

B-Engrossed
Senate Bill 504

Ordered by the House May 24
Including Senate Amendments dated May 1 and House Amendments dated
May 24

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.

[Requires physician serving as attending physician for workers' compensation claim to be responsible for treatment of worker's compensable injury on ongoing basis.] Allows emergency room physician who is not authorized to serve as attending physician to authorize temporary disability benefits for maximum of 14 days.

A BILL FOR AN ACT

1
2 Relating to attending physicians for workers' compensation claims; amending ORS 656.005 and
3 656.245.

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

5 **SECTION 1.** ORS 656.005 is amended to read:

6 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered em-
7 ployment, as determined by the Employment Department, for the last quarter of the calendar year
8 preceding the fiscal year in which the injury occurred.

9 (2) "Beneficiary" means an injured worker, and the husband, wife, child or dependent of a
10 worker, who is entitled to receive payments under this chapter. "Beneficiary" does not include:

11 (a) A spouse of an injured worker living in a state of abandonment for more than one year at
12 the time of the injury or subsequently. A spouse who has lived separate and apart from the worker
13 for a period of two years and who has not during that time received or attempted by process of law
14 to collect funds for support or maintenance is considered living in a state of abandonment.

15 (b) A person who intentionally causes the compensable injury to or death of an injured worker.

16 (3) "Board" means the Workers' Compensation Board.

17 (4) "Carrier-insured employer" means an employer who provides workers' compensation cover-
18 age with a guaranty contract insurer.

19 (5) "Child" includes a posthumous child, a child legally adopted prior to the injury, a child to-
20 ward whom the worker stands in loco parentis, an illegitimate child and a stepchild, if such
21 stepchild was, at the time of the injury, a member of the worker's family and substantially dependent
22 upon the worker for support. An invalid dependent child is a child, for purposes of benefits, re-
23 gardless of age, so long as the child was an invalid at the time of the accident and thereafter re-
24 mains an invalid substantially dependent on the worker for support. For purposes of this chapter,
25 an invalid dependent child is considered to be a child under 18 years of age.

26 (6) "Claim" means a written request for compensation from a subject worker or someone on the

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 worker's behalf, or any compensable injury of which a subject employer has notice or knowledge.

2 (7)(a) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appli-
3 cances, arising out of and in the course of employment requiring medical services or resulting in
4 disability or death; an injury is accidental if the result is an accident, whether or not due to acci-
5 dental means, if it is established by medical evidence supported by objective findings, subject to the
6 following limitations:

7 (A) No injury or disease is compensable as a consequence of a compensable injury unless the
8 compensable injury is the major contributing cause of the consequential condition.

9 (B) If an otherwise compensable injury combines at any time with a preexisting condition to
10 cause or prolong disability or a need for treatment, the combined condition is compensable only if,
11 so long as and to the extent that the otherwise compensable injury is the major contributing cause
12 of the disability of the combined condition or the major contributing cause of the need for treatment
13 of the combined condition.

14 (b) "Compensable injury" does not include:

15 (A) Injury to any active participant in assaults or combats which are not connected to the job
16 assignment and which amount to a deviation from customary duties;

17 (B) Injury incurred while engaging in or performing, or as the result of engaging in or per-
18 forming, any recreational or social activities primarily for the worker's personal pleasure; or

19 (C) Injury the major contributing cause of which is demonstrated to be by a preponderance of
20 the evidence the injured worker's consumption of alcoholic beverages or the unlawful consumption
21 of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of
22 such consumption.

23 (c) A "disabling compensable injury" is an injury which entitles the worker to compensation for
24 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless
25 there is a reasonable expectation that permanent disability will result from the injury.

26 (d) A "nondisabling compensable injury" is any injury which requires medical services only.

27 (8) "Compensation" includes all benefits, including medical services, provided for a compensable
28 injury to a subject worker or the worker's beneficiaries by an insurer or self-insured employer pur-
29 suant to this chapter.

30 (9) "Department" means the Department of Consumer and Business Services.

31 (10) "Dependent" means any of the following-named relatives of a worker whose death results
32 from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson,
33 granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the
34 accident, are dependent in whole or in part for their support upon the earnings of the worker.
35 Unless otherwise provided by treaty, aliens not residing within the United States at the time of the
36 accident other than father, mother, husband, wife or children are not included within the term "de-
37 pendent."

38 (11) "Director" means the Director of the Department of Consumer and Business Services.

39 (12)(a) "Doctor" or "physician" means a person duly licensed to practice one or more of the
40 healing arts in any country or in any state, territory or possession of the United States within the
41 limits of the license of the licentiate.

42 (b) Except as otherwise provided for workers subject to a managed care contract, "attending
43 physician" means a doctor or physician who is primarily responsible for the treatment of a worker's
44 compensable injury and who is:

45 (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the

1 Board of Medical Examiners for the State of Oregon or an oral and maxillofacial surgeon licensed
2 by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state,
3 territory or possession of the United States; or

4 (B) For a period of 30 days from the date of first visit on the initial claim or for 12 visits,
5 whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners
6 for the State of Oregon or a similarly licensed doctor or physician in any country or in any state,
7 territory or possession of the United States.

8 (c) **Except as otherwise provided for workers subject to a managed care contract, “at-**
9 **tending physician” does not include a physician who provides care in a hospital emergency**
10 **room and refers the injured worker to a primary care physician for follow-up care and**
11 **treatment.**

12 [(c)] (d) “Consulting physician” means a doctor or physician who examines a worker or the
13 worker’s medical record to advise the attending physician or nurse practitioner authorized to pro-
14 vide compensable medical services under ORS 656.245 regarding treatment of a worker’s
15 compensable injury.

16 (13)(a) “Employer” means any person, including receiver, administrator, executor or trustee, and
17 the state, state agencies, counties, municipal corporations, school districts and other public corpo-
18 rations or political subdivisions, who contracts to pay a remuneration for and secures the right to
19 direct and control the services of any person.

20 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of
21 a temporary service provider is not the employer of temporary workers provided by the temporary
22 service provider.

23 (c) As used in paragraph (b) of this subsection, “temporary service provider” has the meaning
24 for that term provided in ORS 656.850.

25 (14) “Guaranty contract insurer” and “insurer” mean the State Accident Insurance Fund Cor-
26 poration or an insurer authorized under ORS chapter 731 to transact workers’ compensation insur-
27 ance in this state or an assigned claims agent selected by the director under ORS 656.054.

28 (15) “Consumer and Business Services Fund” means the fund created by ORS 705.145.

29 (16) “Invalid” means one who is physically or mentally incapacitated from earning a livelihood.

30 (17) “Medically stationary” means that no further material improvement would reasonably be
31 expected from medical treatment, or the passage of time.

32 (18) “Noncomplying employer” means a subject employer who has failed to comply with ORS
33 656.017.

34 (19) “Objective findings” in support of medical evidence are verifiable indications of injury or
35 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and
36 palpable muscle spasm. “Objective findings” does not include physical findings or subjective re-
37 sponses to physical examinations that are not reproducible, measurable or observable.

38 (20) “Palliative care” means medical service rendered to reduce or moderate temporarily the
39 intensity of an otherwise stable medical condition, but does not include those medical services ren-
40 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

41 (21) “Party” means a claimant for compensation, the employer of the injured worker at the time
42 of injury and the insurer, if any, of such employer.

43 (22) “Payroll” means a record of wages payable to workers for their services and includes
44 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or
45 similar advantage received from the employer. However, “payroll” does not include overtime pay,

1 vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments
2 to reward workers for safe working practices. Bonus pay is limited to payments which are not an-
3 ticipated under the contract of employment and which are paid at the sole discretion of the em-
4 ployer. The exclusion from payroll of bonus payments to reward workers for safe working practices
5 is only for the purpose of calculations based on payroll to determine premium for workers' com-
6 pensation insurance, and does not affect any other calculation or determination based on payroll for
7 the purposes of this chapter.

8 (23) "Person" includes partnership, joint venture, association, limited liability company and
9 corporation.

10 (24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, con-
11 genital abnormality, personality disorder or similar condition that contributes to disability or need
12 for treatment, provided that:

13 (A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the
14 worker has been diagnosed with such condition, or has obtained medical services for the symptoms
15 of the condition regardless of diagnosis; and

16 (B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes
17 the initial injury;

18 (ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the
19 new medical condition; or

20 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment
21 precedes the onset of the worsened condition.

22 (b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, con-
23 genital abnormality, personality disorder or similar condition that contributes to disability or need
24 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim
25 for worsening in such claims pursuant to ORS 656.273 or 656.278.

26 (c) For the purposes of industrial injury claims, a condition does not contribute to disability or
27 need for treatment if the condition merely renders the worker more susceptible to the injury.

28 (25) "Self-insured employer" means an employer or group of employers certified under ORS
29 656.430 as meeting the qualifications set out by ORS 656.407.

30 (26) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident
31 Insurance Fund Corporation created under ORS 656.752.

32 (27) "Subject employer" means an employer who is subject to this chapter as provided by ORS
33 656.023.

34 (28) "Subject worker" means a worker who is subject to this chapter as provided by ORS
35 656.027.

36 (29) "Wages" means the money rate at which the service rendered is recompensed under the
37 contract of hiring in force at the time of the accident, including reasonable value of board, rent,
38 housing, lodging or similar advantage received from the employer, and includes the amount of tips
39 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of
40 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips
41 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-
42 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at
43 which any worker shall be carried upon the payroll of the employer for the purpose of determining
44 the premium of the employer.

45 (30) "Worker" means any person, including a minor whether lawfully or unlawfully employed,

1 who engages to furnish services for a remuneration, subject to the direction and control of an em-
2 ployer and includes salaried, elected and appointed officials of the state, state agencies, counties,
3 cities, school districts and other public corporations, but does not include any person whose services
4 are performed as an inmate or ward of a state institution or as part of the eligibility requirements
5 for a general or public assistance grant. For the purpose of determining entitlement to temporary
6 disability benefits or permanent total disability benefits under this chapter, "worker" does not in-
7 clude a person who has withdrawn from the workforce during the period for which such benefits are
8 sought.

9 (31) "Independent contractor" has the meaning for that term provided in ORS 670.600.

10 **SECTION 2.** ORS 656.005, as amended by section 2, chapter 811, Oregon Laws 2003, is amended
11 to read:

12 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered em-
13 ployment, as determined by the Employment Department, for the last quarter of the calendar year
14 preceding the fiscal year in which the injury occurred.

15 (2) "Beneficiary" means an injured worker, and the husband, wife, child or dependent of a
16 worker, who is entitled to receive payments under this chapter. "Beneficiary" does not include:

17 (a) A spouse of an injured worker living in a state of abandonment for more than one year at
18 the time of the injury or subsequently. A spouse who has lived separate and apart from the worker
19 for a period of two years and who has not during that time received or attempted by process of law
20 to collect funds for support or maintenance is considered living in a state of abandonment.

21 (b) A person who intentionally causes the compensable injury to or death of an injured worker.

22 (3) "Board" means the Workers' Compensation Board.

23 (4) "Carrier-insured employer" means an employer who provides workers' compensation cover-
24 age with a guaranty contract insurer.

25 (5) "Child" includes a posthumous child, a child legally adopted prior to the injury, a child to-
26 ward whom the worker stands in loco parentis, an illegitimate child and a stepchild, if such
27 stepchild was, at the time of the injury, a member of the worker's family and substantially dependent
28 upon the worker for support. An invalid dependent child is a child, for purposes of benefits, re-
29 gardless of age, so long as the child was an invalid at the time of the accident and thereafter re-
30 mains an invalid substantially dependent on the worker for support. For purposes of this chapter,
31 an invalid dependent child is considered to be a child under 18 years of age.

32 (6) "Claim" means a written request for compensation from a subject worker or someone on the
33 worker's behalf, or any compensable injury of which a subject employer has notice or knowledge.

34 (7)(a) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appli-
35 ances, arising out of and in the course of employment requiring medical services or resulting in
36 disability or death; an injury is accidental if the result is an accident, whether or not due to acci-
37 dental means, if it is established by medical evidence supported by objective findings, subject to the
38 following limitations:

39 (A) No injury or disease is compensable as a consequence of a compensable injury unless the
40 compensable injury is the major contributing cause of the consequential condition.

41 (B) If an otherwise compensable injury combines at any time with a preexisting condition to
42 cause or prolong disability or a need for treatment, the combined condition is compensable only if,
43 so long as and to the extent that the otherwise compensable injury is the major contributing cause
44 of the disability of the combined condition or the major contributing cause of the need for treatment
45 of the combined condition.

1 (b) "Compensable injury" does not include:

2 (A) Injury to any active participant in assaults or combats which are not connected to the job
3 assignment and which amount to a deviation from customary duties;

4 (B) Injury incurred while engaging in or performing, or as the result of engaging in or per-
5 forming, any recreational or social activities primarily for the worker's personal pleasure; or

6 (C) Injury the major contributing cause of which is demonstrated to be by a preponderance of
7 the evidence the injured worker's consumption of alcoholic beverages or the unlawful consumption
8 of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of
9 such consumption.

10 (c) A "disabling compensable injury" is an injury which entitles the worker to compensation for
11 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless
12 there is a reasonable expectation that permanent disability will result from the injury.

13 (d) A "nondisabling compensable injury" is any injury which requires medical services only.

14 (8) "Compensation" includes all benefits, including medical services, provided for a compensable
15 injury to a subject worker or the worker's beneficiaries by an insurer or self-insured employer pur-
16 suant to this chapter.

17 (9) "Department" means the Department of Consumer and Business Services.

18 (10) "Dependent" means any of the following-named relatives of a worker whose death results
19 from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson,
20 granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the
21 accident, are dependent in whole or in part for their support upon the earnings of the worker.
22 Unless otherwise provided by treaty, aliens not residing within the United States at the time of the
23 accident other than father, mother, husband, wife or children are not included within the term "de-
24 pendent."

25 (11) "Director" means the Director of the Department of Consumer and Business Services.

26 (12)(a) "Doctor" or "physician" means a person duly licensed to practice one or more of the
27 healing arts in any country or in any state, territory or possession of the United States within the
28 limits of the license of the licentiate.

29 (b) Except as otherwise provided for workers subject to a managed care contract, "attending
30 physician" means a doctor or physician who is primarily responsible for the treatment of a worker's
31 compensable injury and who is:

32 (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the
33 Board of Medical Examiners for the State of Oregon or an oral and maxillofacial surgeon licensed
34 by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state,
35 territory or possession of the United States; or

36 (B) For a period of 30 days from the date of first visit on the initial claim or for 12 visits,
37 whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners
38 for the State of Oregon or a similarly licensed doctor or physician in any country or in any state,
39 territory or possession of the United States.

40 (c) **Except as otherwise provided for workers subject to a managed care contract, "at-**
41 **tending physician" does not include a physician who provides care in a hospital emergency**
42 **room and refers the injured worker to a primary care physician for follow-up care and**
43 **treatment.**

44 [(c)] (d) "Consulting physician" means a doctor or physician who examines a worker or the
45 worker's medical record to advise the attending physician regarding treatment of a worker's

1 compensable injury.

2 (13)(a) "Employer" means any person, including receiver, administrator, executor or trustee, and
3 the state, state agencies, counties, municipal corporations, school districts and other public corpo-
4 rations or political subdivisions, who contracts to pay a remuneration for and secures the right to
5 direct and control the services of any person.

6 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of
7 a temporary service provider is not the employer of temporary workers provided by the temporary
8 service provider.

9 (c) As used in paragraph (b) of this subsection, "temporary service provider" has the meaning
10 for that term provided in ORS 656.850.

11 (14) "Guaranty contract insurer" and "insurer" mean the State Accident Insurance Fund Cor-
12 poration or an insurer authorized under ORS chapter 731 to transact workers' compensation insur-
13 ance in this state or an assigned claims agent selected by the director under ORS 656.054.

14 (15) "Consumer and Business Services Fund" means the fund created by ORS 705.145.

15 (16) "Invalid" means one who is physically or mentally incapacitated from earning a livelihood.

16 (17) "Medically stationary" means that no further material improvement would reasonably be
17 expected from medical treatment, or the passage of time.

18 (18) "Noncomplying employer" means a subject employer who has failed to comply with ORS
19 656.017.

20 (19) "Objective findings" in support of medical evidence are verifiable indications of injury or
21 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and
22 palpable muscle spasm. "Objective findings" does not include physical findings or subjective re-
23 sponses to physical examinations that are not reproducible, measurable or observable.

24 (20) "Palliative care" means medical service rendered to reduce or moderate temporarily the
25 intensity of an otherwise stable medical condition, but does not include those medical services ren-
26 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

27 (21) "Party" means a claimant for compensation, the employer of the injured worker at the time
28 of injury and the insurer, if any, of such employer.

29 (22) "Payroll" means a record of wages payable to workers for their services and includes
30 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or
31 similar advantage received from the employer. However, "payroll" does not include overtime pay,
32 vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments
33 to reward workers for safe working practices. Bonus pay is limited to payments which are not an-
34 ticipated under the contract of employment and which are paid at the sole discretion of the em-
35 ployer. The exclusion from payroll of bonus payments to reward workers for safe working practices
36 is only for the purpose of calculations based on payroll to determine premium for workers' com-
37 pensation insurance, and does not affect any other calculation or determination based on payroll for
38 the purposes of this chapter.

39 (23) "Person" includes partnership, joint venture, association, limited liability company and
40 corporation.

41 (24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, con-
42 genital abnormality, personality disorder or similar condition that contributes to disability or need
43 for treatment, provided that:

44 (A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the
45 worker has been diagnosed with such condition, or has obtained medical services for the symptoms

1 of the condition regardless of diagnosis; and

2 (B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes
3 the initial injury;

4 (ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the
5 new medical condition; or

6 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment
7 precedes the onset of the worsened condition.

8 (b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, con-
9 genital abnormality, personality disorder or similar condition that contributes to disability or need
10 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim
11 for worsening in such claims pursuant to ORS 656.273 or 656.278.

12 (c) For the purposes of industrial injury claims, a condition does not contribute to disability or
13 need for treatment if the condition merely renders the worker more susceptible to the injury.

14 (25) "Self-insured employer" means an employer or group of employers certified under ORS
15 656.430 as meeting the qualifications set out by ORS 656.407.

16 (26) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident
17 Insurance Fund Corporation created under ORS 656.752.

18 (27) "Subject employer" means an employer who is subject to this chapter as provided by ORS
19 656.023.

20 (28) "Subject worker" means a worker who is subject to this chapter as provided by ORS
21 656.027.

22 (29) "Wages" means the money rate at which the service rendered is recompensed under the
23 contract of hiring in force at the time of the accident, including reasonable value of board, rent,
24 housing, lodging or similar advantage received from the employer, and includes the amount of tips
25 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of
26 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips
27 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-
28 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at
29 which any worker shall be carried upon the payroll of the employer for the purpose of determining
30 the premium of the employer.

31 (30) "Worker" means any person, including a minor whether lawfully or unlawfully employed,
32 who engages to furnish services for a remuneration, subject to the direction and control of an em-
33 ployer and includes salaried, elected and appointed officials of the state, state agencies, counties,
34 cities, school districts and other public corporations, but does not include any person whose services
35 are performed as an inmate or ward of a state institution or as part of the eligibility requirements
36 for a general or public assistance grant. For the purpose of determining entitlement to temporary
37 disability benefits or permanent total disability benefits under this chapter, "worker" does not in-
38 clude a person who has withdrawn from the workforce during the period for which such benefits are
39 sought.

40 (31) "Independent contractor" has the meaning for that term provided in ORS 670.600.

41 **SECTION 3.** ORS 656.245 is amended to read:

42 656.245. (1)(a) For every compensable injury, the insurer or the self-insured employer shall cause
43 to be provided medical services for conditions caused in material part by the injury for such period
44 as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS
45 656.225, including such medical services as may be required after a determination of permanent

1 disability. In addition, for consequential and combined conditions described in ORS 656.005 (7), the
2 insurer or the self-insured employer shall cause to be provided only those medical services directed
3 to medical conditions caused in major part by the injury.

4 (b) Compensable medical services shall include medical, surgical, hospital, nursing, ambulances
5 and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and
6 supports and where necessary, physical restorative services. A pharmacist or dispensing physician
7 shall dispense generic drugs to the worker in accordance with ORS 689.515. The duty to provide
8 such medical services continues for the life of the worker.

9 (c) Notwithstanding any other provision of this chapter, medical services after the worker's
10 condition is medically stationary are not compensable except for the following:

11 (A) Services provided to a worker who has been determined to be permanently and totally dis-
12 abled.

13 (B) Prescription medications.

14 (C) Services necessary to administer prescription medication or monitor the administration of
15 prescription medication.

16 (D) Prosthetic devices, braces and supports.

17 (E) Services necessary to monitor the status, replacement or repair of prosthetic devices, braces
18 and supports.

19 (F) Services provided pursuant to an accepted claim for aggravation under ORS 656.273.

20 (G) Services provided pursuant to an order issued under ORS 656.278.

21 (H) Services that are necessary to diagnose the worker's condition.

22 (I) Life-preserving modalities similar to insulin therapy, dialysis and transfusions.

23 (J) With the approval of the insurer or self-insured employer, palliative care that the worker's
24 attending physician referred to in ORS 656.005 (12)(b)(A) prescribes and that is necessary to enable
25 the worker to continue current employment or a vocational training program. If the insurer or
26 self-insured employer does not approve, the attending physician or the worker may request approval
27 from the Director of the Department of Consumer and Business Services for such treatment. The
28 director may order a medical review by a physician or panel of physicians pursuant to ORS 656.327
29 (3) to aid in the review of such treatment. The decision of the director is subject to review under
30 ORS 656.704.

31 (K) With the approval of the director, curative care arising from a generally recognized, non-
32 experimental advance in medical science since the worker's claim was closed that is highly likely
33 to improve the worker's condition and that is otherwise justified by the circumstances of the claim.
34 The decision of the director is subject to review under ORS 656.704.

35 (L) Curative care provided to a worker to stabilize a temporary and acute waxing and waning
36 of symptoms of the worker's condition.

37 (d) When the medically stationary date in a disabling claim is established by the insurer or
38 self-insured employer and is not based on the findings of the attending physician, the insurer or
39 self-insured employer is responsible for reimbursement to affected medical service providers for
40 otherwise compensable services rendered until the insurer or self-insured employer provides written
41 notice to the attending physician of the worker's medically stationary status.

42 (e) Except for services provided under a managed care contract, out-of-pocket expense re-
43 imbursement to receive care from the attending physician or nurse practitioner authorized to pro-
44 vide compensable medical services under this section shall not exceed the amount required to seek
45 care from an appropriate nurse practitioner or attending physician of the same specialty who is in

1 a medical community geographically closer to the worker's home. For the purposes of this para-
2 graph, all physicians and nurse practitioners within a metropolitan area are considered to be part
3 of the same medical community.

4 (2)(a) The worker may choose an attending doctor, physician or nurse practitioner within the
5 State of Oregon. The worker may choose the initial attending physician or nurse practitioner and
6 may subsequently change attending physician or nurse practitioner two times without approval from
7 the director. If the worker thereafter selects another attending physician or nurse practitioner, the
8 insurer or self-insured employer may require the director's approval of the selection and, if re-
9 quested, the director shall determine with the advice of one or more physicians, whether the se-
10 lection by the worker shall be approved. The decision of the director is subject to review under
11 ORS 656.704. The worker also may choose an attending doctor or physician in another country or
12 in any state or territory or possession of the United States with the prior approval of the insurer
13 or self-insured employer.

14 (b) A medical service provider who is not a member of a managed care organization is subject
15 to the following provisions:

16 (A) A medical service provider who is not qualified to be an attending physician may provide
17 compensable medical service to an injured worker for a period of 30 days from the date of injury
18 or occupational disease or for 12 visits, whichever first occurs, without the authorization of an at-
19 tending physician. Thereafter, medical service provided to an injured worker without the written
20 authorization of an attending physician is not compensable.

21 (B) A medical service provider who is not an attending physician cannot authorize the payment
22 of temporary disability compensation. **However, an emergency room physician who is not au-**
23 **thorized to serve as an attending physician under ORS 656.005 (12)(c) may authorize tempo-**
24 **rary disability benefits for a maximum of 14 days.** Except as otherwise provided in this chapter,
25 only the attending physician at the time of claim closure may make findings regarding the worker's
26 impairment for the purpose of evaluating the worker's disability.

27 (C) Notwithstanding subparagraphs (A) and (B) of this paragraph, a nurse practitioner licensed
28 under ORS 678.375 to 678.390 may:

29 (i) Provide compensable medical services for 90 days from the date of the first visit on the claim;

30 (ii) Authorize the payment of temporary disability benefits for a period not to exceed 60 days
31 from the date of the first visit on the initial claim; and

32 (iii) When an injured worker treating with a nurse practitioner authorized to provide
33 compensable services under this section becomes medically stationary within the 90-day period in
34 which the nurse practitioner is authorized to treat the injured worker, shall refer the injured worker
35 to a physician qualified to be an attending physician as defined in ORS 656.005 for the purpose of
36 making findings regarding the worker's impairment for the purpose of evaluating the worker's disa-
37 bility. If a worker returns to the nurse practitioner after initial claim closure for evaluation of a
38 possible worsening of the worker's condition, the nurse practitioner shall refer the worker to an
39 attending physician and the insurer shall compensate the nurse practitioner for the examination
40 performed.

41 (3) Notwithstanding any other provision of this chapter, the director, by rule, upon the advice
42 of the committee created by ORS 656.794 and upon the advice of the professional licensing boards
43 of practitioners affected by the rule, may exclude from compensability any medical treatment the
44 director finds to be unscientific, unproven, outmoded or experimental. The decision of the director
45 is subject to review under ORS 656.704.

1 (4) Notwithstanding subsection (2)(a) of this section, when a self-insured employer or the insurer
2 of an employer contracts with a managed care organization certified pursuant to ORS 656.260 for
3 medical services required by this chapter to be provided to injured workers:

4 (a) Those workers who are subject to the contract shall receive medical services in the manner
5 prescribed in the contract. Workers subject to the contract include those who are receiving medical
6 treatment for an accepted compensable injury or occupational disease, regardless of the date of in-
7 jury or medically stationary status, on or after the effective date of the contract. If the managed
8 care organization determines that the change in provider would be medically detrimental to the
9 worker, the worker shall not become subject to the contract until the worker is found to be med-
10 ically stationary, the worker changes physicians or nurse practitioners, or the managed care or-
11 ganization determines that the change in provider is no longer medically detrimental, whichever
12 event first occurs. A worker becomes subject to the contract upon the worker's receipt of actual
13 notice of the worker's enrollment in the managed care organization, or upon the third day after the
14 notice was sent by regular mail by the insurer or self-insured employer, whichever event first oc-
15 curs. A worker shall not be subject to a contract after it expires or terminates without renewal. A
16 worker may continue to treat with the attending physician or nurse practitioner authorized to pro-
17 vide compensable medical services under this section under an expired or terminated managed care
18 organization contract if the physician or nurse practitioner agrees to comply with the rules, terms
19 and conditions regarding services performed under any subsequent managed care organization con-
20 tract to which the worker is subject. A worker shall not be subject to a contract if the worker's
21 primary residence is more than 100 miles outside the managed care organization's certified ge-
22 ographical area. Each such contract must comply with the certification standards provided in ORS
23 656.260. However, a worker may receive immediate emergency medical treatment that is
24 compensable from a medical service provider who is not a member of the managed care organization.
25 Insurers or self-insured employers who contract with a managed care organization for medical ser-
26 vices shall give notice to the workers of eligible medical service providers and such other informa-
27 tion regarding the contract and manner of receiving medical services as the director may prescribe.
28 Notwithstanding any provision of law or rule to the contrary, a worker of a noncomplying employer
29 is considered to be subject to a contract between the State Accident Insurance Fund Corporation
30 as a processing agent or the assigned claims agent and a managed care organization.

31 (b)(A) For initial or aggravation claims filed after June 7, 1995, the insurer or self-insured em-
32 ployer may require an injured worker, on a case-by-case basis, immediately to receive medical ser-
33 vices from the managed care organization.

34 (B) If the insurer or self-insured employer gives notice that the worker is required to receive
35 treatment from the managed care organization, the insurer or self-insured employer must guarantee
36 that any reasonable and necessary services so received, that are not otherwise covered by health
37 insurance, will be paid as provided in ORS 656.248, even if the claim is denied, until the worker
38 receives actual notice of the denial or until three days after the denial is mailed, whichever event
39 first occurs. The worker may elect to receive care from a primary care physician or nurse practi-
40 tioner authorized to provide compensable medical services under this section who agrees to the
41 conditions of ORS 656.260 (4)(g). However, guarantee of payment is not required by the insurer or
42 self-insured employer if this election is made.

43 (C) If the insurer or self-insured employer does not give notice that the worker is required to
44 receive treatment from the managed care organization, the insurer or self-insured employer is under
45 no obligation to pay for services received by the worker unless the claim is later accepted.

1 (D) If the claim is denied, the worker may receive medical services after the date of denial from
2 sources other than the managed care organization until the denial is reversed. Reasonable and
3 necessary medical services received from sources other than the managed care organization after
4 the date of claim denial must be paid as provided in ORS 656.248 by the insurer or self-insured em-
5 ployer if the claim is finally determined to be compensable.

6 (5) Notwithstanding any other provision of this chapter, the director, by rule, shall authorize
7 physician assistants licensed by the Board of Medical Examiners for the State of Oregon who prac-
8 tice in areas served by Type A or Type B rural hospitals described in ORS 442.470 to authorize the
9 payment of temporary disability compensation for injured workers for a period not to exceed 30 days
10 from the date of the first visit on the claim. In addition, the director, by rule, may authorize such
11 assistants who practice in areas served by a Type C rural hospital described in ORS 442.470 to au-
12 thorize such payment.

13 (6) A nurse practitioner licensed under ORS 678.375 to 678.390 who is not a member of the
14 managed care organization, is authorized to provide the same level of services as a primary care
15 physician as established by ORS 656.260 (4), if at the time the worker is enrolled in the managed
16 care organization, the nurse practitioner maintains the worker's medical records and with whom the
17 worker has a documented history of treatment, if that nurse practitioner agrees to refer the worker
18 to the managed care organization for any specialized treatment, including physical therapy, to be
19 furnished by another provider that the worker may require and if that nurse practitioner agrees to
20 comply with all the rules, terms and conditions regarding services performed by the managed care
21 organization.

22 (7) Subject to the provisions of ORS 656.704, if a claim for medical services is disapproved, the
23 injured worker, insurer or self-insured employer may request administrative review by the director
24 pursuant to ORS 656.260 or 656.327.

25 **SECTION 4.** ORS 656.245, as amended by section 4, chapter 811, Oregon Laws 2003, and section
26 4, chapter 26, Oregon Laws 2005, is amended to read:

27 656.245. (1)(a) For every compensable injury, the insurer or the self-insured employer shall cause
28 to be provided medical services for conditions caused in material part by the injury for such period
29 as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS
30 656.225, including such medical services as may be required after a determination of permanent
31 disability. In addition, for consequential and combined conditions described in ORS 656.005 (7), the
32 insurer or the self-insured employer shall cause to be provided only those medical services directed
33 to medical conditions caused in major part by the injury.

34 (b) Compensable medical services shall include medical, surgical, hospital, nursing, ambulances
35 and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and
36 supports and where necessary, physical restorative services. A pharmacist or dispensing physician
37 shall dispense generic drugs to the worker in accordance with ORS 689.515. The duty to provide
38 such medical services continues for the life of the worker.

39 (c) Notwithstanding any other provision of this chapter, medical services after the worker's
40 condition is medically stationary are not compensable except for the following:

41 (A) Services provided to a worker who has been determined to be permanently and totally dis-
42 abled.

43 (B) Prescription medications.

44 (C) Services necessary to administer prescription medication or monitor the administration of
45 prescription medication.

1 (D) Prosthetic devices, braces and supports.

2 (E) Services necessary to monitor the status, replacement or repair of prosthetic devices, braces
3 and supports.

4 (F) Services provided pursuant to an accepted claim for aggravation under ORS 656.273.

5 (G) Services provided pursuant to an order issued under ORS 656.278.

6 (H) Services that are necessary to diagnose the worker's condition.

7 (I) Life-preserving modalities similar to insulin therapy, dialysis and transfusions.

8 (J) With the approval of the insurer or self-insured employer, palliative care that the worker's
9 attending physician referred to in ORS 656.005 (12)(b)(A) prescribes and that is necessary to enable
10 the worker to continue current employment or a vocational training program. If the insurer or
11 self-insured employer does not approve, the attending physician or the worker may request approval
12 from the Director of the Department of Consumer and Business Services for such treatment. The
13 director may order a medical review by a physician or panel of physicians pursuant to ORS 656.327
14 (3) to aid in the review of such treatment. The decision of the director is subject to review under
15 ORS 656.704.

16 (K) With the approval of the director, curative care arising from a generally recognized, non-
17 experimental advance in medical science since the worker's claim was closed that is highly likely
18 to improve the worker's condition and that is otherwise justified by the circumstances of the claim.
19 The decision of the director is subject to review under ORS 656.704.

20 (L) Curative care provided to a worker to stabilize a temporary and acute waxing and waning
21 of symptoms of the worker's condition.

22 (d) When the medically stationary date in a disabling claim is established by the insurer or
23 self-insured employer and is not based on the findings of the attending physician, the insurer or
24 self-insured employer is responsible for reimbursement to affected medical service providers for
25 otherwise compensable services rendered until the insurer or self-insured employer provides written
26 notice to the attending physician of the worker's medically stationary status.

27 (e) Except for services provided under a managed care contract, out-of-pocket expense re-
28 imbursement to receive care from the attending physician shall not exceed the amount required to
29 seek care from an appropriate attending physician of the same specialty who is in a medical com-
30 munity geographically closer to the worker's home. For the purposes of this paragraph, all physi-
31 cians within a metropolitan area are considered to be part of the same medical community.

32 (2)(a) The worker may choose an attending doctor or physician within the State of Oregon. The
33 worker may choose the initial attending physician and may subsequently change attending physician
34 two times without approval from the director. If the worker thereafter selects another attending
35 physician, the insurer or self-insured employer may require the director's approval of the selection
36 and, if requested, the director shall determine with the advice of one or more physicians, whether
37 the selection by the worker shall be approved. The decision of the director is subject to review un-
38 der ORS 656.704. The worker also may choose an attending doctor or physician in another country
39 or in any state or territory or possession of the United States with the prior approval of the insurer
40 or self-insured employer.

41 (b) A medical service provider who is not a member of a managed care organization is subject
42 to the following provisions:

43 (A) A medical service provider who is not qualified to be an attending physician may provide
44 compensable medical service to an injured worker for a period of 30 days from the date of injury
45 or occupational disease or for 12 visits, whichever first occurs, without the authorization of an at-

1 tending physician. Thereafter, medical service provided to an injured worker without the written
2 authorization of an attending physician is not compensable.

3 (B) A medical service provider who is not an attending physician cannot authorize the payment
4 of temporary disability compensation. **However, an emergency room physician who is not au-**
5 **thorized to serve as an attending physician under ORS 656.005 (12)(c) may authorize tempo-**
6 **rary disability benefits for a maximum of 14 days.** Except as otherwise provided in this chapter,
7 only the attending physician at the time of claim closure may make findings regarding the worker's
8 impairment for the purpose of evaluating the worker's disability.

9 (3) Notwithstanding any other provision of this chapter, the director, by rule, upon the advice
10 of the committee created by ORS 656.794 and upon the advice of the professional licensing boards
11 of practitioners affected by the rule, may exclude from compensability any medical treatment the
12 director finds to be unscientific, unproven, outmoded or experimental. The decision of the director
13 is subject to review under ORS 656.704.

14 (4) Notwithstanding subsection (2)(a) of this section, when a self-insured employer or the insurer
15 of an employer contracts with a managed care organization certified pursuant to ORS 656.260 for
16 medical services required by this chapter to be provided to injured workers:

17 (a) Those workers who are subject to the contract shall receive medical services in the manner
18 prescribed in the contract. Workers subject to the contract include those who are receiving medical
19 treatment for an accepted compensable injury or occupational disease, regardless of the date of in-
20 jury or medically stationary status, on or after the effective date of the contract. If the managed
21 care organization determines that the change in provider would be medically detrimental to the
22 worker, the worker shall not become subject to the contract until the worker is found to be med-
23 ically stationary, the worker changes physicians or the managed care organization determines that
24 the change in provider is no longer medically detrimental, whichever event first occurs. A worker
25 becomes subject to the contract upon the worker's receipt of actual notice of the worker's enroll-
26 ment in the managed care organization, or upon the third day after the notice was sent by regular
27 mail by the insurer or self-insured employer, whichever event first occurs. A worker shall not be
28 subject to a contract after it expires or terminates without renewal. A worker may continue to treat
29 with the attending physician under an expired or terminated managed care organization contract if
30 the physician agrees to comply with the rules, terms and conditions regarding services performed
31 under any subsequent managed care organization contract to which the worker is subject. A worker
32 shall not be subject to a contract if the worker's primary residence is more than 100 miles outside
33 the managed care organization's certified geographical area. Each such contract must comply with
34 the certification standards provided in ORS 656.260. However, a worker may receive immediate
35 emergency medical treatment that is compensable from a medical service provider who is not a
36 member of the managed care organization. Insurers or self-insured employers who contract with a
37 managed care organization for medical services shall give notice to the workers of eligible medical
38 service providers and such other information regarding the contract and manner of receiving med-
39 ical services as the director may prescribe. Notwithstanding any provision of law or rule to the
40 contrary, a worker of a noncomplying employer is considered to be subject to a contract between
41 the State Accident Insurance Fund Corporation as a processing agent or the assigned claims agent
42 and a managed care organization.

43 (b)(A) For initial or aggravation claims filed after June 7, 1995, the insurer or self-insured em-
44 ployer may require an injured worker, on a case-by-case basis, immediately to receive medical ser-
45 vices from the managed care organization.

1 (B) If the insurer or self-insured employer gives notice that the worker is required to receive
2 treatment from the managed care organization, the insurer or self-insured employer must guarantee
3 that any reasonable and necessary services so received, that are not otherwise covered by health
4 insurance, will be paid as provided in ORS 656.248, even if the claim is denied, until the worker
5 receives actual notice of the denial or until three days after the denial is mailed, whichever event
6 first occurs. The worker may elect to receive care from a primary care physician who agrees to the
7 conditions of ORS 656.260 (4)(g). However, guarantee of payment is not required by the insurer or
8 self-insured employer if this election is made.

9 (C) If the insurer or self-insured employer does not give notice that the worker is required to
10 receive treatment from the managed care organization, the insurer or self-insured employer is under
11 no obligation to pay for services received by the worker unless the claim is later accepted.

12 (D) If the claim is denied, the worker may receive medical services after the date of denial from
13 sources other than the managed care organization until the denial is reversed. Reasonable and
14 necessary medical services received from sources other than the managed care organization after
15 the date of claim denial must be paid as provided in ORS 656.248 by the insurer or self-insured em-
16 ployer if the claim is finally determined to be compensable.

17 (5) Notwithstanding any other provision of this chapter, the director, by rule, shall authorize
18 nurse practitioners certified by the Oregon State Board of Nursing and physician assistants licensed
19 by the Board of Medical Examiners for the State of Oregon who practice in areas served by Type
20 A or Type B rural hospitals described in ORS 442.470 to authorize the payment of temporary disa-
21 bility compensation for injured workers for a period not to exceed 30 days from the date of the first
22 visit on the claim. In addition, the director, by rule, may authorize such practitioners and assistants
23 who practice in areas served by a Type C rural hospital described in ORS 442.470 to authorize such
24 payment.

25 (6) Subject to the provisions of ORS 656.704, if a claim for medical services is disapproved, the
26 injured worker, insurer or self-insured employer may request administrative review by the director
27 pursuant to ORS 656.260 or 656.327.

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