



# MEMORANDUM

May 5, 2026

**To:** Board Members

**From:** Autumn Blake, Board Review Coordinator

**Subject:** Draft amendments to OAR 438-015-0019 “Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute”

At the March 19, 2026, Board meeting, it was requested that staff members prepare draft amendments to OAR 438-015-0019, “Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute,” following a January 9, 2026, advisory committee report. The specific amendments requested include:

- (1) Make use of the Board’s “Cost Bill” Form mandatory;
- (2) Extend the timeframe for the claimant to submit the cost bill from 30 days to 60 days;
- (3) Allow the claimant’s attorney to sign the cost bill form; and
- (4) Alternate drafts, one referring to costs “paid,” the other leaving reference to costs “incurred.”

Attached are alternate drafts and draft amendments to the “Cost Bill” Form.

- Exhibit A makes amendments one through three above. It also changes the term “incurred” to “paid.” This draft includes suggested amendments to definitions in OAR 438-015-0005, which includes the term “incurred” in two places.
- Exhibit B makes amendments one through three above.

- Draft amendments to the “Cost Bill” Form to change “costs incurred” to costs that “have been paid.”

In reviewing OAR 438-015-0005, it was noted that the definition of “attorney” does not conform with Senate Bill 166 (2025). Regardless of which draft the Board approves, staff recommends that the definition of “attorney” in OAR 438-015-0005(3) be amended as a “statutory minor correction” under ORS 183.335(7)(g), which does not require formal rulemaking.

## EXHIBIT A

**438-015-0005**

### **Definitions**

In addition to the definitions set forth in OAR 438-005-0040:

- (1) “Approved fee” means an attorney fee paid out of a claimant’s compensation.
- (2) “Assessed fee” means an attorney fee paid to a claimant’s attorney by an insurer or self-insured employer in addition to compensation paid to a claimant.
- (3) “Attorney” means an attorney licensee*[member]* of the Oregon State Bar.
- (4) “Attorney fee” means payment for legal services performed on behalf of and at the request of a claimant under ORS Chapter 656.
- (5) “Client paid fee” means an attorney fee paid by an insurer or self-insured employer to its attorney.
- (6) “Compensation” means all benefits, including medical services, provided for a compensable injury to a subject worker or the beneficiaries of a subject worker pursuant to ORS Chapter 656.
- (7) “Cost bill” means an itemized statement from the claimant of the amount of expenses and costs for records, expert opinions, and witness fees paid*[incurred]* as a result of the litigation involving a claim denial under ORS 656.386(1).
- (8) “Denied claim” means a claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation or a claim under ORS 656.386(1)(b)(B), (C) or (D) to which the insurer or self-insured employer does not timely respond.
- (9) “Expenses and costs” reimbursable under ORS 656.386(2) mean reasonable expenses and costs paid*[incurred]* by the claimant for things and services reasonably necessary to pursue a matter, but do not include attorney fees. Examples of expenses and costs referred to include, but are not limited to, costs of records, expert witness opinions, witness fees and mileage paid to execute a subpoena, and costs associated with travel.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.308, 656.382, 656.386, 656.388 & 656.726(5)

## EXHIBIT A

**438-015-0019**

### **Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute**

(1) If a claimant finally prevails against a denial under ORS 656.386(1), the Administrative Law Judge or the Board may order payment of the claimant's reasonable expenses and costs for records, expert opinions, and witness fees **paid***[incurred]* in the litigation of the denied claim(s).

(2) In ordering payment under section (1), an Administrative Law Judge or the Board may award reasonable expenses and costs that the claimant **paid***[incurred]* as a result of the litigation of the denied claim(s) under ORS 656.386(1). If the parties stipulate to the specific amount of the reasonable expenses and costs, the Administrative Law Judge's or the Board's award of expenses and costs shall be included in the order finding that the claimant finally prevails against a denied claim(s) under 656.386(1). In the absence of the parties' stipulation, the Administrative Law Judge or the Board may award reasonable expenses and costs as described in section (1), which the claimant may claim by submitting a cost bill under section (3) to the insurer or the self-insured employer.

(a) Reasonable costs and expenses may not exceed \$3,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount.

(b) The maximum expenses and costs awarded under this section are subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board will publish the maximum fee by bulletin, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest multiple of \$100.

(3) If an order under section (2) does not specify the amount of a reasonable award for expenses and costs, the claimant shall submit, within **60***[30]* days after the order under section (2) becomes final, a cost bill to the insurer or self-insured employer. The cost bill **must***[, which may]* be submitted on a form prescribed by the Board **and must***[, shall]* contain, but is not limited to, the following information:

## EXHIBIT A

- (a) An itemization of [*the incurred*] expenses and costs for records, expert opinions, and witness fees that **have been paid in the litigation of the denied claim**[*are due to the denied claim(s)*]; and
- (b) The claimant's **or, if represented, the claimant's attorney's** signature confirming that the claimed expenses and costs were **paid**[*incurred*] in the litigation of the denied claim(s).
- (4) If the parties disagree whether a claimed fee, expense, or cost is reasonable, a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.
- (5) Unless a hearing is requested by the insurer or self-insured employer under section (4), payments for witness fees, expenses, and costs shall be made by the insurer or self-insured employer within 30 days of its receipt of the cost bill submitted in accordance with section (3) or within 30 days after the order under section (2) becomes final, whichever is later, and are in addition to compensation payable to the claimant and in addition to attorney fees.
- (6) In disputes involving a claim for costs, if the claimant prevails on the claim for any increase of costs, the Administrative Law Judge or the Board shall award a reasonable assessed attorney fee to the claimant's attorney.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.386(2), ORS 656.386(4)[, *OR Ch L 2025 c. 152*]

## EXHIBIT B

438-015-0019

### **Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute**

(1) If a claimant finally prevails against a denial under ORS 656.386(1), the Administrative Law Judge or the Board may order payment of the claimant's reasonable expenses and costs for records, expert opinions, and witness fees incurred in the litigation of the denied claim(s).

(2) In ordering payment under section (1), an Administrative Law Judge or the Board may award reasonable expenses and costs that the claimant incurred as a result of the litigation of the denied claim(s) under ORS 656.386(1). If the parties stipulate to the specific amount of the reasonable expenses and costs, the Administrative Law Judge's or the Board's award of expenses and costs shall be included in the order finding that the claimant finally prevails against a denied claim(s) under 656.386(1). In the absence of the parties' stipulation, the Administrative Law Judge or the Board may award reasonable expenses and costs as described in section (1), which the claimant may claim by submitting a cost bill under section (3) to the insurer or the self-insured employer.

(a) Reasonable costs and expenses may not exceed \$3,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount.

(b) The maximum expenses and costs awarded under this section are subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board will publish the maximum fee by bulletin, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest multiple of \$100.

(3) If an order under section (2) does not specify the amount of a reasonable award for expenses and costs, the claimant shall submit, within **60**[30] days after the order under section (2) becomes final, a cost bill to the insurer or self-insured employer. The cost bill **must**[, *which may*] be submitted on a form prescribed by the Board **and must**[, *shall*] contain, but is not limited to, the following information:

## EXHIBIT B

(a) An itemization of the incurred expenses and costs for records, expert opinions, and witness fees that are due to the denied claim(s); and

(b) The claimant's **or, if represented, the claimant's attorney's** signature confirming that the claimed expenses and costs were incurred in the litigation of the denied claim(s).

(4) If the parties disagree whether a claimed fee, expense, or cost is reasonable, a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.

(5) Unless a hearing is requested by the insurer or self-insured employer under section (4), payments for witness fees, expenses, and costs shall be made by the insurer or self-insured employer within 30 days of its receipt of the cost bill submitted in accordance with section (3) or within 30 days after the order under section (2) becomes final, whichever is later, and are in addition to compensation payable to the claimant and in addition to attorney fees.

(6) In disputes involving a claim for costs, if the claimant prevails on the claim for any increase of costs, the Administrative Law Judge or the Board shall award a reasonable assessed attorney fee to the claimant's attorney.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.386(2), ORS 656.386(4)[, *OR Ch L 2025 c. 152*]

“Cost Bill” Form  
(ORS 656.386(2); OAR 438-015-0019)

To: \_\_\_\_\_  
(Insurer, Self-Insured Employer, Claim Administrator)

Claimant: \_\_\_\_\_

WCB Case No: \_\_\_\_\_

Claim No: \_\_\_\_\_

Date of Injury: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

ALJ/Board/Court Order Date: \_\_\_\_\_

**EXPENSES AND COSTS** (Itemized)

Payee	Date of Service	Description	Amount
<b>Total</b>			<b>\$</b>

I hereby confirm that the above expenses and costs **have been paid** [*were incurred*] in the litigation of the denied claim(s) involving the above-referenced claimant.

\_\_\_\_\_  
(Claimant or Claimant’s Attorney)

\_\_\_\_\_  
(Date)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone)