

House Bill 2319

Sponsored by Representative BARNHART; Senator BATES (Pre-session filed.)

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**.

Establishes process for random external file review in certain workers' compensation claims. Limits independent medical examination requests in workers' compensation claim to one request by employer or self-insured employer and one request by worker. Authorizes Director of Department of Consumer and Business Services to adopt rules concerning random external file reviews.

A BILL FOR AN ACT

1
2 Relating to compensability disputes in workers' compensation claims; creating new provisions; and
3 amending ORS 656.325 and 656.328.

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

5 **SECTION 1.** ORS 656.325 is amended to read:

6 656.325. (1)(a) Any worker entitled to receive compensation under this chapter is required, if
7 requested by the Director of the Department of Consumer and Business Services, the insurer or
8 self-insured employer, to submit to a medical examination at a time reasonably convenient for the
9 worker as may be provided by the rules of the director. No more than *[three]* **one** independent
10 medical *[examinations]* **examination** may be requested except after notification to and authorization
11 by the director. If the worker refuses to submit to any such examination, or obstructs the same, the
12 rights of the worker to compensation shall be suspended with the consent of the director until the
13 examination has taken place, and no compensation shall be payable during or for account of such
14 period. The provisions of this paragraph are subject to the limitations on medical examinations
15 provided in ORS 656.268.

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

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

21 (A) Provide a worker the opportunity to request review by the director of the reasonableness
22 of the location selected for an independent medical examination. Upon receipt of the request for
23 review, the director shall conduct an expedited review of the location selected for the independent
24 medical examination and issue an order on the reasonableness of the location of the examination.
25 The director shall determine if there is substantial evidence for the objection to the location for the
26 independent medical examination based on a conclusion that the required travel is medically
27 contraindicated or other good cause establishing that the required travel is unreasonable. The de-
28 terminations of the director about the location of independent medical examinations are not subject
29 to review.

30 (B) Impose a monetary penalty against a worker who fails to attend an independent medical

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 examination without prior notification or without justification for not attending the examination. A
2 penalty imposed under this subparagraph may be imposed only on a worker who is not receiving
3 temporary disability benefits under ORS 656.210 or 656.212. An insurer or self-insured employer may
4 offset any future compensation payable to the worker to recover any penalty imposed under this
5 subparagraph from a claim with the same insurer or self-insured employer. When a penalty is re-
6 covered from temporary disability or permanent total disability benefits, the amount recovered from
7 each payment may not exceed 25 percent of the benefit payment without prior authorization from
8 the worker.

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

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

14 (e) If the worker has made a timely request for a hearing on a denial of compensability as re-
15 quired by ORS 656.319 (1)(a) that is based on one or more reports of examinations conducted pur-
16 suant to paragraph (a) of this subsection and the worker's attending physician or nurse practitioner
17 authorized to provide compensable medical services under ORS 656.245 does not concur with the
18 report or reports, the worker may request an examination to be conducted by a physician selected
19 by the [director] **the worker or the legal representative of the worker** from the list described in
20 ORS 656.328. The cost of the examination and the examination report shall be paid by the insurer
21 or self-insured employer. **If the opinion of the physician selected by the worker or the legal**
22 **representative of the worker does not concur with the opinion of the independent medical**
23 **examiner selected by the insurer or the self-insured employer, the claim shall be referred to**
24 **the director for a single random external file review by a provider selected at random from**
25 **the list described in ORS 656.328. The report of the provider conducting the external file re-**
26 **view shall become part of the record of the claim.**

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

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

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

44 (3) A worker who has received an award for permanent total or permanent partial disability
45 should be encouraged to make a reasonable effort to reduce the disability; and the award shall be

1 subject to periodic examination and adjustment in conformity with ORS 656.268.

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

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

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

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

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

29 **SECTION 2.** ORS 656.328 is amended to read:

30 656.328. (1) The Director of the Department of Consumer and Business Services shall maintain
 31 a list of providers that are authorized to perform independent medical examinations **and random**
 32 **external file reviews. Each provider authorized to provide medical services under this chapter**
 33 **who meets the requirements adopted under subsection (3) of this section shall be included**
 34 **on the list unless the provider has been excluded under subsection (2) of this section.**

35 (2) A provider on the list maintained by the director under subsection (1) of this section may
 36 be excluded from the list by the director after a finding of a violation of standards of professional
 37 conduct for conducting independent medical examinations **and random external file reviews**
 38 adopted by the appropriate health professional regulatory board. The director shall adopt by rule
 39 standards of professional conduct for providers performing independent medical examinations **and**
 40 **random external file reviews** if the appropriate health professional regulatory board has not
 41 adopted standards pertaining to independent medical examinations **and random external file re-**
 42 **views.** The rules adopted by the director under this subsection may be consistent with the guide-
 43 lines of conduct published by the Independent Medical Examination Association in effect on June
 44 4, 2007. The decision of the director to exclude a provider from the list maintained under subsection
 45 (1) of this section is subject to review under ORS 656.704.

1 (3) The director, in consultation with the advisory committee on medical care of the Workers'
2 Compensation Division of the Department of Consumer and Business Services, the Workers' Com-
3 pensation Management-Labor Advisory Committee and affected interest groups shall develop, and
4 the director shall adopt by rule:

5 (a) Professional licensing training requirements and educational materials for physicians partic-
6 ipating in the workers' compensation system and conducting independent medical examinations **and**
7 **random external file reviews** required under ORS 656.325 (1); and

8 (b) A process for investigating and reviewing complaints about independent medical examina-
9 tions **or random external file reviews** conducted under the requirements of ORS 656.325 (1) that
10 includes, but is not limited to, standards for referring complaints to the appropriate health profes-
11 sional regulatory board and an appeals process for a physician who disagrees with an action taken
12 by the director under subsection (2) of this section.

13 **SECTION 3. The amendments to ORS 656.325 and 656.328 by sections 1 and 2 of this 2011**
14 **Act apply to claims filed on or after the effective date of this 2011 Act.**