

Senate Bill 701

Sponsored by Senator BEYER

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**.

Modifies process for independent medical examinations of injured workers to provide for random selection of qualified physicians to conduct independent medical examinations in workers' compensation claims.

A BILL FOR AN ACT

1
2 Relating to independent medical examinations of injured workers; 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 independent medical
10 examinations may be requested except after notification to and authorization by the director. If the
11 worker refuses to submit to any such examination, or obstructs the same, the rights of the worker
12 to compensation shall be suspended with the consent of the director until the examination has taken
13 place, and no compensation shall be payable during or for account of such period. The provisions
14 of this paragraph are subject to the limitations on medical examinations provided in ORS 656.268.

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

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
31 examination without prior notification or without justification for not attending the examination. A

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

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

10 **(D) Establish a process for the random selection of a physician from a list of qualified**
11 **physicians maintained by the director as required by ORS 656.328 to perform medical exam-**
12 **inations authorized under this section.**

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

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

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

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

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

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

43 (4) When the employer of an injured worker, or the employer's insurer determines that the in-
44 jured worker has failed to follow medical advice from the attending physician or nurse practitioner
45 authorized to provide compensable medical services under ORS 656.245 or has failed to participate

1 in or complete physical restoration or vocational rehabilitation programs prescribed for the worker
2 pursuant to this chapter, the employer or insurer may petition the director for reduction of any
3 benefits awarded the worker. Notwithstanding any other provision of this chapter, if the director
4 finds that the worker has failed to accept treatment as provided in this subsection, the director may
5 reduce any benefits awarded the worker by such amount as the director considers appropriate.

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

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

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

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

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

26 656.328. (1) The Director of the Department of Consumer and Business Services shall maintain
27 a list of providers that are authorized to perform [*independent*] medical examinations **authorized**
28 **under this section.**

29 (2) A provider on the list maintained by the director under subsection (1) of this section may
30 be excluded from the list by the director after a finding of a violation of standards of professional
31 conduct for conducting independent medical examinations adopted by the appropriate health pro-
32 fessional regulatory board. The director shall adopt by rule standards of professional conduct for
33 providers performing independent medical examinations if the appropriate health professional regu-
34 latory board has not adopted standards pertaining to independent medical examinations. The rules
35 adopted by the director under this subsection may be consistent with the guidelines of conduct
36 published by the Independent Medical Examination Association in effect on June 4, 2007. The deci-
37 sion of the director to exclude a provider from the list maintained under subsection (1) of this sec-
38 tion is subject to review under ORS 656.704.

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

43 (a) Professional licensing training requirements and educational materials for physicians partic-
44 ipating in the workers' compensation system and conducting independent medical examinations re-
45 quired under ORS 656.325 (1); and

1 (b) A process for investigating and reviewing complaints about independent medical examina-
2 tions conducted under the requirements of ORS 656.325 (1) that includes, but is not limited to,
3 standards for referring complaints to the appropriate health professional regulatory board and an
4 appeals process for a physician who disagrees with an action taken by the director under subsection
5 (2) of this section.

6 **SECTION 3. The amendments to ORS 656.325 and 656.328 by sections 1 and 2 of this 2015**
7 **Act apply to requests for independent medical examinations on or after the effective date**
8 **of this 2015 Act.**

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