

**B-Engrossed**  
**Senate Bill 311**

Ordered by the Senate June 22  
Including Senate Amendments dated April 15 and June 22

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on General Government)

**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.

Requires Director of Department of Consumer and Business Services to adopt rules applicable to independent medical examinations for workers' compensation claims. Requires director to develop or approve training curriculum used by insurers, self-insured employers and third party administrators that is related to interactions with independent medical examination providers.

Requires director to maintain list of providers authorized to perform independent medical examinations for workers' compensation claims. Requires director to adopt rules relating to professional licensing training requirements and educational materials for physicians participating in workers' compensation system and conducting required medical examinations. Requires director to adopt process for investigation of complaints about medical examinations.

**Increases limitation on expenditures for Department of Consumer and Business Services for biennium beginning July 1, 2005, for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by department for specified purposes.**

**A BILL FOR AN ACT**

1  
2 Relating to required medical examinations for workers' compensation claims; creating new pro-  
3 visions; amending ORS 656.325 and 656.780; and limiting expenditures.

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

5 **SECTION 1.** ORS 656.325, as amended by section 11, chapter 657, Oregon Laws 2003, is  
6 amended to read:

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

17 **(b) When a worker is requested by the director, the insurer or self-insured employer to**  
18 **attend an independent medical examination, the examination must be conducted by a physi-**  
19 **cian selected from a list of qualified physicians established by the director under section 5**  
20 **of this 2005 Act.**

**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 (c) The director shall adopt rules applicable to independent medical examinations con-  
2 ducted pursuant to paragraph (a) of this subsection that:

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

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

21 (C) Impose a sanction against a medical service provider that unreasonably fails to pro-  
22 vide in a timely manner diagnostic records required for an independent medical examination.

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

27 [(b)] (e) If the worker has made a timely request for a hearing on a denial of compensability as  
28 required by ORS 656.319 (1)(a) that is based on one or more reports of examinations conducted  
29 pursuant to paragraph (a) of this subsection and the worker's attending physician or nurse practi-  
30 tioner authorized to provide compensable medical services under ORS 656.245 does not concur with  
31 the report or reports, the worker may request an examination to be conducted by a physician se-  
32 lected by the director from the list described in [ORS 656.268 (7)(d)] **section 5 of this 2005 Act**.  
33 The cost of the examination and the examination report shall be paid by the insurer or self-insured  
34 employer.

35 [(c)] (f) The insurer or self-insured employer shall pay the costs of the medical examination and  
36 related services which are reasonably necessary to allow the worker to submit to any examination  
37 requested under this section. As used in this [subsection] **paragraph**, "related services" includes, but  
38 is not limited to, child care, travel, meals, lodging and an amount equivalent to the worker's net lost  
39 wages for the period during which the worker is absent if the worker does not receive benefits  
40 pursuant to ORS 656.210 (4) during the period of absence. A claim for "related services" described  
41 in this [section] **paragraph** shall be made in the manner prescribed by the director.

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

45 (2) For any period of time during which any worker commits insanitary or injurious practices

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

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

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

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

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

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

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

37 **SECTION 2.** ORS 656.325, as amended by sections 11 and 12, chapter 657, Oregon Laws 2003,  
 38 and section 14, chapter 811, Oregon Laws 2003, is amended to read:

39 656.325. (1)(a) Any worker entitled to receive compensation under this chapter is required, if  
 40 requested by the Director of the Department of Consumer and Business Services, the insurer or  
 41 self-insured employer, to submit to a medical examination at a time reasonably convenient for the  
 42 worker as may be provided by the rules of the director. [However,] No more than three **independent**  
 43 **medical** examinations may be requested except after notification to and authorization by the direc-  
 44 tor. If the worker refuses to submit to any such examination, or obstructs the same, the rights of  
 45 the worker to compensation shall be suspended with the consent of the director until the examina-

1 tion has taken place, and no compensation shall be payable during or for account of such period.  
 2 The provisions of this paragraph are subject to the limitations on medical examinations provided in  
 3 ORS 656.268.

4 **(b) When a worker is requested by the director, the insurer or self-insured employer to**  
 5 **attend an independent medical examination, the examination must be conducted by a physi-**  
 6 **cian selected from a list of qualified physicians established by the director under section 5**  
 7 **of this 2005 Act.**

8 **(c) The director shall adopt rules applicable to independent medical examinations con-**  
 9 **ducted pursuant to paragraph (a) of this subsection that:**

10 **(A) Provide a worker the opportunity to request review by the director of the reason-**  
 11 **ableness of the location selected for an independent examination. Upon receipt of the request**  
 12 **for review, the director shall conduct an expedited review of the location selected for the**  
 13 **independent medical examination and issue an order on the reasonableness of the location**  
 14 **of the examination. The director shall determine if there is substantial evidence for the**  
 15 **objection to the location for the independent medical examination based on a conclusion that**  
 16 **the required travel is medically contraindicated or other good cause establishing that the**  
 17 **required travel is unreasonable. The determinations of the director about the location of in-**  
 18 **dependent medical examinations are not subject to review.**

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

28 **(C) Impose a sanction against a medical service provider that unreasonably fails to pro-**  
 29 **vide in a timely manner diagnostic records required for an independent medical examination.**

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

34 **[(b)] (e) If the worker has made a timely request for a hearing on a denial of compensability as**  
 35 **required by ORS 656.319 (1)(a) that is based on one or more reports of examinations conducted**  
 36 **pursuant to paragraph (a) of this subsection and the worker's attending physician does not concur**  
 37 **with the report or reports, the worker may request an examination to be conducted by a physician**  
 38 **selected by the director from the list described in [ORS 656.268 (7)(d)] section 5 of this 2005 Act.**  
 39 **The cost of the examination and the examination report shall be paid by the insurer or self-insured**  
 40 **employer.**

41 **[(c)] (f) The insurer or self-insured employer shall pay the costs of the medical examination and**  
 42 **related services which are reasonably necessary to allow the worker to submit to any examination**  
 43 **requested under this section. As used in this [subsection] paragraph, "related services" includes, but**  
 44 **is not limited to, child care, travel, meals, lodging and an amount equivalent to the worker's net lost**  
 45 **wages for the period during which the worker is absent if the worker does not receive benefits**

1 pursuant to ORS 656.210 (4) during the period of absence. A claim for “related services” described  
2 in this [section] **paragraph** shall be made in the manner prescribed by the director.

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

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

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

16 (4) When the employer of an injured worker, or the employer’s insurer determines that the in-  
17 jured worker has failed to follow medical advice from the attending physician or has failed to par-  
18 ticipate in or complete physical restoration or vocational rehabilitation programs prescribed for the  
19 worker pursuant to this chapter, the employer or insurer may petition the director for reduction of  
20 any benefits awarded the worker. Notwithstanding any other provision of this chapter, if the direc-  
21 tor finds that the worker has failed to accept treatment as provided in this subsection, the director  
22 may reduce any benefits awarded the worker by such amount as the director considers appropriate.

23 (5)(a) Except as provided by ORS 656.268 (4)(c) and (10), an insurer or self-insured employer shall  
24 cease making payments pursuant to ORS 656.210 and shall commence making payment of such  
25 amounts as are due pursuant to ORS 656.212 when an injured worker refuses wage earning em-  
26 ployment prior to claim determination and the worker’s attending physician, after being notified by  
27 the employer of the specific duties to be performed by the injured worker, agrees that the injured  
28 worker is capable of performing the employment offered.

29 (b) If the worker has been terminated for violation of work rules or other disciplinary reasons,  
30 the insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and commence  
31 payments pursuant to ORS 656.212 when the attending physician approves employment in a modified  
32 job that would have been offered to the worker if the worker had remained employed, provided that  
33 the employer has a written policy of offering modified work to injured workers.

34 (c) If the worker is a person present in the United States in violation of federal immigration  
35 laws, the insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and com-  
36 mence payments pursuant to ORS 656.212 when the attending physician approves employment in a  
37 modified job whether or not such a job is available.

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

39 **SECTION 3.** ORS 656.780 is amended to read:

40 656.780. (1) The Director of the Department of Consumer and Business Services shall:

41 **(a) Adopt by rule standards for certification of workers’ compensation claims examiners[.] that**  
42 **shall be administered by workers’ compensation insurers, self-insured employers and third party**  
43 **administrators [shall administer the standards.]; and**

44 **(b) Develop or approve any training curriculum used by insurers, self-insured employers**  
45 **and third party administrators that is related to interactions with independent medical ex-**

1 **amination providers required under ORS 656.325.**

2 (2)(a) Each insurer, self-insured employer and third party administrator shall maintain records  
3 of the certification and training of their workers' compensation claims examiners. These records are  
4 subject to inspection and review by the director.

5 (b) The director may impose a civil penalty against any insurer, self-insured employer or third  
6 party administrator that fails to:

7 (A) Maintain or produce certification and training records as required by the rules of the di-  
8 rector; or

9 (B) Provide training based on a curriculum approved by the director related to inter-  
10 actions with independent medical examination providers required under ORS 656.325.

11 (3) Insurers, self-insured employers and third party administrators may employ only certified  
12 workers' compensation claims examiners to process workers' compensation claims. The director may  
13 impose a civil penalty against any insurer, self-insured employer or third party administrator that  
14 violates this subsection.

15 **SECTION 4.** Section 5 of this 2005 Act is added to and made a part of ORS chapter 656.

16 **SECTION 5.** (1) The Director of the Department of Consumer and Business Services shall  
17 maintain a list of providers that are authorized to perform independent medical examina-  
18 tions.

19 (2) A provider on the list maintained by the director under subsection (1) of this section  
20 may be excluded from the list by the director after a finding of a violation of standards of  
21 professional conduct for conducting independent medical examinations adopted by the ap-  
22 propriate health professional regulatory board. If a health professional regulatory board has  
23 not adopted standards pertaining to independent medical examinations, the guidelines of  
24 conduct published by the American Board of Independent Medical Examiners in effect on the  
25 effective date of this 2005 Act shall apply as standards pertaining to providers conducting  
26 independent medical examinations that are licensed by that board. The decision of the di-  
27 rector to exclude a provider from the list maintained under subsection (1) of this section is  
28 subject to review under ORS 656.704.

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

33 (a) Professional licensing training requirements and educational materials for physicians  
34 participating in the workers' compensation system and conducting independent medical ex-  
35 aminations required under ORS 656.325 (1); and

36 (b) A process for investigating and reviewing complaints about independent medical ex-  
37 aminations conducted under the requirements of ORS 656.325 (1) that includes, but is not  
38 limited to, standards for referring complaints to the appropriate health professional regula-  
39 tory board and an appeals process for a physician who disagrees with an action taken by the  
40 director under subsection (2) of this section.

41 **SECTION 6.** Section 5 of this 2005 Act becomes operative on July 1, 2006.

42 **SECTION 7.** The Director of the Department of Consumer and Business Services may  
43 take any action before the operative date of section 5 of this 2005 Act that is necessary to  
44 enable the director to exercise, on and after the operative date of section 5 of this 2005 Act,  
45 the duties, powers and functions conferred on the director by this 2005 Act.

1       **SECTION 8.** The amendments to ORS 656.325 and 656.780 by sections 1, 2 and 3 of this  
2 2005 Act apply to all claims in which an independent medical examination required under  
3 ORS 656.325 is scheduled on or after the effective date of this 2005 Act.

4       **SECTION 9.** Notwithstanding any other law limiting expenditures, the limitation on  
5 expenditures for the Department of Consumer and Business Services for the biennium be-  
6 ginning July 1, 2005, established as the maximum limit for payment of expenses from fees,  
7 moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and  
8 federal funds, collected or received by the Department of Consumer and Business Services,  
9 is increased by \$525,608 for the purpose of carrying out the provisions of sections 5 and 7 of  
10 this 2005 Act and the amendments to ORS 656.325 and 656.780 by sections 1, 2 and 3 of this  
11 2005 Act.

12