apply to these contracts and agreements.

- The current rules require insurers to pay medical providers and clinics at varying rates that at no time can exceed the applicable fee schedule established under ORS 656.248. The division requires insurers to report to the agency the amount charged and the amount paid for every service. Payments can be less than both the charged amount and the fee schedule for a number of reasons, however, and reporting of these reasons is not required. Neither the size nor the existence of network discounts is reported. Therefore, we are unable to measure or accurately estimate the magnitude of network discounts currently in the system. This complicates the estimation of the financial impact of the new rule.

Evidence suggests and is supported by stakeholder input that network discounts have long existed in the workers' compensation system. We find no evidence to the contrary and, therefore, make the assumption that this is true in this analysis. Prohibiting the application of discounts will put upward pressure on system costs, primarily affecting insurers, with a corresponding benefit to medical providers. Allowing new types of discounts not currently in use will put downward pressure on system costs.

- **Medical Service Providers and medical clinics:** The proposed rule prohibits network discounts to medical service providers and clinics for professional services, for example – evaluation and management, surgery, anesthesiology, radiology, medicine and physical medicine. In 2007, these services accounted for 55.5 percent of total medical payments, or 174.6 million dollars. The fee schedule maximum is estimated to be between 105 and 116 percent of payments. Prohibiting network discounts without some form of replacement discount (see the section on “Fee Discount Agreements”) could increase costs perhaps as high as the fee schedule maximum. Insurers, and ultimately employers and consumers, would assume increased costs, and medical service providers and clinics would experience a corresponding increase in revenue. Any impact will be mitigated by the fact that SAIF Corporation, Oregon’s largest workers’ compensation insurance company, has not applied provider network discounts to payments to Oregon medical providers.
- **Hospitals:** Hospitals are paid a percentage of charges sufficient to recoup their costs, as specified in OAR 436-009-0020. This percentage is referred to as the adjusted cost/charge ratio (CCR). Currently, 30 of 57 Oregon hospitals qualify for the rural hospital exemption from the CCR based on their status as a critical access hospital or on financial need. The adjusted CCR for exempted hospitals is 1.0, or pay as charged. The proposed rule specifically prohibits network discounts, other than managed care organization discounts, from being applied to payments to hospitals that qualify for the rural exemption from the CCR. Since the current and proposed rules concur on the amount to be paid hospitals that qualify for the rural exemption, the fiscal impact is expected to be very limited. Under the assumption that network discounts exist in the workers’ compensation system currently, prohibiting network discounts for hospitals exempt from the CCR would increase costs to insurers and revenue to these hospitals.
- **Medical Arbitrator and Physician Review Examinations:** The proposed rule would prohibit discounting fees for medical arbitrator and physician review examinations. These services account for a small percentage of total costs. To the extent that these services are being discounted by the provider networks, prohibiting the discounts is expected to increase costs.
- **Fee Discount Agreements:** Under the proposed rule, medical service providers and clinics may enter into Fee Discount Agreements with insurers to reduce the cost of medical services. These Fee Discount Agreements are intended to lower costs in those services for which the proposed rule prohibits network discounts. Because the nature and extent of these agreements is currently unknown, it’s not possible to estimate the size of the impact, however, it is assumed that it will offset, at least partially, the increased costs of prohibiting network discounts. If fee discount agreements are not used, there would be no effect. The procedural requirements associated with these agreements would have small associated administrative costs for insurers and the medical providers and clinics that choose to make such agreements.
- **Provider Networks:** The proposed rule is expected to decrease revenue to provider networks. To the extent that the proposed rule prohibits provider networks from participating in the workers’ compensation system, that revenue can be expected to decline. Provider networks that wish to continue participating in the workers’ compensation system have the option of becoming certified managed care organizations.
- **Pharmacies, Ambulatory Surgical Centers, Durable Medical Equipment Vendors:** Evidence suggests that network discounts are currently being taken from payments for these services. The proposed rule would allow them to continue to be taken. The impact on the system overall would be expected to be minimal or, if prevalence of discounting increases as a result of the new rule, rule changes could reduce income for these providers and vendors and lower costs to insurers.

The Director will continue to monitor the system and make adjustments to the fee schedule or premium rates as required to maintain the sustainability of the system.

OAR chapter 436, division 015, “Managed Care Organizations”

The agency projects that proposed changes to chapter 436, division 015, would not have a significant economic impact on any persons or businesses, including small businesses.

OAR chapter 436, division 060, “Claims Administration”

Proposed rules require insurers to file an additional Form 1502 upon making the first payment of temporary disability when first payment occurs after the insurer has met current Form 1502 filing requirements. Some insurers already report “late” first payments using Form 1502.

- The additional reporting required by this rule would increase insurers’ reporting costs. Because very few accepted, disabling claims have not had temporary disability paid by the time the insurer files the initial Form 1502 with the agency, the volume of new 1502s would be very small, but we do not have a basis to estimate how many additional 1502s will be reported. The associated cost increase, for those insurers that do not already report late first payments, should be very small.

Proposed rules require the insurer to send a copy to the worker’s attending physician of any written demand that the worker cease behaviors that may imperil or retard recovery.

- The required postage and handling for this letter copy would be an increased cost for insurers (that do not already inform the attending physician), though the volume of these warning letters is very low. However, the attending physician may be instrumental in getting the worker to cooperate, improving medical outcomes and promoting return to work. Therefore, the agency estimates the proposed change would have, overall, a small positive fiscal impact on insurers and workers.

Proposed rules specify when the insurer must give the worker or beneficiaries a written explanation about temporary disability, permanent disability, and fatal payments. Existing rules require explanations with every benefit payment, while proposed rules require explanations to accompany only the initial payment of permanent disability or fatality benefits.

- The proposed change would reduce insurers’ costs for notices to workers and beneficiaries receiving permanent disability and fatal benefits. Because the explanations generally accompany the payments, savings for existing “paper” payment processes would be very small. However, this change should ease any transition to electronic payment, which could bring more substantial savings to insurers.

Proposed rules provide criteria for electronic payment of benefits. Insurers may elect to pay electronically if the worker agrees.

- The proposed change could reduce insurers’ costs associated with payment of benefits and reduce costs for those workers who currently pay a fee to cash time-loss checks. The extent of savings would depend upon how many insurers and workers choose to participate.

The agency projects that additional proposed changes to chapter 436, division 060, would not have a significant economic impact on any persons or businesses, including small businesses.

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

Small businesses affected by these rules are primarily Oregon medical providers and pharmacies. A number of medical providers participated in the stakeholder advisory committees for OAR 436-009, “Oregon Medical Fee and Payment Rules.” The agency invited a pharmacy representative but that representative did not attend.

Cost of compliance effect on small businesses:

Estimated number of small businesses subject to the proposed rule:

Based on available data, we estimate approximately 12,000 medical providers and 110 pharmacies are small businesses, as defined in ORS 183.310(10).

Identify the types of businesses and industries with small businesses subject to the proposed rule:

Oregon medical providers
Oregon pharmacies

Describe the projected reporting, record-keeping and other administrative activities required for compliance with the proposed rule, including costs of professional services:

Reporting: The proposed changes would not require increased reporting for medical service providers and clinics that qualify as small businesses.

Record-keeping: The proposed changes would require increased record-keeping for providers that qualify as small businesses for medical service providers and clinics that elect to enter into fee discount agreements or provider network contracts.

Other administrative activities and costs of professional services: The proposed changes could increase administrative activities or the costs for professional services for providers that qualify as small businesses. To the extent medical service providers and clinics elect to enter into fee discount agreements or provider network contracts, providers and clinics would assume administrative activities necessary to develop and monitor the agreements or contracts.

Extent of economic impact: There is no basis to say that economic impacts would be “significantly adverse” (under ORS 183.540), but we invite public testimony on the probable extent of the impact.

Identify equipment, supplies, labor and increased administration required for compliance with the proposed rule:

Equipment: The proposed changes would not require the purchase of equipment to achieve compliance.

Supplies: The proposed changes would not require the purchase of supplies to achieve compliance.

Labor: The proposed changes would not require that small businesses hire additional staff to achieve compliance.

Administration: The proposed changes could require increased administration to achieve compliance. See cost analysis under “administrative activities” above.

Extent of economic impact: There is no basis to say that any impacts would be “significantly adverse” (under ORS 183.540), but we invite public testimony on the probable extent of the impact.

Administrative Rule Advisory Committee consulted:

Yes. Advisory committees met on Jun. 27, Aug. 22, and Aug 27, 2008 regarding OAR 436-009 and on Aug. 18, 2008 regarding OAR 436-060. The agency also presented the issues to the Medical Advisory Committee on July 18 and Sept. 19, as well as to the House Business and Labor Committee on Sept. 18, 2008.

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

/s/ Jerry Managhan (for)

10/15/08

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



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

Proposed

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Proposed amendments are marked as follows:

Deleted text has a "strike-through" style, as in
Added text is bold and underlined, as in

~~Deleted~~
Added

HISTORY LINES: These rules include only the most recent “History” lines. The history line shows when the rule was last revised (or “filed” if the rule has never been revised) and its effective date. To obtain a comprehensive history for OAR chapter 436, please call the Workers’ Compensation Division, (503) 947-7627, or visit the division’s Web site: http://www.wcd.oregon.gov/policy/rules/full_set.html

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: 72 Federal Register No. 227, November 27, 2007

This copy of the Federal Register is located at:

http://www.access.gpo.gov/su_docs/fedreg/a071127c.html

- 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: 2007 Relative Value Guide
- To order the **CPT® 2008** or the *CPT Assistant*, contact:
American Medical Association
515 North State Street
Chicago, IL 60610
Phone (800) 621-8335
- To order the **NUBC UB-04 Data Specifications Manual**, contact:
National Uniform Billing Committee
American Hospital Association
29th Floor
One North Franklin
Chicago, IL 60606
Phone (312) 422-3390
Ask to: Become a subscriber of the NUBC UB-04 Specifications Manual
- To order the Healthcare Common Procedure Coding System, contact:
National Technical Information Service
Springfield, VA 22161
Phone (800) 621- 8335
www.cms.hhs.gov/HCPCSReleaseCodeSets/ANHCPCS/list.asp

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
Proposed 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: 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: 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 columns titled "CPT/HCPCS," "Mod," "Physician Work RVUs," "Year 2008 Transitional Non-Facility PE RVUs," "Year 2008 Transitional Facility PE RVUs," "Malpractice RVUs," and "Global" in the Centers for Medicare & Medicaid Services (CMS) 2008 Medicare Resource-Based Relative Value Scale (RBRVS) Addendum B and Addendum C, 72 Federal Register No. 227, November 27, 2007, as the basis for the fee schedule for payment of medical service providers except as otherwise provided in these rules. The director does not adopt the definitions, status indicators, alpha codes, edits, processes, policies or philosophies of CMS, such as the National Correct Coding Initiative.

(2) The director adopts, by reference, the *American Society of Anesthesiologists ASA, Relative Value Guide* 2008 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, by reference, the American Medical Association's (AMA) *The Physicians' Current Procedural Terminology (CPT[®] 2008)*, Fourth Edition Revised, 2007, 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) The director adopts, by reference, the AMA's *CPT[®] Assistant*, Volume 0, Issue 04 1990 through Volume 17, Issue 12 2007, as a supplement for determining the level of service

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described by the CPT[®] manual guidelines. If there is a conflict between the CPT[®] manual and CPT[®] Assistant, the CPT[®] manual shall be the controlling resource to determine the level of service.

(5) The director adopts, by reference, only the alphanumeric codes from the CMS *Healthcare Common Procedure Coding System* (HCPCS) to be used when billing for services only to identify products, supplies, and services that are not described by CPT[®] codes or that provide more detail than a CPT[®] code. The director does not adopt the edits, processes, exclusions, color-coding and associated instructions, age and sex edits, notes, status indicators, or other policies of CMS.

(6) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 control over any conflicting provision in Addenda B and C, 72 Federal Register, No. 227, November 27, 2007, ASA Relative Value Guide 2008, CPT[®] 2008, CPT[®] Assistant, or HCPCS 2008.

Stat Auth: ORS 656.248, 656.726(4)
Stats Implemented: ORS 656.248
Hist: Amended 6/12/08 as WCD Admin. Order 08-051, eff. 7/1/08

436-009-0005 Definitions

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

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

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

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

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

~~(2)~~**(6)** Abbreviations used in these rules are either defined in the rules in which they are used or defined as follows:

- (a) ANSI means the American National Standards Institute.
- (b) CMS means Centers for Medicare & Medicaid Services.
- (c) CPT[®] means Current Procedural Terminology published by the American Medical Association.

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Proposed OREGON MEDICAL FEE AND PAYMENT RULES**

- (d) DME means durable medical equipment.
- (e) DRG means diagnosis related group.
- (f) EDI means electronic data interchange.
- (g) HCPCS means Healthcare Common Procedure Coding System published by CMS.
- (h) IAIABC means International Association of Industrial Accident Boards and Commissions.
- (i) ICD-9-CM means International Classification of Diseases, Ninth Revision, Clinical Modification, Vol. 1, 2 & 3 by US Department of Health and Human Services.
- (j) MCO means managed care organization **certified by the director**.
- (k) NPI means National Provider Identifier.
- (l) OSC means Oregon specific code.
- (m) PCE means physical capacity evaluation.
- (n) RBRVS means Medicare Resource-Based Relative Value Scale published by CMS.
- (o) RVU means relative value unit.
- (p) WCE means work capacity evaluation.

Stat. Auth.: ORS 656.726(4)
 Stats. Implemented: ORS 656.726(4)
 Hist: Amended 11/1/07 as WCD Admin. Order 07-055, eff. 1/1/08
Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

436-009-0006 Administration of Rules

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

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

436-009-0008 Administrative Review Before the Director

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

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

(2) The medical provider, ~~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

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for administrative review before the director under this rule:

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

(b) For all claims not enrolled in an MCO, or for disputes which do not involve an action or decision of the MCO, 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.~~ **Absent a showing of good cause, the date a medical provider should have known is the date the provider received payment or was notified the bill would not be paid.** For purposes of this rule, ~~the~~ **The date the insurer should have known of the dispute is the date action on the bill was due pursuant to** **under** 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) An insurer may request a refund from a provider for any amount it determines was overpaid for a compensable medical service. The insurer must make the request within 180 days of the payment date. If the provider does not respond to the request, or disagrees that a service was overpaid, the insurer may request director review within 90 days of requesting the refund.

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

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

- (a) Identify the worker's name, date of injury, insurer, and claim number.
- (b) Specify the issues in dispute and the relief sought.
- (c) Provide the specific dates of the unpaid disputed treatment or services.

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

(A) The request for review; and

(B) Any attached supporting documentation; and

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

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

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

(b) Upon receipt of a written request for additional information, the party must respond within 14 days.

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

(A) A party fails to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement.

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

(6) Hearings before an administrative law judge: Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

(7) Contested case hearings of sanction and civil penalties: Under ORS 656.740, any

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party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254, or 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as described in OAR 436-010-0008(14).

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

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

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

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

Stats. Implemented: ORS 656.704

Hist: Amended 6/12/08 as WCD Admin. Order 08-051, eff. 7/1/08

Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

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) Billings must include the worker's full name and date of injury, the employer's name and, if available, the insurer's claim number and the provider's NPI. If the NPI is not available, then the provider must provide its license number and FEIN. For provider types not licensed by the state, "999999" must be used. All medical providers must submit bills to the insurer or managed care organization, as provided by their contract for medical services, on a completed current UB-04 (CMS 1450) or CMS 1500 form, except for:

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

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

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

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

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

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

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(4) When billing for medical services, a medical service provider must use codes listed in CPT[®] 2008 or Oregon Specific Codes (OSC) that accurately describe the service. If there is no specific CPT[®] code or OSC, a medical service provider must use the appropriate HCPCS code, if available, to identify the medical supply or service. Pharmacy billings must use the National Drug Code (NDC) to identify the drug or biological billed. A "zz" modifier must be used when billing electronically for services that use an OSC.

(a) If there is no specific code for the medical service, the medical service provider shall use the appropriate unlisted code from HCPCS or the unlisted code at the end of each medical service section of CPT[®] 2008 and provide a description of the service provided.

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

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

(a) Bills must be submitted within:

(A) 60 days of the date of service.

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

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

(b) A medical service billing submitted later than the time frames in subsection(a) of this section may be payable in full if the provider establishes good cause for submitting the bill late. Good cause may include, but is not limited to, such issues as extenuating circumstances or circumstances considered outside the control of the provider.

(c) A bill rendered over twelve months after the date of service is not payable, except when a provision of subsection (a) of this section is the reason the billing was rendered after twelve months.

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

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

(8) Medical providers shall not submit false or fraudulent billings, including billing for services not provided. As used in this section, "false or fraudulent" means an intentional deception or misrepresentation with the knowledge that the deception could result in

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unauthorized benefit to the provider or some other person. A request for pre-payment for a deposition is not considered false or fraudulent.

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

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

Stat. Auth.: ORS 656.245, 656.252, 656.254
 Stats. Implemented: ORS 656.245, 656.252, 656.254
 Hist: Amended 6/12/08 as WCD Admin. Order 08-051, eff. 7/1/08

436-009-0015 Limitations on Medical Billings

(1) An injured worker is not liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer according to OAR chapter 436. A medical provider 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 and OAR 436-010-0210;

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

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

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

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

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

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

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(5) No fee is payable for a missed appointment except a closing examination or an appointment arranged by the insurer or for a Worker Requested Medical Examination. Except as provided in OAR 436-009-0070 (10)(d) and (11)(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.

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

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

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface EMG (electromyography) tests;

(d) Rolfing;

(e) Prolotherapy;

(f) Thermography; and

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

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

(B) The injured worker is between the age of 16 and 60;

(C) The injured worker underwent a minimum of 6 months unsuccessful exercise based rehabilitation; and

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

(7) Only one office visit code may be used for each visit except for those code numbers relating specifically to additional time.

(8) Mechanical muscle testing may be paid a maximum of three times during a treatment program when prescribed and approved by the attending physician or authorized nurse practitioner: once near the beginning, once near the middle, and once near the end of the treatment program. Additional mechanical muscle testing shall be paid for only when authorized in writing by the insurer prior to the testing. The fee for mechanical muscle testing includes a copy of the computer printout from the machine, written interpretation of the results, and documentation of time spent with the patient.

(9)(a) When a physician or authorized nurse practitioner provides services in hospital emergency or outpatient departments which are similar to services that could have been provided in the physician's or authorized nurse practitioner's office, such services 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.

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(10) Physician assistant, authorized nurse practitioner, or out-of-state nurse practitioner fees shall be paid at the rate of 85 percent of a physician's allowable fee for a comparable service. The bills for services by these providers must be marked with modifier "-81". Chart notes 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, an 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 documentation of 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: Amended 6/12/08 as WCD Admin. Order 08-051, eff. 7/1/08

436-009-0018 Fee Discount Agreements

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

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

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

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

(3) An insurer may not apply a discount under a fee discount agreement until the medical service provider or clinic and insurer have signed the fee discount agreement. The fee discount agreement must be printed on the medical service provider's or clinic's letterhead. The agreement must include the following:

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

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

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

(d) A statement that the insurer or employer cannot direct a worker to treat with the provider;

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

(f) A statement that a subsequent fee discount agreement entered into before the date the current agreement ends will supercede the agreement and apply to all payments for medical services after the date of the new fee discount agreement;

(g) A statement that the fee discount agreement may be terminated by either party

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with 30 days written notice to the other party;

(h) The names of the insurers that will apply the discounts to the bills submitted by the medical service provider or clinic; and

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

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

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

(b) The medical service provider's or clinic's name;

(c) The effective date of the agreement;

(d) The end date of the agreement;

(e) The discount rate under the agreement;

(f) Any other terms and conditions agreed to by the medical service provider or clinic and the insurer; and

(g) An indication that all the terms required under section (3) of this rule are included in the signed fee discount agreement.

(5) Either party to the fee discount agreement may terminate the agreement by providing 30 days written notice. If the insurer provides notice to the medical service provider or clinic of termination, or the insurer receives notice of termination from the medical service provider or clinic, the insurer must update the information by completing the director's online form. The following information must be reported:

(a) The insurer's name;

(b) The medical service provider's or clinic's name; and

(c) The termination date of the agreement.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist: Adopted xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-009-0020 Hospital Fees

(1) Hospital inpatient charges billed to insurers must include ICD-9-CM diagnostic and procedural codes. Hospitals must include their NPI on all bills. ~~Unless otherwise provided for by a governing MCO contract, insurers must 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 UB-04 billing form. The audited bill must be multiplied by the hospital's adjusted cost/charge ratio to determine the allowable payment.

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(2) Hospital outpatient charges billed to insurers must include revenue codes, ICD-9-CM diagnostic and procedural codes, CPT[®] codes, HCPCS codes, and National Drug Codes (NDC), where applicable. Hospitals must include their NPI on all bills. ~~Unless otherwise provided for by a governing MCO contract, insurers must pay hospitals for outpatient services according to the following: the insurer must first separate out and pay charges for services by physicians and other licensed medical service providers assigned a code under the CPT[®] and assigned a value in RBRVS for physician fees as identified by the revenue codes indicating professional services. These charges must be subtracted from the total bill and the adjusted cost/charge ratio applied only to the balance. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the Physician work RVUs, Year 2008 transitional non-facility PE RVUs, and Malpractice RVUs columns. All other charges billed using both the hospital name and tax identification number will be paid as if provided by the hospital.~~

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

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

(a) Separate and pay charges for services by physicians and other medical service providers assigned a code under the CPT[®] and assigned a value in the RBRVS for physician fees as identified by the revenue codes indicating professional services. These charges must be subtracted from the total bill. All outpatient therapy services (physical therapy, occupational therapy, and speech language pathology) must be paid using the Physician work RVUs, Year 2008 transitional non-facility PE RVUs, and Malpractice RVUs columns.

(b) Unless otherwise provided by contract, the balance of the hospital total bill for outpatient services must be paid at the allowable payment amount as calculated by multiplying the hospital's adjusted cost/charge ratio by the amount billed (See Bulletin 290).

(c) Unless otherwise provided by contract, all other charges billed using both the hospital name and tax identification number must be paid at the allowable payment amount as calculated by multiplying the hospital's adjusted cost/charge ratio by the amount billed.

(5) If a hospital qualifies for a rural exemption, the insurer may only apply an MCO contract to discount the fees calculated under (4)(b) of this rule.

~~(3)~~**(6)** Each hospital's CMS 2552 form and financial statement shall be the basis for determining its adjusted cost/charge ratio. If a current form 2552 is not available, then financial statements may be used to develop estimated data. If the adjusted cost/charge ratio is determined from estimated data, the hospital will receive the lower ratio of either the hospital's last published cost/charge ratio or the hospital's cost/charge ratio based on estimated data.

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

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(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 subsection (36)(a) to obtain the factor for bad debt and charity care.

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

(e) The factors resulting from subsections (36)(c) and (36)(d) of this rule will be added to the ratio calculated in subsection (36)(a) of this rule to obtain the adjusted cost/charge ratio. In no event will the adjusted cost/charge ratio exceed 1.00.

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

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

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

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

(j) Notwithstanding subsections (c) through (i) of this section the payment to out-of-state

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hospitals, may be negotiated between the insurer and the hospital.

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

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

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

(k) Notwithstanding sections ~~(13)~~ and ~~(24)~~ 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: Amended 6/12/08 as WCD Admin. Order 08-051, eff. 7/1/08
Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

436-009-0022 Ambulatory Surgical Center Fees

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

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

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

~~(2) Fees shall be paid at the provider's usual 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 fee, or according to the fee schedule, whichever is less.~~
Unless otherwise provided by contract, insurers must pay an ASC at the ASC's usual fee, or the amount set by 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.

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(c) Services not listed in the Medicare ASC groups 1 through 9 shall be paid at the provider's usual rate.

(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;
- (g) Supervision of the services of an anesthesiologist by the operating surgeon.

(6) The ASC fee does not include services, such as physicians' services, laboratory, x-ray or diagnostic procedures not directly related to the surgical procedure, prosthetic devices, orthotic devices, durable medical equipment (DME), or anesthesiologists' services. The insurer shall pay for prosthetic devices, orthotic devices, and DME as provided in OAR 436-009-0080.

(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: Amended 5/22/07 as WCD Admin. Order 07-051, eff. 7/1/07
Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

436-009-0025 Reimbursement of Related Services Costs

(1) The insurer shall notify the worker in writing at the time of claim acceptance that

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

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

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

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

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

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

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

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

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

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

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receipt by the insurer. The insurer shall provide the worker an explanation of the reason for nonpayment and advise the worker of the right to appeal the insurer's decision by requesting administrative review before the director, under OAR 436-009-0008.

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

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

436-009-0030 Insurer's Duties and Responsibilities

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

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

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

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

(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 submits a bill electronically, it shall be considered "mailed"

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in accordance with OAR 436-010-0005.

(4) With each payment or denied payment, the insurer or its representative must provide the medical provider a written explanation of the specific reason(s) for non-payment, reduced payment, or discounted payment for each service provided by the medical provider. The written explanation must also include:

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

(b) A notice of right to administrative review as follows: "If you disagree with the insurer's decisions about this payment, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of receipt of the insurer's explanation. To request review, sign and date this document in the space provided, indicate which decisions you disagree with, and mail this document to the Workers' Compensation Division, Medical Section/Resolution Team, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7612. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."

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

(5) An insurer must answer a medical provider's inquiry about a medical payment within 48 hours, not including weekends or legal holidays, of the medical provider's inquiry.

(46) 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.

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

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

(79) 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.

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

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This documentation must include, but not be limited to, medical bills, internal audit forms, and any medical charge summaries prepared by private medical audit companies.

(~~9~~**11**) The insurer must pay a medical provider for any bill related to the claimed condition received by the insurer on or before the date the terms of a disputed claim settlement (DCS) were agreed on, but was either not listed in the approved DCS or was not paid to the medical provider as set forth in the approved DCS. Payment must be made by the insurer as prescribed by ORS 656.313(4)(d) and OAR 438-009-0010(2)(g) as if the bill had been listed in the approved settlement or as set forth in the approved DCS, except if the DCS payments have already been made, the payment must not be deducted from the settlement proceeds. Payment must be made within 45 days of the insurer's knowledge of the outstanding bill.

(~~10~~**12**) 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 bill payment 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 director will notify the affected insurers when they reach the minimum. If the insurer drops below the 100 disabling claim level or encounters other significant hardships, the insurer may apply to the director for exemption from the reporting requirement. The reporting requirements are as follows:

(a) The transmission data and format requirements are included in Appendix A of these rules and Appendix B of OAR 436-160. OAR 436-160 explains the IAIABC ANSI 837 medical bill reporting requirements. To determine which appendix applies to required reporting insurers, see below.

(b) Each insurer must continue to report according to Appendix A until successfully completing IAIABC ANSI 837 testing under OAR 436-160. Once successfully completing testing, the insurer may only report via IAIABC ANSI 837.

(c) Group 1 is all required reporting insurers who are currently reporting data via IAIABC ANSI 837 in another jurisdiction. Each insurer in Group 1 must begin testing on July 1, 2008.

(d) Group 2 is the State Accident Insurance Fund Corporation. Group 2 must begin testing on April 1, 2009.

(e) Group 3 is all other required reporting insurers. Each insurer in Group 3 must begin testing on October 1, 2009.

(~~11~~**13**) An insurer may request, in writing, additional time to report the requested data elements according to OAR 436-160. The insurer must demonstrate that the date to begin testing creates an undue hardship. The request must include a plan to begin testing within 12 months of the group's testing date, and may not extend beyond January 1, 2010.

(~~12~~**14**) Undue hardship is demonstrated by providing the total required expenses to begin testing; the reporting cost per bill if transmitted directly by the insurer; and the total cost per bill if reported by a vendor.

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~~(1315)~~ If the director allows additional time, the insurer must continue to report all medical billing data under Appendix A during the testing.

~~(1416)~~ The director may audit an insurer's actual payments reported for individual claims. An insurer is subject to a civil penalty if an audit determines that the insurer's error rate is 15 percent or higher 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: Amended 6/12/08 as WCD Admin. Order 08-051, eff. 7/1/08

Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

436-009-0035 Interim Medical Benefits

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

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

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

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

(2) Interim medical benefits include:

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

(b) Medication required to alleviate pain.

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

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

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

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

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

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

(8) The workers' compensation insurer shall pay in accordance with the Oregon fee rules, any amount not reimbursed by the health benefit plan within 45 days of receipt of the bill with the health plan's explanation of benefits, in accordance with OAR 436-009-0030 ~~(6)~~**(8)**.

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

Stat. Implemented: ORS 656.247

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Hist: Amended 3/14/06 as WCD Admin Order 06-052, eff. 4/1/06
Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

436-009-0040 Calculating Medical Provider Fees

(1) ~~The insurers must pay for medical services at the provider's usual fee or in accordance with the fee schedule, whichever is less, unless otherwise provided by contract or fee discount agreement permitted by these rules. Insurers must pay for medical services that have no fee schedule at the provider's usual fee. For all MCO-enrolled claims, the insurer must pay for medical services at the provider's usual 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 of, but not limited to, the following: reasonableness, the usual fees of similar providers, the services provided in the specific case, fees for similar services in similar geographic regions, and any extenuating circumstances.~~

(2) If a billed service is not covered by a contract permitted by these rules or the fee schedule, then the insurer must pay for the medical services at the provider's usual fee. When 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 of, but not limited to, the following: reasonableness, the usual fees of similar providers, the services provided in the specific case, fees for similar services in similar geographic regions, and any extenuating circumstances.

~~(2)~~**(3)**(a) When using RBRVS, the total RVU is determined by reference to the appropriate CPT[®] code and by adding the values of the Physician work RVU, Year 2008 transitional non-facility PE RVU or Year 2008 transitional facility PE RVU, and Malpractice RVU. The PE RVU is determined by the location where the procedure is performed: If the procedure is performed inside the medical service provider's office, use Year 2008 transitional non-facility PE RVUs column; if the procedure is performed outside the medical service provider's office, use Year 2008 transitional facility PE RVUs 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 Physician work RVUs, Year 2008 transitional non-facility PE RVUs, and Malpractice RVUs columns.

(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 *American Society of Anesthesiologists Relative Value Guide*, a basic unit value is determined by reference to the appropriate Anesthesia code. The anesthesia value includes the basic unit value, time units, and modifying units.

~~(3)~~**(4)** Payment according to the fee schedule must be determined by multiplying the assigned RVU or basic unit value by the applicable conversion factor. Where the code is

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designated by an RVU of "0.00" or IC (individual consideration) for Anesthesia codes, the insurer must pay at the provider's usual rate.

~~(4)~~**(5)** The table below lists the conversion factors to be applied to services, assigned an RVU, rendered by all medical providers.

Service Categories	Conversion Factors
Evaluation / Management	\$64.79
Anesthesiology	\$53.45
Surgery	\$86.44
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: Amended 6/12/08 as WCD Admin. Order 08-051, eff. 7/1/08
Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

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 certified nurse anesthetist who remains in constant attendance during the procedure for the sole purpose of rendering such anesthesia service.

(c) When a regional anesthesia is administered by the attending surgeon, the value 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.

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

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

(c) Multiple surgical procedures performed at the same session 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 15 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 and include a report of the findings. Billings for 14" x 36" lateral views shall not be paid.

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

(5) Pathology and Laboratory services.

(a) The 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

Hist: Amended 5/22/07 as WCD Admin. Order 07-051, eff. 7/1/07

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

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accredited for that purpose by the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

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

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

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

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

(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

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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
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

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		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
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)
Stats. Implemented: ORS 656.248
Hist: Amended 3/14/06 as WCD Admin Order 06-052, eff. 4/1/06

436-009-0070 Oregon Specific Code, Other Services

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

(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

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

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

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

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

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

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

(10) 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

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case as compared to the universe of claims in the medical arbiter process. When the examination is scheduled, the director shall notify the medical arbiter and the parties of the authorized fee for that medical arbiter review based on a combination of separate components.

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

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

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

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

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

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

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

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

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Limited	OSC-AR031
Complex	OSC-AR032

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

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

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

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

(a) The physician will be paid for preparation and submission of the report. Billings for services by a single physician shall be billed under OSC-P0001 for the examination and under OSC-P0003 for the report.

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

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

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

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

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

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made timely as required in this subsection.

(12) 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.

(13) 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	3.00	First Level PCE
99197	5.36	Second Level PCE
99198	11.31	WCE
99193	0.77	Additional 15 minutes
D0001	0.00	Attorney consultation time
D0002	0.00	Deposition time
D0003	0.00	Independent Medical Examination (IME) and report
D0004	0.00	Interpretive services
D0019	0.00	Medical service provider review and response to IME report
D0030	0.00	Insurer consultation time
AR001	5.12	Level 1 arbiter exam
AR002	6.82	Level 2 arbiter exam
AR003	8.53	Level 3 arbiter exam
AR004	2.56	Level 4 arbiter exam
AR011	0.88	Level 1 arbiter report
AR012	1.32	Level 2 arbiter report
AR013	1.77	Level 3 arbiter report
AR021	0.88	Level 1 arbiter file review
AR022	2.21	Level 2 arbiter file review
AR023	5.30	Level 3 arbiter file review
AR024	10.23	Level 4 arbiter file review
AR025	13.65	Level 5 arbiter file review

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AR031	0.88	Limited arbiter report
AR032	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

Stat. Auth.: ORS 656.726(4)
 Stats. Implemented: ORS 656.248
 Hist: Amended 6/12/08 as WCD Admin. Order 08-051, eff. 7/1/08
Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

436-009-0080 Durable Medical Equipment and Medical Supplies

(1) Durable medical equipment (DME) is equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use, could normally be rented and used by successive patients, is appropriate for use in the home, and not generally useful to a person in the absence of an illness or injury. For example: Transcutaneous Electrical Nerve Stimulation (TENS), MicroCurrent Electrical Nerve Stimulation (MENS), home traction devices, heating pads, reusable hot/cold packs, etc. **Unless otherwise provided by contract, F**ees for durable medical equipment shall be paid as follows:

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

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

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

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

(2) A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. For example: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc. **Unless otherwise provided by contract, F** the insurer shall pay the fee for a prosthetic at the provider's usual rate.

(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

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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 for a pair of hearing aids, or \$2500 for a single hearing aid.

(3) An orthosis is an orthopedic appliance or apparatus used to support, align, prevent or correct deformities, or to improve the function of a moveable body part. For example: brace, splint, shoe insert or modification, etc. **Unless otherwise provided by contract, ¶** the insurer shall pay the fee for an orthosis at the provider's usual rate.

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

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

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

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

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

436-009-0090 Pharmacy Fees

(1) Except for in-patient hospital charges ~~or, the insurer must pay for prescription medications at the provider's usual rate or the maximum allowable fee set by this rule, whichever is lower.~~ **unless otherwise provided by contract, insurers must pay medical providers for prescription medication at the medical provider's usual fee, or the amount set by the fee schedule, whichever is less.**

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

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

If the drug dispensed is:	Then the maximum allowable fee is:
A generic drug	83.5 % of the dispensed drug's AWP plus a \$2.00 dispensing fee
A brand name drug without a generic equivalent	83.5 % of the dispensed drug's AWP plus a \$2.00 dispensing fee

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A brand name drug and the prescribing health care provider has not prohibited substitution	83.5 % of the average AWP for the class of generic drugs plus a \$2.00 dispensing fee
A brand name drug the prescribing health care provider has specified that the drug may not be substituted with a generic equivalent	83.5 % of the dispensed drug's AWP plus a \$2.00 dispensing fee

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

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

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

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

(7) Except for sections 2, 3, 4 and 6 of this rule, this rule does not apply to a worker's direct purchase of prescription medications, and does not limit a worker's right to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

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

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

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.248
Hist: Amended 6/12/08 as WCD Admin. Order 08-051, eff. 7/1/08
Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

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436-009-0095 Application of Fee Discounts

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist: Adopted xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-009-0100 Sanctions and Civil Penalties

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

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

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

(4) **If the director finds a pattern and practice, or an egregious violation of applying discounts to providers' fees under these rules, by an insurer or someone acting on the insurer's behalf, the director may require the insurer to pay for all medical fees at the maximum allowable fee schedule for up to one year.**

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

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

Amended xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx

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Insurers are required to report medical bill payment data on all payments made during each quarter for medical services as defined in OAR 436-010-0005. Insurers must submit medical bill payment data no later than 45 days after the end of each quarter, as shown below.

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

Technical Requirements: Medical bill payment 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 by secure file transfer protocol (SFTP) using the secure shell (also known as SSH) protocol. Contact the Information Management Division (IMD) to arrange submission of files by SFTP. The record length must be fixed, 129 bytes, no packed fields, and in conformance with the records layout in Appendix B. Contact IMD for e-mail cover letter instructions. The cover letter must include 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; the quarter being reported, and any known problems with the data.

Data Quality: The director will conduct electronic edits for blank or invalid data. Required reporting insurers are responsible for pre-screening the data 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 for correction and must be resubmitted within three weeks (21 days) from the date it was returned by the department.

Special Requirements

The medical bill payment data must include all payments made during each calendar quarter for medical services. The following apply:

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.

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.

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UPIN: The unique provider identifier number (UPIN), is a six-position alphanumeric identifier that is assigned to all Medicare physicians, medical groups, and non-physician practitioners. Left justify the UPIN and follow with blanks.

ICD-9-CM Diagnosis Codes: The International Classification of Diseases (ICD-9-CM) diagnosis code(s) must appear on all records where the provider type is chiropractor, hospital inpatient, hospital outpatient, medical doctor, osteopath, physician's assistant, or registered nurse practitioner. The primary code must be supplied first and, if available, the secondary code should be supplied.

Service, Drug, or Procedure Codes: Report the Physicians' Current Procedural Terminology (CPT®) code or other applicable code from the Oregon Medical Fee and Payment Rules: for example, "99201". On payments for durable medical equipment, report the appropriate HCPCS code: for example, "E0110". On payments for pharmaceuticals, report the eleven-digit National Drug Code (NDC): for example, "61392054230". On hospital inpatient services, report the ICD-9-CM procedure code: for example, "81.97". If reporting a hospital outpatient service, you may report the appropriate hospital revenue code: for example, "450". All codes must be left-justified and followed with blanks, as necessary, to comply with the required record layout format.

Modifier Codes: All adjustments to payments need to be associated with specific services.

- Use modifier 'SG' to identify ambulatory surgical center facility charges.
- Use modifier 'NT' (no time) on bills from a surgeon or attending physician administering a local or regional block for anesthesia during a procedure.
- Use modifier '50' when a surgical procedure is performed bilaterally for the second side.
- Use modifier '81' on bills for services by a physician assistant or nurse practitioner.
- Use a "zz" modifier when billing electronically for services that use Oregon Specific Codes.
- For a refund payment, repeat the record exactly as originally reported but enter payment and charge amounts as negatives (put minuses in the sign fields) and put "RF" (for refund) in the modifier code field.
- Adjustments that result in a partial refund or additional payment for a service that has already been paid should be coded with "DC" in the modifier code field.

Number of units or services: Report the number of time units paid on each time-based service such as anesthesiology and therapeutic procedures. For example, where base time unit equals 15 minutes (anesthesia, CPT® 97110, 97530, etc.), one hour of service equals "04" units. Where base time unit equals one hour (CPT® 97546), two hours of service equals "02" units. Also report the number of services if multiple, identical services to a patient are bundled into one record. For example, three whirlpool treatments (CPT® 97022) equals "03".

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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.

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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.

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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
Ambulatory Surgical Center	AS
Chiropractor	CH ₁
Dentist	DE
Home Health Care	HH
Hospital Inpatient	HI ₁
Hospital Outpatient	HO ₁
Laboratory	LA
Medical Doctor	MD ₁
Medical Supplies	MS
Naturopath	NA
Nursing Home	NH
Occupational Therapist	OT
Optometrist	OP
Osteopath	OS ₁
Pharmacy	PH
Physical Therapist	PT
Physician's Assistant	PA ₁
Podiatrist	PO
Psychologist	PS
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
Radiologist	RAD
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.

NOTE: ANSI 837 Medical Bill Reporting Requirements are described in OAR 436-160