

## **HB 4052-1**

**SUBJECT: Prohibits employer or insurer from requiring injured worker to obtain nonemergency medical services from a specific provider. Exempts employer or insurer that has managed care organization contract. Requires medical provider to provide injured worker with written notice of medical treatment rights in workers' compensation claim. Requires Director of Dept. of Consumer and Business Services to adopt rules and a form.**

**SPONSOR: House Business and Labor Committee**

**Existing Law:**

- Provides that a worker has the right to choose an attending doctor, physician, or nurse practitioner, within the state of Oregon.
- Allows a self-insured employer or insurer to require a worker to receive medical services under a managed care organization (MCO) contract, if applicable.
- Requires employers to supply director-prescribed forms to workers for reporting injuries to their employers, upon the worker's request.

**This bill with -1 amendment:**

- Prohibits self-insured employer or insurer from requiring a worker to obtain nonemergency medical care from a specified doctor, physician, nurse practitioner, occupational medical center, emergency care clinic, or other medical group, except when the worker is enrolled in an MCO.
- Requires any medical service provider to supply a director-prescribed form to the worker prior to providing compensable medical services.
- Requires a medical service provider to give workers a written notice, prior to providing compensable medical services, explaining their medical treatment rights. Specifies the minimum information the notice must contain.
- Requires that the medical service provider and worker sign the notice and that the medical service provider provide a copy to the worker and to the insurer. The worker or the insurer may request to receive the copy of the signed notice in electronic format.

**Analysis:**

1. Current law states that a worker may choose a medical provider of his or her choice to act as the attending physician. Current administrative rules also provide that it is the worker's right to choose his or her attending physician. The exception is that insurers may require a worker to treat with a managed care organization (MCO) panel provider upon enrollment in an MCO. This bill emphasizes that an employer cannot direct a worker to particular provider for treatment.

2. The director currently publishes Form 3283, “A Guide for Workers Recently Hurt on the Job,” that explains a worker’s right to receive medical treatment from a health care provider of his or her choice. Insurers are required to provide this form to their insured employers. Employers must provide this form to a worker at the time the worker files a claim for a work-related accident. In lieu of distributing the form separately, the employer may also print the information on the back of the claim form completed by the worker (typically a form 801). A medical provider is also required to give Form 3283 to the worker when the worker seeks treatment and must provide a copy of the completed Form 827 (the provider’s and worker’s report for a claim) to the worker. Currently, it is possible for a worker to receive provider choice information twice.
3. This bill with the -1 amendment requires any medical service provider give the worker the provider choice information prior to providing compensable medical services. Under current rules, a “medical service provider” includes persons duly licensed to practice one or more of the healing arts. This includes medical doctors, doctors of osteopathy, physical therapists, nurse practitioners, chiropractors, naturopaths, dentists, podiatrists, and others.
4. The new requirement would mean each time the worker sees a new medical service provider, whether by the worker’s choice or by referral from the attending physician, the medical service provider and worker must sign a form specifying that the worker received the choice of provider information. This could be a potential burden on medical providers and possibly be confusing to the worker. In addition, many medical service providers, such as physical therapists, treat workers on referral from an attending physician. These providers do not typically use the medical reporting forms (e.g. the form 827 or the form 3283) in the same way as an attending physician. The amendment will impose a new paperwork process on those providers.
5. The amendment language says “prior to providing compensable medical services under this chapter...” the medical service provider must give the worker the notice and obtain a signature. This means providers may not get paid by the insurer if the provider failed to obtain the signature before providing services.
6. The bill also requires that a signed copy of this notice be given to the worker and the insurer. Since the insurer or worker may request to receive a copy of the signed notice in electronic format, the medical service provider must have the necessary equipment to do so. In addition the bill requires that the medical service provider must make a fully executed copy of the signed notice available to the director or the workers’ representative.
7. The proposed change in the -1 amendments to 656.265(3), adding new subsection (7)(a)(B), (pg. 3, lines 4-6), stating, “Neither the worker’s employer nor any other person may require that the worker seek treatment from a medical service provider other than the provider selected by the worker,” may also be problematic. This language does not advise a worker that they may face MCO limitations under ORS 656.245(4). Many self-insured employers require workers to become enrolled in an MCO as soon as the employer receives notice of the claim. An amendment could clarify the notice inform the worker their choice is different if they are enrolled in an MCO. In addition, this general language could prohibit an attending physician from referring a worker to another provider for a consultation or specialized treatment.

8. Under current law, the director may issue a civil penalty against a provider for violating medical reporting requirements (ORS 656.254(2)). If this bill passes, the division anticipates following current practice of responding to individual complaints and investigating whether a violation of the law occurred, and issuing a civil penalty if warranted. The director also has authority to issue a penalty against any person found to be directing care.

**Questions and/or suggested amendments:**

1. It is not clear whether the changes are intended to introduce a new paperwork process for medical services provided on referral from the attending physician (e.g., consultations or physical therapy). An amendment could clarify which providers are the main focus of the notice and signature requirement.
2. The required notice language does not reference the impact of managed care enrollment on the worker's provider choice. The bill could include clarification of this impact.

**Fiscal Impact to DCBS:** None anticipated. However, if the bill requestor expects an increase in the division's regulatory efforts, there may be a need for additional staffing.

**Other Economic Impact:** Providers will incur some additional costs in making copies of the signed form and providing copies to both the worker and the insurer, as well as additional costs to store the signed notice and provide it to the director upon request. In addition, the bill requires that the provider send the signed notice electronically to either the worker or the insurer, upon request. This may be problematic for some providers who don't have the electronic equipment to provide electronic copies.

**Support:** Vern Saboe, DC

**Opposition:** Unknown

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