

Senate Bill 506

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**.

Defines "direct medical sequelae" for purposes of workers' compensation claims.

A BILL FOR AN ACT

1
2 Relating to direct medical sequelae of accepted condition in workers' compensation claims; amending
3 ORS 656.268.

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

5 **SECTION 1.** ORS 656.268 is amended to read:

6 656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and
7 as near as possible to a condition of self support and maintenance as an able-bodied worker. The
8 insurer or self-insured employer shall close the worker's claim, as prescribed by the Director of the
9 Department of Consumer and Business Services, and determine the extent of the worker's permanent
10 disability, provided the worker is not enrolled and actively engaged in training according to rules
11 adopted by the director pursuant to ORS 656.340 and 656.726, when:

12 (a) The worker has become medically stationary and there is sufficient information to determine
13 permanent disability;

14 (b) The accepted injury is no longer the major contributing cause of the worker's combined or
15 consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because
16 the accepted injury is no longer the major contributing cause of the worker's combined or conse-
17 quential condition or conditions, and there is sufficient information to determine permanent disabil-
18 ity, the likely permanent disability that would have been due to the current accepted condition shall
19 be estimated;

20 (c) Without the approval of the attending physician or nurse practitioner authorized to provide
21 compensable medical services under ORS 656.245, the worker fails to seek medical treatment for a
22 period of 30 days or the worker fails to attend a closing examination, unless the worker
23 affirmatively establishes that such failure is attributable to reasons beyond the worker's control; or

24 (d) An insurer or self-insured employer finds that a worker who has been receiving permanent
25 total disability benefits has materially improved and is capable of regularly performing work at a
26 gainful and suitable occupation.

27 (2) If the worker is enrolled and actively engaged in training according to rules adopted pursu-
28 ant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately re-
29 duced by any sums earned during the training.

30 (3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors
31 shall be furnished to the worker, if requested by the worker.

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 (4) Temporary total disability benefits shall continue until whichever of the following events
2 first occurs:

3 (a) The worker returns to regular or modified employment;

4 (b) The attending physician or nurse practitioner who has authorized temporary disability ben-
5 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker
6 is released to return to regular employment;

7 (c) The attending physician or nurse practitioner who has authorized temporary disability ben-
8 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker
9 is released to return to modified employment, such employment is offered in writing to the worker
10 and the worker fails to begin such employment. However, an offer of modified employment may be
11 refused by the worker without the termination of temporary total disability benefits if the offer:

12 (A) Requires a commute that is beyond the physical capacity of the worker according to the
13 worker's attending physician or the nurse practitioner who may authorize temporary disability un-
14 der ORS 656.245;

15 (B) Is at a work site more than 50 miles one way from where the worker was injured unless the
16 site is less than 50 miles from the worker's residence or the intent of the parties at the time of hire
17 or as established by the pattern of employment prior to the injury was that the employer had mul-
18 tiple or mobile work sites and the worker could be assigned to any such site;

19 (C) Is not with the employer at injury;

20 (D) Is not at a work site of the employer at injury;

21 (E) Is not consistent with the existing written shift change policy or is not consistent with
22 common practice of the employer at injury or aggravation; or

23 (F) Is not consistent with an existing shift change provision of an applicable collective bar-
24 gaining agreement; or

25 (d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld
26 or terminated under ORS 656.262 (4) or other provisions of this chapter.

27 (5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's dis-
28 ability in closure of the claim shall be pursuant to the standards prescribed by the director. The
29 insurer or self-insured employer shall issue a notice of closure of such a claim to the worker, to the
30 worker's attorney if the worker is represented, and to the director. The notice must inform:

31 (A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissat-
32 isfied with the terms of the notice;

33 (B) The worker of the amount of any further compensation, including permanent disability
34 compensation to be awarded; of the duration of temporary total or temporary partial disability
35 compensation; of the right of the worker to request reconsideration by the director under this sec-
36 tion within 60 days of the date of the notice of claim closure; of the right of the insurer or self-
37 insured employer to request reconsideration by the director under this section within seven days
38 of the date of the notice of claim closure; of the aggravation rights; and of such other information
39 as the director may require; and

40 (C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204
41 and 656.208.

42 (b) If the insurer or self-insured employer has not issued a notice of closure, the worker may
43 request closure. Within 10 days of receipt of a written request from the worker, the insurer or
44 self-insured employer shall issue a notice of closure if the requirements of this section have been
45 met or a notice of refusal to close if the requirements of this section have not been met. A notice

1 of refusal to close shall advise the worker of the decision not to close; of the right of the worker
2 to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to
3 close the claim; of the right to be represented by an attorney; and of such other information as the
4 director may require.

5 (c) If a worker, insurer or self-insured employer objects to the notice of closure, the objecting
6 party first must request reconsideration by the director under this section. A worker's request for
7 reconsideration must be made within 60 days of the date of the notice of closure. A request for re-
8 consideration by an insurer or self-insured employer may be based only on disagreement with the
9 findings used to rate impairment and must be made within seven days of the date of the notice of
10 closure.

11 (d) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant
12 to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing
13 on the claim and if a finding is made at the hearing that the notice of closure or refusal to close
14 was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid
15 to the worker in an amount equal to 25 percent of all compensation determined to be then due the
16 claimant.

17 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
18 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
19 for permanent disability and the worker is found upon reconsideration to be at least 20 percent
20 permanently disabled, a penalty shall be assessed against the insurer or self-insured employer and
21 paid to the worker in an amount equal to 25 percent of all compensation determined to be then due
22 the claimant. If the increase in compensation results from information that the insurer or self-
23 insured employer demonstrates the insurer or self-insured employer could not reasonably have
24 known at the time of claim closure, from new information obtained through a medical arbiter ex-
25 amination or from the adoption of a temporary emergency rule, the penalty shall not be assessed.

26 (6)(a) Notwithstanding any other provision of law, only one reconsideration proceeding may be
27 held on each notice of closure. At the reconsideration proceeding:

28 (A) A deposition arranged by the worker, limited to the testimony and cross-examination of the
29 worker about the worker's condition at the time of claim closure, shall become part of the recon-
30 sideration record. The deposition must be conducted subject to the opportunity for cross-examination
31 by the insurer or self-insured employer and in accordance with rules adopted by the director. The
32 cost of the court reporter and one original of the transcript of the deposition for the Department
33 of Consumer and Business Services and one copy of the transcript of the deposition for each party
34 shall be paid by the insurer or self-insured employer. The reconsideration proceeding may not be
35 postponed to receive a deposition taken under this subparagraph. A deposition taken in accordance
36 with this subparagraph may be received as evidence at a hearing even if the deposition is not pre-
37 pared in time for use in the reconsideration proceeding.

38 (B) Pursuant to rules adopted by the director, the worker or the insurer or self-insured employer
39 may correct information in the record that is erroneous and may submit any medical evidence that
40 should have been but was not submitted by the attending physician or nurse practitioner authorized
41 to provide compensable medical services under ORS 656.245 at the time of claim closure.

42 (C) If the director determines that a claim was not closed in accordance with subsection (1) of
43 this section, the director may rescind the closure.

44 (b) If necessary, the director may require additional medical or other information with respect
45 to the claims and may postpone the reconsideration for not more than 60 additional calendar days.

1 (c) In any reconsideration proceeding under this section in which the worker was represented
2 by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney,
3 out of the additional compensation awarded, an amount equal to 10 percent of any additional com-
4 pensation awarded to the worker.

5 (d) The reconsideration proceeding shall be completed within 18 working days from the date the
6 reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit
7 within the department. The deadline of 18 working days may be postponed by an additional 60 cal-
8 endar days if within the 18 working days the department mails notice of review by a medical arbiter.
9 If an order on reconsideration has not been mailed on or before 18 working days from the date the
10 reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days
11 where a notice for medical arbiter review was timely mailed or the director postponed the recon-
12 sideration pursuant to paragraph (b) of this subsection, or within such additional time as provided
13 in subsection (7) of this section when reconsideration is postponed further because the worker has
14 failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and
15 any further proceedings shall occur as though an order on reconsideration affirming the notice of
16 closure was mailed on the date the order was due to issue.

17 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
18 subsection begins upon receipt by the director of a worker's request for reconsideration pursuant
19 to subsection (5)(c) of this section. If the insurer or self-insured employer requests reconsideration,
20 the period for reconsideration begins upon the earlier of the date of the request for reconsideration
21 by the worker, the date of receipt of a waiver from the worker of the right to request reconsider-
22 ation or the date of expiration of the right of the worker to request reconsideration. If a party elects
23 not to file a separate request for reconsideration, the party does not waive the right to fully par-
24 ticipate in the reconsideration proceeding, including the right to proceed with the reconsideration
25 if the initiating party withdraws the request for reconsideration.

26 (f) Any medical arbiter report may be received as evidence at a hearing even if the report is
27 not prepared in time for use in the reconsideration proceeding.

28 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
29 656.283 within 30 days from the date of the reconsideration order.

30 (7)(a) If the basis for objection to a notice of closure issued under this section is disagreement
31 with the impairment used in rating of the worker's disability, the director shall refer the claim to
32 a medical arbiter appointed by the director.

33 (b) If neither party requests a medical arbiter and the director determines that insufficient
34 medical information is available to determine disability, the director may refer the claim to a med-
35 ical arbiter appointed by the director.

36 (c) At the request of either of the parties, a panel of three medical arbiters shall be appointed.

37 (d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians
38 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the
39 director in consultation with the Board of Medical Examiners for the State of Oregon and the
40 committee referred to in ORS 656.790.

41 (e)(A) The medical arbiter or panel of medical arbiters may examine the worker and perform
42 such tests as may be reasonable and necessary to establish the worker's impairment.

43 (B) If the director determines that the worker failed to attend the examination without good
44 cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall
45 postpone the reconsideration proceedings for up to 60 days from the date of the determination that

1 the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this
2 or any prior opening of the claim until such time as the worker attends and cooperates with the
3 examination or the request for reconsideration is withdrawn. Any additional evidence regarding
4 good cause must be submitted prior to the conclusion of the 60-day postponement period.

5 (C) At the conclusion of the 60-day postponement period, if the worker has not attended and
6 cooperated with a medical arbiter examination or established good cause, there shall be no further
7 opportunity for the worker to attend a medical arbiter examination for this claim closure. The re-
8 consideration record shall be closed, and the director shall issue an order on reconsideration based
9 upon the existing record.

10 (D) All disability benefits suspended pursuant to this subsection, including all disability benefits
11 awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Com-
12 pensation Board or upon court review, shall not be due and payable to the worker.

13 (f) The costs of examination and review by the medical arbiter or panel of medical arbiters shall
14 be paid by the insurer or self-insured employer.

15 (g) The findings of the medical arbiter or panel of medical arbiters shall be submitted to the
16 director for reconsideration of the notice of closure.

17 (h) After reconsideration, no subsequent medical evidence of the worker's impairment is admis-
18 sible before the director, the Workers' Compensation Board or the courts for purposes of making
19 findings of impairment on the claim closure.

20 (i)(A) When the basis for objection to a notice of closure issued under this section is a disa-
21 greement with the impairment used in rating the worker's disability, and the director determines
22 that the worker is not medically stationary at the time of the reconsideration or that the closure
23 was not made pursuant to this section, the director is not required to appoint a medical arbiter prior
24 to the completion of the reconsideration proceeding.

25 (B) If the worker's condition has substantially changed since the notice of closure, upon the
26 consent of all the parties to the claim, the director shall postpone the proceeding until the worker's
27 condition is appropriate for claim closure under subsection (1) of this section.

28 (8) No hearing shall be held on any issue that was not raised and preserved before the director
29 at reconsideration. However, issues arising out of the reconsideration order may be addressed and
30 resolved at hearing.

31 (9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled
32 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,
33 any permanent disability payments due for work disability under the closure shall be suspended, and
34 the worker shall receive temporary disability compensation and any permanent disability payments
35 due for impairment while the worker is enrolled and actively engaged in the training. When the
36 worker ceases to be enrolled and actively engaged in the training, the insurer or self-insured em-
37 ployer shall again close the claim pursuant to this section if the worker is medically stationary or
38 if the worker's accepted injury is no longer the major contributing cause of the worker's combined
39 or consequential condition or conditions pursuant to ORS 656.005 (7). The closure shall include the
40 duration of temporary total or temporary partial disability compensation. Permanent disability
41 compensation shall be redetermined for work disability only. If the worker has returned to work or
42 the worker's attending physician has released the worker to return to regular or modified employ-
43 ment, the insurer or self-insured employer shall again close the claim. This notice of closure may
44 be appealed only in the same manner as are other notices of closure under this section.

45 (10) If the attending physician or nurse practitioner authorized to provide compensable medical

1 services under ORS 656.245 has approved the worker's return to work and there is a labor dispute
2 in progress at the place of employment, the worker may refuse to return to that employment without
3 loss of reemployment rights or any vocational assistance provided by this chapter.

4 (11) Any notice of closure made under this section may include necessary adjustments in com-
5 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-
6 bility payments prematurely made, crediting temporary disability payments against current or future
7 permanent or temporary disability awards or payments and requiring the payment of temporary
8 disability payments which were payable but not paid.

9 (12) An insurer or self-insured employer may take a credit or offset of previously paid workers'
10 compensation benefits or payments against any further workers' compensation benefits or payments
11 due a worker from that insurer or self-insured employer when the worker admits to having obtained
12 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction
13 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-
14 fits or payments obtained through fraud by a worker shall not be included in any data used for
15 ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer,
16 a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund
17 Corporation or the director.

18 (13)(a) An insurer or self-insured employer may offset any compensation payable to the worker
19 to recover an overpayment from a claim with the same insurer or self-insured employer. When
20 overpayments are recovered from temporary disability or permanent total disability benefits, the
21 amount recovered from each payment shall not exceed 25 percent of the payment, without prior
22 authorization from the worker.

23 (b) An insurer or self-insured employer may suspend and offset any compensation payable to the
24 beneficiary of the worker, and recover an overpayment of permanent total disability benefits caused
25 by the failure of the worker's beneficiaries to notify the insurer or self-insured employer about the
26 death of the worker.

27 (14)(a) Conditions that are direct medical sequelae to the original accepted condition shall be
28 included in rating permanent disability of the claim unless they have been specifically denied.

29 **(b) As used in this subsection, "direct medical sequelae" means conditions that were di-**
30 **agnosed, were submitted for acceptance by the injured worker and were accepted prior to**
31 **the closure of the claim.**

32 **SECTION 2.** ORS 656.268, as amended by section 8, chapter 657, Oregon Laws 2003, section 12,
33 chapter 811, Oregon Laws 2003, section 2, chapter 221, Oregon Laws 2005, section 4, chapter 461,
34 Oregon Laws 2005, and section 2, chapter 569, Oregon Laws 2005, is amended to read:

35 656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and
36 as near as possible to a condition of self support and maintenance as an able-bodied worker. The
37 insurer or self-insured employer shall close the worker's claim, as prescribed by the Director of the
38 Department of Consumer and Business Services, and determine the extent of the worker's permanent
39 disability, provided the worker is not enrolled and actively engaged in training according to rules
40 adopted by the director pursuant to ORS 656.340 and 656.726, when:

41 (a) The worker has become medically stationary and there is sufficient information to determine
42 permanent impairment;

43 (b) The accepted injury is no longer the major contributing cause of the worker's combined or
44 consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because
45 the accepted injury is no longer the major contributing cause of the worker's combined or conse-

1 quential condition or conditions, and there is sufficient information to determine permanent impair-
 2 ment, the likely impairment and adaptability that would have been due to the current accepted
 3 condition shall be estimated;

4 (c) Without the approval of the attending physician, the worker fails to seek medical treatment
 5 for a period of 30 days or the worker fails to attend a closing examination, unless the worker
 6 affirmatively establishes that such failure is attributable to reasons beyond the worker's control; or

7 (d) An insurer or self-insured employer finds that a worker who has been receiving permanent
 8 total disability benefits has materially improved and is capable of regularly performing work at a
 9 gainful and suitable occupation.

10 (2) If the worker is enrolled and actively engaged in training according to rules adopted pursu-
 11 ant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately re-
 12 duced by any sums earned during the training.

13 (3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors
 14 shall be furnished to the worker, if requested by the worker.

15 (4) Temporary total disability benefits shall continue until whichever of the following events
 16 first occurs:

17 (a) The worker returns to regular or modified employment;

18 (b) The attending physician advises the worker and documents in writing that the worker is
 19 released to return to regular employment;

20 (c) The attending physician advises the worker and documents in writing that the worker is
 21 released to return to modified employment, such employment is offered in writing to the worker and
 22 the worker fails to begin such employment. However, an offer of modified employment may be re-
 23 fused by the worker without the termination of temporary total disability benefits if the offer:

24 (A) Requires a commute that is beyond the physical capacity of the worker according to the
 25 worker's attending physician;

26 (B) Is at a work site more than 50 miles one way from where the worker was injured unless the
 27 site is less than 50 miles from the worker's residence or the intent of the parties at the time of hire
 28 or as established by the pattern of employment prior to the injury was that the employer had mul-
 29 tiple or mobile work sites and the worker could be assigned to any such site;

30 (C) Is not with the employer at injury;

31 (D) Is not at a work site of the employer at injury;

32 (E) Is not consistent with the existing written shift change policy or is not consistent with
 33 common practice of the employer at injury or aggravation; or

34 (F) Is not consistent with an existing shift change provision of an applicable collective bar-
 35 gaining agreement; or

36 (d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld
 37 or terminated under ORS 656.262 (4) or other provisions of this chapter.

38 (5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's dis-
 39 ability in closure of the claim shall be pursuant to the standards prescribed by the director. The
 40 insurer or self-insured employer shall issue a notice of closure of such a claim to the worker, to the
 41 worker's attorney if the worker is represented, and to the director. The notice must inform:

42 (A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissat-
 43 isfied with the terms of the notice;

44 (B) The worker of the amount of any further compensation, including permanent disability
 45 compensation to be awarded; of the duration of temporary total or temporary partial disability

1 compensation; of the right of the worker to request reconsideration by the director under this sec-
2 tion within 60 days of the date of the notice of claim closure; of the right of the insurer or self-
3 insured employer to request reconsideration by the director under this section within seven days
4 of the date of the notice of claim closure; of the aggravation rights; and of such other information
5 as the director may require; and

6 (C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204
7 and 656.208.

8 (b) If the insurer or self-insured employer has not issued a notice of closure, the worker may
9 request closure. Within 10 days of receipt of a written request from the worker, the insurer or
10 self-insured employer shall issue a notice of closure if the requirements of this section have been
11 met or a notice of refusal to close if the requirements of this section have not been met. A notice
12 of refusal to close shall advise the worker of the decision not to close; of the right of the worker
13 to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to
14 close the claim; of the right to be represented by an attorney; and of such other information as the
15 director may require.

16 (c) If a worker, insurer or self-insured employer objects to the notice of closure, the objecting
17 party first must request reconsideration by the director under this section. A worker's request for
18 reconsideration must be made within 60 days of the date of the notice of closure. A request for re-
19 consideration by an insurer or self-insured employer may be based only on disagreement with the
20 findings used to rate impairment and must be made within seven days of the date of the notice of
21 closure.

22 (d) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant
23 to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing
24 on the claim and if a finding is made at the hearing that the notice of closure or refusal to close
25 was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid
26 to the worker in an amount equal to 25 percent of all compensation determined to be then due the
27 claimant.

28 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
29 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
30 for either a scheduled or unscheduled permanent disability and the worker is found upon reconsid-
31 eration to be at least 20 percent permanently disabled, a penalty shall be assessed against the
32 insurer or self-insured employer and paid to the worker in an amount equal to 25 percent of all
33 compensation determined to be then due the claimant. If the increase in compensation results from
34 information that the insurer or self-insured employer demonstrates the insurer or self-insured em-
35 ployer could not reasonably have known at the time of claim closure, from new information obtained
36 through a medical arbiter examination or from the adoption of a temporary emergency rule, the
37 penalty shall not be assessed.

38 (6)(a) Notwithstanding any other provision of law, only one reconsideration proceeding may be
39 held on each notice of closure. At the reconsideration proceeding:

40 (A) A deposition arranged by the worker, limited to the testimony and cross-examination of the
41 worker about the worker's condition at the time of claim closure, shall become part of the recon-
42 sideration record. The deposition must be conducted subject to the opportunity for cross-examination
43 by the insurer or self-insured employer and in accordance with rules adopted by the director. The
44 cost of the court reporter and one original of the transcript of the deposition for the Department
45 of Consumer and Business Services and one copy of the transcript of the deposition for each party

1 shall be paid by the insurer or self-insured employer. The reconsideration proceeding may not be
2 postponed to receive a deposition taken under this subparagraph. A deposition taken in accordance
3 with this subparagraph may be received as evidence at a hearing even if the deposition is not pre-
4 pared in time for use in the reconsideration proceeding.

5 (B) Pursuant to rules adopted by the director, the worker or the insurer or self-insured employer
6 may correct information in the record that is erroneous and may submit any medical evidence that
7 should have been but was not submitted by the attending physician at the time of claim closure.

8 (C) If the director determines that a claim was not closed in accordance with subsection (1) of
9 this section, the director may rescind the closure.

10 (b) If necessary, the director may require additional medical or other information with respect
11 to the claims and may postpone the reconsideration for not more than 60 additional calendar days.

12 (c) In any reconsideration proceeding under this section in which the worker was represented
13 by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney,
14 out of the additional compensation awarded, an amount equal to 10 percent of any additional com-
15 pensation awarded to the worker.

16 (d) The reconsideration proceeding shall be completed within 18 working days from the date the
17 reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit
18 within the department. The deadline of 18 working days may be postponed by an additional 60 cal-
19 endar days if within the 18 working days the department mails notice of review by a medical arbiter.
20 If an order on reconsideration has not been mailed on or before 18 working days from the date the
21 reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days
22 where a notice for medical arbiter review was timely mailed or the director postponed the recon-
23 sideration pursuant to paragraph (b) of this subsection, or within such additional time as provided
24 in subsection (7) of this section when reconsideration is postponed further because the worker has
25 failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and
26 any further proceedings shall occur as though an order on reconsideration affirming the notice of
27 closure was mailed on the date the order was due to issue.

28 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
29 subsection begins upon receipt by the director of a worker's request for reconsideration pursuant
30 to subsection (5)(c) of this section. If the insurer or self-insured employer requests reconsideration,
31 the period for reconsideration begins upon the earlier of the date of the request for reconsideration
32 by the worker, the date of receipt of a waiver from the worker of the right to request reconsider-
33 ation or the date of expiration of the right of the worker to request reconsideration. If a party elects
34 not to file a separate request for reconsideration, the party does not waive the right to fully par-
35 ticipate in the reconsideration proceeding, including the right to proceed with the reconsideration
36 if the initiating party withdraws the request for reconsideration.

37 (f) Any medical arbiter report may be received as evidence at a hearing even if the report is
38 not prepared in time for use in the reconsideration proceeding.

39 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
40 656.283 within 30 days from the date of the reconsideration order.

41 (7)(a) If the basis for objection to a notice of closure issued under this section is disagreement
42 with the impairment used in rating of the worker's disability, the director shall refer the claim to
43 a medical arbiter appointed by the director.

44 (b) If neither party requests a medical arbiter and the director determines that insufficient
45 medical information is available to determine disability, the director may refer the claim to a med-

1 ical arbiter appointed by the director.

2 (c) At the request of either of the parties, a panel of three medical arbiters shall be appointed.

3 (d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians
4 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the
5 director in consultation with the Board of Medical Examiners for the State of Oregon and the
6 committee referred to in ORS 656.790.

7 (e)(A) The medical arbiter or panel of medical arbiters may examine the worker and perform
8 such tests as may be reasonable and necessary to establish the worker's impairment.

9 (B) If the director determines that the worker failed to attend the examination without good
10 cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall
11 postpone the reconsideration proceedings for up to 60 days from the date of the determination that
12 the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this
13 or any prior opening of the claim until such time as the worker attends and cooperates with the
14 examination or the request for reconsideration is withdrawn. Any additional evidence regarding
15 good cause must be submitted prior to the conclusion of the 60-day postponement period.

16 (C) At the conclusion of the 60-day postponement period, if the worker has not attended and
17 cooperated with a medical arbiter examination or established good cause, there shall be no further
18 opportunity for the worker to attend a medical arbiter examination for this claim closure. The re-
19 consideration record shall be closed, and the director shall issue an order on reconsideration based
20 upon the existing record.

21 (D) All disability benefits suspended pursuant to this subsection, including all disability benefits
22 awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Com-
23 pensation Board or upon court review, shall not be due and payable to the worker.

24 (f) The costs of examination and review by the medical arbiter or panel of medical arbiters shall
25 be paid by the insurer or self-insured employer.

26 (g) The findings of the medical arbiter or panel of medical arbiters shall be submitted to the
27 director for reconsideration of the notice of closure.

28 (h) After reconsideration, no subsequent medical evidence of the worker's impairment is admis-
29 sible before the director, the Workers' Compensation Board or the courts for purposes of making
30 findings of impairment on the claim closure.

31 (i)(A) When the basis for objection to a notice of closure issued under this section is a disa-
32 greement with the impairment used in rating the worker's disability, and the director determines
33 that the worker is not medically stationary at the time of the reconsideration or that the closure
34 was not made pursuant to this section, the director is not required to appoint a medical arbiter prior
35 to the completion of the reconsideration proceeding.

36 (B) If the worker's condition has substantially changed since the notice of closure, upon the
37 consent of all the parties to the claim, the director shall postpone the proceeding until the worker's
38 condition is appropriate for claim closure under subsection (1) of this section.

39 (8) No hearing shall be held on any issue that was not raised and preserved before the director
40 at reconsideration. However, issues arising out of the reconsideration order may be addressed and
41 resolved at hearing.

42 (9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled
43 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,
44 any permanent disability payments due under the closure shall be suspended, and the worker shall
45 receive temporary disability compensation while the worker is enrolled and actively engaged in the

1 training. When the worker ceases to be enrolled and actively engaged in the training, the insurer
2 or self-insured employer shall again close the claim pursuant to this section if the worker is med-
3 ically stationary or if the worker's accepted injury is no longer the major contributing cause of the
4 worker's combined or consequential condition or conditions pursuant to ORS 656.005 (7). The closure
5 shall include the duration of temporary total or temporary partial disability compensation. Perma-
6 nent disability compensation shall be redetermined for unscheduled disability only. If the worker has
7 returned to work or the worker's attending physician has released the worker to return to regular
8 or modified employment, the insurer or self-insured employer shall again close the claim. This notice
9 of closure may be appealed only in the same manner as are other notices of closure under this
10 section.

11 (10) If the attending physician has approved the worker's return to work and there is a labor
12 dispute in progress at the place of employment, the worker may refuse to return to that employment
13 without loss of reemployment rights or any vocational assistance provided by this chapter.

14 (11) Any notice of closure made under this section may include necessary adjustments in com-
15 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-
16 bility payments prematurely made, crediting temporary disability payments against current or future
17 permanent or temporary disability awards or payments and requiring the payment of temporary
18 disability payments which were payable but not paid.

19 (12) An insurer or self-insured employer may take a credit or offset of previously paid workers'
20 compensation benefits or payments against any further workers' compensation benefits or payments
21 due a worker from that insurer or self-insured employer when the worker admits to having obtained
22 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction
23 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-
24 fits or payments obtained through fraud by a worker shall not be included in any data used for
25 ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer,
26 a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund
27 Corporation or the director.

28 (13)(a) An insurer or self-insured employer may offset any compensation payable to the worker
29 to recover an overpayment from a claim with the same insurer or self-insured employer. When
30 overpayments are recovered from temporary disability or permanent total disability benefits, the
31 amount recovered from each payment shall not exceed 25 percent of the payment, without prior
32 authorization from the worker.

33 (b) An insurer or self-insured employer may suspend and offset any compensation payable to the
34 beneficiary of the worker, and recover an overpayment of permanent total disability benefits caused
35 by the failure of the worker's beneficiaries to notify the insurer or self-insured employer about the
36 death of the worker.

37 (14)(a) Conditions that are direct medical sequelae to the original accepted condition shall be
38 included in rating permanent disability of the claim unless they have been specifically denied.

39 (b) **As used in this subsection, "direct medical sequelae" means conditions that were di-**
40 **agnosed, were submitted for acceptance by the injured worker and were accepted prior to**
41 **the closure of the claim.**

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