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NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 438

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION BOARD

FILED: 05/22/2026 4:34 PM

ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Updating Workers' Compensation Board rule related to cost bill submissions.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/06/2026 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT:

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Filed By:

Autumn Blake

Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/22/2026

TIME: 9:30 AM

OFFICER: Cathy Ostrand

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 833-568-8864

CONFERENCE ID: 1655752317

NEED FOR THE RULE(S):

Practitioners requested that the Board consider amendments to OAR 438-015-0019 (Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute), to streamline and standardize the process of submitting a cost bill. The Board appointed an advisory committee, which recommended specific amendments.

Under ORS 656.386(2), if a claimant finally prevails against a denied claim, the claimant may recover reasonable expenses and costs for records, expert opinions, and witness fees from the insurer or self-insured employer. OAR 438-015-0019(3) provides the procedure for the claimant to submit a cost bill to the insurer or self-insured employer, and the information the cost bill must include. The Board proposes to amend the rule to extend the time frame to submit the cost bill from 30 days to 60 days, to make use of the Board's cost bill form mandatory, to require the cost bill form be submitted separately, and to allow the claimant's attorney to sign the cost bill form on the claimant's behalf.

The changes are needed to increase efficiency and reduce cost bill disputes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- January 9, 2026, Advisory Committee Report
- March 19, 2026, Board Meeting Minutes
- May 5, 2026, Memorandum to Board Members
- May 12, 2026, Board Meeting Minutes

These documents are or will be available on the Board's website at wcb.oregon.gov, or by calling 503-934-0123.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

The proposed rule amendments are intended to standardize and streamline the cost bill process, reduce disputes, and ensure claimants are reimbursed for reasonable costs and expenses related to litigation. The Board does not have sufficient data to estimate the specific effects on racial equity but invites public input.

FISCAL AND ECONOMIC IMPACT:

The proposed rule has a potential impact on insurers, self-insured employers, workers' compensation claimants, and any state agencies and local governments who employ claimants. By allowing an additional 30 days for claimants to submit cost bills, this may increase the amount of costs claimants are able to recover and the amount of costs insurers and self-insured employers are required to pay.

By amending the rule to require the use of a standardized cost bill form, it is anticipated that insurers and self-insured employers will be able to more efficiently process cost bills and provide timely payment to claimants.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) State agencies, local governments, and other businesses who employ workers' compensation claimants; workers' compensation claimants; insurers and self-insured employers; and attorneys who represent these entities' interests are likely to be economically affected by the rule.

(2)(a) There are approximately 1000 attorney firms within the workers' compensation system. The majority are considered small businesses as defined by ORS 183.310(10). Many of those firms represent workers and will be required to comply with the amended rule.

(2)(b) There may be a slightly increased administrative burden from the requirement to use the Board's form instead of other means.

(2)(c) The Board is unable to estimate the cost of increased administration but invites public input.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Claimant attorneys who are employed by or run small businesses were on the advisory committee and provided public comment at the Board's meetings regarding the proposed rule amendments. The workers' compensation Small Business Ombudsman was on the advisory committee and provided input on the committee's recommendations.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 438-015-0019

RULE SUMMARY: OAR 438-015-0019 amends the requirements that claimants and their attorneys must follow when submitting a cost bill to the insurer or self-insured employer.

CHANGES TO RULE:

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 ~~30~~ 60 days after the order under section (2) becomes final, a cost bill to the insurer or self-insured employer. The cost bill, ~~which may~~ must be submitted as a separate submission on a form prescribed by the Board, ~~shall and must~~ contain, but is not limited to, the following information: ¶

(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~~