Ex. 1

MEMORANDUM

July 28, 2026

To: Board Members

From: Cathy Ostrand, Assistant Managing Attorney

Subject: July 22, 2026, Rulemaking Hearing

A public rulemaking hearing was held on July 22, 2026, at 10 a.m. regarding proposed changes to OAR 438-015-0019 related to cost bill submissions. The hearing was held by Zoom with the public able to participate by video or phone.

Two members of the public attended the hearing, but did not provide comment. No oral testimony regarding the proposed changes was offered or received.

The deadline for the public to submit written comments is 5 p.m. on August 5, 2026. Any written comments received by the deadline will be forwarded to you for your consideration.

Ex. 2

M E M O R A N D U M

July 29, 2026

To: Members

From: Autumn Blake

Subject: Use of must versus shall in administrative rules

At the May 12, 2026, Board meeting, Member Douglas asked for clarification and information regarding the use of **must** instead of **shall**.

Both the Oregon Legislative Assembly *Form and Style Manual for Legislative Measures* and the Legislative Counsel's *Bill Drafting Manual* advise, "To impose an obligation to act, use 'shall.' To confer a right, power or privilege, use 'may.' Do not use 'shall' to grant permission or 'may' to impose a duty." However, the *Form and Style Manual* also states, "**OARs do not follow legislative form and style.**" (Emphasis in original.)

In 2003, the Oregon legislature added ORS 183.750, which requires executive department agencies and boards to use "language that is as clear and simple as possible" in administrative rules and other public communication.

The Oregon Department of Administrative Services (DAS) maintains a maximum standard for public writing, including administrative rules, of a 10th grade reading level. DAS' guidance specifically recommends using **must** instead of **shall**.

It is the practice of the Department of Consumer and Business Services (DCBS) and the Workers' Compensation Division (WCD) to incorporate plain language in all public writing, including administrative rules and orders. The DCBS Stylebook advises using **must** or will instead of **shall**. WCD's Rule Writing Guide instructs rule writers not to use **shall:** "If a person is required to do something, say the person 'must' do it. If an action is optional, say the person 'may' do it. If a person is forbidden to do something, say the person 'may not' do it."

The Office of the Federal Register created plain language guidance tailored for regulations following the 2010 Plain Writing Act. It recommends the use of **must** instead of **shall** to impose a legal obligation. It defines **shall** as "impos[ing] an obligation to act, but may be confused with prediction of future action," whereas **must** "imposes obligation" and "indicates a necessity to act."

The American with Disabilities Act (ADA) Title II mandates state government agencies to ensure communication with members of the public with disabilities "are as effective as communications with others," supporting the use of plain language in the Workers' Compensation Board's publications.

Legal writing advice favors using **must** over **shall**. In *A Dictionary of Modern Legal Usage*, Bryan Garner states, "Drafting generally ought to be in the present tense, whereas 'shall' is commonly used as a future-tense verb. 'Must' carries a straightforward requirement while the use of 'shall' is more easily misconstrued."

Exhibit 3

August 5, 2026

JOY DOUGHERTY, BOARD CHAIR
WORKERS' COMPENSATION BOARD
2601 25TH ST. SE, STE. 150
SALEM, OR 97302

Re: Written comments regarding the proposed changes to OAR 438-015-0019

Dear Board Chair Dougherty and Board Members:

SAIF Corporation (SAIF) thanks the Workers' Compensation Board (Board) for the opportunity to provide additional written comments following its July 22, 2026, rulemaking hearing regarding its proposed changes to OAR 438-015-0019. The proposed rules reflect the effort by stakeholders and the Board to revise and improve the Board's process for cost bill submissions when a claimant prevails against a denial. SAIF offers the following additional comments for the Board's consideration and asks it to reconsider the recommendations of the advisory committee.

Here, the Board appointed an advisory committee to review the cost bill process following a joint request from SAIF and the Oregon Trial Lawyers Association. The advisory committee met twice and issued its recommendations in a report dated January 9, 2026. In that report, the advisory committee recommended the following changes to the Board's cost bill process:

1. Clarify that costs must be paid rather than incurred by the claimant's attorney to be eligible for reimbursement,
2. Require separate submission of the cost bill on the Board's form,
3. Extend the time to submit the cost bill to 60 days after the order awarding reasonable expenses and costs, and
4. Allow the claimant's attorney to sign the cost bill.

Following its consideration of the advisory committee report and stakeholder feedback, the Board supported changing the current rule to require separate submission of the cost bill on the Board's form, allow the claimant's attorney to sign the cost bill, and extend the time for the prevailing party to submit the cost bill. The proposed rules reflect these changes.

While SAIF appreciates the Board's adoption of most of the advisory committee's recommendations in the proposed rules, SAIF remains disappointed the Board did not adopt the committee's recommendation that only paid costs should be subject to reimbursement and changing the term "incurred" to "paid" in OAR 438-015-0019.

The advisory committee's report stated that "the purpose of the rule is to reimburse claimants for expenses and costs actually paid". On that basis, the committee supported

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changing the word "incurred" to "paid" indicating that "providers sometimes decide not to bill, even if the claimants anticipate being billed".[1]

SAIF agrees and maintains that the cost should not be reimbursed unless it was actually paid by the prevailing party.

Here, the proposed rule will require the insurer to issue an advance payment for an expected expense that may or may not be incurred and paid by the prevailing party at some future date. It also places a burden on the prevailing party to continuously audit their records or their client's file to see if they were subsequently billed for the cost that was already reimbursed.

Additionally, the proposed rules do not specify a mechanism through which the prevailing party must review their records or their client's file to confirm whether a bill was later received and paid. Absent any details the prevailing party could retain the payment indefinitely assuming that they may be billed at some later date.

Lastly, there is no mechanism to require disclosure by the prevailing party that a cost was "incurred" but not yet "paid". This prevents an insurer from knowing whether to close their file or request updates from the prevailing party as to whether the cost was incurred, paid, subject to reimbursement, or should be refunded to the insurer.

For these reasons, SAIF urges the Board to reconsider its continued reference to costs "incurred" in the proposed changes to OAR 438-015-0019 and to instead change "incurred" costs to "paid" costs in the proposed rule.

SAIF appreciates the Board's consideration of SAIF's comments as well as the Board's engagement and collaborative approach to discuss issues that impact injured workers, insurers, employers, and their representatives.

Sincerely,

/s/ Elaine Schooler
Assistant General Counsel
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[1] January 9, 2026, Cost Bill Advisory Committee report, pg. 3.