

## HOUSE AMENDMENTS TO HOUSE BILL 3412

By COMMITTEE ON BUSINESS AND LABOR

March 27

1 On page 1 of the printed bill, line 2, after “ORS” insert “656.005 and”.

2 On page 4, delete lines 34 through 45.

3 On page 5, delete lines 1 through 3 and insert:

4 “(5)(a) A nurse practitioner or a physician assistant who is not a member of the managed care  
5 organization is authorized to provide the same level of services as a primary care physician as es-  
6 tablished by ORS 656.260 (4) if the nurse practitioner or physician assistant:

7 “(A) Maintains the worker’s medical records;

8 “(B) Has a documented history of treatment with the worker;

9 “(C) Agrees to refer the worker to the managed care organization for any specialized treatment,  
10 including physical therapy, to be furnished by another provider that the worker may require; and

11 “(D) Agrees to comply with all the rules, terms and conditions regarding services performed by  
12 the managed care organization.

13 “(b)(A) A nurse practitioner or physician assistant authorized to provide medical services to a  
14 worker enrolled in the managed care organization may:

15 “(i) Provide medical treatment to the worker if the treatment is determined to be medically ap-  
16 propriate according to the service utilization review process of the managed care organization; and

17 “(ii) Authorize temporary disability payments as provided in subsection (2)(b)(D) of this section.

18 “(B) The managed care organization may also authorize the nurse practitioner or physician as-  
19 sistant to provide medical services and authorize temporary disability payments beyond the periods  
20 established in subsection (2)(b)(D) of this section.”.

21 After line 6, insert:

22 “**SECTION 2.** ORS 656.005, as amended by section 5, chapter 6, Oregon Laws 2022, is amended  
23 to read:

24 “656.005. (1) ‘Average weekly wage’ means the Oregon average weekly wage in covered em-  
25 ployment, as determined by the Employment Department, for the last quarter of the calendar year  
26 preceding the fiscal year in which the injury occurred.

27 “(2)(a) ‘Beneficiary’ means an injured worker, and the spouse in a marriage, child or dependent  
28 of a worker, who is entitled to receive payments under this chapter.

29 “(b) ‘Beneficiary’ does not include a person who intentionally causes the compensable injury to  
30 or death of an injured worker.

31 “(3) ‘Board’ means the Workers’ Compensation Board.

32 “(4) ‘Carrier-insured employer’ means an employer who provides workers’ compensation cover-  
33 age with the State Accident Insurance Fund Corporation or an insurer authorized under ORS  
34 chapter 731 to transact workers’ compensation insurance in this state.

35 “(5) ‘Child’ means a child of an injured worker, including:

1       “(a) A posthumous child;

2       “(b) A child legally adopted before the injury;

3       “(c) A child toward whom the worker stands in loco parentis;

4       “(d) A child born out of wedlock;

5       “(e) A stepchild, if the stepchild was, at the time of the injury, a member of the worker’s family

6 and substantially dependent upon the worker for support; and

7       “(f) A child of any age who was incapacitated at the time of the accident and thereafter remains

8 incapacitated and substantially dependent on the worker for support.

9       “(6) ‘Claim’ means a written request for compensation from a subject worker or someone on the

10 worker’s behalf, or any compensable injury of which a subject employer has notice or knowledge.

11       “(7)(a) A ‘compensable injury’ is an accidental injury, or accidental injury to prosthetic appli-

12 ances, arising out of and in the course of employment requiring medical services or resulting in

13 disability or death. An injury is accidental if the result is an accident, whether or not due to acci-

14 dental means, if it is established by medical evidence supported by objective findings, subject to the

15 following limitations:

16       “(A) An injury or disease is not compensable as a consequence of a compensable injury unless

17 the compensable injury is the major contributing cause of the consequential condition.

18       “(B) If an otherwise compensable injury combines at any time with a preexisting condition to

19 cause or prolong disability or a need for treatment, the combined condition is compensable only if,

20 so long as and to the extent that the otherwise compensable injury is the major contributing cause

21 of the disability of the combined condition or the major contributing cause of the need for treatment

22 of the combined condition.

23       “(b) ‘Compensable injury’ does not include:

24       “(A) Injury to any active participant in assaults or combats that are not connected to the job

25 assignment and that amount to a deviation from customary duties;

26       “(B) Injury incurred while engaging in or performing, or as the result of engaging in or per-

27 forming, any recreational or social activities primarily for the worker’s personal pleasure; or

28       “(C) Injury the major contributing cause of which is demonstrated to be by a preponderance of

29 the evidence the injured worker’s consumption of alcoholic beverages or cannabis or the unlawful

30 consumption of any controlled substance, unless the employer permitted, encouraged or had actual

31 knowledge of such consumption.

32       “(c) A ‘disabling compensable injury’ is an injury that entitles the worker to compensation for

33 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless

34 there is a reasonable expectation that permanent disability will result from the injury.

35       “(d) A ‘nondisabling compensable injury’ is any injury that requires medical services only.

36       “(8) ‘Compensation’ includes all benefits, including medical services, provided for a compensable

37 injury to a subject worker or the worker’s beneficiaries by an insurer or self-insured employer pur-

38 suant to this chapter.

39       “(9) ‘Department’ means the Department of Consumer and Business Services.

40       “(10) ‘Dependent’ means any of the following individuals who, at the time of an accident, de-

41 pended in whole or in part for the individual’s support on the earnings of a worker who dies as a

42 result of an injury:

43       “(a) A parent of a worker or the parent’s spouse or domestic partner;

44       “(b) A grandparent of a worker or the grandparent’s spouse or domestic partner;

45       “(c) A grandchild of a worker or the grandchild’s spouse or domestic partner;

1 “(d) A sibling or stepsibling of a worker or the sibling’s or stepsibling’s spouse or domestic  
2 partner; and

3 “(e) Any individual related by blood or affinity whose close association with a worker is the  
4 equivalent of a family relationship.

5 “(11) ‘Director’ means the Director of the Department of Consumer and Business Services.

6 “(12)(a) ‘Doctor’ or ‘physician’ means a person duly licensed to practice one or more of the  
7 healing arts in any country or in any state, territory or possession of the United States within the  
8 limits of the license of the licensee.

9 “(b) Except as otherwise provided for workers subject to a managed care contract, ‘attending  
10 physician’ means a doctor, physician or physician assistant who is primarily responsible for the  
11 treatment of a worker’s compensable injury and who is:

12 “(A) A physician licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a  
13 podiatric physician and surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical  
14 Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly  
15 licensed doctor in any country or in any state, territory or possession of the United States; *[or]*

16 “(B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative  
17 total of 18 visits, whichever occurs first, to any of the medical service providers listed in this sub-  
18 paragraph, a:

19 “(i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of  
20 Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any  
21 state, territory or possession of the United States; **or**

22 “[*ii*] *Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505*  
23 *to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or pos-*  
24 *session of the United States; or]*

25 “[*iii*] **(ii)** Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of  
26 Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any  
27 country or in any state, territory or possession of the United States[.]; **or**

28 “**(C) For a cumulative total of 180 days from the first visit on the initial claim, a physi-**  
29 **cian assistant licensed by the Oregon Medical Board in accordance with ORS 677.505 to**  
30 **677.525 or a similarly licensed physician assistant in any country or in any state, territory**  
31 **or possession of the United States.**

32 “(c) Except as otherwise provided for workers subject to a managed care contract, ‘attending  
33 physician’ does not include a physician who provides care in a hospital emergency room and refers  
34 the injured worker to a primary care physician for follow-up care and treatment.

35 “(d) ‘Consulting physician’ means a doctor or physician who examines a worker or the worker’s  
36 medical record to advise the attending physician or nurse practitioner authorized to provide  
37 compensable medical services under ORS 656.245 regarding treatment of a worker’s compensable  
38 injury.

39 “(13)(a) ‘Employer’ means any person, including receiver, administrator, executor or trustee, and  
40 the state, state agencies, counties, municipal corporations, school districts and other public corpo-  
41 rations or political subdivisions, that contracts to pay a remuneration for the services of any  
42 worker.

43 “(b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client  
44 of a temporary service provider is not the employer of temporary workers provided by the temporary  
45 service provider.

1 “(c) As used in paragraph (b) of this subsection, ‘temporary service provider’ has the meaning  
2 [for] **given** that term [provided] in ORS 656.850.

3 “(d) For the purposes of this chapter, ‘subject employer’ means an employer that is subject to  
4 this chapter as provided in ORS 656.023.

5 “(14) ‘Insurer’ means the State Accident Insurance Fund Corporation or an insurer authorized  
6 under ORS chapter 731 to transact workers’ compensation insurance in this state or an assigned  
7 claims agent selected by the director under ORS 656.054.

8 “(15) ‘Consumer and Business Services Fund’ means the fund created by ORS 705.145.

9 “(16) ‘Incapacitated’ means an individual is physically or mentally unable to earn a livelihood.

10 “(17) ‘Medically stationary’ means that no further material improvement would reasonably be  
11 expected from medical treatment or the passage of time.

12 “(18) ‘Noncomplying employer’ means a subject employer that has failed to comply with ORS  
13 656.017.

14 “(19) ‘Objective findings’ in support of medical evidence are verifiable indications of injury or  
15 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and  
16 palpable muscle spasm. ‘Objective findings’ does not include physical findings or subjective re-  
17 sponses to physical examinations that are not reproducible, measurable or observable.

18 “(20) ‘Palliative care’ means medical service rendered to reduce or moderate temporarily the  
19 intensity of an otherwise stable medical condition, but does not include those medical services ren-  
20 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

21 “(21) ‘Party’ means a claimant for compensation, the employer of the injured worker at the time  
22 of injury and the insurer, if any, of the employer.

23 “(22) ‘Payroll’ means a record of wages payable to workers for their services and includes  
24 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or  
25 similar advantage received from the employer. However, ‘payroll’ does not include overtime pay,  
26 vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments  
27 to reward workers for safe working practices. Bonus pay is limited to payments that are not antic-  
28 ipated under the contract of employment and that are paid at the sole discretion of the employer.  
29 The exclusion from payroll of bonus payments to reward workers for safe working practices is only  
30 for the purpose of calculations based on payroll to determine premium for workers’ compensation  
31 insurance, and does not affect any other calculation or determination based on payroll for the pur-  
32 poses of this chapter.

33 “(23) ‘Person’ includes a partnership, joint venture, association, limited liability company and  
34 corporation.

35 “(24)(a) ‘Preexisting condition’ means, for all industrial injury claims, any injury, disease, con-  
36 genital abnormality, personality disorder or similar condition that contributes to disability or need  
37 for treatment, provided that:

38 “(A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the  
39 worker has been diagnosed with the condition, or has obtained medical services for the symptoms  
40 of the condition regardless of diagnosis; and

41 “(B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes  
42 the initial injury;

43 “(ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the  
44 new medical condition; or

45 “(iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment

1 precedes the onset of the worsened condition.

2 “(b) ‘Preexisting condition’ means, for all occupational disease claims, any injury, disease, con-  
3 genital abnormality, personality disorder or similar condition that contributes to disability or need  
4 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim  
5 for worsening in such claims pursuant to ORS 656.273 or 656.278.

6 “(c) For the purposes of industrial injury claims, a condition does not contribute to disability  
7 or need for treatment if the condition merely renders the worker more susceptible to the injury.

8 “(25) ‘Self-insured employer’ means an employer or group of employers certified under ORS  
9 656.430 as meeting the qualifications set out by ORS 656.407.

10 “(26) ‘State Accident Insurance Fund Corporation’ and ‘corporation’ mean the State Accident  
11 Insurance Fund Corporation created under ORS 656.752.

12 “(27) ‘Wages’ means the money rate at which the service rendered is recompensed under the  
13 contract of hiring in force at the time of the accident, including reasonable value of board, rent,  
14 housing, lodging or similar advantage received from the employer, and includes the amount of tips  
15 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of  
16 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips  
17 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-  
18 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at  
19 which any worker shall be carried upon the payroll of the employer for the purpose of determining  
20 the premium of the employer.

21 “(28)(a) ‘Worker’ means any person, other than an independent contractor, who engages to fur-  
22 nish services for a remuneration, including a minor whether lawfully or unlawfully employed and  
23 salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts  
24 and other public corporations, but does not include any person whose services are performed as an  
25 adult in custody or ward of a state institution or as part of the eligibility requirements for a general  
26 or public assistance grant.

27 “(b) For the purpose of determining entitlement to temporary disability benefits or permanent  
28 total disability benefits under this chapter, ‘worker’ does not include a person who has withdrawn  
29 from the workforce during the period for which such benefits are sought.

30 “(c) For the purposes of this chapter, ‘subject worker’ means a worker who is subject to this  
31 chapter as provided in ORS 656.027.

32 “(29) ‘Independent contractor’ has the meaning [for] **given** that term [provided] in ORS  
33 670.600.”.