

HB 3374

Members of the committee, my name is Lon Holston. Today I speak for myself and as a former injured worker.

I rise in opposition to House Bill 3374.

Oregon workers' compensation current law excludes insurance companies from owning Managed Care Organizations (MCOs) **to prevent potential conflicts of interest**, ensuring that medical decisions for injured workers are made based solely on their healthcare needs, not influenced by the financial interests of their insurance provider.

Oregon workers' compensation law excludes insurance companies from ownership of Medical Care Organizations (MCOs) to avoid potential conflicts of interest. By prohibiting insurers from having ownership in MCOs, the goal is to ensure that medical treatment and care decisions are made primarily based on the health and well-being of injured workers, and not the financial interests of insurers.

Insurance companies to own MCOs could create incentives to reduce health care costs, which could lead to lower quality or quantity of treatment for workers. Separating these roles seeks to ensure a more impartial system, in which health care providers prioritize employees' medical needs without cost-cutting pressures driven by insurers.

Key points about this regulation:

- **Protecting patient care:** By prohibiting insurance companies from owning MCOs, the law aims to safeguard the quality of medical care provided to injured workers by preventing situations where an insurance company might incentivize cost-cutting measures that could compromise treatment quality.
- **Independent decision-making:** This separation ensures that the MCO, responsible for managing a worker's medical care, can make independent decisions about treatment options without being influenced by the worker's insurance company.
- **Promoting transparency:** By preventing insurance companies from directly controlling MCOs, the law promotes transparency in pricing and treatment options, allowing for easier comparison and selection of healthcare providers.

The State Accident Insurance Fund Corporation would like to use House Bill 3374 as a vehicle to create their own MCO. In creating this MCO they wish to acquire, lease, rent, own, and manage real property, construct, equip and furnish buildings or other structures as necessary to accommodate its MCO's needs.

The State Accident and Insurance Fund Corporation would have you believe that by starting and MCO would have the proper firewall between it and its new entity.

It starts with the selection process that involves one member from labor, one from management and three members recommended by the State Accident Insurance Fund Corporation. These recommendations by The State Accident and Insurance Fund, can hardly be impartial.

If the MCO was truly free of influence from the State Accident Insurance Fund Corporation, all members would be appointed by the governor without recommendations from the State Accident Insurance Fund Corporation.

Page 2 Line 41 of the bill;

(2) No member of the board of directors of a subsidiary shall have any **pecuniary interest, other than an incidental interest** that is disclosed and made a matter of public record at the time of appointment to the board, in any corporation or other business entity doing business in the workers' compensation insurance industry.

What does pecuniary mean in legal terms?

Pecuniary means of or relating to money.

pecuniary | Wex | US Law | LII / Legal Information Institute

Law.Cornell.Edu - Cornell University

<https://www.law.cornell.edu/wex/pecuniary>

What is the legal definition of incidental?

incidental adj

1: subordinate or secondary in importance or position [benefits] 2: incident. 3: occurring by chance or in isolation [use of a person's image]

Incidental - FindLaw Dictionary of Legal Terms

FindLaw Legal Dictionary

<https://dictionary.findlaw.com/definition/incidental>

The bill proponents are proposing the board members to be paid as if they are in a state commission or board.

Page 3; Line13 (4) A member of the board of directors is entitled to compensation and expenses as provided in ORS 292.495.

Page 3 line 24

(8) It is the function of the Board of Directors to establish the policies or the operation of the subsidiary that it governs in accordance with all applicable provisions of law.

The MCO board of the directors proposed composition would have an unfair balance to properly follow and establish policies while remaining independent of the State Accident Insurance Fund Corporation. This is truly not a State Board or commission, recruited and appointed by the governor, responsible to the governor. As Most states boards and commissions are volunteers wanting to serve the citizens of Oregon.

The goal of the bill, House Bill 3374 is to create and then show some separation between State Accident Insurance Fund Corporation and the new entity, the MCO which could be acquired, and capitalized by the State Accident Insurance Fund it itself is a conflict.

Currently in the State of Oregon as well as the nation there are not enough physicians to see their patients in a timely manner.

Doctor's workers compensation practices in urban and rural areas are dancing a fine line, treating injured workers.

- Employers have a stake in the outcome and want to know when they get their employee back to return to work.
- The injured workers families have a stake in the outcomes. (In rural areas, close knit personal relationships exist throughout the community.)
- Insurance companies have a stake in the outcome.
- Managed care organizations have a stake in the outcome.

The proponents of House Bill 3374 will tell you that they have the ability of recruiting and training physicians to make it more conducive to treat injured workers. The training mechanisms would include how to streamline paperwork effectively, deal with difficult patients, how to spend more time with your patients instead of on the phone dealing with claims examiners and managed care organizations.

There is no easy fix for the lack of physicians nationwide. You can't throw enough money at it, you can't organize it better, and you can't create providers. The pure and simple fact is it will take all of the stakeholders, management and labor to solve the problems.

Other hassle factors include:

- Hire long-term employees skilled in workers compensation paperwork
- Restrictive treatment denials from insurance companies, denial of referrals, Restrictive treatment contracts with providers.
- There is an excessive amount of paperwork that the doctors need to hire employees to manage.
- Delays in compensation to physicians.
- MCO's requiring chart notes and paperwork for service utilization reviews.
- MCO contract reviews with the physician
- Thus, getting between the doctor's treatment and his patient.

Without solving the hassle factors involved in treating injured workers, physician practices in rural Oregon fail.

With the emergence of telehealth as a vehicle for treating patients, this becomes problematic under this bill. Telehealth can be conducted anywhere in the world. Under workers compensation law you just have to be licensed in the healing arts. You can use physicians in Idaho, Montana, Kansas, Europe, South America or anywhere else on the planet as long as they

are licensed in the healing arts, and willing to sign a contract with a Managed Care Organization in Oregon. As an injured worker once you're enrolled in a Managed Care Organization, you must follow the managed-care rules which is using only a physician, physical therapist and other medical providers within the MCO.

The proponents will also cite "Quality Assurance" on page 4; line 11 means activities to safeguard or improve quality of medical care by assessing the quality of care or service and taking action to improve it.

My quality of medical care is from my treating physician, diagnostics, physical therapy and if I feel that's in jeopardy, I should have the right to change providers. MCO contracts don't allow that liberty.

Page 3; Line 40 (A) "Contract review" means the methods and processes whereby the managed care organization monitors and enforces its contracts with participating providers for matters other than matters enumerated in subparagraphs (D), (F) and (G) of this paragraph.

What is addressed in subparagraphs (D), (F) and (G)?

- Peer Review
- Quality Assurance
- Service Utilization Review

Page 3; Line 43

(B) "Dispute resolution" includes the resolution of disputes arising under peer review, service utilization review and quality assurance activities between insurers, self-insured employers, workers and medical health care service providers, as required under the certified plan.

If you're a physician who has a dispute with the MCO Regarding Peer Review, Quality Assurance, or Service Utilization Review you could write a letter to the MCO and hope they address it. These were left out of the dispute resolution process. This dispute process seems to have many components that would be an interest of an MCO and insurance company, but only in Page 3; Line 45, does the language speak to; workers and medical and healthcare providers. I've been unable to find language that would address an appeal process. I see no due process remedy in the dispute resolution process.

I am assuming that the other healthcare providers would be, physical therapists, diagnostics and mental health providers. What if the physician needs diagnostic tests that are in dispute. Let's say they're going outside of the MCO, requesting these diagnostics for treatment. If the MCO denied the diagnostic testing, the physician is stuck trying to find another way to convince the panel of the appropriateness for treatment. If he is denied a second time, there is no due process to the Director of Worker's Compensation for resolution or the courts.

The proponents go on to try to describe how they will have an annual audit done by the Director of Worker's Compensation. The director is required to then send a report to the

governor, Speaker of the House of Representatives, and the president of the Senate. While it is admirable that SAIF Corporation is willing to pay for this audit, the audit is still undefined as to how deep the director will be able to get into the data of the interaction between the State Accident Insurance Fund Corporation and its subsidiary and MCO interact together.

I appreciate that SAIF Corporation is trying to make inroads with the lack of treating physicians in the state. But I find this proposal self-serving for SAIF Corporation.