

Senate Bill 371

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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**.

Allows insurer or self-insured employer to mail notice of closure of workers' compensation claim to beneficiaries of deceased worker under certain circumstances. Establishes right of beneficiaries of deceased worker to request reconsideration of notice of closure. Includes necessary interpreter services in expenses that must be paid by insurer or self-insured employer in relation to deposition in reconsideration proceeding.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to notice of closure of workers' compensation claims; creating new provisions; amending
3 ORS 656.218 and 656.268; and declaring an emergency.

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-

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 un-
17 der 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.

39 **(b) The insurer or self-insured employer shall issue a notice of closure of [such a] the claim to**
40 **the worker, to the worker's attorney if the worker is represented, and to the director. If the worker**
41 **is deceased at the time the notice of closure is issued, the insurer or self-insured employer**
42 **shall mail the worker's copy of the notice of closure, addressed to the estate of the worker,**
43 **to the worker's last known address and may mail copies of the notice of closure to any**
44 **known or potential beneficiaries to the estate of the deceased worker.**

45 (c) The notice of closure must inform:

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

3 (B) The worker of:

4 (i) The amount of any further compensation, including permanent disability compensation to be
5 awarded;

6 (ii) [of] The duration of temporary total or temporary partial disability compensation;

7 (iii) [of] The right of the worker **or beneficiaries of the worker who were mailed a copy of**
8 **the notice of closure under paragraph (b) of this subsection** to request reconsideration by the
9 director under this section within 60 days of the date of the notice of [claim] closure;

10 (iv) **The right of beneficiaries who were not mailed a copy of the notice of closure under**
11 **paragraph (b) of this subsection to request reconsideration by the director under this section**
12 **within one year of the date the notice of closure was mailed to the estate of the worker**
13 **under paragraph (b) of this subsection;**

14 (v) [of] The right of the insurer or self-insured employer to request reconsideration by the di-
15 rector under this section within seven days of the date of the notice of [claim] closure;

16 (vi) [of] The aggravation rights; and

17 (vii) [of such] **Any** other information as the director may require; and

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

20 [(b)] (d) If the insurer or self-insured employer has not issued a notice of closure, the worker
21 may request closure. Within 10 days of receipt of a written request from the worker, the insurer or
22 self-insured employer shall issue a notice of closure if the requirements of this section have been
23 met or a notice of refusal to close if the requirements of this section have not been met. A notice
24 of refusal to close shall advise the worker of:

25 (A) The decision not to close; [of]

26 (B) The right of the worker to request a hearing pursuant to ORS 656.283 within 60 days of the
27 date of the notice of refusal to close [the claim];

28 (C) [of] The right to be represented by an attorney; and

29 (D) [of such] **Any** other information as the director may require.

30 [(c)] (e) If a worker, **a worker's beneficiary, an** insurer or **a** self-insured employer objects to
31 the notice of closure, the objecting party first must request reconsideration by the director under
32 this section. A worker's request for reconsideration must be made within 60 days of the date of the
33 notice of closure. **If the worker is deceased at the time the notice of closure is issued, a re-**
34 **quest for reconsideration by a beneficiary of the worker who was mailed a copy of the notice**
35 **of closure under paragraph (b) of this subsection must be made within 60 days of the date**
36 **of the notice of closure. A request for reconsideration by a beneficiary to the estate of a**
37 **deceased worker who was not mailed a copy of the notice of closure under paragraph (b) of**
38 **this subsection must be made within one year of the date the notice of closure was mailed**
39 **to the estate of the worker under paragraph (b) of this subsection.** A request for reconsider-
40 ation by an insurer or self-insured employer may be based only on disagreement with the findings
41 used to rate impairment and must be made within seven days of the date of the notice of closure.

42 [(d)] (f) If an insurer or self-insured employer has closed a claim or refused to close a claim
43 pursuant to this section, if the correctness of that notice of closure or refusal to close is at issue
44 in a hearing on the claim and if a finding is made at the hearing that the notice of closure or refusal
45 to close was not reasonable, a penalty shall be assessed against the insurer or self-insured employer

1 and paid to the worker in an amount equal to 25 percent of all compensation determined to be then
2 due the claimant.

3 [(e)] (g) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the
4 director orders an increase by 25 percent or more of the amount of compensation to be paid to the
5 worker for permanent disability and the worker is found upon reconsideration to be at least 20
6 percent permanently disabled, a penalty shall be assessed against the insurer or self-insured em-
7 ployer and paid to the worker in an amount equal to 25 percent of all compensation determined to
8 be then due the claimant. If the increase in compensation results from information that the insurer
9 or self-insured employer demonstrates the insurer or self-insured employer could not reasonably have
10 known at the time of claim closure, from new information obtained through a medical arbiter ex-
11 amination or from a determination order issued by the director that addresses the extent of the
12 worker's permanent disability that is not based on the standards adopted pursuant to ORS 656.726
13 (4)(f), the penalty shall not be assessed.

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

16 (A) A deposition arranged by the worker, limited to the testimony and cross-examination of the
17 worker about the worker's condition at the time of claim closure, shall become part of the recon-
18 sideration record. The deposition must be conducted subject to the opportunity for cross-examination
19 by the insurer or self-insured employer and in accordance with rules adopted by the director. The
20 cost of the court reporter, **interpreter services, if necessary**, and one original of the transcript
21 of the deposition for the Department of Consumer and Business Services and one copy of the tran-
22 script of the deposition for each party shall be paid by the insurer or self-insured employer. The
23 reconsideration proceeding may not be postponed to receive a deposition taken under this subpara-
24 graph. A deposition taken in accordance with this subparagraph may be received as evidence at a
25 hearing even if the deposition is not prepared in time for use in the reconsideration proceeding.

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

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

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

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

38 (d) Except as provided in subsection (7) of this section, the reconsideration proceeding shall be
39 completed within 18 working days from the date the reconsideration proceeding begins, and shall
40 be performed by a special evaluation appellate unit within the department. The deadline of 18
41 working days may be postponed by an additional 60 calendar days if within the 18 working days the
42 department mails notice of review by a medical arbiter. If an order on reconsideration has not been
43 mailed on or before 18 working days from the date the reconsideration proceeding begins, or within
44 18 working days plus the additional 60 calendar days where a notice for medical arbiter review was
45 timely mailed or the director postponed the reconsideration pursuant to paragraph (b) of this sub-

1 section, or within such additional time as provided in subsection (8) of this section when reconsid-
2 eration is postponed further because the worker has failed to cooperate in the medical arbiter
3 examination, reconsideration shall be deemed denied and any further proceedings shall occur as
4 though an order on reconsideration affirming the notice of closure was mailed on the date the order
5 was due to issue.

6 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
7 subsection begins upon receipt by the director of a worker's **or a beneficiary's** request for recon-
8 sideration pursuant to subsection [(5)(c)] **(5)(e)** of this section. If the insurer or self-insured employer
9 requests reconsideration, the period for reconsideration begins upon the earlier of the date of the
10 request for reconsideration by the worker[,] **or beneficiary**, the date of receipt of a waiver from the
11 worker **or beneficiary** of the right to request reconsideration or the date of expiration of the right
12 of the worker **or beneficiary** to request reconsideration. If a party elects not to file a separate re-
13 quest for reconsideration, the party does not waive the right to fully participate in the reconsider-
14 ation proceeding, including the right to proceed with the reconsideration if the initiating party
15 withdraws the request for reconsideration.

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

18 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
19 656.283 within 30 days from the date of the reconsideration order.

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

22 (A) A request for reconsideration of a notice of closure has been made to the director within
23 60 days of the date of the notice of closure;

24 (B) The parties are actively engaged in settlement negotiations that include issues in dispute
25 at reconsideration;

26 (C) The parties agree to the delay; and

27 (D) Both parties notify the director before the 18th working day after the reconsideration pro-
28 ceeding has begun that they request a delay under this subsection.

29 (b) A delay of the reconsideration proceeding granted by the director under this subsection ex-
30 pires:

31 (A) If a party requests the director to resume the reconsideration proceeding before the expi-
32 ration of the delay period;

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

35 (C) On the next calendar day following the expiration of the delay period authorized by the di-
36 rector.

37 (c) Upon expiration of a delay granted under this subsection, the timeline for the completion of
38 the reconsideration proceeding shall resume as if the delay had never been granted.

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

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

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

45 (b) If neither party requests a medical arbiter and the director determines that insufficient

1 medical information is available to determine disability, the director may refer the claim to a med-
2 ical arbiter appointed by the director.

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

4 (d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians
5 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the
6 director in consultation with the Oregon Medical Board and the committee referred to in ORS
7 656.790.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (15) Conditions that are direct medical sequelae to the original accepted condition shall be in-
 40 cluded in rating permanent disability of the claim unless they have been specifically denied.

41 **SECTION 2.** ORS 656.218 is amended to read:

42 656.218. (1) In case of the death of a worker entitled to compensation, whether eligibility
 43 therefor or the amount thereof [*have*] **has** been determined, payments shall be made for the period
 44 during which the worker, if surviving, would have been entitled thereto.

45 (2) If the worker's death occurs prior to issuance of a notice of closure under ORS 656.268, the

1 insurer or the self-insured employer shall determine compensation for permanent partial disability,
2 if any.

3 (3) If the worker has filed a request for [a] hearing pursuant to ORS 656.283 **or a request for**
4 **reconsideration pursuant to ORS 656.268** and death occurs prior to the final disposition of the
5 request, the persons described in subsection (5) of this section shall be entitled to pursue the matter
6 to final determination of all issues presented by the request [*for hearing*].

7 (4) If the worker dies before filing a request for hearing **or a request for reconsideration**, the
8 persons described in subsection (5) of this section shall be entitled to file a request for hearing **or**
9 **a request for reconsideration** and to pursue the matter to final determination as to all issues
10 presented by the request [*for hearing*].

11 (5) The payments provided in this section shall be made to the persons who would have been
12 entitled to receive death benefits if the injury causing the disability had been fatal. In the absence
13 of persons so entitled, the unpaid balance of the award shall be paid to the worker's estate.

14 (6) This section does not entitle any person to double payments on account of the death of a
15 worker and a continuation of payments for permanent partial disability, or to a greater sum in the
16 aggregate than if the injury had been fatal.

17 **SECTION 3. The amendments to ORS 656.218 and 656.268 by sections 1 and 2 of this 2015**
18 **Act apply to notices of closure issued on or after the effective date of this 2015 Act.**

19 **SECTION 4. This 2015 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
21 **on its passage.**

22