

**Workers' Compensation Board
Rules Advisory Committee
OAR 438-015-0019 Cost Bill Procedures**

Virtual Meeting Only

December 5, 2025

9 a.m.–noon

Committee members:

ALJ Ian Brown, facilitator

Caitlin Breitbach, Small Business Ombudsman

Bin Chen, Hooton & Chen LLP

Darren Lee, SAIF Corporation

Keith Semple, OTLA/Johnson Johnson Lucas et al

Rebecca Watkins, SBH Law

Observers:

MaryMichelle Sosne, Legislative Fiscal Office

Staff:

Autumn Blake, WCB Board Review Coordinator

Minutes

Administrative Law Judge (ALJ) Ian Brown provided background regarding the request by the Workers' Compensation Board (WCB) for the committee to review OAR 438-015-0019, "Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute." ORS 656.386(2) allows for a claimant to recover up to \$1,500 in witness fees, expenses, and costs when prevailing over a denied claim. House Bill 2799 (2025) increased the cap to \$3,500 and added an annual adjustment tied to the state average weekly wage. OAR 438-015-0019 provides the method by which a claimant may submit a cost bill to the insurer or self-insured employer to recover costs and expenses.

The SAIF Corporation and the Oregon Trial Lawyers Association submitted a joint request to the Board to review and revise its process for cost bill submissions.

ALJ Brown asked Keith Semple, as the representative for OTLA, and Darren Lee, as the representative for SAIF, to provide context for the request.

Semple stated that the request goes back to the legislative discussion regarding caps, review of cost bills, and a request to standardize the cost bill procedure. There were concerns that attorneys

were submitting costs with other matters and not using the form. His position was that he does not see a problem that cannot be resolved between the parties. The cost bill form provided by WCB is fine and does not want a lot of paperwork. He was unsure if receipt submission should be required for every transaction. He explained that it could be difficult to get receipts from doctors and they are not always readily available.

Lee shared that updates would make things run more smoothly for both sides and reduce litigation. Some offices are more responsive than others when it comes to receipts and there's a broad spectrum of information and reliability. He stated that SAIF does not want to make the process more burdensome but that there are holes in the process that create questions. Rules are meant to establish continuity and reasonable expectations for all practitioners. He said that it is a normal business practice to submit receipts for reimbursement and that this was no different. He stated that fair guardrails are good for everyone and that good practices should be applied equitably to all practitioners.

Bin Chen stated that he agreed with Semple. His office closely monitors money coming in and out. He wondered if a receipt requirement should be built directly into the rules.

Lee said that his main concerns were about the process being transparent, that cost requests are not buried in unrelated information, and to reduce delays and overall costs.

Chen shared that he did not want a strict requirement for receipts but would support a confirmation or certification from the attorney. The issue is that claimant attorneys are not the party generating the receipt. Many times they ask for one and do not receive it, but mark the invoice as paid. About 80 percent of providers send a receipt. There are times they do not receive the bill until after the case settles, sometimes up to six months later. Chen also shared his concern about having the claimant sign off on a cost bill. Claimants often have limited availability or may not be familiar with electronic signatures. He would prefer that their attorney be able to attest to a "true and accurate" accounting of costs.

ALJ Brown asked if Chen had encountered problems with submitting a cost bill within 30 days after the order is final.

Chen replied that it can be more of a problem when trying to finalize a stipulation. He's usually able to work things out with opposing counsel but there are times when it is difficult to get the bill from a doctor.

Semple added that sometimes doctors decide not to bill later on. The other complicating factor is that doctors are not doing the billing themselves but are contracting out accounts payable/receivable services. The bill may go through multiple people before it gets to claimant's

attorney. Generally, he is able to work with opposing counsel. The timeline to submit a cost bill can be a concern so he appreciates flexibility.

Semple also agreed with Chen regarding the difficulty in getting receipts from doctors. They may have proof of payment, a contract to pay, or a document that states the cost was paid or will be paid. If a bill comes in late they may have to write it off without the ability to recoup the cost.

He continued that he did not have any concerns about standardizing the form or requiring a record of payment, especially if it was only upon request. He also agreed that the language of requiring the worker to sign the cost bill should be revisited.

Rebecca Watkins observed that everyone seemed to be in agreement that the cost bill form should be used uniformly. The majority of claimant attorneys are using it, however, some are not itemizing costs as they are required. The way that the current form is formatted allows her to confirm costs against other information they have. She has also encountered the problem of cost bills being submitted within other documents which delays reimbursement.

ALJ Brown asked if cost bills do not contain an itemization, does Watkins ask for that information or does she make the determination that it is not worth the time it would take.

Watkins responded that both cases happen. She will write back and ask for the purpose and dates. However, if the cost is smaller, it would be the same amount incurred to the client for the work as it is to pay the submitted cost bill. It would be a great improvement to ensure those who are not using the cost bill form do so.

Watkins agreed that medical billing is frustrating and wondered if there was a way to address the issue of providers not billing timely within the medical billing rules.

Semple responded that there are times when they do have to take medical bills that have been billed late to the Workers' Compensation Division.

Chen was not sure that a phone conference with claimant's attorney would constitute a medical bill subject under the rules.

Lee observed that if there has been a payment, then it would be considered a cost. There should also be a record as confirmation of payment made. If a doctor is not billing, claimant's attorney is not paying the bill, and it would not be considered a cost.

ALJ Brown pointed out that the rule refers to costs "incurred," which may not be those yet paid. He summarized that it is typical that costs have been paid within 60 days after the Opinion and

Order has issued. He also observed that there did not seem to be a problem in documenting confirmation of costs by the deadline.

Semple stated that he would resist changing the language from “incurred” to “paid” when there is verifiable documentation that the cost has been incurred. He did not want to specifically require receipts so that other verification or proof of payment can be provided.

Lee presented a possible situation where an attorney has submitted a cost only to have the doctor decide not to bill. That would create issues for returning the check to the insurer and ensuring that it has been received. In his opinion, the rule is about reimbursing costs that have been paid and avoiding speculation. Lee also preferred the use of “documentation” rather than “receipt.”

Chen asked if the rule should make room for these situations where an expense has been incurred but not paid. He asked defense bar if claimant can submit the cost bill with an expense that has not been paid but provides documentation that it will be, or be given the opportunity to provide a supplemental cost bill.

Watkins confirmed that the situation they were discussing is rare. The claimant is given 30 days from when the record closes plus 30 days after the order issues plus an additional 30 days after it is final to submit the cost bill. It seems the costs would have been incurred before the record closed. Extending it further complicates the situation. There may be a need to put language regarding extraordinary circumstances to submit costs up to six months and then take it before an ALJ. Something that would impose a time limit and need for justification.

Chen agreed that it is a rare occurrence. He did not want claimant attorneys to be left without a remedy if bills come in after the window has closed.

Semple stated that it would help some outliers to extend the time frame in which claimant must submit their cost bill. He believed changing the deadline to submit a cost bill to 60 days after an order becomes final could help account for such costs as last-minute rebuttal reports.

Caitlin Breitbach shared her perspective from working with employers that one of the most important aspects is the need for transparency in billing. Employers are ultimately paying for costs through their premiums. It is important to have some documentation as proof of payment or costs incurred. She supported that the timeline be extended and the cost bill be sent separately or highlighted.

Semple said that he also support itemization through a standard form. Although, he would prefer that proof of payment be provided upon request rather than in every case.

ALJ Brown asked if there were concerns about using WCB's form.

Chen replied that it was easy to use and contained fields for all relevant information.

Breitbart observed that the rule states that WCB's cost bill form "may" be submitted and suggested that it be changed to "shall" as a requirement.

ALJ Brown summarized the discussion thus far. He noted that the committee agreed on making the WCB form mandatory and that it would be a good step towards ensuring costs are sufficiently itemized. They had also agreed that extending the time frame to submit a cost bill would allow claimant more flexibility to submit documentation.

The committee discussed the use of "claimant" in OAR 438-015-0019(3)(b) and if it was meant in a generic sense interpreted as claimant's representative. Watkins pointed out that a pro se claimant could submit a cost bill.

Lee suggested that the language, such as "claimant" and "requesting parties," be clarified so that it is not a limiting factor.

Chen agreed with fixing the signature requirement. He suggested that it mirror worker reimbursement under OAR chapter 436.

Lee stated that the reimbursement requirements under OAR chapter 436 that Chen referred to are applicable to workers, not attorneys.

Chen agreed and replied that the standards imposed on workers can be followed by attorneys.

ALJ Brown asked if extending the time frame to submit a cost bill from 30 to 60 days after an order is final was sufficient. Chen and Semple agreed that it was.

ALJ Brown asked if they had encountered a situation where they were not able to receive proof of billing in the time needed to include it in a cost bill. Semple had not. Chen stated that it had happened one time; he received a bill six months later.

ALJ Brown observed that there was consensus on requiring the WCB form and the value of having some kind of proof of payment within 60 days of an order being final. He asked the committee if it made sense to require proof to be submitted with the form or upon request.

Lee stated that there is nothing to stop an insurer from requesting proof if it is not initially submitted. Requiring documentation only upon request does not seem to aid the shared goal of timely reimbursement of expenses and adds another step to the process.

Watkins agreed that, while it would vary between adjusters and insurers, insurers could create a policy where they would request documentation every time. She believed it would be simpler and better to require everything be sent together.

Semple conceded that if documentation is upon request, it could be requested every time, delaying reimbursement and not accomplishing anything.

Chen agreed with Semple. Under the medical service rules, when a worker requests reimbursement an insurer may require additional proof. Most costs at hearing are usually straightforward. It can be inconvenient and time consuming to print and submit receipts. He suggested that the rule say that the insurer may require documentation but that it not be required in every case.

Semple made the alternative suggestion to keep the deadline to submit the cost bill but if additional documentation is required, claimant would have so many days to provide it.

Lee was concerned that having documentation be optional at the insurer's request would become more burdensome to a less organized law firm, there would be more instances of mistakes, and it would drive litigation.

Chen observed that not every firm has proper staffing. Sole practitioners may not have the capacity for extensive recordkeeping. It can be burdensome to require documentation up front. Attorneys are held to a certain ethical standard so when they submit an itemization of costs, there is an expectation that it is accurate.

Breitbach countered that other professions are expected to keep detailed accounting without exception. It would not be fair to expect one firm to provide documentation but not another. If the standard of providing documentation is set ahead of time, attorneys would be more successful going forward and it would be easier in the long run.

Lee agreed and Semple conceded to Breitbach's argument.

Lee added that he could not imagine meeting with a small business and saying that it was okay that they did not have payroll records. Most claimant attorneys would understand that professionalism dictates a good system and that they must be accountable to their client.

ALJ Brown summarized the committee's agreements that:

- The term "incurred" in rule should be changed to "paid"
- The timeline for the claimant to submit a cost bill should be extended from 30 days to 60 days after an order becomes final
- The claimant must submit the Board's form referenced in OAR 438-015-0019(3) as a requirement separate from argument or other documents
- The claimant attorney's signature on the form is sufficient to confirm the claimed expenses and costs were paid

He also stated that the committee had agreed that documentation of expenses and costs should be provided, but could not reach a consensus on whether documentation should be included with initial submission of a cost bill or upon request by the insurer.

The committee decided to reconvene at a later date to review a draft report prepared by ALJ Brown.