

D R A F T

SUMMARY

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. Establishes process for provider selection for out-of-state independent medical examinations.

A BILL FOR AN ACT

1
2 Relating to independent medical examinations of injured workers; creating
3 new provisions; and 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
7 chapter is required, if requested by the Director of the Department of Con-
8 sumer and Business Services, the insurer or self-insured employer, to submit
9 to a medical examination at a time reasonably convenient for the worker as
10 may be provided by the rules of the director. No more than three independent
11 medical examinations may be requested except after notification to and au-
12 thorization by the director. If the worker refuses to submit to any such ex-
13 amination, or obstructs the same, the rights of the worker to compensation
14 shall be suspended with the consent of the director until the examination
15 has taken place, and no compensation shall be payable during or for account
16 of such period. The provisions of this paragraph are subject to the limita-
17 tions on medical examinations provided in ORS 656.268.

18 (b) When a worker is requested by the director, the insurer or self-insured
19 employer to attend an independent medical examination, the examination
20 must be conducted by a physician selected **at random by the director** from

1 a list of qualified physicians established by the director under ORS 656.328.

2 (c) The director shall adopt rules applicable to independent medical ex-
3 aminations conducted pursuant to paragraph (a) of this subsection that:

4 (A) Provide a worker the opportunity to request review by the director
5 of the reasonableness of the location selected for an independent medical
6 examination. Upon receipt of the request for review, the director shall con-
7 duct an expedited review of the location selected for the independent medical
8 examination and issue an order on the reasonableness of the location of the
9 examination. The director shall determine if there is substantial evidence for
10 the objection to the location for the independent medical examination based
11 on a conclusion that the required travel is medically contraindicated or
12 other good cause establishing that the required travel is unreasonable. The
13 determinations of the director about the location of independent medical
14 examinations are not subject to review.

15 (B) Impose a monetary penalty against a worker who fails to attend an
16 independent medical examination without prior notification or without jus-
17 tification for not attending the examination. A penalty imposed under this
18 subparagraph may be imposed only on a worker who is not receiving tem-
19 porary disability benefits under ORS 656.210 or 656.212. An insurer or self-
20 insured employer may offset any future compensation payable to the worker
21 to recover any penalty imposed under this subparagraph from a claim with
22 the same insurer or self-insured employer. When a penalty is recovered from
23 temporary disability or permanent total disability benefits, the amount re-
24 covered from each payment may not exceed 25 percent of the benefit payment
25 without prior authorization from the worker.

26 (C) Impose a sanction against a medical service provider that unreason-
27 ably fails to provide in a timely manner diagnostic records required for an
28 independent medical examination.

29 **(D) Establish a process for randomly selecting a physician to per-**
30 **form medical examinations authorized under this section from a list**
31 **of qualified physicians the director maintains as required under ORS**

1 **656.328.**

2 **(E) Establish a process to select providers to perform independent**
3 **medical examinations outside this state.**

4 (d) Notwithstanding ORS 656.262 (6), if the director determines that the
5 location selected for an independent medical examination is unreasonable,
6 the insurer or self-insured employer shall accept or deny the claim within
7 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
9 compensability as required by ORS 656.319 (1)(a) that is based on one or more
10 reports of examinations conducted pursuant to paragraph (a) of this sub-
11 section and the worker's attending physician or nurse practitioner authorized
12 to provide compensable medical services under ORS 656.245 does not concur
13 with the report or reports, the worker may request an examination to be
14 conducted by a physician selected **at random** by the director from the list
15 described in ORS 656.328. The cost of the examination and the examination
16 report shall be paid by the insurer or self-insured employer.

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

26 (g) A worker who objects to the location of an independent medical ex-
27 amination must request review by the director under paragraph (c)(A) of this
28 subsection within six business days of the date the notice of the independent
29 medical examination was mailed.

30 (2) For any period of time during which any worker commits insanitary
31 or injurious practices which tend to either imperil or retard recovery of the

1 worker, or refuses to submit to such medical or surgical treatment as is
2 reasonably essential to promote recovery, or fails to participate in a program
3 of physical rehabilitation, the right of the worker to compensation shall be
4 suspended with the consent of the director and no payment shall be made for
5 such period. The period during which such worker would otherwise be enti-
6 tled to compensation may be reduced with the consent of the director to such
7 an extent as the disability has been increased by such refusal.

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

12 (4) When the employer of an injured worker, or the employer's insurer
13 determines that the injured worker has failed to follow medical advice from
14 the attending physician or nurse practitioner authorized to provide
15 compensable medical services under ORS 656.245 or has failed to participate
16 in or complete physical restoration or vocational rehabilitation programs
17 prescribed for the worker pursuant to this chapter, the employer or insurer
18 may petition the director for reduction of any benefits awarded the worker.
19 Notwithstanding any other provision of this chapter, if the director finds
20 that the worker has failed to accept treatment as provided in this subsection,
21 the director may reduce any benefits awarded the worker by such amount
22 as the director considers appropriate.

23 (5)(a) Except as provided by ORS 656.268 (4)(c) and (11), an insurer or
24 self-insured employer shall cease making payments pursuant to ORS 656.210
25 and shall commence making payment of such amounts as are due pursuant
26 to ORS 656.212 when an injured worker refuses wage earning employment
27 prior to claim determination and the worker's attending physician or nurse
28 practitioner authorized to provide compensable medical services under ORS
29 656.245, after being notified by the employer of the specific duties to be per-
30 formed by the injured worker, agrees that the injured worker is capable of
31 performing the employment offered.

1 (b) If the worker has been terminated for violation of work rules or other
2 disciplinary reasons, the insurer or self-insured employer shall cease pay-
3 ments pursuant to ORS 656.210 and commence payments pursuant to ORS
4 656.212 when the attending physician or nurse practitioner authorized to
5 provide compensable medical services under ORS 656.245 approves employ-
6 ment in a modified job that would have been offered to the worker if the
7 worker had remained employed, provided that the employer has a written
8 policy of offering modified work to injured workers.

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

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

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

18 656.328. (1) The Director of the Department of Consumer and Business
19 Services shall maintain a list of providers that are authorized to perform
20 [*independent*] medical examinations **that are authorized under this**
21 **section.**

22 (2) A provider on the list maintained by the director under subsection (1)
23 of this section may be excluded from the list by the director after a finding
24 of a violation of standards of professional conduct for conducting independ-
25 ent medical examinations adopted by the appropriate health professional
26 regulatory board. The director shall adopt by rule standards of professional
27 conduct for providers performing independent medical examinations if the
28 appropriate health professional regulatory board has not adopted standards
29 pertaining to independent medical examinations. The rules adopted by the
30 director under this subsection may be consistent with the guidelines of con-
31 duct published by the Independent Medical Examination Association in effect

1 on June 4, 2007. The decision of the director to exclude a provider from the
2 list maintained under subsection (1) of this section is subject to review under
3 ORS 656.704.

4 (3) The director, in consultation with the advisory committee on medical
5 care of the Workers' Compensation Division of the Department of Consumer
6 and Business Services, the Workers' Compensation Management-Labor Ad-
7 visory Committee and affected interest groups shall develop, and the director
8 shall adopt by rule:

9 (a) Professional licensing training requirements and educational materials
10 for physicians participating in the workers' compensation system and con-
11 ducting independent medical examinations required under ORS 656.325 (1);
12 and

13 (b) A process for investigating and reviewing complaints about independ-
14 ent medical examinations conducted under the requirements of ORS 656.325
15 (1) that includes, but is not limited to, standards for referring complaints to
16 the appropriate health professional regulatory board and an appeals process
17 for a physician who disagrees with an action taken by the director under
18 subsection (2) of this section.

19 **SECTION 3. The amendments to ORS 656.325 and 656.328 by sections**
20 **1 and 2 of this 2017 Act apply to requests for independent medical ex-**
21 **aminations on or after the effective date of this 2017 Act.**

22
