HOUSE AMENDMENTS TO
HOUSE BILL 3412
By COMMITTEE ON BUSINESS AND LABOR
March 27

On page 1 of the printed bill, line 2, after “ORS” insert “656.005 and”.
On page 4, delete lines 34 through 45.
On page 5, delete lines 1 through 3 and insert:

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

“(A) Maintains the worker’s medical records;
“(B) Has a documented history of treatment with the worker;
“(C) Agrees to refer the worker to the managed care organization for any specialized treatment,
including physical therapy, to be furnished by another provider that the worker may require; and
“(D) Agrees to comply with all the rules, terms and conditions regarding services performed by
the managed care organization.

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

“(i) Provide medical treatment to the worker if the treatment is determined to be medically ap-
propriate according to the service utilization review process of the managed care organization; and
“(ii) Authorize temporary disability payments as provided in subsection (2)(b)(D) of this section.

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

After line 6, insert:

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

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

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

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

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

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

“(5) ‘Child’ means a child of an injured worker, including:
“(a) A posthumous child;
“(b) A child legally adopted before the injury;
“(c) A child toward whom the worker stands in loco parentis;
“(d) A child born out of wedlock;
“(e) A stepchild, if the stepchild was, at the time of the injury, a member of the worker’s family and substantially dependent upon the worker for support; and
“(f) A child of any age who was incapacitated at the time of the accident and thereafter remains incapacitated and substantially dependent on the worker for support.
“(6) ‘Claim’ means a written request for compensation from a subject worker or someone on the worker’s behalf, or any compensable injury of which a subject employer has notice or knowledge.
“(7)(a) A ‘compensable injury’ is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death. An injury is accidental if the result is an accident, whether or not due to accidental means, if it is established by medical evidence supported by objective findings, subject to the following limitations:

“(A) An injury or disease is not compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the consequential condition.
“(B) If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition.
“(b) ‘Compensable injury’ does not include:

“(A) Injury to any active participant in assaults or combats that are not connected to the job assignment and that amount to a deviation from customary duties;
“(B) Injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities primarily for the worker’s personal pleasure; or
“(C) Injury the major contributing cause of which is demonstrated to be by a preponderance of the evidence the injured worker’s consumption of alcoholic beverages or cannabis or the unlawful consumption of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of such consumption.
“(c) A ‘disabling compensable injury’ is an injury that entitles the worker to compensation for disability or death. An injury is not disabling if no temporary benefits are due and payable, unless there is a reasonable expectation that permanent disability will result from the injury.
“(d) A ‘nondisabling compensable injury’ is any injury that requires medical services only.
“(8) ‘Compensation’ includes all benefits, including medical services, provided for a compensable injury to a subject worker or the worker’s beneficiaries by an insurer or self-insured employer pursuant to this chapter.
“(9) ‘Department’ means the Department of Consumer and Business Services.
“(10) ‘Dependent’ means any of the following individuals who, at the time of an accident, depended in whole or in part for the individual’s support on the earnings of a worker who dies as a result of an injury:

“(a) A parent of a worker or the parent’s spouse or domestic partner;
“(b) A grandparent of a worker or the grandparent’s spouse or domestic partner;
“(c) A grandchild of a worker or the grandchild’s spouse or domestic partner;
“(d) A sibling or stepsibling of a worker or the sibling’s or stepsibling’s spouse or domestic partner; and

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

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

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

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

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

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

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

“(ii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or possession of the United States; or

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

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

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

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

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

“(b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of a temporary service provider is not the employer of temporary workers provided by the temporary service provider.
“(c) As used in paragraph (b) of this subsection, ‘temporary service provider’ has the meaning
[given] that term [provision] in ORS 656.850.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment
precedes the onset of the worsened condition.

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

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

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

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

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

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

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

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

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