

B-Engrossed Senate Bill 386

Ordered by the House June 9
Including Senate Amendments dated March 31 and House Amendments
dated June 9

Sponsored by 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.

Modifies process for reexamination of claim in which permanent total disability benefits are being paid and criteria for termination of those benefits. [*Requires that reports of medical examinations and evaluations including personal observation of worker be given greater weight than reports or evaluations not based on personal observation when determining termination of benefits.*] **Requires that medical examinations or vocational evaluations used to support termination of benefits include at least one report in which author personally observed worker.** Authorizes Administrative Law Judge to request medical arbiter examination. Establishes eligibility for vocational benefits for worker when permanent total disability benefits are terminated.

A BILL FOR AN ACT

1
2 Relating to permanent total disability benefits paid in workers' compensation claims; creating new
3 provisions; and amending ORS 656.206, 656.268, 656.319 and 656.605.

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

5 **SECTION 1.** ORS 656.206, as amended by section 5, chapter 657, Oregon Laws 2003, is amended
6 to read:

7 656.206. (1) As used in this section:

8 (a) **"Essential functions" means the primary tasks associated with the job.**

9 (b) **"Materially improved medically" means an actual change for the better in the work-
10 er's medical condition that is supported by objective findings.**

11 (c) **"Materially improved vocationally" means an actual change for the better in the:**

12 (A) **Worker's vocational capability; or**

13 (B) **Likelihood that the worker can return to work in a gainful and suitable occupation.**

14 [(a)] (d) [*Notwithstanding ORS 656.225,*] **"Permanent total disability" means, notwithstanding**
15 **ORS 656.225,** the loss, including preexisting disability, of use or function of any portion of the body
16 which permanently incapacitates the worker from regularly performing work at a gainful and suit-
17 able occupation. [*As used in this section, a gainful occupation is one that pays wages equal to or*
18 *greater than the state mandated hourly minimum wage. As used in this section, a suitable occupation*
19 *is one that the worker has the ability and the training or experience to perform, or an occupation that*
20 *the worker is able to perform after rehabilitation.*]

21 (e) **"Regularly performing work" means the ability of the worker to discharge the es-
22 sential functions of the job.**

23 (f) **"Suitable occupation" means one that the worker has the ability and the training or
24 experience to perform, or an occupation that the worker is able to perform after rehabili-**

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 **tation.**

2 [(b)] (g) "Wages" means wages as determined under ORS 656.210.

3 (2) When permanent total disability results from the injury, the worker shall receive during the
4 period of that disability compensation benefits equal to 66-2/3 percent of wages not to exceed 100
5 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the
6 amount of \$50, whichever amount is lesser.

7 (3) The worker has the burden of proving permanent total disability status and must establish
8 that the worker is willing to seek regular gainful employment and that the worker has made rea-
9 sonable efforts to obtain such employment.

10 (4) When requested by the Director of the Department of Consumer and Business Services, a
11 worker who receives permanent total disability benefits shall file on a form provided by the director,
12 a sworn statement of the worker's gross annual income for the preceding year along with such other
13 information as the director considers necessary to determine whether the worker regularly performs
14 work at a gainful and suitable occupation.

15 (5) Each insurer shall reexamine periodically each permanent total disability claim for which the
16 insurer has current payment responsibility to determine whether the worker [*is currently*] **has**
17 **materially improved, either medically or vocationally, and is no longer** permanently incapac-
18 itated from regularly performing work at a gainful and suitable occupation. Reexamination shall be
19 conducted every two years or at such other more frequent interval as the director may prescribe.
20 Reexamination shall include such medical examinations, **vocational evaluations**, reports and other
21 records as the insurer considers necessary or the director may require.

22 **(6)(a) If a worker receiving permanent total disability benefits is found to be materially**
23 **improved and capable of regularly performing work at a gainful and suitable occupation, the**
24 **insurer or self-insured employer shall issue a notice of closure pursuant to ORS 656.268.**
25 **Permanent total disability benefits shall be paid through the date of the notice of closure.**
26 **Notwithstanding ORS 656.268 (5), if a worker objects to a notice of closure issued under this**
27 **subsection, the worker must request a hearing. If the worker requests a hearing on the no-**
28 **tice of closure before the Hearings Division of the Workers' Compensation Board within 30**
29 **days of the date of the notice of closure, the insurer or self-insured employer shall continue**
30 **payment of permanent total disability benefits until an order of the Hearings Division or a**
31 **subsequent order affirms the notice of closure or until another order that terminates the**
32 **worker's benefits becomes final. If the worker requests a hearing on the notice of closure**
33 **more than 30 days from the date of the notice of closure but before the 60-day period for**
34 **requesting a hearing expires, the insurer or self-insured employer shall resume paying per-**
35 **manent total disability benefits from the date the hearing is requested and shall continue**
36 **payment of benefits until an order of the Hearings Division or a subsequent order affirms**
37 **the notice of closure or until another order that terminates the worker's benefits becomes**
38 **final. If the notice of closure is upheld by the Hearings Division, the insurer or self-insured**
39 **employer shall be reimbursed from the Workers' Benefit Fund for the amount of permanent**
40 **total disability benefits paid after the date of the notice of closure issued under this sub-**
41 **section.**

42 (b) An insurer or self-insured employer must establish that the condition of a worker
43 who is receiving permanent total disability benefits has materially improved by a prepon-
44 derance of the evidence presented at hearing.

45 (c) Medical examinations or vocational evaluations used to support the issuance of a no-

1 tice of closure under this subsection must include at least one report in which the author
2 personally observed the worker.

3 (d) Notwithstanding section 54 (3), chapter 2, Oregon Laws 1990, the Hearings Division
4 of the Workers' Compensation Board may request the director to order a medical arbiter
5 examination of an injured worker who has requested a hearing under this subsection.

6 (7) A worker who has had permanent total disability benefits terminated under this sec-
7 tion by an order that has become final is eligible for vocational assistance pursuant to ORS
8 656.340. Notwithstanding ORS 656.268 (9), if a worker has enrolled in and is actively engaged
9 in a training program, when vocational assistance provided under this section ends or the
10 worker ceases to be enrolled and actively engaged in the training program, the insurer or
11 the self-insured employer shall determine the extent of disability pursuant to ORS 656.214.

12 (8) A worker receiving permanent total disability benefits is required, if requested by the
13 director, the insurer or the self-insured employer, to submit to a vocational evaluation at a
14 time reasonably convenient to the worker as may be provided by the rules of the director.
15 No more than three evaluations may be requested except after notification to and authori-
16 zation by the director. If the worker refuses to submit to or obstructs a vocational evalua-
17 tion, the rights of the worker to compensation shall be suspended with the consent of the
18 director until the evaluation has taken place, and no compensation shall be payable for the
19 period during which the worker refused to submit to or obstructed the evaluation. The
20 insurer or self-insured employer shall pay the costs of the evaluation and related services
21 that are reasonably necessary to allow the worker to attend the evaluation requested under
22 this subsection. As used in this subsection, "related services" includes, but is not limited to,
23 wages, child care, travel, meals and lodging.

24 (9) Notwithstanding any other provisions of this chapter, if a worker receiving permanent
25 total disability incurs a new compensable injury, the worker's entitlement to compensation
26 for the new injury shall be limited to medical benefits pursuant to ORS 656.245 and perma-
27 nent partial disability benefits for impairment, as determined in the manner set forth in ORS
28 656.214 (2).

29 (10) When a worker eligible for benefits under this section returns to work, if the com-
30 bined total of the worker's post-injury wages plus permanent total disability benefit exceeds
31 the worker's wage at the time of injury, the worker's permanent total disability benefit shall
32 be reduced by the amount the worker's wages plus statutory permanent total disability
33 benefit exceeds the worker's wage at injury.

34 (11) For purposes of this section:

35 (a) A gainful occupation for workers with a date of injury prior to January 1, 2006, who
36 were:

37 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that pro-
38 vides weekly wages that are the lesser of the most recent federal poverty guidelines for a
39 family of three that are applicable to Oregon residents and that are published annually in the
40 Federal Register by the United States Department of Health and Human Services or 66-2/3
41 percent of the worker's average weekly wages from all employment for the 52 weeks prior
42 to the date of injury.

43 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were
44 employed for at least four weeks prior to the date of injury, is an occupation that provides
45 weekly wages that are the lesser of the most recent federal poverty guidelines for a family

1 of three that are applicable to Oregon residents and that are published annually in the Fed-
2 eral Register by the United States Department of Health and Human Services or 66-2/3 per-
3 cent of the worker's average weekly wage from all employment for the 52 weeks prior to the
4 date of injury based on weeks of actual employment, excluding any extended periods of un-
5 employment.

6 (C) Employed for less than four weeks prior to the date of injury with no other employ-
7 ment during the 52 weeks prior to the date of injury, is an occupation that provides weekly
8 wages that are the lesser of the most recent federal poverty guidelines for a family of three
9 that are applicable to Oregon residents and that are published annually in the Federal Reg-
10 ister by the United States Department of Health and Human Services or 66-2/3 percent of the
11 average weekly wages intended by the parties at the time of initial hire.

12 (b) A gainful occupation for workers with a date of injury on or after January 1, 2006,
13 who were:

14 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that pro-
15 vides weekly wages that are the lesser of the most recent federal poverty guidelines for a
16 family of three that are applicable to Oregon residents and that are published annually in the
17 Federal Register by the United States Department of Health and Human Services or 66-2/3
18 percent of the worker's average weekly wages from all employment for the 52 weeks prior
19 to the date of injury adjusted by the percentage of change in the applicable federal poverty
20 guidelines for a family of three from the date of injury to the date of evaluation of the extent
21 of the worker's disability.

22 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were
23 employed for at least four weeks prior to the date of injury, is an occupation that provides
24 weekly wages that are the lesser of the most recent federal poverty guidelines for a family
25 of three that are applicable to Oregon residents and that are published annually in the Fed-
26 eral Register by the United States Department of Health and Human Services or 66-2/3 per-
27 cent of the worker's average weekly wage from all employment for the 52 weeks prior to the
28 date of injury based on weeks of actual employment, excluding any extended periods of un-
29 employment and as adjusted by the percentage of change in the applicable federal poverty
30 guidelines for a family of three from the date of injury to the date of evaluation of the extent
31 of the worker's disability.

32 (C) Employed for less than four weeks prior to the date of injury with no other employ-
33 ment during the 52 weeks prior to the date of injury, is an occupation that provides weekly
34 wages that are the lesser of the most recent federal poverty guidelines for a family of three
35 that are applicable to Oregon residents and that are published annually in the Federal Reg-
36 ister by the United States Department of Health and Human Services or 66-2/3 percent of the
37 average weekly wages intended by the parties at the time of initial hire adjusted by the
38 percentage of change in the applicable federal poverty guidelines for a family of three from
39 the date of injury to the date of evaluation of the extent of the worker's disability.

40 **SECTION 2.** ORS 656.206, as amended by sections 5 and 6, chapter 657, Oregon Laws 2003, is
41 amended to read:

42 656.206. (1) As used in this section:

43 (a) "Essential functions" means the primary tasks associated with the job.

44 (b) "Materially improved medically" means an actual change for the better in the work-
45 er's medical condition that is supported by objective findings.

1 (c) **“Materially improved vocationally” means an actual change for the better in the:**

2 **(A) Worker’s vocational capability; or**

3 **(B) Likelihood that the worker can return to work in a gainful and suitable occupation.**

4 [(a)] (d) [Notwithstanding ORS 656.225,] **“Permanent total disability” means, notwithstanding**
5 **ORS 656.225,** the loss, including preexisting disability, of use or function of any scheduled or un-
6 scheduled portion of the body which permanently incapacitates the worker from regularly perform-
7 ing work at a gainful and suitable occupation. [As used in this section, a gainful occupation is one
8 that pays wages equal to or greater than the state mandated hourly minimum wage. As used in this
9 section, a suitable occupation is one that the worker has the ability and the training or experience to
10 perform, or an occupation that the worker is able to perform after rehabilitation.]

11 (e) **“Regularly performing work” means the ability of the worker to discharge the es-**
12 **sential functions of the job.**

13 (f) **“Suitable occupation” means one that the worker has the ability and the training or**
14 **experience to perform, or an occupation that the worker is able to perform after rehabili-**
15 **tation.**

16 [(b)] (g) **“Wages” means wages as determined under ORS 656.210.**

17 (2) When permanent total disability results from the injury, the worker shall receive during the
18 period of that disability compensation benefits equal to 66-2/3 percent of wages not to exceed 100
19 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the
20 amount of \$50, whichever amount is lesser.

21 (3) The worker has the burden of proving permanent total disability status and must establish
22 that the worker is willing to seek regular gainful employment and that the worker has made rea-
23 sonable efforts to obtain such employment.

24 (4) When requested by the Director of the Department of Consumer and Business Services, a
25 worker who receives permanent total disability benefits shall file on a form provided by the director,
26 a sworn statement of the worker’s gross annual income for the preceding year along with such other
27 information as the director considers necessary to determine whether the worker regularly performs
28 work at a gainful and suitable occupation.

29 (5) Each insurer shall reexamine periodically each permanent total disability claim for which the
30 insurer has current payment responsibility to determine whether the worker [*is currently*] **has**
31 **materially improved, either medically or vocationally, and is no longer** permanently incapaciti-
32 cated from regularly performing work at a gainful and suitable occupation. Reexamination shall be
33 conducted every two years or at such other more frequent interval as the director may prescribe.
34 Reexamination shall include such medical examinations, **vocational evaluations,** reports and other
35 records as the insurer considers necessary or the director may require.

36 (6)(a) **If a worker receiving permanent total disability benefits is found to be materially**
37 **improved and capable of regularly performing work at a gainful and suitable occupation, the**
38 **insurer or self-insured employer shall issue a notice of closure pursuant to ORS 656.268.**
39 **Permanent total disability benefits shall be paid through the date of the notice of closure.**
40 **Notwithstanding ORS 656.268 (5), if a worker objects to a notice of closure issued under this**
41 **subsection, the worker must request a hearing. If the worker requests a hearing on the no-**
42 **tice of closure before the Hearings Division of the Workers’ Compensation Board within 30**
43 **days of the date of the notice of closure, the insurer or self-insured employer shall continue**
44 **payment of permanent total disability benefits until an order of the Hearings Division or a**
45 **subsequent order affirms the notice of closure or until another order that terminates the**

1 worker's benefits becomes final. If the worker requests a hearing on the notice of closure
2 more than 30 days from the date of the notice of closure but before the 60-day period for
3 requesting a hearing expires, the insurer or self-insured employer shall resume paying per-
4 manent total disability benefits from the date the hearing is requested and shall continue
5 payment of benefits until an order of the Hearings Division or a subsequent order affirms
6 the notice of closure or until another order that terminates the worker's benefits becomes
7 final. If the notice of closure is upheld by the Hearings Division, the insurer or self-insured
8 employer shall be reimbursed from the Workers' Benefit Fund for the amount of permanent
9 total disability benefits paid after the date of the notice of closure issued under this sub-
10 section.

11 (b) An insurer or self-insured employer must establish that the condition of a worker
12 who is receiving permanent total disability benefits has materially improved by a prepon-
13 derance of the evidence presented at hearing.

14 (c) Medical examinations or vocational evaluations used to support the issuance of a no-
15 tice of closure under this subsection must include at least one report in which the author
16 personally observed the worker.

17 (d) Notwithstanding section 54 (3), chapter 2, Oregon Laws 1990, the Hearings Division
18 of the Workers' Compensation Board may request the director to order a medical arbiter
19 examination of an injured worker who has requested a hearing under this subsection.

20 (7) A worker who has had permanent total disability benefits terminated under this sec-
21 tion by an order that has become final is eligible for vocational assistance pursuant to ORS
22 656.340. Notwithstanding ORS 656.268 (9), if a worker has enrolled in and is actively engaged
23 in a training program, when vocational assistance provided under this section ends or the
24 worker ceases to be enrolled and actively engaged in the training program, the insurer or
25 self-insured employer shall determine the extent of disability pursuant to ORS 656.214.

26 (8) A worker receiving permanent total disability benefits is required, if requested by the
27 director, the insurer or the self-insured employer, to submit to a vocational evaluation at a
28 time reasonably convenient to the worker as may be provided by the rules of the director.
29 No more than three evaluations may be requested except after notification to and authori-
30 zation by the director. If the worker refuses to submit to or obstructs a vocational evalu-
31 ation, the rights of the worker to compensation shall be suspended with the consent of the
32 director until the evaluation has taken place, and no compensation shall be payable for the
33 period during which the worker refused to submit to or obstructed the evaluation. The
34 insurer or self-insured employer shall pay the costs of the evaluation and related services
35 that are reasonably necessary to allow the worker to attend the evaluation requested under
36 this subsection. As used in this subsection, "related services" includes, but is not limited to,
37 wages, child care, travel, meals and lodging.

38 (9) Notwithstanding any other provisions of this chapter, if a worker receiving permanent
39 total disability incurs a new compensable injury, the worker's entitlement to compensation
40 for the new injury shall be limited to medical benefits pursuant to ORS 656.245 and perma-
41 nent partial disability benefits for impairment, as determined in the manner set forth in ORS
42 656.214 (2).

43 (10) When a worker eligible for benefits under this section returns to work, if the com-
44 bined total of the worker's post-injury wages plus permanent total disability benefit exceeds
45 the worker's wage at the time of injury, the worker's permanent total disability benefit shall

1 be reduced by the amount the worker's wages plus statutory permanent total disability
2 benefit exceeds the worker's wage at injury.

3 (11) For purposes of this section:

4 (a) A gainful occupation for workers with a date of injury prior to January 1, 2006, who
5 were:

6 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that pro-
7 vides weekly wages that are the lesser of the most recent federal poverty guidelines for a
8 family of three that are applicable to Oregon residents and that are published annually in the
9 Federal Register by the United States Department of Health and Human Services or 66-2/3
10 percent of the worker's average weekly wages from all employment for the 52 weeks prior
11 to the date of injury.

12 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were
13 employed for at least four weeks prior to the date of injury, is an occupation that provides
14 weekly wages that are the lesser of the most recent federal poverty guidelines for a family
15 of three that are applicable to Oregon residents and that are published annually in the Fed-
16 eral Register by the United States Department of Health and Human Services or 66-2/3 per-
17 cent of the worker's average weekly wage from all employment for the 52 weeks prior to the
18 date of injury based on weeks of actual employment, excluding any extended periods of un-
19 employment.

20 (C) Employed for less than four weeks prior to the date of injury with no other employ-
21 ment during the 52 weeks prior to the date of injury, is an occupation that provides weekly
22 wages that are the lesser of the most recent federal poverty guidelines for a family of three
23 that are applicable to Oregon residents and that are published annually in the Federal Reg-
24 ister by the United States Department of Health and Human Services or 66-2/3 percent of the
25 average weekly wages intended by the parties at the time of initial hire.

26 (b) A gainful occupation for workers with a date of injury on or after January 1, 2006,
27 who were:

28 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that pro-
29 vides weekly wages that are the lesser of the most recent federal poverty guidelines for a
30 family of three that are applicable to Oregon residents and that are published annually in the
31 Federal Register by the United States Department of Health and Human Services or 66-2/3
32 percent of the worker's average weekly wages from all employment for the 52 weeks prior
33 to the date of injury adjusted by the percentage of change in the applicable federal poverty
34 guidelines for a family of three from the date of injury to the date of evaluation of the extent
35 of the worker's disability.

36 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were
37 employed for at least four weeks prior to the date of injury, is an occupation that provides
38 weekly wages that are the lesser of the most recent federal poverty guidelines for a family
39 of three that are applicable to Oregon residents and that are published annually in the Fed-
40 eral Register by the United States Department of Health and Human Services or 66-2/3 per-
41 cent of the worker's average weekly wage from all employment for the 52 weeks prior to the
42 date of injury based on weeks of actual employment, excluding any extended periods of un-
43 employment and as adjusted by the percentage of change in the applicable federal poverty
44 guidelines for a family of three from the date of injury to the date of evaluation of the extent
45 of the worker's disability.

1 (C) Employed for less than four weeks prior to the date of injury with no other employ-
2 ment during the 52 weeks prior to the date of injury, is an occupation that provides weekly
3 wages that are the lesser of the most recent federal poverty guidelines for a family of three
4 that are applicable to Oregon residents and that are published annually in the Federal Reg-
5 ister by the United States Department of Health and Human Services or 66-2/3 percent of the
6 average weekly wages intended by the parties at the time of initial hire adjusted by the
7 percentage of change in the applicable federal poverty guidelines for a family of three from
8 the date of injury to the date of evaluation of the extent of the worker's disability.

9 **SECTION 3.** ORS 656.268, as amended by section 7, chapter 657, Oregon Laws 2003, is amended
10 to read:

11 656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and
12 as near as possible to a condition of self support and maintenance as an able-bodied worker. The
13 insurer or self-insured employer shall close the worker's claim, as prescribed by the Director of the
14 Department of Consumer and Business Services, and determine the extent of the worker's permanent
15 disability, provided the worker is not enrolled and actively engaged in training according to rules
16 adopted by the director pursuant to ORS 656.340 and 656.726, when:

17 (a) The worker has become medically stationary and there is sufficient information to determine
18 permanent disability;

19 (b) The accepted injury is no longer the major contributing cause of the worker's combined or
20 consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because
21 the accepted injury is no longer the major contributing cause of the worker's combined or conse-
22 quential condition or conditions, and there is sufficient information to determine permanent disabil-
23 ity, the likely permanent disability that would have been due to the current accepted condition shall
24 be estimated; [or]

25 (c) Without the approval of the attending physician or nurse practitioner authorized to provide
26 compensable medical services under ORS 656.245, the worker fails to seek medical treatment for a
27 period of 30 days or the worker fails to attend a closing examination, unless the worker
28 affirmatively establishes that such failure is attributable to reasons beyond the worker's control[.];

29 **or**

30 (d) **An insurer or self-insured employer finds that a worker who has been receiving per-**
31 **manent total disability benefits has materially improved and is capable of regularly per-**
32 **forming work at a gainful and suitable occupation.**

33 (2) If the worker is enrolled and actively engaged in training according to rules adopted pursu-
34 ant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately re-
35 duced by any sums earned during the training.

36 (3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors
37 shall be furnished to the worker, if requested by the worker.

38 (4) Temporary total disability benefits shall continue until whichever of the following events
39 first occurs:

40 (a) The worker returns to regular or modified employment;

41 (b) The attending physician or nurse practitioner who has authorized temporary disability ben-
42 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker
43 is released to return to regular employment;

44 (c) The attending physician or nurse practitioner who has authorized temporary disability ben-
45 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker

1 is released to return to modified employment, such employment is offered in writing to the worker
2 and the worker fails to begin such employment. However, an offer of modified employment may be
3 refused by the worker without the termination of temporary total disability benefits if the offer:

4 (A) Requires a commute that is beyond the physical capacity of the worker according to the
5 worker's attending physician or the nurse practitioner who may authorize temporary disability un-
6 der ORS 656.245;

7 (B) Is at a work site more than 50 miles one way from where the worker was injured unless the
8 site is less than 50 miles from the worker's residence or the intent of the parties at the time of hire
9 or as established by the pattern of employment prior to the injury was that the employer had mul-
10 tiple or mobile work sites and the worker could be assigned to any such site;

11 (C) Is not with the employer at injury;

12 (D) Is not at a work site of the employer at injury;

13 (E) Is not consistent with the existing written shift change policy or is not consistent with
14 common practice of the employer at injury or aggravation; or

15 (F) Is not consistent with an existing shift change provision of an applicable collective bar-
16 gaining agreement; or

17 (d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld
18 or terminated under ORS 656.262 (4) or other provisions of this chapter.

19 (5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's dis-
20 ability in closure of the claim shall be pursuant to the standards prescribed by the director [*of the*
21 *Department of Consumer and Business Services*]. The insurer or self-insured employer shall issue a
22 notice of closure of such a claim to the worker, to the worker's attorney if the worker is repres-
23 ented, and to the director. The notice must inform:

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

26 (B) The worker of the amount of any further compensation, including permanent disability
27 compensation to be awarded; of the duration of temporary total or temporary partial disability
28 compensation; of the right of the worker to request reconsideration by the director under this sec-
29 tion within 60 days of the date of the notice of claim closure; of the right of the insurer or self-
30 insured employer to request reconsideration by the director under this section within seven days
31 of the date of the notice of claim closure; of the aggravation rights; and of such other information
32 as the director may require; and

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

35 (b) If the insurer or self-insured employer has not issued a notice of closure, the worker may
36 request closure. Within 10 days of receipt of a written request from the worker, the insurer or
37 self-insured employer shall issue a notice of closure if the requirements of this section have been
38 met or a notice of refusal to close if the requirements of this section have not been met. A notice
39 of refusal to close shall advise the worker of the decision not to close; of the right of the worker
40 to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to
41 close the claim; of the right to be represented by an attorney; and of such other information as the
42 director may require.

43 (c) If a worker, insurer or self-insured employer objects to the notice of closure, the objecting
44 party first must request reconsideration by the director under this section. A worker's request for
45 reconsideration must be made within 60 days of the date of the notice of closure. A request for re-

1 consideration by an insurer or self-insured employer may be based only on disagreement with the
2 findings used to rate impairment and must be made within seven days of the date of the notice of
3 closure.

4 (d) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant
5 to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing
6 on the claim and if a finding is made at the hearing that the notice of closure or refusal to close
7 was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid
8 to the worker in an amount equal to 25 percent of all compensation determined to be then due the
9 claimant.

10 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
11 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
12 for permanent disability and the worker is found upon reconsideration to be at least 20 percent
13 permanently disabled, a penalty shall be assessed against the insurer or self-insured employer and
14 paid to the worker in an amount equal to 25 percent of all compensation determined to be then due
15 the claimant. If the increase in compensation results from new information obtained through a
16 medical arbiter examination or from the adoption of a temporary emergency rule, the penalty shall
17 not be assessed.

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

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

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

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

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

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

42 (d) The reconsideration proceeding shall be completed within 18 working days from the date the
43 reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit
44 within the department. The deadline of 18 working days may be postponed by an additional 60 cal-
45 endar days if within the 18 working days the department mails notice of review by a medical arbiter.

1 If an order on reconsideration has not been mailed on or before 18 working days from the date the
2 reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days
3 where a notice for medical arbiter review was timely mailed or the director postponed the recon-
4 sideration pursuant to paragraph (b) of this subsection, or within such additional time as provided
5 in subsection (7) of this section when reconsideration is postponed further because the worker has
6 failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and
7 any further proceedings shall occur as though an order on reconsideration affirming the notice of
8 closure was mailed on the date the order was due to issue.

9 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
10 subsection begins upon receipt by the director of a worker's request for reconsideration pursuant
11 to subsection (5)(c) of this section. If the insurer or self-insured employer requests reconsideration,
12 the period for reconsideration begins upon the later of the date of the request for reconsideration
13 by the worker, the date of receipt of a waiver from the worker of the right to request reconsider-
14 ation or the date of expiration of the right of the worker to request reconsideration. If a party elects
15 not to file a separate request for reconsideration, the party does not waive the right to fully par-
16 ticipate in the reconsideration proceeding, including the right to proceed with the reconsideration
17 if the initiating party withdraws the request for reconsideration.

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

20 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
21 656.283 within 30 days from the date of the reconsideration order.

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

25 (b) If neither party requests a medical arbiter and the director determines that insufficient
26 medical information is available to determine disability, the director may refer the claim to a med-
27 ical arbiter appointed by the director.

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

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

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

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

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

1 upon the existing record.

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

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

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

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

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

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

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

23 (9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled
24 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,
25 any permanent disability payments due for work disability under the closure shall be suspended, and
26 the worker shall receive temporary disability compensation and any permanent disability payments
27 due for impairment while the worker is enrolled and actively engaged in the training. When the
28 worker ceases to be enrolled and actively engaged in the training, the insurer or self-insured em-
29 ployer shall again close the claim pursuant to this section if the worker is medically stationary or
30 if the worker's accepted injury is no longer the major contributing cause of the worker's combined
31 or consequential condition or conditions pursuant to ORS 656.005 (7). The closure shall include the
32 duration of temporary total or temporary partial disability compensation. Permanent disability
33 compensation shall be redetermined for work disability only. If the worker has returned to work or
34 the worker's attending physician has released the worker to return to regular or modified employ-
35 ment, the insurer or self-insured employer shall again close the claim. This notice of closure may
36 be appealed only in the same manner as are other notices of closure under this section.

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

41 (11) Any notice of closure made under this section may include necessary adjustments in com-
42 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-
43 bility payments prematurely made, crediting temporary disability payments against current or future
44 permanent or temporary disability awards or payments and requiring the payment of temporary
45 disability payments which were payable but not paid.

1 (12) An insurer or self-insured employer may take a credit or offset of previously paid workers'
2 compensation benefits or payments against any further workers' compensation benefits or payments
3 due a worker from that insurer or self-insured employer when the worker admits to having obtained
4 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction
5 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-
6 fits or payments obtained through fraud by a worker shall not be included in any data used for
7 ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer,
8 a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund
9 Corporation or the director.

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

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

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

21 **SECTION 4.** ORS 656.268, as amended by sections 7 and 8, chapter 657, Oregon Laws 2003, and
22 section 12, chapter 811, Oregon Laws 2003, is amended to read:

23 656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and
24 as near as possible to a condition of self support and maintenance as an able-bodied worker. The
25 insurer or self-insured employer shall close the worker's claim, as prescribed by the Director of the
26 Department of Consumer and Business Services, and determine the extent of the worker's permanent
27 disability, provided the worker is not enrolled and actively engaged in training according to rules
28 adopted by the director pursuant to ORS 656.340 and 656.726, when:

29 (a) The worker has become medically stationary and there is sufficient information to determine
30 permanent impairment;

31 (b) The accepted injury is no longer the major contributing cause of the worker's combined or
32 consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because
33 the accepted injury is no longer the major contributing cause of the worker's combined or conse-
34 quential condition or conditions, and there is sufficient information to determine permanent impair-
35 ment, the likely impairment and adaptability that would have been due to the current accepted
36 condition shall be estimated; [*or*]

37 (c) Without the approval of the attending physician, the worker fails to seek medical treatment
38 for a period of 30 days or the worker fails to attend a closing examination, unless the worker
39 affirmatively establishes that such failure is attributable to reasons beyond the worker's control[.];
40 **or**

41 **(d) An insurer or self-insured employer finds that a worker who has been receiving per-**
42 **manent total disability benefits has materially improved and is capable of regularly per-**
43 **forming work at a gainful and suitable occupation.**

44 (2) If the worker is enrolled and actively engaged in training according to rules adopted pursu-
45 ant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately re-

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 advises the worker and documents in writing that the worker is
8 released to return to regular employment;

9 (c) The attending physician advises the worker and documents in writing that the worker is
10 released to return to modified employment, such employment is offered in writing to the worker and
11 the worker fails to begin such employment. However, an offer of modified employment may be re-
12 fused by the worker without the termination of temporary total disability benefits if the offer:

13 (A) Requires a commute that is beyond the physical capacity of the worker according to the
14 worker's attending physician;

15 (B) Is at a work site more than 50 miles one way from where the worker was injured unless the
16 site is less than 50 miles from the worker's residence or the intent of the parties at the time of hire
17 or as established by the pattern of employment prior to the injury was that the employer had mul-
18 tiple or mobile work sites and the worker could be assigned to any such site;

19 (C) Is not with the employer at injury;

20 (D) Is not at a work site of the employer at injury;

21 (E) Is not consistent with the existing written shift change policy or is not consistent with
22 common practice of the employer at injury or aggravation; or

23 (F) Is not consistent with an existing shift change provision of an applicable collective bar-
24 gaining agreement; or

25 (d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld
26 or terminated under ORS 656.262 (4) or other provisions of this chapter.

27 (5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's dis-
28 ability in closure of the claim shall be pursuant to the standards prescribed by the director [*of the*
29 *Department of Consumer and Business Services*]. The insurer or self-insured employer shall issue a
30 notice of closure of such a claim to the worker, to the worker's attorney if the worker is repres-
31 ented, and to the director. The notice must inform:

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

34 (B) The worker of the amount of any further compensation, including permanent disability
35 compensation to be awarded; of the duration of temporary total or temporary partial disability
36 compensation; of the right of the worker to request reconsideration by the director under this sec-
37 tion within 60 days of the date of the notice of claim closure; of the right of the insurer or self-
38 insured employer to request reconsideration by the director under this section within seven days
39 of the date of the notice of claim closure; of the aggravation rights; and of such other information
40 as the director may require; and

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

43 (b) If the insurer or self-insured employer has not issued a notice of closure, the worker may
44 request closure. Within 10 days of receipt of a written request from the worker, the insurer or
45 self-insured employer shall issue a notice of closure if the requirements of this section have been

1 met or a notice of refusal to close if the requirements of this section have not been met. A notice
2 of refusal to close shall advise the worker of the decision not to close; of the right of the worker
3 to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to
4 close the claim; of the right to be represented by an attorney; and of such other information as the
5 director may require.

6 (c) If a worker, insurer or self-insured employer objects to the notice of closure, the objecting
7 party first must request reconsideration by the director under this section. A worker's request for
8 reconsideration must be made within 60 days of the date of the notice of closure. A request for re-
9 consideration by an insurer or self-insured employer may be based only on disagreement with the
10 findings used to rate impairment and must be made within seven days of the date of the notice of
11 closure.

12 (d) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant
13 to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing
14 on the claim and if a finding is made at the hearing that the notice of closure or refusal to close
15 was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid
16 to the worker in an amount equal to 25 percent of all compensation determined to be then due the
17 claimant.

18 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
19 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
20 for either a scheduled or unscheduled permanent disability and the worker is found upon reconsi-
21 deration to be at least 20 percent permanently disabled, a penalty shall be assessed against the
22 insurer or self-insured employer and paid to the worker in an amount equal to 25 percent of all
23 compensation determined to be then due the claimant. If the increase in compensation results from
24 new information obtained through a medical arbiter examination or from the adoption of a tempo-
25 rary emergency rule, the penalty shall not be assessed.

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

28 (A) A deposition arranged by the worker, limited to the testimony and cross-examination of the
29 worker about the worker's condition at the time of claim closure, shall become part of the recon-
30 sideration record. The deposition must be conducted subject to the opportunity for cross-examination
31 by the insurer or self-insured employer and in accordance with rules adopted by the director. The
32 cost of the court reporter and one original of the transcript of the deposition for the Department
33 of Consumer and Business Services and one copy of the transcript of the deposition for each party
34 shall be paid by the insurer or self-insured employer. The reconsideration proceeding may not be
35 postponed to receive a deposition taken under this subparagraph. A deposition taken in accordance
36 with this subparagraph may be received as evidence at a hearing even if the deposition is not pre-
37 pared in time for use in the reconsideration proceeding.

38 (B) Pursuant to rules adopted by the director, the worker or the insurer or self-insured employer
39 may correct information in the record that is erroneous and may submit any medical evidence that
40 should have been but was not submitted by the attending physician at the time of claim closure.

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

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

45 (c) In any reconsideration proceeding under this section in which the worker was represented

1 by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney,
2 out of the additional compensation awarded, an amount equal to 10 percent of any additional com-
3 pensation awarded to the worker.

4 (d) The reconsideration proceeding shall be completed within 18 working days from the date the
5 reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit
6 within the department. The deadline of 18 working days may be postponed by an additional 60 cal-
7 endar days if within the 18 working days the department mails notice of review by a medical arbiter.
8 If an order on reconsideration has not been mailed on or before 18 working days from the date the
9 reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days
10 where a notice for medical arbiter review was timely mailed or the director postponed the recon-
11 sideration pursuant to paragraph (b) of this subsection, or within such additional time as provided
12 in subsection (7) of this section when reconsideration is postponed further because the worker has
13 failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and
14 any further proceedings shall occur as though an order on reconsideration affirming the notice of
15 closure was mailed on the date the order was due to issue.

16 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
17 subsection begins upon receipt by the director of a worker's request for reconsideration pursuant
18 to subsection (5)(c) of this section. If the insurer or self-insured employer requests reconsideration,
19 the period for reconsideration begins upon the later of the date of the request for reconsideration
20 by the worker, the date of receipt of a waiver from the worker of the right to request reconsider-
21 ation or the date of expiration of the right of the worker to request reconsideration. If a party elects
22 not to file a separate request for reconsideration, the party does not waive the right to fully par-
23 ticipate in the reconsideration proceeding, including the right to proceed with the reconsideration
24 if the initiating party withdraws the request for reconsideration.

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

27 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
28 656.283 within 30 days from the date of the reconsideration order.

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

32 (b) If neither party requests a medical arbiter and the director determines that insufficient
33 medical information is available to determine disability, the director may refer the claim to a med-
34 ical arbiter appointed by the director.

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

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

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

42 (B) If the director determines that the worker failed to attend the examination without good
43 cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall
44 postpone the reconsideration proceedings for up to 60 days from the date of the determination that
45 the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this

1 or any prior opening of the claim until such time as the worker attends and cooperates with the
2 examination or the request for reconsideration is withdrawn. Any additional evidence regarding
3 good cause must be submitted prior to the conclusion of the 60-day postponement period.

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

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

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

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

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

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

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

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

30 (9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled
31 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,
32 any permanent disability payments due under the closure shall be suspended, and the worker shall
33 receive temporary disability compensation while the worker is enrolled and actively engaged in the
34 training. When the worker ceases to be enrolled and actively engaged in the training, the insurer
35 or self-insured employer shall again close the claim pursuant to this section if the worker is med-
36 ically stationary or if the worker's accepted injury is no longer the major contributing cause of the
37 worker's combined or consequential condition or conditions pursuant to ORS 656.005 (7). The closure
38 shall include the duration of temporary total or temporary partial disability compensation. Perma-
39 nent disability compensation shall be redetermined for unscheduled disability only. If the worker has
40 returned to work or the worker's attending physician has released the worker to return to regular
41 or modified employment, the insurer or self-insured employer shall again close the claim. This notice
42 of closure may be appealed only in the same manner as are other notices of closure under this
43 section.

44 (10) If the attending physician has approved the worker's return to work and there is a labor
45 dispute in progress at the place of employment, the worker may refuse to return to that employment

1 without loss of reemployment rights or any vocational assistance provided by this chapter.

2 (11) Any notice of closure made under this section may include necessary adjustments in com-
3 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-
4 bility payments prematurely made, crediting temporary disability payments against current or future
5 permanent or temporary disability awards or payments and requiring the payment of temporary
6 disability payments which were payable but not paid.

7 (12) An insurer or self-insured employer may take a credit or offset of previously paid workers'
8 compensation benefits or payments against any further workers' compensation benefits or payments
9 due a worker from that insurer or self-insured employer when the worker admits to having obtained
10 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction
11 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-
12 fits or payments obtained through fraud by a worker shall not be included in any data used for
13 ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer,
14 a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund
15 Corporation or the director.

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

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

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

27 **SECTION 5.** ORS 656.605 is amended to read:

28 656.605. (1) The Workers' Benefit Fund is created in the State Treasury, separate and distinct
29 from the General Fund. Moneys in the fund shall be invested in the same manner as other state
30 moneys and investment earnings shall be credited to the fund. The fund shall consist of the follow-
31 ing:

32 (a) Moneys received pursuant to ORS 656.506.

33 (b) Moneys recovered under ORS 656.054.

34 (c) Fines and penalties recovered under ORS 656.735.

35 (d) All moneys received by the Director of the Department of Consumer and Business Services
36 pursuant to law or from any other source for purposes for which the fund may be expended.

37 (2) Moneys in the Workers' Benefit Fund may be expended for the following purposes:

38 (a) Expenses of programs under ORS 656.445, 656.506, 656.622, 656.625, 656.628 and 656.630.

39 (b) Proceedings against noncomplying employers pursuant to ORS 656.054 and 656.735.

40 (c) Expenses of vocational assistance on claims, the cost of which was imposed pursuant to
41 section 15, chapter 600, Oregon Laws 1985.

42 (d) Payment of supplemental temporary disability benefits for workers employed in more than
43 one job at the time of injury and reimbursement of the costs of administering payments resulting
44 from elections by insurers and self-insured employers as provided by ORS 656.210 (5).

45 (e) Payments made to injured workers pursuant to section 6a, chapter 865, Oregon Laws 2001.

1 (f) Expenses of the Bureau of Labor and Industries for enforcing ORS 659A.040, 659A.043,
2 659A.046, 659A.049 and 659A.052, subject to an agreement between the Director of the Department
3 of Consumer and Business Services and the Commissioner of the Bureau of Labor and Industries.
4 The agreement must include, but is not limited to, the amount of funds to be transferred to the bu-
5 reau for enforcing ORS 659A.040, 659A.043, 659A.046, 659A.049 and 659A.052 and the information
6 relating to the enforcement of ORS 659A.040, 659A.043, 659A.046, 659A.049 and 659A.052 that the
7 bureau must report to the director.

8 **(g) Reimbursement to the insurer or self-insured employer for the amount of permanent**
9 **total disability benefits paid after the date of the notice of closure that was upheld pursuant**
10 **to ORS 656.206.**

11 (3) Subject to the following provisions, all moneys in the fund are appropriated continuously to
12 the Director of the Department of Consumer and Business Services to carry out the activities for
13 which the fund may be expended:

14 (a) Moneys received pursuant to ORS 656.054 and 656.735 and transfers made pursuant to ORS
15 705.148 may be expended only to carry out the provisions of ORS 656.054 and 656.735 and section
16 15, chapter 600, Oregon Laws 1985.

17 (b) Moneys received pursuant to ORS 656.506 and the transfers of unexpended and unobligated
18 moneys in the Retroactive Reserve, Reemployment Assistance Reserve, Reopened Claims Reserve
19 and Handicapped Workers Reserve referred to in ORS 656.506, 656.622, 656.625 and 656.628 (All 1993
20 Edition) may be expended only to carry out the programs referred to in ORS 656.506, 656.622,
21 656.625, 656.628 and 656.630.

22 (4) Notwithstanding any other provision of this chapter, if the director determines at any time
23 that there are insufficient moneys in the Workers' Benefit Fund to pay the expenses of programs for
24 which expenditure of the fund is authorized, the director may reduce the level of benefits payable
25 accordingly.

26 **SECTION 6.** ORS 656.319 is amended to read:

27 656.319. (1) With respect to objection by a claimant to denial of a claim for compensation under
28 ORS 656.262, a hearing thereon shall not be granted and the claim shall not be enforceable unless:

29 (a) A request for hearing is filed not later than the 60th day after the mailing of the denial to
30 the claimant; or

31 (b) The request is filed not later than the 180th day after mailing of the denial and the claimant
32 establishes at a hearing that there was good cause for failure to file the request by the 60th day
33 after mailing of the denial.

34 (2) Notwithstanding subsection (1) of this section, a hearing shall be granted even if a request
35 therefor is filed after the time specified in subsection (1) of this section if the claimant can show
36 lack of mental competency to file the request within that time. The period for filing under this
37 subsection shall not be extended more than five years by lack of mental competency, nor shall it
38 extend in any case longer than one year after the claimant regains mental competency.

39 (3) With respect to subsection (2) of this section, lack of mental competency shall apply only to
40 an individual suffering from such mental disorder, mental illness or nervous disorder as is required
41 for commitment or voluntary admission to a treatment facility pursuant to ORS 426.005 to 426.223
42 and 426.241 to 426.380 and the rules of the Department of Human Services.

43 (4) With respect to objections to a reconsideration order under ORS 656.268, a hearing on such
44 objections shall not be granted unless a request for hearing is filed within 30 days after the copies
45 of the reconsideration order were mailed to the parties.

1 (5) With respect to objection by a claimant to a notice of refusal to close a claim under ORS
2 656.268, a hearing on the objection shall not be granted unless the request for hearing is filed within
3 60 days after copies of the notice of refusal to close were mailed to the parties.

4 (6) A hearing for failure to process or an allegation that the claim was processed incorrectly
5 shall not be granted unless the request for hearing is filed within two years after the alleged action
6 or inaction occurred.

7 **(7) With respect to objection by a claimant to a notice of closure issued under ORS**
8 **656.206, a hearing on the objection shall not be granted unless the request for hearing is filed**
9 **within 60 days after the notice of closure was mailed to the claimant.**

10 **SECTION 7. The amendments to ORS 656.206, 656.268, 656.319 and 656.605 by sections 1**
11 **to 6 of this 2005 Act apply to all claims for which a notice of closure is issued under ORS**
12 **656.206 or 656.268 on or after the effective date of this 2005 Act.**

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