

# House Bill 3470

Sponsored by Representative SUMNER (at the request of Oregon Litigation Fairness Project)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes health care providers and health care recipients to enter into dispute resolution agreements. Provides that process for resolving claims is exclusive remedy for health care recipients who enter into dispute resolution agreements.

Requires Board of Medical Examiners to establish compensation schedule for injuries subject to claims under dispute resolution agreements.

Provides procedures for claims, hearings, review by Workers' Compensation Board and judicial review.

Provides that health care recipient has burden to establish by preponderance of evidence that injury was caused by services provided by health care provider and that injury resulted from failure of health care provider to meet applicable standard of care.

Appropriates moneys to Workers' Compensation Board to implement dispute resolution agreements.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to resolution of health care claims; appropriating money; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

### **SECTION 1. Definitions. As used in sections 1 to 9 of this 2005 Act:**

(1) **"Dispute resolution agreement"** means an agreement entered into under section 2 of this 2005 Act.

(2) **"Health care provider"** means any person who is licensed or certified by:

(a) **The State Board of Examiners for Speech-Language Pathology and Audiology;**

(b) **The State Board of Chiropractic Examiners;**

(c) **The State Board of Clinical Social Workers;**

(d) **The Oregon Board of Licensed Professional Counselors and Therapists;**

(e) **The Oregon Board of Dentistry;**

(f) **The Board of Examiners of Licensed Dietitians;**

(g) **The State Board of Massage Therapists;**

(h) **The Board of Naturopathic Examiners;**

(i) **The Oregon State Board of Nursing;**

(j) **The Board of Examiners of Nursing Home Administrators;**

(k) **The Oregon Board of Optometry;**

(l) **The State Board of Pharmacy;**

(m) **The Board of Medical Examiners;**

(n) **The Occupational Therapy Licensing Board;**

(o) **The Physical Therapist Licensing Board;**

(p) **The State Board of Psychologist Examiners;**

(q) **The Board of Radiologic Technology; or**

(r) **The Health Licensing Office.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (3) "Health care recipient" means a person who receives services from a health care  
2 provider.

3 **SECTION 2. Dispute resolution agreement.** (1) A health care provider and a health care  
4 recipient may enter into a dispute resolution agreement that provides that claims for injuries  
5 that may arise out of the provision of health care services to the health care recipient will  
6 be resolved in the manner provided by sections 1 to 9 of this 2005 Act. An agreement under  
7 this section must be entered into before health care services are provided under the agree-  
8 ment. By signing the agreement, the health care recipient waives the right to bring a civil  
9 action for claims based on services provided by the health care provider and waives any right  
10 to a jury trial for those claims.

11 (2) An agreement under this section is valid if:

12 (a) The agreement is in writing;

13 (b) The agreement is in plain terms that are reasonably understandable; and

14 (c) The health care recipient is allowed three calendar days after signing the agreement  
15 to rescind the agreement.

16 (3) An agreement entered into under this section must state:

17 (a) The services covered by the agreement;

18 (b) That by signing the agreement, the health care recipient waives the right to bring a  
19 civil action for claims based on services provided by the health care provider;

20 (c) That by signing the agreement, the health care recipient waives the right to a jury  
21 trial for claims based on services provided by the health care provider;

22 (d) A description of the manner in which a claim may be made under the agreement; and

23 (e) A description of the time limitations under section 3 of this 2005 Act for making a  
24 claim.

25 (4) If an agreement is rescinded under subsection (2) of this section, the health care  
26 provider may decline to provide additional health care services to the health care recipient.

27 (5) Execution of an agreement must be voluntary. A health care provider may not con-  
28 dition the provision of services on execution of the agreement. A health care provider may  
29 provide a discount in the cost of health care services for patients who execute an agreement.

30 (6) An agreement executed by a health care recipient must be set forth in a separate  
31 document from other documents that the health care recipient is required to sign. A copy  
32 of the agreement must be provided to the health care recipient.

33 **SECTION 3. Claims.** (1) A claim subject to a dispute resolution agreement must be made  
34 in writing by the health care recipient within one year of the act or omission that is the basis  
35 of the claim. A claim may not be made later than the time allowed by law for commencing  
36 a civil action for the injury.

37 (2) A health care provider must give written notice of acceptance or denial of a claim to  
38 the health care recipient not more than 60 days after the health care provider receives the  
39 claim.

40 (3) If a health care provider accepts a claim, the written notice required by this section  
41 must inform the health care recipient that the health care provider finds that the claim is  
42 valid and that the health care provider will pay all medical services required by reason of the  
43 injury and all amounts required under the compensation schedule adopted by the Board of  
44 Medical Examiners under section 4 of this 2005 Act.

45 (4) If a health care provider denies a claim, the written notice required by this section

1 must inform the health care recipient of the grounds for the denial.

2 **SECTION 4. Compensation schedule.** The Board of Medical Examiners by rule shall adopt  
 3 a compensation schedule for claims filed under sections 1 to 9 of this 2005 Act. The schedule  
 4 must establish the amounts payable for specific losses, as well as amounts payable for any  
 5 disability attributable to an injury. To the extent possible, the compensation schedule shall  
 6 be based on the compensation payable under ORS chapter 656 for compensable injuries.

7 **SECTION 5. Hearing.** (1) If a health care provider denies a claim, or the health care re-  
 8 cipient disputes any amount offered to be paid as compensation, the health care recipient  
 9 may request a hearing on the denial. The request for hearing must be in writing, must be  
 10 signed by the health care recipient or by a representative for the health care recipient, and  
 11 must be mailed to the Workers' Compensation Board. The request must be received by the  
 12 board not later than 30 days after the health care recipient receives the acceptance or denial  
 13 of the claim.

14 (2) The board shall refer a request for hearing under this section to an administrative law  
 15 judge for determination. The hearing shall be scheduled not more than 60 days after receipt  
 16 by the board of the request for hearing. The hearing may not be postponed except in ex-  
 17 traordinary circumstances beyond the control of the requesting party.

18 (3) At least 10 days before the date scheduled for the hearing, the board shall give all  
 19 parties notice of the time and place of the hearing. Hearings shall be held in the county  
 20 where the health care recipient resided at the time of the injury or such other place selected  
 21 by the administrative law judge.

22 (4) A record of all proceedings at the hearing shall be kept but need not be transcribed  
 23 unless a party requests a review of the order of the administrative law judge.

24 (5) Except as otherwise provided in this section and rules of procedure established by the  
 25 board, the administrative law judge is not bound by common law or statutory rules of evi-  
 26 dence or by technical or formal rules of procedure, and may conduct the hearing in any  
 27 manner that will achieve substantial justice.

28 **SECTION 6. Order.** (1) Not more than 30 days after a hearing under section 5 of this 2005  
 29 Act, the administrative law judge shall issue an order deciding the matter and mail a copy  
 30 of the order to the parties in the proceeding.

31 (2) An order issued under this section is final unless, within 30 days after the date on  
 32 which a copy of the order is mailed to the parties, one of the parties requests a review by  
 33 the Workers' Compensation Board. If a party requests a review by the board, a copy of the  
 34 request must be mailed to the other party or parties. The other party or parties may request  
 35 a review by the board within 30 days after the date on which a copy of the order is mailed  
 36 to the parties, or within 10 days after receiving notice of an initial request for review under  
 37 this subsection, whichever is later.

38 **SECTION 7. Board review.** (1) A request for review of an order by the Workers' Com-  
 39 pensation Board under section 6 of this 2005 Act need only state that the party requests a  
 40 review of the order.

41 (2) If review of an order is requested under this section, the record of the proceedings  
 42 before the administrative law judge, as may be necessary for purposes of the review, shall  
 43 be transcribed at the expense of the party requesting review. The original transcript shall  
 44 be certified to be true, accurate and complete by the transcriber. A list of all exhibits re-  
 45 ceived by the administrative law judge shall be furnished to the parties along with a copy of

1 the transcribed record.

2 (3) The board shall issue an order on a request for review not later than 90 days after  
3 the board receives the request for review. Review may not be postponed except in extraor-  
4 dinary circumstances beyond the control of the requesting party.

5 (4) The review by the board shall be based on the entire transcribed record and such oral  
6 or written argument as the board may receive. If the board determines that a case has been  
7 improperly, incompletely or otherwise insufficiently developed or heard by the administrative  
8 law judge, the board may remand the case to the administrative law judge for further pro-  
9 ceedings.

10 (5) The board may affirm, reverse, modify or supplement the order of the administrative  
11 law judge and make such disposition of the case as the board determines appropriate.

12 (6) The board shall mail a copy of the board's order to each of the parties.

13 (7) An order of the board is final unless within 30 days after the date of mailing copies  
14 of the order to the parties, one of the parties appeals to the Court of Appeals for judicial  
15 review as provided in section 8 of this 2005 Act.

16 **SECTION 8. Judicial review.** (1) Any party adversely affected by an order of the Workers'  
17 Compensation Board issued under section 7 of this 2005 Act may request judicial review of  
18 the order by the Court of Appeals within the time allowed by section 7 of this 2005 Act.

19 (2) The judicial review shall be commenced by serving a copy of a petition for judicial  
20 review on the board and on the parties who appeared in the review proceedings, and by filing  
21 with the clerk of the Court of Appeals the original petition for judicial review with proof of  
22 service. The petition for judicial review must state:

23 (a) The name of the person appealing and the names of all other parties.

24 (b) The date the order appealed from was filed.

25 (c) A statement that the order is being appealed to the Court of Appeals.

26 (d) A brief statement of the relief requested and the reasons the relief should be granted.

27 (3) The following requirements are jurisdictional and may not be waived or extended:

28 (a) Service of the petition for judicial review on all parties identified in the petition for  
29 judicial review as adverse parties or, if the petition for judicial review does not identify ad-  
30 verse parties, on all parties who have appeared in the proceeding before the board.

31 (b) Filing of the original petition for judicial review with the Court of Appeals within the  
32 time allowed.

33 (4) Within 30 days after service of a petition for judicial review on the board, the board  
34 shall forward to the clerk of the Court of Appeals:

35 (a) The original copy of the transcribed record prepared under section 7 of this 2005 Act.

36 (b) All exhibits.

37 (c) Copies of all decisions and orders entered during the hearing and review proceedings.

38 (5) The review by the Court of Appeals shall be based on the entire transcribed record  
39 forwarded by the board. Review shall be as provided in ORS 183.482 (7) and (8).

40 **SECTION 9. Burden of proof.** In any proceeding under sections 1 to 9 of this 2005 Act,  
41 the burden is on the health care recipient to establish by a preponderance of the evidence  
42 that the injury suffered by the health care recipient was caused by the health care services  
43 provided by the health care provider and that the injury resulted from the failure of the  
44 health care provider to meet the standard of care applicable to the health care provider.

45 **SECTION 10.** There is appropriated to the Workers' Compensation Board, for the

1 biennium beginning July 1, 2005, out of the General Fund, the amount of \$\_\_\_\_\_ for the  
2 purpose of implementing sections 1 to 9 of this 2005 Act.

3 **SECTION 11. Operative date.** Except as provided by section 12 of this 2005 Act, sections  
4 1 to 9 of this 2005 Act become operative on January 1, 2006.

5 **SECTION 12.** The Board of Medical Examiners and the Workers' Compensation Board  
6 may adopt rules and take any other actions necessary to implement sections 1 to 9 of this  
7 2005 Act prior to the operative date of sections 1 to 9 of this 2005 Act.

8 **SECTION 13.** The section captions used in this 2005 Act are provided only for the con-  
9 venience of the reader and do not become part of the statutory law of this state or express  
10 any legislative intent in the enactment of this 2005 Act.

11 **SECTION 14.** This 2005 Act being necessary for the immediate preservation of the public  
12 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect  
13 on its passage.

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