

Enrolled
House Bill 2294

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CHAPTER

AN ACT

Relating to workers' compensation claims; creating new provisions; and amending ORS 656.267, 656.278 and 656.298.

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

SECTION 1. ORS 656.267 is amended to read:

656.267. (1) To initiate omitted medical condition claims under ORS 656.262 (6)(d) or new medical condition claims under this section, the worker must clearly request formal written acceptance of a new medical condition or an omitted medical condition from the insurer or self-insured employer. A claim for a new medical condition or an omitted condition is not made by the receipt of medical billings, nor by requests for authorization to provide medical services for the new or omitted condition, nor by actually providing such medical services. The insurer or self-insured employer is not required to accept each and every diagnosis or medical condition with particularity, as long as the acceptance tendered reasonably apprises the claimant and the medical providers of the nature of the compensable conditions. Notwithstanding any other provision of this chapter, the worker may initiate a new medical or omitted condition claim at any time.

(2)(a) Claims properly initiated for new medical conditions and omitted medical conditions related to an initially accepted claim shall be processed pursuant to ORS 656.262.

(b) If an insurer or self-insured employer denies a claim for a new medical or omitted medical condition, the claimant may request a hearing on the denial pursuant to ORS 656.283.

(3) Notwithstanding subsection (2) of this section, claims for new medical or omitted medical conditions related to an initially accepted claim that [are] **have been determined to be compensable and that were** initiated after the rights under ORS 656.273 [have] expired shall be processed as requests for relief under the Workers' Compensation Board's own motion jurisdiction pursuant to ORS 656.278 (1)(b).

SECTION 2. ORS 656.278 is amended to read:

656.278. (1) Except as provided in subsection (7) of this section, the power and jurisdiction of the Workers' Compensation Board shall be continuing, and it may, upon its own motion, from time to time modify, change or terminate former findings, orders or awards if in its opinion such action is justified in those cases in which:

(a) There is a worsening of a compensable injury that results in the inability of the worker to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work. In such cases, the payment of temporary disability compensation in accordance with ORS 656.210, 656.212 (2) and 656.262 (4) may be provided from the time the attending physician authorizes

temporary disability compensation for the hospitalization, surgery or other curative treatment until the worker's condition becomes medically stationary;

(b) The worker submits and obtains acceptance of a claim for a compensable new medical condition or an omitted medical condition pursuant to ORS 656.267 and the claim is initiated after the rights under ORS 656.273 have expired. In such cases, the payment of temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212 (2) and 656.262 (4) may be provided from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery or other curative treatment until the worker's condition becomes medically stationary, and the payment of permanent disability benefits may be provided after application of the standards for the evaluation and determination of disability as may be adopted by the Director of the Department of Consumer and Business Services pursuant to ORS 656.726; or

(c) The date of injury is earlier than January 1, 1966. In such cases, in addition to the payment of temporary disability compensation, the payment of medical benefits may be provided.

(2) Benefits provided under subsection (1) of this section:

(a) Do not include vocational assistance benefits under ORS 656.340;

(b) Do not include temporary disability compensation for periods of time during which the claimant did not qualify as a "worker" pursuant to ORS 656.005 (30);

(c) Do not include medical services provided pursuant to ORS 656.245 except as provided under subsection (1)(c) of this section; and

(d) May include permanent disability benefits for additional impairment to an injured body part that has previously been the basis of a permanent partial disability award, but only to the extent that the permanent partial disability rating exceeds the permanent partial disability rated by the prior award or awards.

(3) An order or award made by the board during the time within which the claimant has the right to request a hearing on aggravation under ORS 656.273 is not an order or award, as the case may be, made by the board on its own motion.

(4) *[The claimant has no right to appeal any order or award made by the board on its own motion, except when the order diminishes or terminates a former award. The employer may appeal from an order which increases the award.] Pursuant to ORS 656.298, any party may appeal an order or award made by the board on its own motion.*

(5) The insurer or self-insured employer may voluntarily reopen any claim to provide benefits allowable under this section or to grant additional medical or hospital care to the claimant. The board shall establish procedures for the resolution of disputes arising out of a voluntary reopening of a claim under this section.

(6) Any claim reopened under this section shall be closed by the insurer or self-insured employer in a manner prescribed by the board, including, when appropriate, an award of permanent disability benefits as determined under subsections (1)(b) and (2)(d) of this section. The board shall also prescribe a process to be followed if the worker objects to the claim closure.

(7) The provisions of this section do not authorize the board, on its own motion, to modify, change or terminate former findings or orders:

(a) That a claimant incurred no injury or incurred a noncompensable injury; or

(b) Approving disposition of a claim under ORS 656.236 or 656.289 (4).

SECTION 3. ORS 656.298 is amended to read:

656.298. (1) **Within the time limit specified in ORS 656.295**, any party affected by an order of the Workers' Compensation Board, **including orders issued pursuant to ORS 656.278**, may, *within the time limit specified in ORS 656.295,* request judicial review of the order by the Court of Appeals.

(2) The name and style of the proceedings shall be "In the Matter of the Compensation of (name of the worker)."

(3) The judicial review shall be commenced by serving a copy of a petition for judicial review on the board and on the parties who appeared in the review proceedings, and by filing with the

clerk of the Court of Appeals the original petition for judicial review with proof of service indorsed thereon. The petition for judicial review shall state:

- (a) The name of the person appealing and of all other parties.
- (b) The date the order appealed from was filed.
- (c) A statement that the order is being appealed to the Court of Appeals.
- (d) A brief statement of the relief requested and the reasons the relief should be granted.
- (4) Within 10 days after service of a petition for judicial review on a party under subsection (3) of this section, such party may also request judicial review in the same manner.
- (5) The following requirements of subsection (3) of this section are jurisdictional and may not be waived or extended:
 - (a) Service of the petition for judicial review on all parties identified in the petition for judicial review as adverse parties or, if the petition for judicial review does not identify adverse parties, on all parties who have appeared in the proceeding before the board.
 - (b) Filing of the original petition for judicial review with the Court of Appeals within the time limits imposed by ORS 656.295 (8) and by subsection (4) of this section.
 - (6) Within 30 days after service of a petition for judicial review on the board, the board shall forward to the clerk of the Court of Appeals:
 - (a) The original copy of the transcribed record prepared under ORS 656.295.
 - (b) All exhibits.
 - (c) Copies of all decisions and orders entered during the hearing and review proceedings.
 - (7) The review by the Court of Appeals shall be on the entire record forwarded by the board. Review shall be as provided in ORS 183.482 (7) and (8).
 - (8) Review under this section shall be given precedence on the docket over all other cases, except those given equal status by statute.

SECTION 4. (1) The amendments to ORS 656.267, 656.278 and 656.298 by sections 1, 2 and 3 of this 2005 Act apply to all claims existing or arising on or after the effective date of this 2005 Act.

(2) Notwithstanding subsection (1) of this section, the amendments to ORS 656.267, 656.278 and 656.298 by sections 1, 2 and 3 of this 2005 Act do not apply to any matter for which an order has become final prior to the effective date of this 2005 Act.

Passed by House April 20, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate May 24, 2005

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President of Senate

Received by Governor:

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Approved:

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State