HB 3412-1 (LC 2299) 3/14/23 (ASD/ps)

Requested by Representative GRAYBER

## PROPOSED AMENDMENTS TO HOUSE BILL 3412

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:

"(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 established by ORS 656.260 (4) if the
nurse practitioner or physician assistant:

8 "(A) Maintains the worker's medical records;

9 "(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 appropriate 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 assistant to provide medical services and authorize temporary disability payments beyond the periods established in subsection (2)(b)(D) of this section.".

5 After line 6, insert:

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

8 "656.005. (1) 'Average weekly wage' means the Oregon average weekly 9 wage in covered employment, as determined by the Employment Department, 10 for the last quarter of the calendar year preceding the fiscal year in which 11 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.

17 "(3) 'Board' means the Workers' Compensation Board.

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

<sup>22</sup> "(5) 'Child' means a child of an injured worker, including:

23 "(a) A posthumous child;

24 "(b) A child legally adopted before the injury;

<sup>25</sup> "(c) A child toward whom the worker stands in loco parentis;

26 "(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

30 "(f) A child of any age who was incapacitated at the time of the accident

HB 3412-1 3/14/23 Proposed Amendments to HB 3412 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.

6 "(7)(a) A 'compensable injury' is an accidental injury, or accidental injury 7 to prosthetic appliances, arising out of and in the course of employment re-8 quiring medical services or resulting in disability or death. An injury is ac-9 cidental if the result is an accident, whether or not due to accidental means, 10 if it is established by medical evidence supported by objective findings, sub-11 ject 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.

21 "(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 cus tomary 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.

7 "(d) A 'nondisabling compensable injury' is any injury that requires
8 medical services only.

9 "(8) 'Compensation' includes all benefits, including medical services, pro-10 vided for a compensable injury to a subject worker or the worker's benefi-11 ciaries by an insurer or self-insured employer pursuant to this chapter.

"(9) 'Department' means the Department of Consumer and Business Ser vices.

"(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:

17 "(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 domesticpartner;

20 "(c) A grandchild of a worker or the grandchild's spouse or domestic 21 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 1 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:

6 "(A) A physician licensed under ORS 677.100 to 677.228 by the Oregon 7 Medical Board, or a podiatric physician and surgeon licensed under ORS 8 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial 9 surgeon licensed by the Oregon Board of Dentistry or a similarly licensed 10 doctor in any country or in any state, territory or possession of the United 11 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 subparagraph, a:

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

<sup>19</sup> "[(*ii*) Physician assistant licensed by the Oregon Medical Board in accord-<sup>20</sup> ance with ORS 677.505 to 677.525 or a similarly licensed physician assistant <sup>21</sup> in any country or in any state, territory or possession of the United States; <sup>22</sup> or]

<sup>23</sup> "[(*iii*)] (**ii**) Doctor of naturopathy or naturopathic physician licensed by <sup>24</sup> the Oregon Board of Naturopathic Medicine under ORS chapter 685 or a <sup>25</sup> similarly licensed doctor or physician in any country or in any state, terri-<sup>26</sup> tory 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 pos-

## 1 session 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 [for] given that term [provided] 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.

1 "(18) 'Noncomplying employer' means a subject employer that has failed 2 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 responses to physical examinations that are not reproducible, measurable or observable.

9 "(20) 'Palliative care' means medical service rendered to reduce or mod-10 erate temporarily the intensity of an otherwise stable medical condition, but 11 does not include those medical services rendered to diagnose, heal or per-12 manently alleviate or eliminate a medical condition.

"(21) 'Party' means a claimant for compensation, the employer of the in-13 jured worker at the time of injury and the insurer, if any, of the employer. 14 "(22) 'Payroll' means a record of wages payable to workers for their ser-15vices and includes commissions, value of exchange labor and the reasonable 16 value of board, rent, housing, lodging or similar advantage received from the 17 employer. However, 'payroll' does not include overtime pay, vacation pay, 18 bonus pay, tips, amounts payable under profit-sharing agreements or bonus 19 payments to reward workers for safe working practices. Bonus pay is limited 20to payments that are not anticipated under the contract of employment and 21that are paid at the sole discretion of the employer. The exclusion from 22payroll of bonus payments to reward workers for safe working practices is 23only for the purpose of calculations based on payroll to determine premium 24for workers' compensation insurance, and does not affect any other calcu-2526 lation or determination based on payroll for the purposes of this chapter.

"(23) 'Person' includes a partnership, joint venture, association, limited
 liability company and corporation.

29 "(24)(a) 'Preexisting condition' means, for all industrial injury claims, any 30 injury, disease, congenital abnormality, personality disorder or similar con1 dition 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

6 "(B)(i) In claims for an initial injury or omitted condition, the diagnosis 7 or treatment precedes the initial injury;

8 "(ii) In claims for a new medical condition, the diagnosis or treatment 9 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.

<sup>25</sup> "(27) 'Wages' means the money rate at which the service rendered is <sup>26</sup> recompensed under the contract of hiring in force at the time of the accident, <sup>27</sup> including reasonable value of board, rent, housing, lodging or similar ad-<sup>28</sup> vantage received from the employer, and includes the amount of tips required <sup>29</sup> to be reported by the employer pursuant to section 6053 of the Internal <sup>30</sup> Revenue Code of 1954, as amended, and the regulations promulgated pursuant

HB 3412-1 3/14/23 Proposed Amendments to HB 3412 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.

6 "(28)(a) 'Worker' means any person, other than an independent contractor, 7 who engages to furnish services for a remuneration, including a minor 8 whether lawfully or unlawfully employed and salaried, elected and appointed 9 officials of the state, state agencies, counties, cities, school districts and 10 other public corporations, but does not include any person whose services 11 are performed as an adult in custody or ward of a state institution or as part 12 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.".

21