

Senate Bill 463

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND WORKFORCE DEVELOPMENT (at the request of Self-Insurers Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Extends period for acceptance or denial of workers' compensation claim from 60 days to 90 days.

A BILL FOR AN ACT

1
2 Relating to processing of workers' compensation claims; creating new provisions; and amending ORS
3 656.262, 656.308, 656.325 and 656.386.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 656.262 is amended to read:

6 656.262. (1) Processing of claims and providing compensation for a worker shall be the respon-
7 sibility of the insurer or self-insured employer. All employers shall assist their insurers in processing
8 claims as required in this chapter.

9 (2) The compensation due under this chapter shall be paid periodically, promptly and directly
10 to the person entitled thereto upon the employer's receiving notice or knowledge of a claim, except
11 where the right to compensation is denied by the insurer or self-insured employer.

12 (3)(a) Employers shall, immediately and not later than five days after notice or knowledge of any
13 claims or accidents which may result in a compensable injury claim, report the same to their
14 insurer. The report shall include:

15 (A) The date, time, cause and nature of the accident and injuries.

16 (B) Whether the accident arose out of and in the course of employment.

17 (C) Whether the employer recommends or opposes acceptance of the claim, and the reasons
18 therefor.

19 (D) The name and address of any health insurance provider for the injured worker.

20 (E) Any other details the insurer may require.

21 (b) Failure to so report subjects the offending employer to a charge for reimbursing the insurer
22 for any penalty the insurer is required to pay under subsection (11) of this section because of such
23 failure. As used in this subsection, "health insurance" has the meaning for that term provided in
24 ORS 731.162.

25 (4)(a) The first installment of temporary disability compensation shall be paid no later than the
26 14th day after the subject employer has notice or knowledge of the claim, if the attending physician
27 or nurse practitioner authorized to provide compensable medical services under ORS 656.245 au-
28 thORIZES the payment of temporary disability compensation. Thereafter, temporary disability com-
29 pensation shall be paid at least once each two weeks, except where the Director of the Department
30 of Consumer and Business Services determines that payment in installments should be made at some
31 other interval. The director may by rule convert monthly benefit schedules to weekly or other pe-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 riodic schedules.

2 (b) Notwithstanding any other provision of this chapter, if a self-insured employer pays to an
3 injured worker who becomes disabled the same wage at the same pay interval that the worker re-
4 ceived at the time of injury, such payment shall be deemed timely payment of temporary disability
5 payments pursuant to ORS 656.210 and 656.212 during the time the wage payments are made.

6 (c) Notwithstanding any other provision of this chapter, when the holder of a public office is
7 injured in the course and scope of that public office, full official salary paid to the holder of that
8 public office shall be deemed timely payment of temporary disability payments pursuant to ORS
9 656.210 and 656.212 during the time the wage payments are made. As used in this subsection, "public
10 office" has the meaning for that term provided in ORS 260.005.

11 (d) Temporary disability compensation is not due and payable for any period of time for which
12 the insurer or self-insured employer has requested from the worker's attending physician or nurse
13 practitioner authorized to provide compensable medical services under ORS 656.245 verification of
14 the worker's inability to work resulting from the claimed injury or disease and the physician or
15 nurse practitioner cannot verify the worker's inability to work, unless the worker has been unable
16 to receive treatment for reasons beyond the worker's control.

17 (e) If a worker fails to appear at an appointment with the worker's attending physician or nurse
18 practitioner authorized to provide compensable medical services under ORS 656.245, the insurer or
19 self-insured employer shall notify the worker by certified mail that temporary disability benefits may
20 be suspended after the worker fails to appear at a rescheduled appointment. If the worker fails to
21 appear at a rescheduled appointment, the insurer or self-insured employer may suspend payment of
22 temporary disability benefits to the worker until the worker appears at a subsequent rescheduled
23 appointment.

24 (f) If the insurer or self-insured employer has requested and failed to receive from the worker's
25 attending physician or nurse practitioner authorized to provide compensable medical services under
26 ORS 656.245 verification of the worker's inability to work resulting from the claimed injury or dis-
27 ease, medical services provided by the attending physician or nurse practitioner are not
28 compensable until the attending physician or nurse practitioner submits such verification.

29 (g) Temporary disability compensation is not due and payable pursuant to ORS 656.268 after the
30 worker's attending physician or nurse practitioner authorized to provide compensable medical ser-
31 vices under ORS 656.245 ceases to authorize temporary disability or for any period of time not au-
32 thorized by the attending physician or nurse practitioner. No authorization of temporary disability
33 compensation by the attending physician or nurse practitioner under ORS 656.268 shall be effective
34 to retroactively authorize the payment of temporary disability more than 14 days prior to its issu-
35 ance.

36 (h) The worker's disability may be authorized only by a person described in ORS 656.005
37 (12)(b)(B) or 656.245 for the period of time permitted by those sections. The insurer or self-insured
38 employer may unilaterally suspend payment of temporary disability benefits to the worker at the
39 expiration of the period until temporary disability is reauthorized by an attending physician or nurse
40 practitioner authorized to provide compensable medical services under ORS 656.245.

41 (i) The insurer or self-insured employer may unilaterally suspend payment of all compensation
42 to a worker enrolled in a managed care organization if the worker continues to seek care from an
43 attending physician or nurse practitioner authorized to provide compensable medical services under
44 ORS 656.245 that is not authorized by the managed care organization more than seven days after
45 the mailing of notice by the insurer or self-insured employer.

1 (5) Payment of compensation under subsection (4) of this section or payment, in amounts not to
2 exceed \$1,500 per claim, for medical services for nondisabling claims, may be made by the subject
3 employer if the employer so chooses. The making of such payments does not constitute a waiver or
4 transfer of the insurer's duty to determine entitlement to benefits. If the employer chooses to make
5 such payment, the employer shall report the injury to the insurer in the same manner that other
6 injuries are reported. However, an insurer shall not modify an employer's experience rating or
7 otherwise make charges against the employer for any medical expenses paid by the employer pur-
8 suant to this subsection.

9 (6)(a) Written notice of acceptance or denial of the claim shall be furnished to the claimant by
10 the insurer or self-insured employer within [60] 90 days after the employer has notice or knowledge
11 of the claim. Once the claim is accepted, the insurer or self-insured employer shall not revoke ac-
12 ceptance except as provided in this section. The insurer or self-insured employer may revoke ac-
13 ceptance and issue a denial at any time when the denial is for fraud, misrepresentation or other
14 illegal activity by the worker. If the worker requests a hearing on any revocation of acceptance and
15 denial alleging fraud, misrepresentation or other illegal activity, the insurer or self-insured employer
16 has the burden of proving, by a preponderance of the evidence, such fraud, misrepresentation or
17 other illegal activity. Upon such proof, the worker then has the burden of proving, by a preponder-
18 ance of the evidence, the compensability of the claim. If the insurer or self-insured employer accepts
19 a claim in good faith, in a case not involving fraud, misrepresentation or other illegal activity by
20 the worker, and later obtains evidence that the claim is not compensable or evidence that the
21 insurer or self-insured employer is not responsible for the claim, the insurer or self-insured employer
22 may revoke the claim acceptance and issue a formal notice of claim denial, if such revocation of
23 acceptance and denial is issued no later than two years after the date of the initial acceptance. If
24 the worker requests a hearing on such revocation of acceptance and denial, the insurer or self-
25 insured employer must prove, by a preponderance of the evidence, that the claim is not compensable
26 or that the insurer or self-insured employer is not responsible for the claim. Notwithstanding any
27 other provision of this chapter, if a denial of a previously accepted claim is set aside by an Admin-
28 istrative Law Judge, the Workers' Compensation Board or the court, temporary total disability
29 benefits are payable from the date any such benefits were terminated under the denial. Except as
30 provided in ORS 656.247, pending acceptance or denial of a claim, compensation payable to a
31 claimant does not include the costs of medical benefits or burial expenses. The insurer shall also
32 furnish the employer a copy of the notice of acceptance.

33 (b) The notice of acceptance shall:

34 (A) Specify what conditions are compensable.

35 (B) Advise the claimant whether the claim is considered disabling or nondisabling.

36 (C) Inform the claimant of the Expedited Claim Service and of the hearing and aggravation
37 rights concerning nondisabling injuries, including the right to object to a decision that the injury
38 of the claimant is nondisabling by requesting reclassification pursuant to ORS 656.277.

39 (D) Inform the claimant of employment reinstatement rights and responsibilities under ORS
40 chapter 659A.

41 (E) Inform the claimant of assistance available to employers and workers from the Reemploy-
42 ment Assistance Program under ORS 656.622.

43 (F) Be modified by the insurer or self-insured employer from time to time as medical or other
44 information changes a previously issued notice of acceptance.

45 (c) An insurer's or self-insured employer's acceptance of a combined or consequential condition

1 under ORS 656.005 (7), whether voluntary or as a result of a judgment or order, shall not preclude
2 the insurer or self-insured employer from later denying the combined or consequential condition if
3 the otherwise compensable injury ceases to be the major contributing cause of the combined or
4 consequential condition.

5 (d) An injured worker who believes that a condition has been incorrectly omitted from a notice
6 of acceptance, or that the notice is otherwise deficient, first must communicate in writing to the
7 insurer or self-insured employer the worker's objections to the notice pursuant to ORS 656.267. The
8 insurer or self-insured employer has [60] 90 days from receipt of the communication from the worker
9 to revise the notice or to make other written clarification in response. A worker who fails to comply
10 with the communication requirements of this paragraph or ORS 656.267 may not allege at any
11 hearing or other proceeding on the claim a de facto denial of a condition based on information in
12 the notice of acceptance from the insurer or self-insured employer. Notwithstanding any other
13 provision of this chapter, the worker may initiate objection to the notice of acceptance at any time.

14 (7)(a) After claim acceptance, written notice of acceptance or denial of claims for aggravation
15 or new medical or omitted condition claims properly initiated pursuant to ORS 656.267 shall be
16 furnished to the claimant by the insurer or self-insured employer within [60] 90 days after the
17 insurer or self-insured employer receives written notice of such claims. A worker who fails to com-
18 ply with the communication requirements of subsection (6) of this section or ORS 656.267 may not
19 allege at any hearing or other proceeding on the claim a de facto denial of a condition based on
20 information in the notice of acceptance from the insurer or self-insured employer.

21 (b) Once a worker's claim has been accepted, the insurer or self-insured employer must issue a
22 written denial to the worker when the accepted injury is no longer the major contributing cause
23 of the worker's combined condition before the claim may be closed.

24 (c) When an insurer or self-insured employer determines that the claim qualifies for claim clo-
25 sure, the insurer or self-insured employer shall issue at claim closure an updated notice of accept-
26 ance that specifies which conditions are compensable. The procedures specified in subsection (6)(d)
27 of this section apply to this notice. Any objection to the updated notice or appeal of denied condi-
28 tions shall not delay claim closure pursuant to ORS 656.268. If a condition is found compensable
29 after claim closure, the insurer or self-insured employer shall reopen the claim for processing re-
30 garding that condition.

31 (8) The assigned claims agent in processing claims under ORS 656.054 shall send notice of ac-
32 ceptance or denial to the noncomplying employer.

33 (9) If an insurer or any other duly authorized agent of the employer for such purpose, on record
34 with the Director of the Department of Consumer and Business Services denies a claim for com-
35 pensation, written notice of such denial, stating the reason for the denial, and informing the worker
36 of the Expedited Claim Service and of hearing rights under ORS 656.283, shall be given to the
37 claimant. A copy of the notice of denial shall be mailed to the director and to the employer by the
38 insurer. The worker may request a hearing pursuant to ORS 656.319.

39 (10) Merely paying or providing compensation shall not be considered acceptance of a claim or
40 an admission of liability, nor shall mere acceptance of such compensation be considered a waiver
41 of the right to question the amount thereof. Payment of permanent disability benefits pursuant to a
42 notice of closure, reconsideration order or litigation order, or the failure to appeal or seek review
43 of such an order or notice of closure, shall not preclude an insurer or self-insured employer from
44 subsequently contesting the compensability of the condition rated therein, unless the condition has
45 been formally accepted.

1 (11)(a) If the insurer or self-insured employer unreasonably delays or unreasonably refuses to
2 pay compensation, or unreasonably delays acceptance or denial of a claim, the insurer or self-
3 insured employer shall be liable for an additional amount up to 25 percent of the amounts then due
4 plus any attorney fees assessed under this section. The fees assessed by the director, an Adminis-
5 trative Law Judge, the board or the court under this section shall be proportionate to the benefit
6 to the injured worker. The board shall adopt rules for establishing the amount of the attorney fee,
7 giving primary consideration to the results achieved and to the time devoted to the case. An attor-
8 ney fee awarded pursuant to this subsection may not exceed \$2,000 absent a showing of extraor-
9 dinary circumstances. Notwithstanding any other provision of this chapter, the director shall have
10 exclusive jurisdiction over proceedings regarding solely the assessment and payment of the addi-
11 tional amount and attorney fees described in this subsection. The action of the director and the re-
12 view of the action taken by the director shall be subject to review under ORS 656.704.

13 (b) When the director does not have exclusive jurisdiction over proceedings regarding the as-
14 sessment and payment of the additional amount and attorney fees described in this subsection, the
15 provisions of this subsection shall apply in the other proceeding.

16 (12) The insurer may authorize an employer to pay compensation to injured workers and shall
17 reimburse employers for compensation so paid.

18 (13) Injured workers have the duty to cooperate and assist the insurer or self-insured employer
19 in the investigation of claims for compensation. Injured workers shall submit to and shall fully co-
20 operate with personal and telephonic interviews and other formal or informal information gathering
21 techniques. Injured workers who are represented by an attorney shall have the right to have the
22 attorney present during any personal or telephonic interview or deposition. However, if the attorney
23 is not willing or available to participate in an interview at a time reasonably chosen by the insurer
24 or self-insured employer within 14 days of the request for interview and the insurer or self-insured
25 employer has cause to believe that the attorney's unwillingness or unavailability is unreasonable
26 and is preventing the worker from complying within 14 days of the request for interview, the insurer
27 or self-insured employer shall notify the director. If the director determines that the attorney's un-
28 willingness or unavailability is unreasonable, the director shall assess a civil penalty against the
29 attorney of not more than \$1,000.

30 (14) If the director finds that a worker fails to reasonably cooperate with an investigation in-
31 volving an initial claim to establish a compensable injury or an aggravation claim to reopen the
32 claim for a worsened condition, the director shall suspend all or part of the payment of compen-
33 sation after notice to the worker. If the worker does not cooperate for an additional 30 days after
34 the notice, the insurer or self-insured employer may deny the claim because of the worker's failure
35 to cooperate. The obligation of the insurer or self-insured employer to accept or deny the claim
36 within [60] 90 days is suspended during the time of the worker's noncooperation. After such a denial,
37 the worker shall not be granted a hearing or other proceeding under this chapter on the merits of
38 the claim unless the worker first requests and establishes at an expedited hearing under ORS
39 656.291 that the worker fully and completely cooperated with the investigation, that the worker
40 failed to cooperate for reasons beyond the worker's control or that the investigative demands were
41 unreasonable. If the Administrative Law Judge finds that the worker has not fully cooperated, the
42 Administrative Law Judge shall affirm the denial, and the worker's claim for injury shall remain
43 denied. If the Administrative Law Judge finds that the worker has cooperated, or that the investi-
44 gative demands were unreasonable, the Administrative Law Judge shall set aside the denial, order
45 the reinstatement of interim compensation if appropriate and remand the claim to the insurer or

1 self-insured employer to accept or deny the claim.

2 (15) In accordance with ORS 656.283 (4), the Administrative Law Judge assigned a request for
3 hearing for a claim for compensation involving more than one potentially responsible employer or
4 insurer may specify what is required of an injured worker to reasonably cooperate with the inves-
5 tigation of the claim as required by subsection (13) of this section.

6 **SECTION 2.** ORS 656.262, as amended by section 10, chapter 811, Oregon Laws 2003, section
7 10, chapter 26, Oregon Laws 2005, section 2, chapter 511, Oregon Laws 2005, and section 3, chapter
8 588, Oregon Laws 2005, is amended to read:

9 656.262. (1) Processing of claims and providing compensation for a worker shall be the respon-
10 sibility of the insurer or self-insured employer. All employers shall assist their insurers in processing
11 claims as required in this chapter.

12 (2) The compensation due under this chapter shall be paid periodically, promptly and directly
13 to the person entitled thereto upon the employer's receiving notice or knowledge of a claim, except
14 where the right to compensation is denied by the insurer or self-insured employer.

15 (3)(a) Employers shall, immediately and not later than five days after notice or knowledge of any
16 claims or accidents which may result in a compensable injury claim, report the same to their
17 insurer. The report shall include:

18 (A) The date, time, cause and nature of the accident and injuries.

19 (B) Whether the accident arose out of and in the course of employment.

20 (C) Whether the employer recommends or opposes acceptance of the claim, and the reasons
21 therefor.

22 (D) The name and address of any health insurance provider for the injured worker.

23 (E) Any other details the insurer may require.

24 (b) Failure to so report subjects the offending employer to a charge for reimbursing the insurer
25 for any penalty the insurer is required to pay under subsection (11) of this section because of such
26 failure. As used in this subsection, "health insurance" has the meaning for that term provided in
27 ORS 731.162.

28 (4)(a) The first installment of temporary disability compensation shall be paid no later than the
29 14th day after the subject employer has notice or knowledge of the claim, if the attending physician
30 authorizes the payment of temporary disability compensation. Thereafter, temporary disability com-
31 pensation shall be paid at least once each two weeks, except where the Director of the Department
32 of Consumer and Business Services determines that payment in installments should be made at some
33 other interval. The director may by rule convert monthly benefit schedules to weekly or other pe-
34 riodic schedules.

35 (b) Notwithstanding any other provision of this chapter, if a self-insured employer pays to an
36 injured worker who becomes disabled the same wage at the same pay interval that the worker re-
37 ceived at the time of injury, such payment shall be deemed timely payment of temporary disability
38 payments pursuant to ORS 656.210 and 656.212 during the time the wage payments are made.

39 (c) Notwithstanding any other provision of this chapter, when the holder of a public office is
40 injured in the course and scope of that public office, full official salary paid to the holder of that
41 public office shall be deemed timely payment of temporary disability payments pursuant to ORS
42 656.210 and 656.212 during the time the wage payments are made. As used in this subsection, "public
43 office" has the meaning for that term provided in ORS 260.005.

44 (d) Temporary disability compensation is not due and payable for any period of time for which
45 the insurer or self-insured employer has requested from the worker's attending physician verification

1 of the worker's inability to work resulting from the claimed injury or disease and the physician
2 cannot verify the worker's inability to work, unless the worker has been unable to receive treatment
3 for reasons beyond the worker's control.

4 (e) If a worker fails to appear at an appointment with the worker's attending physician, the
5 insurer or self-insured employer shall notify the worker by certified mail that temporary disability
6 benefits may be suspended after the worker fails to appear at a rescheduled appointment. If the
7 worker fails to appear at a rescheduled appointment, the insurer or self-insured employer may sus-
8 pend payment of temporary disability benefits to the worker until the worker appears at a subse-
9 quent rescheduled appointment.

10 (f) If the insurer or self-insured employer has requested and failed to receive from the worker's
11 attending physician verification of the worker's inability to work resulting from the claimed injury
12 or disease, medical services provided by the attending physician are not compensable until the at-
13 tending physician submits such verification.

14 (g) Temporary disability compensation is not due and payable pursuant to ORS 656.268 after the
15 worker's attending physician ceases to authorize temporary disability or for any period of time not
16 authorized by the attending physician. No authorization of temporary disability compensation by the
17 attending physician under ORS 656.268 shall be effective to retroactively authorize the payment of
18 temporary disability more than 14 days prior to its issuance.

19 (h) The worker's disability may be authorized only by a person described in ORS 656.005
20 (12)(b)(B) or 656.245 (5) for the period of time permitted by those sections. The insurer or self-insured
21 employer may unilaterally suspend payment of temporary disability benefits to the worker at the
22 expiration of the period until temporary disability is reauthorized by an attending physician.

23 (i) The insurer or self-insured employer may unilaterally suspend payment of all compensation
24 to a worker enrolled in a managed care organization if the worker continues to seek care from an
25 attending physician that is not authorized by the managed care organization more than seven days
26 after the mailing of notice by the insurer or self-insured employer.

27 (5) Payment of compensation under subsection (4) of this section or payment, in amounts not to
28 exceed \$1,500 per claim, for medical services for nondisabling claims, may be made by the subject
29 employer if the employer so chooses. The making of such payments does not constitute a waiver or
30 transfer of the insurer's duty to determine entitlement to benefits. If the employer chooses to make
31 such payment, the employer shall report the injury to the insurer in the same manner that other
32 injuries are reported. However, an insurer shall not modify an employer's experience rating or
33 otherwise make charges against the employer for any medical expenses paid by the employer pur-
34 suant to this subsection.

35 (6)(a) Written notice of acceptance or denial of the claim shall be furnished to the claimant by
36 the insurer or self-insured employer within [60] 90 days after the employer has notice or knowledge
37 of the claim. Once the claim is accepted, the insurer or self-insured employer shall not revoke ac-
38 ceptance except as provided in this section. The insurer or self-insured employer may revoke ac-
39 ceptance and issue a denial at any time when the denial is for fraud, misrepresentation or other
40 illegal activity by the worker. If the worker requests a hearing on any revocation of acceptance and
41 denial alleging fraud, misrepresentation or other illegal activity, the insurer or self-insured employer
42 has the burden of proving, by a preponderance of the evidence, such fraud, misrepresentation or
43 other illegal activity. Upon such proof, the worker then has the burden of proving, by a preponder-
44 ance of the evidence, the compensability of the claim. If the insurer or self-insured employer accepts
45 a claim in good faith, in a case not involving fraud, misrepresentation or other illegal activity by

1 the worker, and later obtains evidence that the claim is not compensable or evidence that the
2 insurer or self-insured employer is not responsible for the claim, the insurer or self-insured employer
3 may revoke the claim acceptance and issue a formal notice of claim denial, if such revocation of
4 acceptance and denial is issued no later than two years after the date of the initial acceptance. If
5 the worker requests a hearing on such revocation of acceptance and denial, the insurer or self-
6 insured employer must prove, by a preponderance of the evidence, that the claim is not compensable
7 or that the insurer or self-insured employer is not responsible for the claim. Notwithstanding any
8 other provision of this chapter, if a denial of a previously accepted claim is set aside by an Admin-
9 istrative Law Judge, the Workers' Compensation Board or the court, temporary total disability
10 benefits are payable from the date any such benefits were terminated under the denial. Except as
11 provided in ORS 656.247, pending acceptance or denial of a claim, compensation payable to a
12 claimant does not include the costs of medical benefits or burial expenses. The insurer shall also
13 furnish the employer a copy of the notice of acceptance.

14 (b) The notice of acceptance shall:

15 (A) Specify what conditions are compensable.

16 (B) Advise the claimant whether the claim is considered disabling or nondisabling.

17 (C) Inform the claimant of the Expedited Claim Service and of the hearing and aggravation
18 rights concerning nondisabling injuries, including the right to object to a decision that the injury
19 of the claimant is nondisabling by requesting reclassification pursuant to ORS 656.277.

20 (D) Inform the claimant of employment reinstatement rights and responsibilities under ORS
21 chapter 659A.

22 (E) Inform the claimant of assistance available to employers and workers from the Reemploy-
23 ment Assistance Program under ORS 656.622.

24 (F) Be modified by the insurer or self-insured employer from time to time as medical or other
25 information changes a previously issued notice of acceptance.

26 (c) An insurer's or self-insured employer's acceptance of a combined or consequential condition
27 under ORS 656.005 (7), whether voluntary or as a result of a judgment or order, shall not preclude
28 the insurer or self-insured employer from later denying the combined or consequential condition if
29 the otherwise compensable injury ceases to be the major contributing cause of the combined or
30 consequential condition.

31 (d) An injured worker who believes that a condition has been incorrectly omitted from a notice
32 of acceptance, or that the notice is otherwise deficient, first must communicate in writing to the
33 insurer or self-insured employer the worker's objections to the notice pursuant to ORS 656.267. The
34 insurer or self-insured employer has [60] 90 days from receipt of the communication from the worker
35 to revise the notice or to make other written clarification in response. A worker who fails to comply
36 with the communication requirements of this paragraph or ORS 656.267 may not allege at any
37 hearing or other proceeding on the claim a de facto denial of a condition based on information in
38 the notice of acceptance from the insurer or self-insured employer. Notwithstanding any other
39 provision of this chapter, the worker may initiate objection to the notice of acceptance at any time.

40 (7)(a) After claim acceptance, written notice of acceptance or denial of claims for aggravation
41 or new medical or omitted condition claims properly initiated pursuant to ORS 656.267 shall be
42 furnished to the claimant by the insurer or self-insured employer within [60] 90 days after the
43 insurer or self-insured employer receives written notice of such claims. A worker who fails to com-
44 ply with the communication requirements of subsection (6) of this section or ORS 656.267 may not
45 allege at any hearing or other proceeding on the claim a de facto denial of a condition based on

1 information in the notice of acceptance from the insurer or self-insured employer.

2 (b) Once a worker's claim has been accepted, the insurer or self-insured employer must issue a
3 written denial to the worker when the accepted injury is no longer the major contributing cause
4 of the worker's combined condition before the claim may be closed.

5 (c) When an insurer or self-insured employer determines that the claim qualifies for claim clo-
6 sure, the insurer or self-insured employer shall issue at claim closure an updated notice of accept-
7 ance that specifies which conditions are compensable. The procedures specified in subsection (6)(d)
8 of this section apply to this notice. Any objection to the updated notice or appeal of denied condi-
9 tions shall not delay claim closure pursuant to ORS 656.268. If a condition is found compensable
10 after claim closure, the insurer or self-insured employer shall reopen the claim for processing re-
11 garding that condition.

12 (8) The assigned claims agent in processing claims under ORS 656.054 shall send notice of ac-
13 ceptance or denial to the noncomplying employer.

14 (9) If an insurer or any other duly authorized agent of the employer for such purpose, on record
15 with the Director of the Department of Consumer and Business Services denies a claim for com-
16 pensation, written notice of such denial, stating the reason for the denial, and informing the worker
17 of the Expedited Claim Service and of hearing rights under ORS 656.283, shall be given to the
18 claimant. A copy of the notice of denial shall be mailed to the director and to the employer by the
19 insurer. The worker may request a hearing pursuant to ORS 656.319.

20 (10) Merely paying or providing compensation shall not be considered acceptance of a claim or
21 an admission of liability, nor shall mere acceptance of such compensation be considered a waiver
22 of the right to question the amount thereof. Payment of permanent disability benefits pursuant to a
23 notice of closure, reconsideration order or litigation order, or the failure to appeal or seek review
24 of such an order or notice of closure, shall not preclude an insurer or self-insured employer from
25 subsequently contesting the compensability of the condition rated therein, unless the condition has
26 been formally accepted.

27 (11)(a) If the insurer or self-insured employer unreasonably delays or unreasonably refuses to
28 pay compensation, or unreasonably delays acceptance or denial of a claim, the insurer or self-
29 insured employer shall be liable for an additional amount up to 25 percent of the amounts then due
30 plus any attorney fees assessed under this section. The fees assessed by the director, an Adminis-
31 trative Law Judge, the board or the court under this section shall be proportionate to the benefit
32 to the injured worker. The board shall adopt rules for establishing the amount of the attorney fee,
33 giving primary consideration to the results achieved and to the time devoted to the case. An attor-
34 ney fee awarded pursuant to this subsection may not exceed \$2,000 absent a showing of extraor-
35 dinary circumstances. Notwithstanding any other provision of this chapter, the director shall have
36 exclusive jurisdiction over proceedings regarding solely the assessment and payment of the addi-
37 tional amount and attorney fees described in this subsection. The action of the director and the re-
38 view of the action taken by the director shall be subject to review under ORS 656.704.

39 (b) When the director does not have exclusive jurisdiction over proceedings regarding the as-
40 sessment and payment of the additional amount and attorney fees described in this subsection, the
41 provisions of this subsection shall apply in the other proceeding.

42 (12) The insurer may authorize an employer to pay compensation to injured workers and shall
43 reimburse employers for compensation so paid.

44 (13) Injured workers have the duty to cooperate and assist the insurer or self-insured employer
45 in the investigation of claims for compensation. Injured workers shall submit to and shall fully co-

1 operate with personal and telephonic interviews and other formal or informal information gathering
2 techniques. Injured workers who are represented by an attorney shall have the right to have the
3 attorney present during any personal or telephonic interview or deposition. However, if the attorney
4 is not willing or available to participate in an interview at a time reasonably chosen by the insurer
5 or self-insured employer within 14 days of the request for interview and the insurer or self-insured
6 employer has cause to believe that the attorney's unwillingness or unavailability is unreasonable
7 and is preventing the worker from complying within 14 days of the request for interview, the insurer
8 or self-insured employer shall notify the director. If the director determines that the attorney's un-
9 willingness or unavailability is unreasonable, the director shall assess a civil penalty against the
10 attorney of not more than \$1,000.

11 (14) If the director finds that a worker fails to reasonably cooperate with an investigation in-
12 volving an initial claim to establish a compensable injury or an aggravation claim to reopen the
13 claim for a worsened condition, the director shall suspend all or part of the payment of compen-
14 sation after notice to the worker. If the worker does not cooperate for an additional 30 days after
15 the notice, the insurer or self-insured employer may deny the claim because of the worker's failure
16 to cooperate. The obligation of the insurer or self-insured employer to accept or deny the claim
17 within [60] 90 days is suspended during the time of the worker's noncooperation. After such a denial,
18 the worker shall not be granted a hearing or other proceeding under this chapter on the merits of
19 the claim unless the worker first requests and establishes at an expedited hearing under ORS
20 656.291 that the worker fully and completely cooperated with the investigation, that the worker
21 failed to cooperate for reasons beyond the worker's control or that the investigative demands were
22 unreasonable. If the Administrative Law Judge finds that the worker has not fully cooperated, the
23 Administrative Law Judge shall affirm the denial, and the worker's claim for injury shall remain
24 denied. If the Administrative Law Judge finds that the worker has cooperated, or that the investi-
25 gative demands were unreasonable, the Administrative Law Judge shall set aside the denial, order
26 the reinstatement of interim compensation if appropriate and remand the claim to the insurer or
27 self-insured employer to accept or deny the claim.

28 (15) In accordance with ORS 656.283 (4), the Administrative Law Judge assigned a request for
29 hearing for a claim for compensation involving more than one potentially responsible employer or
30 insurer may specify what is required of an injured worker to reasonably cooperate with the inves-
31 tigation of the claim as required by subsection (13) of this section.

32 **SECTION 3.** ORS 656.308 is amended to read:

33 656.308. (1) When a worker sustains a compensable injury, the responsible employer shall remain
34 responsible for future compensable medical services and disability relating to the compensable con-
35 dition unless the worker sustains a new compensable injury involving the same condition. If a new
36 compensable injury occurs, all further compensable medical services and disability involving the
37 same condition shall be processed as a new injury claim by the subsequent employer. The standards
38 for determining the compensability of a combined condition under ORS 656.005 (7) shall also be used
39 to determine the occurrence of a new compensable injury or disease under this section.

40 (2)(a) Any insurer or self-insured employer who disputes responsibility for a claim shall so indi-
41 cate in or as part of a denial otherwise meeting the requirements of ORS 656.262 issued in the [60]
42 90 days allowed for processing of the claim. The denial shall advise the worker to file separate,
43 timely claims against other potentially responsible insurers or self-insured employers, including
44 other insurers for the same employer, in order to protect the right to obtain benefits on the claim.
45 The denial may list the names and addresses of other insurers or self-insured employers. Such de-

1 nials shall be final unless the worker files a timely request for hearing pursuant to ORS 656.319.
2 All such requests for hearing shall be consolidated into one proceeding.

3 (b) No insurer or self-insured employer, including other insurers for the same employer, shall
4 be joined to any workers' compensation hearing unless the worker has first filed a timely, written
5 claim against that insurer or self-insured employer, or the insurer or self-insured employer has
6 consented to issuance of an order designating a paying agent pursuant to ORS 656.307. An insurer
7 or self-insured employer against whom a claim is filed may contend that responsibility lies with an-
8 other insurer or self-insured employer, including another insurer for the same employer, regardless
9 of whether the worker has filed a claim against that insurer or self-insured employer.

10 (c) Upon written notice by an insurer or self-insured employer filed not more than 28 days or
11 less than 14 days before the hearing, the Administrative Law Judge shall dismiss that party from
12 the proceeding if the record does not contain substantial evidence to support a finding of responsi-
13 bility against that party. The Administrative Law Judge shall decide such motions and inform the
14 parties not less than seven days prior to the hearing, or postpone the hearing.

15 (d) Notwithstanding ORS 656.382 (2), 656.386 and 656.388, a reasonable attorney fee shall be
16 awarded to the injured worker for the appearance and active and meaningful participation by an
17 attorney in finally prevailing against a responsibility denial. Such a fee shall not exceed \$1,000
18 absent a showing of extraordinary circumstances.

19 (3) A worker who is a party to an approved disputed claim settlement agreement under ORS
20 656.289 (4) may not subsequently file a claim against an insurer or a self-insured employer who is
21 a party to the agreement with regard to claim conditions settled in the agreement even if other
22 insurers or employers disclaim responsibility for those claim conditions. A worker who is a party
23 to an approved claim disposition agreement under ORS 656.236 (1) may not subsequently file a claim
24 against an insurer or a self-insured employer who is a party to the agreement with regard to any
25 matter settled in the agreement even if other insurers or employers disclaim responsibility for those
26 claim conditions, unless the claim in the subsequent proceeding is limited to a claim for medical
27 services for claim conditions settled in the agreement.

28 **SECTION 4.** ORS 656.325 is amended to read:

29 656.325. (1)(a) Any worker entitled to receive compensation under this chapter is required, if
30 requested by the Director of the Department of Consumer and Business Services, the insurer or
31 self-insured employer, to submit to a medical examination at a time reasonably convenient for the
32 worker as may be provided by the rules of the director. No more than three independent medical
33 examinations may be requested except after notification to and authorization by the director. If the
34 worker refuses to submit to any such examination, or obstructs the same, the rights of the worker
35 to compensation shall be suspended with the consent of the director until the examination has taken
36 place, and no compensation shall be payable during or for account of such period. The provisions
37 of this paragraph are subject to the limitations on medical examinations provided in ORS 656.268.

38 (b) When a worker is requested by the director, the insurer or self-insured employer to attend
39 an independent medical examination, the examination must be conducted by a physician selected
40 from a list of qualified physicians established by the director under ORS 656.328.

41 (c) The director shall adopt rules applicable to independent medical examinations conducted
42 pursuant to paragraph (a) of this subsection that:

43 (A) Provide a worker the opportunity to request review by the director of the reasonableness
44 of the location selected for an independent medical examination. Upon receipt of the request for
45 review, the director shall conduct an expedited review of the location selected for the independent

1 medical examination and issue an order on the reasonableness of the location of the examination.
2 The director shall determine if there is substantial evidence for the objection to the location for the
3 independent medical examination based on a conclusion that the required travel is medically
4 contraindicated or other good cause establishing that the required travel is unreasonable. The de-
5 terminations of the director about the location of independent medical examinations are not subject
6 to review.

7 (B) Impose a monetary penalty against a worker who fails to attend an independent medical
8 examination without prior notification or without justification for not attending the examination. A
9 penalty imposed under this subparagraph may be imposed only on a worker who is not receiving
10 temporary disability benefits under ORS 656.210 or 656.212. An insurer or self-insured employer may
11 offset any future compensation payable to the worker to recover any penalty imposed under this
12 subparagraph from a claim with the same insurer or self-insured employer. When a penalty is re-
13 covered from temporary disability or permanent total disability benefits, the amount recovered from
14 each payment may not exceed 25 percent of the benefit payment without prior authorization from
15 the worker.

16 (C) Impose a sanction against a medical service provider that unreasonably fails to provide in
17 a timely manner diagnostic records required for an independent medical examination.

18 (d) [*Notwithstanding ORS 656.262 (6),*] If the director determines that the location selected for
19 an independent medical examination is unreasonable, the insurer or self-insured employer shall ac-
20 cept or deny the claim within 90 days after the employer has notice or knowledge of the claim.

21 (e) If the worker has made a timely request for a hearing on a denial of compensability as re-
22 quired by ORS 656.319 (1)(a) that is based on one or more reports of examinations conducted pur-
23 suant to paragraph (a) of this subsection and the worker's attending physician or nurse practitioner
24 authorized to provide compensable medical services under ORS 656.245 does not concur with the
25 report or reports, the worker may request an examination to be conducted by a physician selected
26 by the director from the list described in ORS 656.328. The cost of the examination and the exam-
27 ination report shall be paid by the insurer or self-insured employer.

28 (f) The insurer or self-insured employer shall pay the costs of the medical examination and re-
29 lated services which are reasonably necessary to allow the worker to submit to any examination
30 requested under this section. As used in this paragraph, "related services" includes, but is not lim-
31 ited to, child care, travel, meals, lodging and an amount equivalent to the worker's net lost wages
32 for the period during which the worker is absent if the worker does not receive benefits pursuant
33 to ORS 656.210 (4) during the period of absence. A claim for "related services" described in this
34 paragraph shall be made in the manner prescribed by the director.

35 (g) A worker who objects to the location of an independent medical examination must request
36 review by the director under paragraph (c)(A) of this subsection within six business days of the date
37 the notice of the independent medical examination was mailed.

38 (2) For any period of time during which any worker commits insanitary or injurious practices
39 which tend to either imperil or retard recovery of the worker, or refuses to submit to such medical
40 or surgical treatment as is reasonably essential to promote recovery, or fails to participate in a
41 program of physical rehabilitation, the right of the worker to compensation shall be suspended with
42 the consent of the director and no payment shall be made for such period. The period during which
43 such worker would otherwise be entitled to compensation may be reduced with the consent of the
44 director to such an extent as the disability has been increased by such refusal.

45 (3) A worker who has received an award for permanent total or permanent partial disability

1 should be encouraged to make a reasonable effort to reduce the disability; and the award shall be
2 subject to periodic examination and adjustment in conformity with ORS 656.268.

3 (4) When the employer of an injured worker, or the employer's insurer determines that the in-
4 jured worker has failed to follow medical advice from the attending physician or nurse practitioner
5 authorized to provide compensable medical services under ORS 656.245 or has failed to participate
6 in or complete physical restoration or vocational rehabilitation programs prescribed for the worker
7 pursuant to this chapter, the employer or insurer may petition the director for reduction of any
8 benefits awarded the worker. Notwithstanding any other provision of this chapter, if the director
9 finds that the worker has failed to accept treatment as provided in this subsection, the director may
10 reduce any benefits awarded the worker by such amount as the director considers appropriate.

11 (5)(a) Except as provided by ORS 656.268 (4)(c) and (10), an insurer or self-insured employer shall
12 cease making payments pursuant to ORS 656.210 and shall commence making payment of such
13 amounts as are due pursuant to ORS 656.212 when an injured worker refuses wage earning em-
14 ployment prior to claim determination and the worker's attending physician or nurse practitioner
15 authorized to provide compensable medical services under ORS 656.245, after being notified by the
16 employer of the specific duties to be performed by the injured worker, agrees that the injured
17 worker is capable of performing the employment offered.

18 (b) If the worker has been terminated for violation of work rules or other disciplinary reasons,
19 the insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and commence
20 payments pursuant to ORS 656.212 when the attending physician or nurse practitioner authorized
21 to provide compensable medical services under ORS 656.245 approves employment in a modified job
22 that would have been offered to the worker if the worker had remained employed, provided that the
23 employer has a written policy of offering modified work to injured workers.

24 (c) If the worker is a person present in the United States in violation of federal immigration
25 laws, the insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and com-
26 mence payments pursuant to ORS 656.212 when the attending physician or nurse practitioner au-
27 thorized to provide compensable medical services under ORS 656.245 approves employment in a
28 modified job whether or not such a job is available.

29 (6) Any party may request a hearing on any dispute under this section pursuant to ORS 656.283.

30 **SECTION 5.** ORS 656.325, as amended by section 12, chapter 657, Oregon Laws 2003, section
31 14, chapter 811, Oregon Laws 2003, and section 2, chapter 675, Oregon Laws 2005, is amended to
32 read:

33 656.325. (1)(a) Any worker entitled to receive compensation under this chapter is required, if
34 requested by the Director of the Department of Consumer and Business Services, the insurer or
35 self-insured employer, to submit to a medical examination at a time reasonably convenient for the
36 worker as may be provided by the rules of the director. No more than three independent medical
37 examinations may be requested except after notification to and authorization by the director. If the
38 worker refuses to submit to any such examination, or obstructs the same, the rights of the worker
39 to compensation shall be suspended with the consent of the director until the examination has taken
40 place, and no compensation shall be payable during or for account of such period. The provisions
41 of this paragraph are subject to the limitations on medical examinations provided in ORS 656.268.

42 (b) When a worker is requested by the director, the insurer or self-insured employer to attend
43 an independent medical examination, the examination must be conducted by a physician selected
44 from a list of qualified physicians established by the director under ORS 656.328.

45 (c) The director shall adopt rules applicable to independent medical examinations conducted

1 pursuant to paragraph (a) of this subsection that:

2 (A) Provide a worker the opportunity to request review by the director of the reasonableness
3 of the location selected for an independent examination. Upon receipt of the request for review, the
4 director shall conduct an expedited review of the location selected for the independent medical ex-
5 amination and issue an order on the reasonableness of the location of the examination. The director
6 shall determine if there is substantial evidence for the objection to the location for the independent
7 medical examination based on a conclusion that the required travel is medically contraindicated or
8 other good cause establishing that the required travel is unreasonable. The determinations of the
9 director about the location of independent medical examinations are not subject to review.

10 (B) Impose a monetary penalty against a worker who fails to attend an independent medical
11 examination without prior notification or without justification for not attending the examination. A
12 penalty imposed under this subparagraph may be imposed only on a worker who is not receiving
13 temporary disability benefits under ORS 656.210 or 656.212. An insurer or self-insured employer may
14 offset any future compensation payable to the worker to recover any penalty imposed under this
15 subparagraph from a claim with the same insurer or self-insured employer. When a penalty is re-
16 covered from temporary disability or permanent total disability benefits, the amount recovered from
17 each payment may not exceed 25 percent of the benefit payment without prior authorization from
18 the worker.

19 (C) Impose a sanction against a medical service provider that unreasonably fails to provide in
20 a timely manner diagnostic records required for an independent medical examination.

21 (d) [*Notwithstanding ORS 656.262 (6),*] If the director determines that the location selected for
22 an independent medical examination is unreasonable, the insurer or self-insured employer shall ac-
23 cept or deny the claim within 90 days after the employer has notice or knowledge of the claim.

24 (e) If the worker has made a timely request for a hearing on a denial of compensability as re-
25 quired by ORS 656.319 (1)(a) that is based on one or more reports of examinations conducted pur-
26 suant to paragraph (a) of this subsection and the worker's attending physician does not concur with
27 the report or reports, the worker may request an examination to be conducted by a physician se-
28 lected by the director from the list described in ORS 656.328. The cost of the examination and the
29 examination report shall be paid by the insurer or self-insured employer.

30 (f) The insurer or self-insured employer shall pay the costs of the medical examination and re-
31 lated services which are reasonably necessary to allow the worker to submit to any examination
32 requested under this section. As used in this paragraph, "related services" includes, but is not lim-
33 ited to, child care, travel, meals, lodging and an amount equivalent to the worker's net lost wages
34 for the period during which the worker is absent if the worker does not receive benefits pursuant
35 to ORS 656.210 (4) during the period of absence. A claim for "related services" described in this
36 paragraph shall be made in the manner prescribed by the director.

37 (g) A worker who objects to the location of an independent medical examination must request
38 review by the director under paragraph (c)(A) of this subsection within six business days of the date
39 the notice of the independent medical examination was mailed.

40 (2) For any period of time during which any worker commits insanitary or injurious practices
41 which tend to either imperil or retard recovery of the worker, or refuses to submit to such medical
42 or surgical treatment as is reasonably essential to promote recovery, or fails to participate in a
43 program of physical rehabilitation, the right of the worker to compensation shall be suspended with
44 the consent of the director and no payment shall be made for such period. The period during which
45 such worker would otherwise be entitled to compensation may be reduced with the consent of the

1 director to such an extent as the disability has been increased by such refusal.

2 (3) A worker who has received an award for unscheduled permanent total or unscheduled partial
3 disability should be encouraged to make a reasonable effort to reduce the disability; and the award
4 shall be subject to periodic examination and adjustment in conformity with ORS 656.268.

5 (4) When the employer of an injured worker, or the employer's insurer determines that the in-
6 jured worker has failed to follow medical advice from the attending physician or has failed to par-
7 ticipate in or complete physical restoration or vocational rehabilitation programs prescribed for the
8 worker pursuant to this chapter, the employer or insurer may petition the director for reduction of
9 any benefits awarded the worker. Notwithstanding any other provision of this chapter, if the direc-
10 tor finds that the worker has failed to accept treatment as provided in this subsection, the director
11 may reduce any benefits awarded the worker by such amount as the director considers appropriate.

12 (5)(a) Except as provided by ORS 656.268 (4)(c) and (10), an insurer or self-insured employer shall
13 cease making payments pursuant to ORS 656.210 and shall commence making payment of such
14 amounts as are due pursuant to ORS 656.212 when an injured worker refuses wage earning em-
15 ployment prior to claim determination and the worker's attending physician, after being notified by
16 the employer of the specific duties to be performed by the injured worker, agrees that the injured
17 worker is capable of performing the employment offered.

18 (b) If the worker has been terminated for violation of work rules or other disciplinary reasons,
19 the insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and commence
20 payments pursuant to ORS 656.212 when the attending physician approves employment in a modified
21 job that would have been offered to the worker if the worker had remained employed, provided that
22 the employer has a written policy of offering modified work to injured workers.

23 (c) If the worker is a person present in the United States in violation of federal immigration
24 laws, the insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and com-
25 mence payments pursuant to ORS 656.212 when the attending physician approves employment in a
26 modified job whether or not such a job is available.

27 (6) Any party may request a hearing on any dispute under this section pursuant to ORS 656.283.

28 **SECTION 6.** ORS 656.386 is amended to read:

29 656.386. (1)(a) In all cases involving denied claims where a claimant finally prevails against the
30 denial in an appeal to the Court of Appeals or petition for review to the Supreme Court, the court
31 shall allow a reasonable attorney fee to the claimant's attorney. In such cases involving denied
32 claims where the claimant prevails finally in a hearing before an Administrative Law Judge or in
33 a review by the Workers' Compensation Board, then the Administrative Law Judge or board shall
34 allow a reasonable attorney fee. In such cases involving denied claims where an attorney is instru-
35 mental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge,
36 a reasonable attorney fee shall be allowed.

37 (b) For purposes of this section, a "denied claim" is:

38 (A) A claim for compensation which an insurer or self-insured employer refuses to pay on the
39 express ground that the injury or condition for which compensation is claimed is not compensable
40 or otherwise does not give rise to an entitlement to any compensation;

41 (B) A claim for compensation for a condition omitted from a notice of acceptance, made pursuant
42 to ORS 656.262 (6)(d), which the insurer or self-insured employer does not respond to within [60] 90
43 days; or

44 (C) A claim for an aggravation made pursuant to ORS 656.273 (2) or for a new medical condition
45 made pursuant to ORS 656.267, which the insurer or self-insured employer does not respond to

1 within [60] **90** days.

2 (c) A denied claim shall not be presumed or implied from an insurer's or self-insured employer's
3 failure to pay compensation for a previously accepted injury or condition in timely fashion. Attor-
4 ney fees provided for in this subsection shall be paid by the insurer or self-insured employer.

5 (2) In all other cases, attorney fees shall be paid from the increase in the claimant's compen-
6 sation, if any, except as otherwise expressly provided in this chapter.

7 **SECTION 7. The amendments to ORS 656.262, 656.308, 656.325 and 656.386 by sections 1,**
8 **2, 3, 4, 5 and 6 of this 2007 Act apply to any claim with a date of acceptance or denial on or**
9 **after January 1, 2008.**

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