

November 15, 2005

BULLETIN NO. 1-2005
Effective: January 1, 2006

TO: Workers' Compensation Insurers, Self-Insured Employers

SUBJECT: **Revised** "Carrier's Own Motion Recommendation" (Form No. 440-2806).
Applies House Bill 2294 (2005) (HB 2294) and Division 012 rule changes for
processing Own Motion claims. Effective January 1, 2006.

The purpose of this bulletin is to provide a revised Carrier's Own Motion Recommendation form that conforms to the amended administrative rules that apply ORS 656.267 (2005), and ORS 656.278 (2005). This bulletin is effective January 1, 2006, and supercedes Bulletin No. 1-2003 effective September 1, 2003, and all previous "Own Motion-related" bulletins.

NOTICE TO CLAIMANT

This section of the Carrier's Own Motion Recommendation notifies claimant of his/her rights and responsibilities with respect to submission of a written position and/or evidence. It also notifies claimant of potential benefits available after the expiration of aggravation rights under ORS 656.273(4) for claims based on a worsening of the compensable injury and for claims based on a new medical condition or omitted medical condition. It notifies claimant about the requirements he/she must satisfy to be entitled to those benefits.

In addition to advising that claimant may have an attorney of his/her choice, claimant is notified that he/she may contact the Workers' Compensation Ombudsman in writing at P.O. Box 14480, Salem, OR 97309-0405, or by telephoning (503) 378-3351 or 1-800-927-1271 (V/TTY) (inside Oregon). Claimant is also notified that he/she may contact the Own Motion Coordinator for assistance at (503) 378-4283 ext. 329 or 1-877-311-8061 (inside Oregon). Claimant is also notified that any copy of material submitted to the Board should be submitted simultaneously to the carrier.

INSTRUCTIONS TO THE CARRIER

This section notifies the carrier that it must process as a request for Own Motion relief under ORS 656.278 any claim that reasonably notifies it of: (1) a "worsened condition" that has been determined to be compensable as defined under OAR 438-012-0001(3), which is filed after the expiration of aggravation rights under ORS 656.273(4) (OAR 438-012-0020(3), (5)(c), (5)(d), OAR 438-012-0030(1)); (2) a new or omitted medical condition that has been determined to be compensable as defined under OAR 438-012-0001(4), which is filed after the expiration of aggravation rights under ORS 656.273(4) (OAR 438-012-0020(4), (6),

OAR 438-012-0030(1)); and/or (3) medical services where the date of injury is before January 1, 1966 (OAR 438-012-0020(5)(a), (b), OAR 438-012-0030(2)). It notifies the carrier that claims for medical services with a date of injury on or after January 1, 1966 must be processed under ORS 656.245.

This section also notifies the carrier that, if it voluntarily reopens the claim under ORS 656.278(5) to provide benefits allowable under ORS 656.278, it is not required to submit a written recommendation. Moreover, pursuant to ORS 656.625, a carrier's voluntary reopening under ORS 656.278 qualifies the carrier for reimbursement from the Reopened Claims Program. However, if the carrier voluntarily reopens the claim, it **must** submit a Form 3501 to the Workers' Compensation Division, with copies to claimant and claimant's attorney (if any). If the carrier does not voluntarily reopen the claim, it must submit a completed recommendation form, with supporting documentation, to the Board. The carrier also must forward to claimant and claimant's attorney (if any) a copy of its written recommendation, including attachments, and provide documentary evidence that it did so.

The carrier is also notified of the timelines within which to voluntarily reopen the claim or submit a recommendation to the Board. For "worsened condition" claims that have been determined to be compensable as defined under OAR 438-012-0001(3) and "post-aggravation rights" new or omitted medical condition claims that have been determined to be compensable as defined under OAR 438-012-0001(4), such action must occur within 30 days after the claimed condition has been determined to be compensable as defined under OAR 438-012-0001(3) or OAR 438-012-0001(4).

The carrier is further notified that it may reproduce the "Carrier's Own Motion Recommendation" form as a word-processing document, provided that the product exactly reproduces all of the data fields and text on the Board's Form 440-2806, eff. 01/01/2006.

Finally, the carrier is notified to submit legible copies of all documents relevant and material to the matters in dispute, including an index. The carrier is advised as to the manner that the documents and index shall be presented. These documents shall include copies of all relevant medical reports concerning hospitalization, surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable claimant to return to work.

RECOMMENDATION TO THE BOARD BY THE CARRIER

The carrier must provide the information requested in Sections A-D.

SECTION A: CLAIM INFORMATION:

Item **Nos. A-1 through A-4** provide for the carrier's name, mailing address and telephone number, the claims examiner's name, and the date the recommendation form is mailed.

Item **Nos. A-5 through A-6** provide for claimant's name and **complete** current address.

Item **Nos. A-7 through A-8** (if claimant is represented) provide for claimant's attorney's name and address. It also requires that, if claimant is represented, the carrier must submit a copy of claimant's counsel's retainer agreement.

Item **Nos. A-9 through A-13** provide for the carrier's claim number, WCD file number, date of injury, employer-at-injury name and address, date the current claim was received by the carrier, and requires that the carrier submit a date-stamped copy of claimant's written claim/request.

Item **Nos. A-14 through A-16** provide for the date of the first claim closure, the date claimant's aggravation rights expired, and the date of the last claim closure issued pursuant to ORS 656.268. It requires that the carrier submit a copy of the **FIRST** Determination Order or Notice of Closure. (If initially accepted as a "nondisabling" claim, the carrier must submit a copy of the Notice of Acceptance). In addition, the carrier also must submit a copy of the last Determination Order or Notice of Closure issued pursuant to ORS 656.268.

Item **No. A-17 (a-c)** provides for a listing of the condition(s) **accepted** prior to the current request for Own Motion relief, and the date each condition was accepted.

Item **No. A-18 (a-b)** provides for a listing of condition(s) "determined to be compensable" under OAR 438-012-0001(3) and/or (4). Item **A-18(a)** requires: (1) a listing of the "worsened conditions" "determined to be compensable" under OAR 438-012-0001(3); (2) the date of the compensability determination under OAR 438-012-0001(3); and (3) if the compensability decision was made by a litigation order, the carrier must submit a copy of that order. Item **A-18(b)** requires: (1) a listing of the "post-aggravation rights" new or omitted medical conditions "determined to be compensable" under OAR 438-012-0001(4); (2) the date of the compensability determination under OAR 438-012-0001(4); and (3) a copy of the Modified Notice of Acceptance or the litigation order.

SECTION B: "POST-AGGRAVATION RIGHTS" "WORSENERED CONDITION" CLAIM THAT HAS BEEN DETERMINED TO BE COMPENSABLE:

Item **No. B-1** asks whether claimant has submitted a "worsened condition" claim that has been "determined to be compensable" under OAR 438-012-0001(3).

Item **No. B-2** asks whether, if the compensability/responsibility issue was decided by a litigation order, the carrier contests that litigation order. The carrier is directed to indicate "No" if there was no litigation order or the carrier does not contest the litigation order.

Item **Nos. B-3 and B4** ask whether claimant's worsened condition results in a partial or total inability to work and requires hospitalization or inpatient or outpatient surgery or other curative treatment prescribed in lieu of hospitalization that is necessary to enable claimant to return to work.

The Board requires information relative to the hospitalization, or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to

enable claimant to return to work, **notwithstanding** the carrier's position(s) regarding whether the "worsened" condition is compensable, the carrier is responsible, or the treatment is authorized or is reasonable and necessary. (In other words, even if the carrier contests a litigation order finding the claim or condition compensable and the carrier's responsibility or challenges the reasonableness and necessity of a medical treatment, the carrier must respond to item B-4, which does not ask the carrier to determine compensability, responsibility, or reasonableness and necessity of the medical treatment). The Board requires all **relevant** medical reports concerning medical treatment be forwarded to the Board.

WORK FORCE CRITERIA AND NOTICE TO CLAIMANT REGARDING WORK FORCE STATUS.

Item **No. B-5** provides for the carrier's position regarding whether claimant was in the work force at the time of disability. If the carrier answers "no" to this question, it must submit an explanation for that position and submit supporting material.

Section E is part of the form that is sent to claimant and claimant's attorney (if any) and provides that, if the carrier challenges claimant's work force status, claimant must prove that he/she was in the work force at the time of disability and provides that he/she may meet this burden of proof by any of these means:

- (1) If claimant was engaged in employment, requires submission of evidence establishing that he/she was working during the relevant time period;
- (2) If claimant was not working, but was willing to work and looking for work, requires submission of evidence of work search and a willingness to work; and
- (3) If claimant was not working or looking for work because of the compensable injury, but was willing to work, requires submission of evidence of futility and willingness to work.

Item **No. B-6** provides for the carrier's agreement or disagreement regarding the reasonableness and/or necessity of the recommended medical treatment.

If the carrier responds "NO" item B-6, it must submit a copy of any request for Director's review of medical treatment pursuant to ORS 656.245, ORS 656.260 and/or ORS 656.327.

Item **No. B-7** provides the carrier's recommendation for or against the reopening of the post-aggravation rights "worsened condition" claim.

SECTION C: "POST-AGGRAVATION RIGHTS" NEW AND/OR OMITTED MEDICAL CONDITION CLAIM THAT HAS BEEN DETERMINED TO BE COMPENSABLE:

Item **No. C-1** asks whether claimant has submitted a "post-aggravation rights" new or omitted medical condition claim that has been "determined to be compensable" under OAR 438-012-0001(4).

Item **No. C-2** provides for a listing of the new/omitted medical conditions that have been “determined to be compensable.”

Item **C-3** asks whether, if the compensability/responsibility issue was decided by a litigation order, the carrier contests that litigation order. The carrier is directed to indicate “No” if there was no litigation order or the carrier does not contest the litigation order.

Item **C-4** provides the carrier’s recommendation for or against the reopening of the “post-aggravation rights” new/omitted medical condition(s) claim.

SECTION D: PRE-1966 INJURY – MEDICAL SERVICE CLAIMS:

Item **Nos. D-1 through D-5** pertain to a “medical services” claim made in a pre-1966 injury claim and provide for a listing of the medical services, the carrier’s agreement or disagreement as to the compensability of, responsibility for, and appropriateness of the claimed medical services. A medical services claim for a pre-1966 injury must be processed within 60 days after receiving the claim. OAR 438-012-0030(2).

Item **No. D-6** provides the carrier’s recommendation for or against the reopening of the pre-1966 “medical services” claim.

THE BOARD’S MAILING ADDRESS

The parties are advised that the Board’s mailing address is: Own Motion Unit, Workers’ Compensation Board, 2601 25th St. SE Ste. 150, Salem, OR 97302-1280.

QUESTIONS

Any questions about the Carrier’s Own Motion Recommendation Form or about procedures and requirements for processing Own Motion claims under ORS 656.278 should be directed in writing to the Own Motion Unit, Workers’ Compensation Board, 2601 25th St. SE Ste. 150, Salem, Oregon 97302-1280, or by calling the Own Motion Coordinator at (503) 378-4283 ext. 329 or 1-877-311-8061 (inside Oregon).


Abigail L. Herman, Board Chair
Workers’ Compensation Board

Attachment

Distribution: A through V, plus X and AA