



MEMORANDUM

May 22, 2015

To: Members of the Workers' Compensation Management-Labor Advisory Committee

From: Theresa Van Winkle, Administrator

Subject: Overview of the HB 2764 -A9 amendment

The difference between the -A7 and -A9 amendment, verbiage wise, is the deletion of the word “board” throughout Section 6 (bottom of page 17 to last 2/3 of the page on page 19).

The rationale behind the amendment language: ORS 656.385 pertains to attorney fees in cases regarding various medical service or vocational rehabilitation matters within the jurisdiction of the DCBS Director. Section 6 of the -A7 amendment increased the maximum fee from \$3,000 to \$4,000 and also added the Workers’ Compensation Board and the court to the entities that could impose this fee.

The board does not apply ORS 656.385 attorney fees because they are not resolving the disputes. However, there is a small subset of medical disputes that also involve causation or compensability issues. These disputes fall under the jurisdiction of the board, and when the board decides these issues, the attorney fees are awarded under ORS 656.386 (or Section 7 of both the -A7 and -A9 amendment language). This law has no cap on the fee.

By adding the board to ORS 656.385, the Oregon Trial Lawyers’ Association was concerned about a potential unintended consequence of changing which attorney fee applies to the medical causation or compensability disputes within the jurisdiction of the board. The proposed -A9 amendment restores the current practice on this type of dispute by removing the board from ORS 656.385.

Also, this portion of the amendment was not discussed at MLAC meetings or the meetings on May 1st pertaining to stakeholder feedback on the co-chairs’ amendment. It could also be argued that Section 6 of the -A7 amendment against the co-chairs’ principles in drafting their amendment language.