

OREGON PHYSICAL THERAPISTS IN INDEPENDENT PRACTICE

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To: Workers' Compensation Division Rule Making Advisory Committee
C/O Fred Bruyns, Policy Analyst/Rules Coordinator

Re: December 17, 2018 Rules Advisory Committee Meeting

The Oregon Physical Therapists in Independent Practice, a trade group of approximately 100 physical therapy clinics owned by physical therapists, requests that the Committee adopt amendments to **OAR 436-015-0037**, MCO-Insurer Contracts, to require that insurers contract with more than one MCO in GSAs served by two or more MCOs, and change from 7 to 14 days the period an injured worker may continue care with a non-MCO provider after notice of MCO enrollment.

Issue and Background:

Require insurers to contract with more than one MCO:

Once an injured worker is enrolled in an MCO, the worker loses a significant choice of medical providers to care for his/her injury. Choice of medical providers is further limited when a workers' compensation insurer contracts with only one MCO even though additional MCOs are available in that GSA. Allowing an insurer to contract with only a single MCO in a GSA creates a de facto monopoly for that MCO. Monopolies are not in the spirit of competition and create skewed market relationships, unfair price negotiations, and reduction in choice for injured workers. Such monopolies create a devaluation of the Oregon Medical Fee Schedule below what may be a providers actual cost of care, which will eventually result in providers leaving the market or eventually not contracting with even a single MCO, thus depriving the market of providers and any discounts for carriers. A lack of competition among MCOs doesn't promote competition among MCOs with regard to care pathways, innovation and return to work programming.

While MCOs are required to have only 3 providers from each provider category on its panel, if the work comp insurer only makes one MCO available, the injured worker enrolled in the MCO may have considerable difficulty in accessing a provider on the panel. The provider the worker wants or needs to see may be booked up for weeks, may not be accepting new patients, or may be in an inconvenient location. Some providers who are willing to accept the deep discount off the work comp fee schedule applied by the MCO may be less experienced in treating the special needs of injured workers than other providers in the medical community who are not willing to accept the discounts, again, further depriving workers of the best choice of medical care.

Lastly, allowing insurers to contract with only one MCO means that injured works in different parts of the state are treated unequally with respect to their lawful right to choose among competing MCOs to be enrolled with.

Allow worker to continue treatment with current provider for 14 days instead of 7:

Injured workers with certain conditions need both early intervention and continuity of care. Acute low back conditions are an example. The current requirement in OAR 436-015-0037 that a worker must leave his or her medical provider "seven days after the mailing date of the notice of enrollment" can too easily obviate the positive effects of care and unwittingly extend the duration of the episode by causing patients to switch from non-MCO contracted providers to contracted providers even when discharge within 14 days is highly probable. The switch from one provider to another will duplicate the evaluation (with attendant unnecessary cost) and will certainly interrupt care, which can undermine the gains the patient has made with the initial provider. The interruption of care, and the attendant delay in scheduling with a new provider, can delay return to work,

possibly costing more in time loss payments. The requirement that a worker cease care with a non-MCO provider within 7 days of *the mailing of* the notice of enrollment can work a further hardship on the worker who may not receive the notice until a day or two before the expiration of the 7 day period. The worker may already be scheduled for an appointment with his preferred provider and would be forced either to cancel that or pay for it out of his or her pocket. A worker who is injured on the job should not be further harmed by the rule that forces an unnecessary interruption in care.

Here is our Proposed Amendment to OAR 436-015-0037:

436-015-0037 MCO-Insurer Contracts

(1) An MCO must provide comprehensive medical services to all enrolled workers covered by the MCO-insurer contract according to the MCO's certification.

(2) An MCO may not contract exclusively with a single insurer. However, an MCO has up to one year from the effective date of its first contract to obtain contracts with more than one insurer. If the MCO has not obtained additional contracts within this time period, the MCO must provide the director with a report documenting the MCO's efforts to obtain additional contracts.

(3) An MCO may contract only with insurers. The contract must include the following terms and conditions:

(a) Who is governed by the contract;

(b) The covered place of employment must be within the authorized geographic service area;

(c) Insurers may contract with multiple MCOs to provide coverage for employers. **In a GSA served by two or more MCOs, insurers shall contract with more than one MCO.** All workers at any specific employer's location must be governed by the same MCO(s). When insurers contract with multiple MCOs each worker must have initial choice at the time of injury to select which MCO will manage their care except when the employer provides a coordinated health care program;

(d) Workers enrolled in an MCO must receive medical services as prescribed by the terms and conditions of the contract; and

(e) A continuity of care provision specifying how workers will receive medical services on open claims, including the following:

(A) Upon enrollment, allowing workers to continue to treat with the current medical service providers for at least [~~seven~~] **fourteen** days after the mailing date of the notice of enrollment; and

(B) Upon termination or expiration of the MCO-insurer contract, allowing workers to continue treatment under ORS 656.245(4)(a).

(4) Notwithstanding the requirements of this rule, failure of the MCO to provide medical services does not relieve the insurers of their responsibility to ensure benefits are provided to workers under ORS chapter 656.

Thank you for the opportunity to present this issue to the