Workers Compensation Benefit Overview – Oregon

Major Developments: Last major legislation in 2004 (SB899), affected indemnity rates, disability rating, medical treatment, medical-legal disputes, penalties, and apportionment. 2007 legislation affects caps on TD and post-surgical treatments.

Indemnity Issues

Temporary Total Benefits	Workers injured on or after 1/1/02, who are entitled to TT benefits on or after **7/1/07 (increase is every 7/1),** shall receive TT benefits equal to 66 2/3 of their average weekly wage up to a maximum weekly TT rate of **$1,051.21**. **This rate is reviewed by the state every year and Bulletin #111 publishes the yearly increase.** The minimum weekly TT rate shall not be less than $50.00 or 90% of their wage, whichever amount is less. Workers employed in more than one job at the time of injury, who lose wages from one or more of the additional jobs, are eligible for supplemental temporary disability payments under ORS 656.210(2) subject to the same maximum and minimum rates TT rates. Oregon has a 3 calendar day waiting period that begins on the first medically authorized date of WC disability. The waiting period is paid retroactively if total (vs. TP) disability continues to be medically approved for 14 consecutive days after the first date of total disability. The worker is entitled for payment of the waiting period if hospitalized as an inpatient within the first 14 days of disability. There is no limitation on the duration of TT benefits.
Temporary Partial Benefits	TP benefits are limited by the same maximum weekly TT rate **given above.** There is no minimum rate applied to TP benefits. The worker is not eligible to recover disability benefits from the waiting period if they have been released to modified work within the first 14 days following the date approved WC disability began. TP benefits are limited to 24 months duration.
Permanent Partial Benefits	An injured worker's eligibility for a PP award is evaluated by the attending physician when a worker is deemed to be medically stationary. Beginning with dates of injury of 1/1/05, Oregon pays PP awards are determined by multiplying the impairment value identified by the physician times 100 times the workers average weekly wage at the time of the injury. PP awards in excess of $6,000 are payable at 4.35 times the weekly temporary total disability rate in effect at the time the PP determination is made. **IW may request a lump sum payment via completion of a Lump Sum Application. This waives any rights to appeal the closing order.**

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Permanent Total Benefits	Monthly PT benefits are computed in relation to the State Average Weekly Wage in effect on the date of injury. Workers shall receive 66 2/3% of their weekly wage at the time of injury but not more than 100% of the State Average Weekly Wage. Refer to Oregon Workers Compensation Division Bulletin 111 for the SAWW information. The minimum amount of benefits payable to an injured worker is 90% of the workers weekly wage at the time of injury or $50 a week, whichever amount is less. The maximum amount of benefits payable to an injured worker is shown in the Bulletin 111 chart. If the date of injury was on or after 7/1/73 but prior to 10/23/99, the worker shall receive $5.00 for each eligible beneficiary not to exceed five in number. The total weekly benefit is multiplied by 4.35 to arrive at the monthly PT benefit payment rate.
Fatality Benefits	Fatal benefits payable as a result of injuries which occurred on or after 4/1/74 continue to be computed in relation to the State Average Weekly Wage in effect at the time of the injury. Any increases in the amounts payable depend upon Oregon WCD Retroactive Program benefit levels established by the WCD. Fatal benefits payable to a surviving spouse and children for injures occurring on or after 7/1/06 shall be computed in the following manner: The monthly benefit for a surviving spouse is 4.35 times 66 2/3% of the State Average Weekly Wage (refer to Oregon WCD Bulletin 111 for SAWW). In addition, monthly benefits shall also be paid in an amount equal to 4.35 times 10% of the SAWW for each child of the deceased who is substantially dependent on the spouse for support, until such child becomes 18 years of age or until age 23 if a full time student. The total monthly benefit paid to the surviving spouse shall not exceed 4.35 times 133 1/3% of the SAWW. Children of the deceased who are not substantially dependent on the surviving spouse for support, are entitled to monthly benefits paid in an amount equal to 4.35 times 25% of the SAWW for each child until such child becomes 18 years of age or until age 23 if a full time student. Regardless of the date of injury or death of the worker, a surviving spouse who remarries shall be entitled to a remarriage allowance, currently 36 times the spouse's monthly benefit, payable in a lump sum. The monthly payments for each child shall continue as before.
Vocational Rehabilitation	Vocation assistance in Oregon includes help with job placement and training. To qualify, the worker must have qualified for a PP award, could not return to the regular job at injury or to a job that pays at least 80% of the wage the worker was earning at the time of injury, and the injured worker must be authorized to work within the United States. Temporary total disability benefits are paid at the normal TT rate while the worker is in a vocational training program. A VR evaluation is required when the worker is medically stationary if they are not employed by the same employer as they had on the date of injury or if they are not performing the job at injury.
Settlement Allowed	Indemnity benefits can be settled by a Claim Disposition Agreement at any time. Settlements must be approved by an Oregon Administrative Law Judge.

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Cap on benefits, exceptions	Payments to aliens residing outside of United States. (1) If a beneficiary is an alien residing outside of the United States or its dependencies, payment of the sums due such beneficiary may, in the discretion of the Director of the Department of Consumer and Business Services, be made to the consul general of the country in which such beneficiary resides on behalf of the beneficiary. The receipt of the consul general to the director for the amounts thus paid shall be a full and sufficient receipt for the payment of the funds thus due the beneficiary. (2) If a beneficiary is an alien residing outside of the United States or its dependencies, the director may, in lieu of awarding such beneficiary compensation in the amount provided by this chapter, award such beneficiary such lesser sum by way of compensation which, according to the conditions and costs of living in the place of residence of such beneficiary will, in the opinion of the director, maintain the beneficiary in a like degree of comfort as a beneficiary of the same class residing in this state and receiving the full compensation authorized by this chapter. The director shall determine the amount of compensation benefits upon the basis of the rate of exchange between the United States and any foreign country as determined by the Federal Reserve Bank as of January 1 and July 1 of the year when paid.

Medical Issues

Initial Choice of Provider	The worker may choose the attending physician within the State of Oregon. Where the employer has a managed care arrangement in place, initial treatment must be with a network provider.
Change of Provider	The employee can make 2 changes of attending physician over the life of a claim without approval from the Director.
Medical Fee Schedule	Oregon implemented a medical fee schedule in 1982. The Workers Compensation Division adopts, by reference, parts of the Centers for Medicare & Medicaid Services Medicare Resource Based Relative Value Scale, the American Society of Anesthesiologists Relative Value Guide, and Current Procedural Terminology. Prescription drugs are reimbursed at the lesser of "usual and customary charge" or 95% of the average wholesale price plus a dispensing fee.
Managed Care	Any health care provider or group of medical service providers may make written application to the Director of the Department of Consumer and Business Services to become certified to provide managed care to injured workers. However, nothing in this section authorizes an organization that is formed, owned or operated by an insurer or employer other than a health care provider to become certified to provide managed care. The application for certification shall include, but not be limited to: (a) A list of the names of all individuals who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for that

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	individual to practice in this state. (b) A description of the times, places and manner of providing services under the plan. (c) A description of the times, places and manner of providing other related optional services the applicants wish to provide. (d) Satisfactory evidence of ability to comply with any financial requirements to insure delivery of service in accordance with the plan which the director may prescribe. Approved plan must provide adequate methods of peer review, service utilization review, quality assurance, contract review and dispute resolution to ensure appropriate treatment or to prevent inappropriate or excessive treatment, to exclude from participation in the plan those individuals who violate these treatment standards and to provide for the resolution of such medical disputes as the director considers appropriate.
Utilization Review	Certified managed care plans must have utilization review programs that include prospective, concurrent, and retrospective review.
Treatment Guidelines	Each managed care plan to develop its own treatment guidelines. Unless otherwise provided for by statute, or within utilization and treatment standards under an MCO contract, treatment typically does not exceed 15 office visits by any and all attending physicians or authorized nurse practitioners in the first 60 days from first date of treatment, and two visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment.
Medical Mileage Reimbursement Rate	**$0.55 per mile, effective 1/1/09. Bulletin #112**
Ability to Terminate Medical Treatment	Once a worker is medically stationary, the compensable WC claim may still have exposure for future medical treatment for the costs of medical services such as prescription drugs, diagnostic care, life-preserving care. Palliative care is covered if pre-approved by the insurer or WCD and allows the injured worker to continue to work, **keep the accepted condition(s) in a medically status**, or to participate in a vocational training program.
Settlement Allowed	Medical benefits can only be settled if in dispute via a Disputed Claim Settlement. Settlements must be approved by an Oregon Administrative Law Judge.
Cap on benefits, exceptions	None

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Other Issues

Staff Counsel	Staff counsel is not available in Oregon. Panel counsel is utilized and the panel firm is: VavRosky MacColl, PC 555 Benjamin Franklin Plaza One Southwest Columbia Portland OR 97258 503 223-2125
Hearings require attorney or claim handler participation	All hearings require attorney participation.
Occupational Diseases	ORS 656.802 defines what is covered under Oregon law: 656.802 Occupational disease; mental disorder; proof. (1)(a) As used in this chapter, "occupational disease" means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including: (A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances. (B) Any mental disorder, whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death. (C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death. (b) As used in this chapter, "mental disorder" includes any physical disorder caused or worsened by mental stress. (2)(a) The worker must prove that employment conditions were the major contributing cause of the disease. (b) If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease. (c) Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005 (7). (d) Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings. (e) Preexisting conditions shall be deemed causes in determining major contributing cause under this section. (3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following: (a) The employment conditions producing the mental disorder exist in a

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	real and objective sense. (b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles. (c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community. (d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment. (4) Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an "occupational disease." Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter's employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter's employment. [Amended by 1959 c.351 §1; 1961 c.583 §1; 1973 c.543 §1; 1977 c.734 §1; 1983 c.236 §1; 1987 c.713 §4; 1990 c.2 §43; 1995 c.332 §56]
Second Injury Fund availability	Any new compensable injury sustained by an injured worker within 3 years from the hire date as a state defined “Preferred Worker” has a claim eligible for SIF recovery from the Workers Benefit Fund.
Other Offset Opportunities	The employer providing the last injurious exposure is fully responsible for an occupational disease WC claim in Oregon.

State workers compensation website link: http://www.cbs.state.or.us/wcd/

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