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HOUSE BILL NO. 719

INTRODUCED BY G. OBLANDER, N. NICOL, J. ETCHART

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAWS RELATING TO THE DESIGNATION OF TREATING PHYSICIANS; PROHIBITING CERTAIN ENTITIES FROM REQUIRING OR THREATENING A WORKER TO USE A PARTICULAR TREATING PHYSICIAN; AND AMENDING ~~SECTION SECTIONS~~ 39-71-1101, 39-71-1102, AND 39-71-1103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-1101, MCA, is amended to read:

"39-71-1101. Choice of health care provider by worker -- ~~insurer designation or approval of treating physician or referral to managed care or preferred provider organization -- payment terms -- definition.~~ (1) ~~Prior to the insurer's designation or approval of a treating physician as provided in subsection (2) or a referral to a managed care organization or preferred provider organization as provided in subsection (8),~~ a worker may choose a person who is listed in 39-71-116(42) for initial treatment and, after initial treatment and diagnosis, may designate that person or another person meeting the criteria set forth in 39-71-116(42) as a treating physician. ~~Subject to subsection (2), if the person listed under 39-71-116(42) chosen by the worker agrees to comply with the requirements of subsection (2), that person is the treating physician.~~ The insurer may verify that the designated person agrees to carry out the responsibilities in subsection (3).

(2) An insurer, managed care organization, or health care provider organization may not:

(a) require that a worker use a particular treating physician; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against a worker to use a particular treating physician.

~~(2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a treating physician who agrees to assume the responsibilities of the treating physician.~~

(3) The designated or approved treating physician:

(a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-

1 704;

2 (b) shall provide timely determinations required under this chapter, including but not limited to
3 maximum medical healing, physical restrictions, return to work, and approval or disapproval of job analyses,
4 and shall provide documentation;

5 (c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain
6 prior approval for other treatment; and

7 (d) shall conduct or arrange for timely impairment ratings.

8 (4) A designation of a treating physician must take into account and give due consideration to the
9 type of injury or occupational disease as well as address practical considerations, including the worker's
10 proximity to and the availability of the treating physician.

11 (5) The treating physician may be changed at any time with the consent of the worker and the
12 insurer that has accepted liability for the claim. Refusal to consent to a change in treating physician is subject to
13 mediation.

14 ~~(3)(6)~~ The treating physician may refer the worker to other health care providers for medical services,
15 as provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health
16 care provider to whom the worker is referred by the designated treating physician is not responsible for
17 coordinating care or providing determinations as required of the treating physician.

18 ~~(4)(7)~~ The treating physician ~~designated or approved by the insurer~~ must be reimbursed at 110% of
19 the department's fee schedule.

20 ~~(5)(8)~~ A health care provider to whom the worker is referred by the treating physician must be
21 reimbursed at 90% of the department's fee schedule.

22 ~~(6)(9)~~ A health care provider providing health care on a compensable claim prior to the designation ~~or~~
23 ~~approval of the of a~~ treating physician by the insurer must be reimbursed at 100% of the department's fee
24 schedule.

25 ~~(7)(10)~~ Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the
26 department in 39-71-704 and the percentages referenced in subsections ~~(4) through (6) (7) through (9)~~ of this
27 section apply to the medical service on the date on which the medical service was provided.

28 ~~(8)(11)~~ The insurer may direct the injured worker ~~to use~~ a managed care organization or a preferred

1 provider organization ~~for designation of in designating~~ the treating physician.

2 (9)(12) After the insurer directs a worker to a managed care organization, ~~or~~ preferred provider
3 organization, or an individual qualified under 39-71-116(42) within either type of organization as a treating
4 physician, a health care provider who otherwise qualifies as a treating physician but who is not a member of a
5 the designated managed care organization or the designated preferred provider organization may not provide
6 treatment at rates paid to the treating physician unless authorized by the insurer.

7 (10)(12) After the date that a worker subject to the provisions of subsection (9)(12) receives
8 individual written notice of a referral, the worker must, unless otherwise authorized by the insurer, receive
9 medical services from the organization designated by the insurer, in accordance with 39-71-1102 and 39-71-
10 1104. The designated treating physician in the organization then becomes the worker's treating physician. The
11 insurer is not liable for medical services obtained ~~otherwise outside of the recommendations by the managed~~
12 care organization of the preferred provider organization, except that a worker may receive immediate
13 emergency medical treatment for a compensable injury from a health care provider who is not a member of a
14 managed care organization or a preferred provider organization.

15 (14)(13) Posting of managed care requirements in the workplace on bulletin boards, in
16 personnel policies, in company manuals, or by other general or broadcast means does not constitute individual
17 written notice. To constitute individual written notice under this section, information regarding referral to a
18 managed care organization must be provided to the worker in written form by mail or in person after the date of
19 injury or occupational disease."

21 **Section 2.** Section 39-71-1102, MCA, is amended to read:

22 **"39-71-1102. Preferred provider organizations -- establishment ~~---limitations~~.** (1) ~~In order to To~~
23 promote cost containment of medical care provided for in 39-71-704, development of preferred provider
24 organizations by insurers is encouraged. Insurers may establish arrangements with suppliers of soft and
25 durable medical goods and health care providers in addition to or in conjunction with managed care
26 organizations. Workers' compensation insurers may contract with other entities to use the other entities'
27 preferred provider organizations. After the date that an injured worker is given an individual written notice by the
28 insurer of a preferred provider, the insurer is not liable for charges from nonpreferred providers, unless the

injured worker is in need of emergency medical treatment. If the injured worker requires immediate emergency medical treatment for a compensable injury or occupational disease, the insurer shall pay for the emergency medical treatment at 100% of the department's fee schedule even if the emergency medical treatment is from a health care provider outside the preferred provider organization.

(2) Posting of preferred provider requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to preferred providers must be provided to the worker in written form by mail or in person after the date of injury or occupational disease.

(3) This section is subject to the requirements of 39-71-1101."

Section 3. Section 39-71-1103, MCA, is amended to read:

"39-71-1103. Workers' compensation managed care. ~~(1) A managed care system is a program organized to serve the medical needs of injured workers in an efficient and cost-effective manner by managing the delivery of medical services for a defined population of injured workers, pursuant to 39-71-1101, through appropriate health care professionals.~~ (1) (a) The designation of a treating physician who is part of a managed care organization is the same as designating any member of that managed care organization as a treating physician, if the member is otherwise qualified as a treating physician.

(b) If, after designation by an insurer of a treating physician in a managed care organization, an injured worker requires immediate emergency medical treatment for a compensable injury or occupational disease, the insurer shall pay for the emergency medical treatment at 100% of the department's fee schedule even if the emergency medical treatment is from a health care provider outside the managed care organization.

(2) The department shall develop criteria pursuant to 39-71-1105 for certification of managed care organizations. The department may adopt rules for certification of managed care organizations.

(3) Insurers may contract with certified managed care organizations for medical services for injured workers. ~~A Subject to 39-71-1101, a~~ worker who is subject to managed care may choose from managed care organizations in the worker's community that have a contract with the insurer responsible for the worker's medical services."