

A-Engrossed
House Bill 2094

Ordered by the House March 10
Including House Amendments dated March 10

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Consumer and Business Services)

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.

Authorizes delay in reconsideration proceeding for notice of claim closure in workers' compensation claim under certain circumstances.

A BILL FOR AN ACT

1
2 Relating to reconsideration proceedings in workers' compensation claims; creating new provisions;
3 and amending ORS 656.206, 656.247, 656.268 and 656.325.

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 disabili-
18 ty, 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-

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 duced by any sums earned during the training.

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

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

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

7 (b) 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 regular employment;

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

15 (A) Requires a commute that is beyond the physical capacity of the worker according to the
16 worker's attending physician or the nurse practitioner who may authorize temporary disability under
17 ORS 656.245;

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

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

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

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

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

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

30 (e) Notwithstanding paragraph (c)(C), (D), (E) and (F) of this subsection, the attending physician
31 or nurse practitioner who has authorized temporary disability benefits under ORS 656.245 for a home
32 care worker who has been made a subject worker pursuant to ORS 656.039 advises the home care
33 worker and documents in writing that the home care worker is released to return to modified em-
34 ployment, appropriate modified employment is offered in writing by the Home Care Commission or
35 a designee of the commission to the home care worker for any client of the Department of Human
36 Services who employs a home care worker and the home care worker fails to begin the employment.

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

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

43 (B) The worker of the amount of any further compensation, including permanent disability
44 compensation to be awarded; of the duration of temporary total or temporary partial disability
45 compensation; of the right of the worker to request reconsideration by the director under this sec-

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

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

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

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

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

27 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
28 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
29 for permanent disability and the worker is found upon reconsideration to be at least 20 percent
30 permanently disabled, a penalty shall be assessed against the insurer or self-insured employer and
31 paid to the worker in an amount equal to 25 percent of all compensation determined to be then due
32 the claimant. If the increase in compensation results from information that the insurer or self-
33 insured employer demonstrates the insurer or self-insured employer could not reasonably have
34 known at the time of claim closure, from new information obtained through a medical arbiter ex-
35 amination or from a determination order issued by the director that addresses the extent of the
36 worker's permanent disability that is not based on the standards adopted pursuant to ORS 656.726
37 (4)(f), the 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 or nurse practitioner authorized
8 to provide compensable medical services under ORS 656.245 at the time of claim closure.

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

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

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

17 (d) **Except as provided in subsection (7) of this section,** the reconsideration proceeding shall
18 be completed within 18 working days from the date the reconsideration proceeding begins, and shall
19 be performed by a special evaluation appellate unit within the department. The deadline of 18
20 working days may be postponed by an additional 60 calendar days if within the 18 working days the
21 department mails notice of review by a medical arbiter. If an order on reconsideration has not been
22 mailed on or before 18 working days from the date the reconsideration proceeding begins, or within
23 18 working days plus the additional 60 calendar days where a notice for medical arbiter review was
24 timely mailed or the director postponed the reconsideration pursuant to paragraph (b) of this sub-
25 section, or within such additional time as provided in subsection [(7)] (8) of this section when re-
26 consideration is postponed further because the worker has failed to cooperate in the medical arbiter
27 examination, reconsideration shall be deemed denied and any further proceedings shall occur as
28 though an order on reconsideration affirming the notice of closure was mailed on the date the order
29 was due to issue.

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

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

41 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
42 656.283 within 30 days from the date of the reconsideration order.

43 **(7)(a) The director may delay the reconsideration proceeding and toll the reconsideration**
44 **timeline established under subsection (6) of this section for up to 45 calendar days if:**

45 **(A) A request for reconsideration of a notice of closure has been made to the director**

1 **within 60 days of the date of the notice of closure;**

2 **(B) The parties are actively engaged in settlement negotiations that include issues in**
3 **dispute at reconsideration;**

4 **(C) The parties agree to the delay; and**

5 **(D) Both parties notify the director before the 18th working day after the reconsideration**
6 **proceeding has begun that they request a delay under this subsection.**

7 **(b) A delay of the reconsideration proceeding granted by the director under this sub-**
8 **section expires:**

9 **(A) If a party requests the director to resume the reconsideration proceeding before the**
10 **expiration of the delay period;**

11 **(B) If the parties reach a settlement and the director receives a copy of the approved**
12 **settlement documents before the expiration of the delay period; or**

13 **(C) On the next calendar day following the expiration of the delay period authorized by**
14 **the director.**

15 **(c) Upon expiration of a delay granted under this subsection, the timeline for the com-**
16 **pletion of the reconsideration proceeding shall resume as if the delay had never been**
17 **granted.**

18 **(d) Compensation due the worker shall continue to be paid during the period of delay**
19 **authorized under this subsection.**

20 **(e) The director may authorize only one delay period for each reconsideration proceeding.**

21 ~~[(7)(a)]~~ **(8)(a)** If the basis for objection to a notice of closure issued under this section is disa-
22 greement with the impairment used in rating of the worker's disability, the director shall refer the
23 claim to a medical arbiter appointed by the director.

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

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

28 (d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians
29 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the
30 director in consultation with the Oregon Medical Board and the committee referred to in ORS
31 656.790.

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

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

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

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

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

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

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

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

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

19 [(8)] (9) No hearing shall be held on any issue that was not raised and preserved before the di-
20 rector at reconsideration. However, issues arising out of the reconsideration order may be ad-
21 dressed and resolved at hearing.

22 [(9)] (10) If, after the notice of closure issued pursuant to this section, the worker becomes en-
23 rolled and actively engaged in training according to rules adopted pursuant to ORS 656.340 and
24 656.726, any permanent disability payments due for work disability under the closure shall be sus-
25 pended, and the worker shall receive temporary disability compensation and any permanent disabili-
26 ty payments due for impairment while the worker is enrolled and actively engaged in the training.
27 When the worker ceases to be enrolled and actively engaged in the training, the insurer or self-
28 insured employer shall again close the claim pursuant to this section if the worker is medically
29 stationary or if the worker's accepted injury is no longer the major contributing cause of the
30 worker's combined or consequential condition or conditions pursuant to ORS 656.005 (7). The closure
31 shall include the duration of temporary total or temporary partial disability compensation. Perma-
32 nent disability compensation shall be redetermined for work disability only. If the worker has re-
33 turned to work or the worker's attending physician has released the worker to return to regular or
34 modified employment, the insurer or self-insured employer shall again close the claim. This notice
35 of closure may be appealed only in the same manner as are other notices of closure under this
36 section.

37 [(10)] (11) If the attending physician or nurse practitioner authorized to provide compensable
38 medical services under ORS 656.245 has approved the worker's return to work and there is a labor
39 dispute in progress at the place of employment, the worker may refuse to return to that employment
40 without loss of reemployment rights or any vocational assistance provided by this chapter.

41 [(11)] (12) Any notice of closure made under this section may include necessary adjustments in
42 compensation paid or payable prior to the notice of closure, including disallowance of permanent
43 disability payments prematurely made, crediting temporary disability payments against current or
44 future permanent or temporary disability awards or payments and requiring the payment of tempo-
45 rary disability payments which were payable but not paid.

1 [(12)] (13) An insurer or self-insured employer may take a credit or offset of previously paid
2 workers' compensation benefits or payments against any further workers' compensation benefits or
3 payments due a worker from that insurer or self-insured employer when the worker admits to having
4 obtained the previously paid benefits or payments through fraud, or a civil judgment or criminal
5 conviction is entered against the worker for having obtained the previously paid benefits through
6 fraud. Benefits or payments obtained through fraud by a worker shall not be included in any data
7 used for ratemaking or individual employer rating or dividend calculations by an insurer, a rating
8 organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation
9 or the director.

10 [(13)(a)] (14)(a) An insurer or self-insured employer may offset any compensation payable to the
11 worker to recover an overpayment from a claim with the same insurer or self-insured employer.
12 When overpayments are recovered from temporary disability or permanent total disability benefits,
13 the amount recovered from each payment shall not exceed 25 percent of the payment, without prior
14 authorization from the worker.

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

19 [(14)] (15) Conditions that are direct medical sequelae to the original accepted condition shall
20 be included in rating permanent disability of the claim unless they have been specifically denied.

21 **SECTION 2.** ORS 656.206 is amended to read:

22 656.206. (1) As used in this section:

23 (a) "Essential functions" means the primary tasks associated with the job.

24 (b) "Materially improved medically" means an actual change for the better in the worker's
25 medical condition that is supported by objective findings.

26 (c) "Materially improved vocationally" means an actual change for the better in the:

27 (A) Worker's vocational capability; or

28 (B) Likelihood that the worker can return to work in a gainful and suitable occupation.

29 (d) "Permanent total disability" means, notwithstanding ORS 656.225, the loss, including preex-
30 isting disability, of use or function of any portion of the body which permanently incapacitates the
31 worker from regularly performing work at a gainful and suitable occupation.

32 (e) "Regularly performing work" means the ability of the worker to discharge the essential
33 functions of the job.

34 (f) "Suitable occupation" means one that the worker has the ability and the training or experi-
35 ence to perform, or an occupation that the worker is able to perform after rehabilitation.

36 (g) "Wages" means wages as determined under ORS 656.210.

37 (2) When permanent total disability results from the injury, the worker shall receive during the
38 period of that disability compensation benefits equal to 66-2/3 percent of wages not to exceed 100
39 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the
40 amount of \$50, whichever amount is lesser.

41 (3) The worker has the burden of proving permanent total disability status and must establish
42 that the worker is willing to seek regular gainful employment and that the worker has made rea-
43 sonable efforts to obtain such employment.

44 (4) When requested by the Director of the Department of Consumer and Business Services, a
45 worker who receives permanent total disability benefits shall file on a form provided by the director,

1 a sworn statement of the worker's gross annual income for the preceding year along with such other
2 information as the director considers necessary to determine whether the worker regularly performs
3 work at a gainful and suitable occupation.

4 (5) Each insurer shall reexamine periodically each permanent total disability claim for which the
5 insurer has current payment responsibility to determine whether the worker has materially im-
6 proved, either medically or vocationally, and is no longer permanently incapacitated from regularly
7 performing work at a gainful and suitable occupation. Reexamination shall be conducted every two
8 years or at such other more frequent interval as the director may prescribe. Reexamination shall
9 include such medical examinations, vocational evaluations, reports and other records as the insurer
10 considers necessary or the director may require.

11 (6)(a) If a worker receiving permanent total disability benefits is found to be materially improved
12 and capable of regularly performing work at a gainful and suitable occupation, the insurer or self-
13 insured employer shall issue a notice of closure pursuant to ORS 656.268. Permanent total disability
14 benefits shall be paid through the date of the notice of closure. Notwithstanding ORS 656.268 (5),
15 if a worker objects to a notice of closure issued under this subsection, the worker must request a
16 hearing. If the worker requests a hearing on the notice of closure before the Hearings Division of
17 the Workers' Compensation Board within 30 days of the date of the notice of closure, the insurer
18 or self-insured employer shall continue payment of permanent total disability benefits until an order
19 of the Hearings Division or a subsequent order affirms the notice of closure or until another order
20 that terminates the worker's benefits becomes final. If the worker requests a hearing on the notice
21 of closure more than 30 days from the date of the notice of closure but before the 60-day period for
22 requesting a hearing expires, the insurer or self-insured employer shall resume paying permanent
23 total disability benefits from the date the hearing is requested and shall continue payment of bene-
24 fits until an order of the Hearings Division or a subsequent order affirms the notice of closure or
25 until another order that terminates the worker's benefits becomes final. If the notice of closure is
26 upheld by the Hearings Division, the insurer or self-insured employer shall be reimbursed from the
27 Workers' Benefit Fund for the amount of permanent total disability benefits paid after the date of
28 the notice of closure issued under this subsection.

29 (b) An insurer or self-insured employer must establish that the condition of a worker who is
30 receiving permanent total disability benefits has materially improved by a preponderance of the ev-
31 idence presented at hearing.

32 (c) Medical examinations or vocational evaluations used to support the issuance of a notice of
33 closure under this subsection must include at least one report in which the author personally ob-
34 served the worker.

35 (d) Notwithstanding section 54 (3), chapter 2, Oregon Laws 1990, the Hearings Division of the
36 Workers' Compensation Board may request the director to order a medical arbiter examination of
37 an injured worker who has requested a hearing under this subsection.

38 (7) A worker who has had permanent total disability benefits terminated under this section by
39 an order that has become final is eligible for vocational assistance pursuant to ORS 656.340.
40 Notwithstanding ORS 656.268 [(9)] (10), if a worker has enrolled in and is actively engaged in a
41 training program, when vocational assistance provided under this section ends or the worker ceases
42 to be enrolled and actively engaged in the training program, the insurer or the self-insured employer
43 shall determine the extent of disability pursuant to ORS 656.214.

44 (8) A worker receiving permanent total disability benefits is required, if requested by the di-
45 rector, the insurer or the self-insured employer, to submit to a vocational evaluation at a time rea-

1 sonably convenient to the worker as may be provided by the rules of the director. No more than
2 three evaluations may be requested except after notification to and authorization by the director.
3 If the worker refuses to submit to or obstructs a vocational evaluation, the rights of the worker to
4 compensation shall be suspended with the consent of the director until the evaluation has taken
5 place, and no compensation shall be payable for the period during which the worker refused to
6 submit to or obstructed the evaluation. The insurer or self-insured employer shall pay the costs of
7 the evaluation and related services that are reasonably necessary to allow the worker to attend the
8 evaluation requested under this subsection. As used in this subsection, "related services" includes,
9 but is not limited to, wages, child care, travel, meals and lodging.

10 (9) Notwithstanding any other provisions of this chapter, if a worker receiving permanent total
11 disability incurs a new compensable injury, the worker's entitlement to compensation for the new
12 injury shall be limited to medical benefits pursuant to ORS 656.245 and permanent partial disability
13 benefits for impairment, as determined in the manner set forth in ORS 656.214 (2).

14 (10) When a worker eligible for benefits under this section returns to work, if the combined total
15 of the worker's post-injury wages plus permanent total disability benefit exceeds the worker's wage
16 at the time of injury, the worker's permanent total disability benefit shall be reduced by the amount
17 the worker's wages plus statutory permanent total disability benefit exceeds the worker's wage at
18 injury.

19 (11) For purposes of this section:

20 (a) A gainful occupation for workers with a date of injury prior to January 1, 2006, who were:

21 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides
22 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three
23 that are applicable to Oregon residents and that are published annually in the Federal Register by
24 the United States Department of Health and Human Services or 66-2/3 percent of the worker's av-
25 erage weekly wages from all employment for the 52 weeks prior to the date of injury.

26 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-
27 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly
28 wages that are the lesser of the most recent federal poverty guidelines for a family of three that
29 are applicable to Oregon residents and that are published annually in the Federal Register by the
30 United States Department of Health and Human Services or 66-2/3 percent of the worker's average
31 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of
32 actual employment, excluding any extended periods of unemployment.

33 (C) Employed for less than four weeks prior to the date of injury with no other employment
34 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that
35 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable
36 to Oregon residents and that are published annually in the Federal Register by the United States
37 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended
38 by the parties at the time of initial hire.

39 (b) A gainful occupation for workers with a date of injury on or after January 1, 2006, who were:

40 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides
41 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three
42 that are applicable to Oregon residents and that are published annually in the Federal Register by
43 the United States Department of Health and Human Services or 66-2/3 percent of the worker's av-
44 erage weekly wages from all employment for the 52 weeks prior to the date of injury adjusted by
45 the percentage of change in the applicable federal poverty guidelines for a family of three from the

1 date of injury to the date of evaluation of the extent of the worker's disability.

2 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-
3 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly
4 wages that are the lesser of the most recent federal poverty guidelines for a family of three that
5 are applicable to Oregon residents and that are published annually in the Federal Register by the
6 United States Department of Health and Human Services or 66-2/3 percent of the worker's average
7 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of
8 actual employment, excluding any extended periods of unemployment and as adjusted by the per-
9 centage of change in the applicable federal poverty guidelines for a family of three from the date
10 of injury to the date of evaluation of the extent of the worker's disability.

11 (C) Employed for less than four weeks prior to the date of injury with no other employment
12 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that
13 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable
14 to Oregon residents and that are published annually in the Federal Register by the United States
15 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended
16 by the parties at the time of initial hire adjusted by the percentage of change in the applicable
17 federal poverty guidelines for a family of three from the date of injury to the date of evaluation of
18 the extent of the worker's disability.

19 **SECTION 3.** ORS 656.247 is amended to read:

20 656.247. (1) Except for medical services provided to workers subject to ORS 656.245 (4)(b)(B),
21 payment for medical services provided to a subject worker in response to an initial claim for a
22 work-related injury or occupational disease from the date of the employer's notice or knowledge of
23 the claim until the date the claim is accepted or denied shall be payable in accordance with sub-
24 section (4) of this section if the expenses are for:

25 (a) Diagnostic services required to identify appropriate treatment or to prevent disability;

26 (b) Medication required to alleviate pain; or

27 (c) Services required to stabilize the worker's claimed condition and to prevent further disabil-
28 ity.

29 (2) Notwithstanding subsection (1) of this section, no payment shall be due from the insurer or
30 self-insured employer if the insurer or self-insured employer denies the claim within 14 days of the
31 date of the employer's notice or knowledge of the claim.

32 (3)(a) Disputes about whether the medical services provided to treat the claimed work-related
33 injury or occupational disease under subsection (1) of this section are excessive, inappropriate or
34 ineffectual or are consistent with the criteria in subsection (1) of this section shall be resolved by
35 the Director of the Department of Consumer and Business Services. The director may order a med-
36 ical review by a physician or panel of physicians pursuant to ORS 656.327 (3) to aid in the review
37 of such services. If a party is dissatisfied with the order of the director, the dissatisfied party may
38 request review under ORS 656.704 within 60 days of the date of the director's order. The order of
39 the director may be modified only if it is not supported by substantial evidence in the record or if
40 it reflects an error of law.

41 (b) Disputes about the amount of the fee or nonpayment of bills for medical treatment and ser-
42 vices pursuant to this section shall be resolved pursuant to ORS 656.248.

43 (c) Except as provided in subsection (2) of this section, when a claim is settled pursuant to ORS
44 656.289 (4), all medical services payable under subsection (1) of this section that are provided on or
45 before the date of denial shall be paid in accordance with subsection (4) of this section. The insurer

1 or self-insured employer shall notify each affected service provider of the results of the settlement.

2 (4)(a) If the claim in which medical services are provided under subsection (1) of this section is
3 accepted, the insurer or self-insured employer shall make payment for such medical services subject
4 to the limitations and conditions of this chapter.

5 (b) If the claim in which medical services are provided under subsection (1) of this section is
6 denied and a health benefit plan provides benefits to the worker, the health benefit plan shall be the
7 first payer of the expenses for medical services according to the terms, conditions and benefits of
8 the plan. Except as provided by subsection (2) of this section, after payment by the health benefit
9 plan, the workers' compensation insurer or self-insured employer shall pay any balance remaining
10 for such services subject to the limitations and conditions of this chapter.

11 (c) As used in this subsection, "health benefit plan" has the meaning given that term in ORS
12 743.730.

13 (5) An insurer or self-insured employer may recover expenses for medical services paid under
14 subsection (1) of this section as an overpayment as provided by ORS 656.268 [(13)(a)] (14).

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

16 656.325. (1)(a) Any worker entitled to receive compensation under this chapter is required, if
17 requested by the Director of the Department of Consumer and Business Services, the insurer or
18 self-insured employer, to submit to a medical examination at a time reasonably convenient for the
19 worker as may be provided by the rules of the director. No more than three independent medical
20 examinations may be requested except after notification to and authorization by the director. If the
21 worker refuses to submit to any such examination, or obstructs the same, the rights of the worker
22 to compensation shall be suspended with the consent of the director until the examination has taken
23 place, and no compensation shall be payable during or for account of such period. The provisions
24 of this paragraph are subject to the limitations on medical examinations provided in ORS 656.268.

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

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

30 (A) Provide a worker the opportunity to request review by the director of the reasonableness
31 of the location selected for an independent medical examination. Upon receipt of the request for
32 review, the director shall conduct an expedited review of the location selected for the independent
33 medical examination and issue an order on the reasonableness of the location of the examination.
34 The director shall determine if there is substantial evidence for the objection to the location for the
35 independent medical examination based on a conclusion that the required travel is medically
36 contraindicated or other good cause establishing that the required travel is unreasonable. The de-
37 terminations of the director about the location of independent medical examinations are not subject
38 to review.

39 (B) Impose a monetary penalty against a worker who fails to attend an independent medical
40 examination without prior notification or without justification for not attending the examination. A
41 penalty imposed under this subparagraph may be imposed only on a worker who is not receiving
42 temporary disability benefits under ORS 656.210 or 656.212. An insurer or self-insured employer may
43 offset any future compensation payable to the worker to recover any penalty imposed under this
44 subparagraph from a claim with the same insurer or self-insured employer. When a penalty is re-
45 covered from temporary disability or permanent total disability benefits, the amount recovered from

1 each payment may not exceed 25 percent of the benefit payment without prior authorization from
2 the worker.

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

5 (d) Notwithstanding ORS 656.262 (6), if the director determines that the location selected for an
6 independent medical examination is unreasonable, the insurer or self-insured employer shall accept
7 or deny the claim within 90 days after the employer has notice or knowledge of the claim.

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

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

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

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

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

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

43 (5)(a) Except as provided by ORS 656.268 (4)(c) and [(10)] (11), an insurer or self-insured em-
44 ployer shall cease making payments pursuant to ORS 656.210 and shall commence making payment
45 of such amounts as are due pursuant to ORS 656.212 when an injured worker refuses wage earning

1 employment prior to claim determination and the worker's attending physician or nurse practitioner
2 authorized to provide compensable medical services under ORS 656.245, after being notified by the
3 employer of the specific duties to be performed by the injured worker, agrees that the injured
4 worker is capable of performing the employment offered.

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

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

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

17 **SECTION 5. The amendments to ORS 656.206, 656.247, 656.268 and 656.325 by sections 1**
18 **to 4 of this 2011 Act apply to requests for reconsideration made on or after the effective date**
19 **of this 2011 Act.**

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