Chapter 445

1965 REPLACEMENT PART

Indigents Injured in Motor Vehicle Accidents

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CROSS REFERENCES

Deaths or injuries to be reported, Ch. 146

Note: The powers, functions and duties of the former State Industrial Accident Commission under ORS 445.010 to 445.220 were transferred to the State Compensation Department by 1965 c.285 §69b.

445.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Ambulance operator" means any person operating an ambulance for hire.

(2) "Care" means:

(a) Treatment in and by a hospital.

(b) Professional services of a doctor.

(c) Professional services of a nurse.

(d) Medicines, substances, articles or appliances (except prosthetic appliances other than artificial limbs, which limbs shall remain, and be plainly and permanently marked and identified as, the property of the State of Oregon) supplied on the prescription or order of the doctor in charge of the case.

(e) Transportation and services by an ambulance operator.

(f) Supplying prosthetic appliances and services.

(g) Any combination of any two or more of the services listed in this subsection.

(3) "Claimant" means a hospital, doctor, nurse, pharmacy or ambulance operator who supplies care to an indigent patient, and who files a claim for his charges therefor pursuant to this chapter. In respect of a hospital, it includes the operator or managing officer thereof. "Claimant" also means an indigent patient, or his personal representative after his death, but claims allowed shall be paid directly to those who supply care to the indigent patient; and an indigent claimant, or his personal representative, has no right of appeal under ORS 445.160.

(4) "Department" means the State Compensation Department.

(5) "Doctor" means a person licensed by the appropriate board of this state to practice one or more of the healing arts.

(6) "Hospital" includes nursing homes and means any institution registered with the department as provided in ORS 445.080 and which admits and cares for patients suffering from motor vehicle injuries and applies for the benefits of this chapter in the manner provided in ORS 445.110.

(7) "Indigent patient" means a person who has suffered a motor vehicle injury and who is unable to pay the cost of the care supplied on account of such injury and, except in the case of a claim filed after a claim arising out of the same motor vehicle injury has been allowed by the department or finally adjudged affirmatively by a court on appeal as provided in ORS 445.160, whose account therefor remains unpaid at the expiration of 90 days after the termination of the care and who is not entitled to the benefits of the Workmen's Compensation Law of this state or any other state or country on account of such injury.

(8) "Motor vehicle injury" means any personal injury suffered by a human being, and accidentally caused in, by, or as the proximate result of, the movement of a motor vehicle on a public way, street or highway within this state, whether the injured person is the operator of the vehicle, a passenger in the same or another vehicle, a pedestrian or whatever the relationship of the injured person to the movement of the vehicle, and whether or not the vehicle is under the control of a human being at the time of the injury.

(9) "Nurse" means a person registered or licensed to practice nursing by the Oregon State Board of Nursing.

(10) "Pharmacy" means a place of business licensed by the State Board of Pharmacy, whereat drugs, medicines, prescriptions, chemicals or poisons are compounded, dispensed or sold at retail.

[Amended by 1953 c.399 §1; 1965 c.376 §1]

445.020 Determination of indigency. (1) A person injured by the movement of a motor vehicle is deemed unable to pay the charges for care if it appears that, upon due and diligent search and inquiry, he, or any other person chargeable by law with his care or support, cannot be found for service of summons, or that, should an action be brought and judgment secured against him, or against any other person chargeable by law with his care or support, for the amount of the charges, execution thereon would be unavailing.

(2) Indigency of a patient shall be determined as of the date on which the patient becomes unable to pay the cost of the care.

445.030 Motor Vehicle Accident Fund; source; payments. (1) There hereby is created a fund to be known as the Motor Vehicle Accident Fund, to be held and deposited by the State Treasurer in such banks as are authorized to receive deposits of the General Fund.

(2) All moneys received by the department under this chapter and under ORS

482.250 shall forthwith be paid to the State Treasurer, and shall become a part of the fund.

(3) The following shall be paid from the fund:

(a) All claims and benefits allowed by the department or finally adjudged affirmatively by a court on appeal in the amounts allowed or adjudged and within the limitations of ORS 445.060 and 445.070.

(b) All expenses of litigation incurred by the department on any appeal under ORS 445.160.

(c) All court costs and disbursements assessed against the department.

(d) All salaries, clerk hire, advances and reimbursement of travel costs and expenses incurred by the department in the administration of this chapter.

(4) Liability for payment of claims or judgments thereon, or both, and expenses authorized by this chapter shall be limited to the fund and all additions thereto made under this chapter.

[Amended by 1965 c.376 §2]

445.040 [Repealed by 1961 c.672 §2]

445.050 Jurisdiction and rule making of department. The department may:

(1) Hear and determine all questions within its jurisdiction.

(2) Promulgate and enforce all rules and regulations as may be proper in the administration and enforcement of this chapter.

445.060 Limitations on initial care. Except as provided in ORS 445.070, the payment of benefits authorized by this chapter is limited so that for care supplied to any one indigent patient by reason of any one motor vehicle injury:

(1) No hospital or hospitals shall receive from the fund more than $3,000, in the aggregate.

(2) No doctor or doctors shall receive from the fund more than $1,250, in the aggregate.

(3) No nurse or nurses shall receive from the fund more than $500, in the aggregate.

(4) No pharmacy or pharmacies shall receive from the fund more than $500, in the aggregate.

(5) No ambulance operator or ambulance operators shall receive from the fund more than $250, in the aggregate.

[Amended by 1953 c.399 §2]

445.070 Authority for and limitations of additional care. If it is made to appear to the department that the limitations of ORS 445.060 are not sufficient to provide necessary and adequate care of an indigent patient and that the condition of the indigent patient warrants such action, the department, in its sole discretion, the exercise of which shall be conclusive and not in any wise subject to review, may authorize the supplying of additional care to the indigent patient of the same type as the types of initial care authorized by this chapter and may pay for the same from the Motor Vehicle Accident Fund. No claim for additional care shall be enforceable under this chapter unless the department first approves and authorizes in writing the supplying of such additional care. No single authorization shall be for more than:

(1) For additional care supplied by a hospital or hospitals, $500.

(2) For additional care supplied by a doctor or doctors, $300.

(3) For additional care supplied by a nurse or nurses, $200.

(4) For additional care supplied by a pharmacy or pharmacies, $100.

(5) For additional care supplied by an ambulance operator or ambulance operators, $50.

445.080 Necessity for registration by participating hospitals; report of changes. (1) Any hospital which intends to, and before it may, avail itself of the benefits of this chapter, must apply therefor by registering with the department, by filing with the department a statement, under oath of the operator or managing officer of the hospital, setting forth:

(a) The name and address of the hospital.

(b) An agreement to abide, and be bound, under this chapter, by the schedule of hospitalization costs fixed and promulgated for industrial accident cases by the department and by all additions thereto and amendments thereof made by the department.

(c) Any other information and data the department may reasonably require.

(2) After initial registration, any change in any of the items set forth in such registration shall be promptly reported to the department, in writing and under oath, as in the case of an original registration.

445.090 Filing of claims; conditions; time for filing. (1) At the time of filing a claim under this chapter, the claimant shall:

(a) Agree to be bound by the schedule of fees fixed for industrial accident cases and by all additions thereto and amendments thereof made by the department.

(b) Submit to the department such information and data as the department may reasonably require.

(2) A claim filed under this chapter must be filed with the department within one year after the termination of the care supplied by the claimant. However, in computing the time there shall not be included that period beginning when any claim under ORS 656.001 to 656.794 arising out of the same motor vehicle accident is filed by the indigent patient with the department, and ending when that claim has been finally decided.

[Amended by 1953 c.399 §3; 1959 c.676 §1; 1965 c.376 §3]

445.100 [Repealed by 1965 c.376 §6]

445.110 Hospital claims; form and contents. Each claim shall be made in writing in the form prescribed by the department, and shall show, and be accompanied by, the following matters and things:

(1) The name and last-known postoffice address of the person to whom care has been given.

(2) The number of days' care, with the dates of admission to the hospital and of discharge therefrom or other termination of care.

(3) The amount of the claim.

(4) A statement in writing and under oath, showing the effort made by the hospital to collect the amount of the claim, the facts indicating the indigency of the patient, and the amount, if any, of money received from him or others in payment of his account.

(5) If reasonably obtainable, the affidavit of the indigent patient or of the person or agency, if any, responsible for him, and, if reasonably obtainable, the statement in writing of a public or private agency engaged in the relief of the poor, verifying the indigency of the patient. If the affidavit or statement does not accompany the claim, and it is alleged in the claim that such absence is owing to the fact that the affidavit or statement is not reasonably obtainable, the claim shall set forth the facts upon which such assertion is based.

(6) Any other information and data the department may reasonably require.

(7) Evidence that the hospital has conformed to ORS 87.555 to 87.585 and acquired a valid lien for assignment pursuant to ORS 445.170.

[Amended by 1965 c.376 §4]

445.120 Filing of claims generally; combining claims. (1) The claim of a claimant other than a hospital shall be in form and substance like that provided in ORS 445.110 in so far as applicable and be accompanied by the same supporting documents. However, only one set of supporting documents need be filed in respect of any one indigent patient in regard to any one motor vehicle injury.

(2) An account for the services of an orthodontist for orthodontia performed by him on the order of the doctor in charge of the case or an account for care supplied by a nurse, pharmacy or ambulance operator may be, with his consent, assigned to, and included as a part in and of the claim of, a hospital or doctor.

445.130 Effect of liability of third person or commencement of legal action on settlement of claim. For the purposes of claims under ORS 445.110 and 445.120, an indigent patient who is not otherwise able to pay the charges for care supplied shall not be deemed to be able to pay them because a third person might be held liable in an action to recover damages on account of the motor vehicle injury, if an action has not been commenced. If an action has been commenced, the claim shall show that fact. In that event the department may suspend the determination of the claim until the action has been terminated and from time to time require the claimant to supply such further information and data in respect of the action as the department may deem necessary in order to determine the ultimate ability of the patient to pay the charges for which the claim is filed.

445.140 Audit and determination of validity of claims. The department shall examine and audit each claim filed with it under this chapter. From the information and data contained in the claim, the reports of the claimant, the documents so accompanying and supporting the claim and such other evidence as it may reasonably require

or itself adduce, the department shall find and determine:

(1) Whether or not the claim has been filed within the time limited in ORS 445.090.

(2) Whether or not the claim is predicated upon care supplied to a person suffering from a motor vehicle injury.

(3) Whether or not the injured person is unable to pay the charges for which the claim is filed, within the meaning of ORS 445.020.

445.150 Filing of, and serving claimant with, order allowing or rejecting claim. (1) If, in the matter of the claim, the department finds and determines in the affirmative in respect of items listed in ORS 445.140, it shall, by its order made and filed in the matter, allow the claim in such amount, not exceeding the limitations in ORS 445.060 and 445.070, as may be in accordance with the schedules mentioned in ORS 445.080 and 445.090 and additions and amendments to such schedules, less such amount as has been paid on the account.

(2) If in its judgment the maintenance of the solvency of the Motor Vehicle Accident Fund so requires, the department may make payment in monthly instalments of any claim which has been allowed by it, or finally adjudged affirmatively by a court on appeal as provided in ORS 445.160.

(3) If the department finds and determines in the negative in respect of any item listed in ORS 445.140, it shall, by its order made and filed therein, reject the claim.

(4) The department promptly shall serve the claimant with a copy of its order, addressed to him at his last-known postoffice address as shown by the records and files of the department.

445.160 Appeal procedure. (1) Within 30 days after the mailing of the copy of order, any claimant aggrieved by the order may, if the amount to be involved in the appeal exceeds $100, appeal to the circuit court for the county in which the claimant resides or, if a corporation, has its principal office, or to the Circuit Court for Marion County. If an appeal is filed in other than a proper county, the court shall order it transferred to a proper county, unless the court and both parties consent that it be tried in the county where filed. The court may change the place of trial, as in other civil actions.

(2) The appeal shall be perfected by filing with the clerk of the circuit court a complaint, as in a civil action, and by serving a copy thereof by registered mail on the commission. Within 20 days after its receipt of the copy of complaint, the department shall move against, demur to, or answer, the complaint. Thereupon the action shall proceed as other civil actions, except that trial thereof shall be without a jury.

(3) Subsequent to perfection of the appeal, the department may, and within 10 days after receipt by it of a demand in writing by the plaintiff shall, file with the court a transcript of the claim and supporting documents, findings and determination, and order of allowance or rejection. The transcript, upon being so filed, shall become a part of the record in the action.

(4) If the amount to be involved in the appeal, exclusive of interest and costs and disbursements, exceeds $500, appeal may be taken from the judgment of the circuit court as in other civil actions.

445.170 Assignment to department of cause of action. The filing with the department of a claim under this chapter shall operate as an assignment to the department, for the use and benefit of the Motor Vehicle Accident Fund, of the cause of action of the claimant so filing it against the subject patient therein named and any other person chargeable by law with his care or support. Such assignment shall carry with it, and also vest in the department, any and all liens, rights, causes of suit and causes of action of the claimant under ORS 87.555 to 87.585, and all statutes supplemental thereto, or otherwise originating, arising out of, connected with or in anywise appurtenant to such first-mentioned cause of action so assigned to the department by operation of this section.

445.180 Reassignment of rights to claimant on notice of finding person liable for care. (1) If it comes to the knowledge of a claimant who has received payment of a claim under this chapter that the patient in respect of whom the claim has been paid, or any other person chargeable by law with his care or support, has been paid, or is able to pay, the amount thereof, the claimant immediately shall notify the department thereof in writing in such form as the department may prescribe, showing the name of the patient and the amount paid.

(2) If the department otherwise acquires knowledge of the fact that a patient in respect of whom a payment has been made by it under this chapter, or any other person chargeable by law with his care or support, has been paid, or is able to pay, the amount thereof, it shall notify the claimant who has received payment of his claim from the department of that fact, by written notice addressed to him, setting forth a brief statement of the facts thus coming to its knowledge, and specifying the amount of the paid claim, the date of the payment thereof, the name and residence, if known, of the person or persons from whom the amount of the payment may be recovered, and such other information and data as it may deem relevant.

(3) After notice is given pursuant to subsection (1) or (2) of this section, the cause of action and the liens, rights, causes of suit and causes of action assigned to the department by operation of ORS 445.170 shall be deemed to have been assigned back from the department to the claimant.

445.190 Claimant's duties to recover claim and reimburse the fund. (1) Within 30 days after the date of the assignment back under ORS 445.180, the claimant shall, unless the amount due on account of the cause of action has been paid in full in the interim, collect such amount, or the unpaid balance thereof, from the patient or other person chargeable by law with his care or support, or both, or, in default of such collection, institute action upon the cause of action against the patient or other person chargeable by law with his care or support, or both, if upon due and diligent search and inquiry the patient or such other person can be found.

(2) The claimant promptly, and in writing, shall inform the department of the collection of such amount, or of institution of the action, and the proceedings therein and status thereof, and, if judgment has been recovered therein and the amount of the judgment has not been realized, show by certified copies of the pertinent court records and files that all legal remedies for the satisfaction of the judgment have been exhausted.

(3) All moneys paid, subsequent to the giving of notice pursuant to ORS 445.180, to or for the use or benefit of the claimant on account of the claim, less the reasonable cost of recovering them, shall be, promptly as received by him, paid to the department and be, by the department, deposited in the Motor Vehicle Accident Fund.

445.200 Adjustment of reassigned claims; deductions from subsequent payments. When assignment back under ORS 445.180 has been effected, the department shall deduct the amount of the prior payment made by it to the claimant, less the reasonable cost of the recovery of any such refund made by the claimant to the department, from any payment to be made to the claimant under this chapter on or after the sixtieth day after the date of the assignment back, unless one of the following has been made satisfactorily to appear to the department:

(1) Upon due and diligent search and inquiry, neither the patient nor such other person chargeable by law with his care or support can be found.

(2) An action has been instituted against the patient or other person chargeable by law with his care or support on the cause of action so assigned back, or both, and the action has not been finally determined, and there is reasonable ground for delay.

(3) The action has been prosecuted to final judgment, and all legal remedies for the satisfaction of the judgment have been exhausted without realizing the amount thereof.

445.210 Validity of compromise settlement. No compromise settlement or release for a consideration less than the true amount thereof, including interest accrued, of a claim which has been filed with the department shall be valid unless it has been executed or authorized, as the case may be, in writing by the department.

445.220 Recovery of amounts not refunded by claimants. (1) Whenever, pursuant to ORS 445.200, the department would be required to deduct the unrefunded amount of a prior payment made by it to a claimant from a subsequent payment to the claimant, it shall, in the event no subsequent payment falls due within 90 days after the right to make the deduction has accrued, certify the unrefunded amount of the prior payment to the Attorney General for collection from the claimant. That amount, together with interest thereon accrued, may be recovered from the claimant in an action brought in the name of the State of Oregon by the Attorney

General for the use and benefit of the Motor Vehicle Accident Fund.

(2) The action shall be commenced within the time limited by law for the commencement of civil actions upon liabilities created by statute other than penalties and forfeitures.

(3) The cause of action shall be deemed to have accrued on the date on which such right of deduction arose.

445.230 Department's lien against award to indigent patient. The department has a lien upon any sum awarded to an indigent patient or his personal representatives by judgment or obtained by a settlement or compromise due to the motor vehicle injury to the extent of the amount paid to a claimant for care furnished to the indigent patient prior to the date of judgment, settlement or compromise. No lien under this section shall be allowed against any sum for necessary attorney fees, costs and expenses incurred by the indigent patient in securing the judgment, settlement or compromise.
[1961 c.470 §2]

445.240 Notice of lien; content; filing; service; docketing. In order to perfect the lien described in ORS 445.230, the department shall, not later than 15 days after it has made payment to the claimant, file a notice of lien substantially in the form prescribed for hospital liens in ORS 87.570, containing an itemized statement of the amount claimed, with the recording officer of the county wherein the injury was suffered, and shall, prior to the date of judgment, settlement or compromise, serve a copy of the notice of lien, certified by a representative of the department to be a true copy, by registered or certified mail upon the person alleged to be responsible for causing the injury and from whom damages are claimed, and upon his insurance carrier which has insured against such liability, if such insurance carrier is known. Upon receipt of the notice of lien the recording officer shall enter the name of the injured person, the approximate date of the injury, and the name and address of the department together with the amount claimed, in the hospital lien docket maintained in the county pursuant to ORS 87.575.
[1961 c.470 §3]

445.250 Liability of person who pays after notice of lien. Any person or insurer who, after the receipt of notice of lien in compliance with ORS 445.240, shall make any payment to the injured person, his heirs, personal representatives or the attorneys for any of them, as compensation for the injury suffered, without paying to the department the amount paid to claimants for care furnished the injured indigent and claimed in the notice of lien or so much thereof as can be satisfied out of the moneys due under any judgment, settlement or compromise, after paying the attorneys fees, costs and expenses incurred in connection therewith and any prior liens, shall, for a period of 180 days after the date of such payment, be liable to the department for the amount which the department was entitled to receive. The department shall, within such period, have a cause of action against the person or insurer making any such payment, which may be prosecuted in the county wherein the notice of lien has been filed.
[1961 c.470 §4]

445.260 Suit to foreclose lien; fee of recording officer. The lien under ORS 445.230 may be foreclosed by a suit in the district or circuit court. In any suit brought pursuant to ORS 445.230 to 445.260, upon entering a decree for the plaintiff, the court shall allow as part of the costs and disbursements, the amount to which the recording officer is entitled for the filing and recording of the notice of lien.
[1961 c.470 §5]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel