

436-009-0110 Interpreters

Helen Eby's commentary:

According to HB2419, as of January 1, 2016, ORS 413.552 (3) will be amended to read:

It is the policy of the Legislative Assembly to require the use of certified health care interpreters or qualified health care interpreters whenever possible to ensure the accurate and adequate provision of health care to persons with limited English proficiency and to persons who communicate in sign language.

Therefore, this section should be brought into alignment with this new legislation, since this is an aspect of healthcare provided in Oregon. This means that healthcare interpreters should be interpreters registered in the Oregon Healthcare Authority's list of Certified and Qualified interpreters.

This certification is based on language proficiency, interpreting training, and testing interpreting skills when such testing is available for the language. The OHA has a mechanism to evaluate trainings.

Note: Terminology changes:

Patient has been changed to injured worker

Worker's compensation has been changed to worker's compensation for gender neutrality

Current text:

(1) Choosing an Interpreter.

A patient may choose a person to communicate with a medical provider when the patient and the medical provider speak different languages, including sign language. The patient may choose a family member, a friend, an employee of the medical provider, or an interpreter. The medical provider may disapprove of the patient's choice at any time the medical provider feels the interpreter services are not improving communication with the patient, or feels the interpretation is not complete or accurate.

Helen Eby's suggested introductory paragraph: Comments

This includes the concept of LEP, explained in detail.

This includes the concept of certification, and who makes the decision and the first call.

This also gives the injured worker the option to make a choice. However, the injured worker's interpreter has to meet the same requirements as any other interpreter in Oregon.

The statement about "they can make an appointment on the phone and still need an interpreter" is because sometimes that happens.

Meaningful access/meaningful participation: this is the legal term used in Title VI.

Change patient to injured worker. This is worker's comp.

Suggested text:

When an injured worker's meaningful access to healthcare services or ability to participate meaningfully in required appointments such as Independent medical exams, Physical review

exams and arbiter exams is restricted by the injured worker's limited English proficiency or because the injured worker is deaf, deaf-blind or hard of hearing, the medical provider is responsible for securing the services of an interpreter, based on the guidance given to medical providers under Title VI. In some cases, an injured worker may be able to schedule an appointment in English, yet need an interpreter for the appointment itself. An injured worker may be involved in the choice of the interpreter. The interpreter must be a professional who meets the regulatory requirements of the profession as described below. If an interpreter must be replaced due to inaccurate or poor services, the interpreter must be replaced with another professional that is also certified and meets the regulatory requirements of the profession.

If an injured worker has expressed a preference for a specific interpreter, the provider must be made aware of this selection with sufficient time to avoid duplication of efforts and to verify the credentials of the injured worker's interpreter.

Helen Eby's proposal:

The interpreter must meet the qualifications below.

- a. *Under ORS 413.552, all medical appointments with persons of limited English proficiency in Oregon must be interpreted by Certified or Qualified interpreters whenever possible.*

Milena's alternative: Whenever an interpreter is requested, the requester shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the injured worker throughout the medical appointment in accordance to ORS 413.552 regulations.

This rule defines "whenever possible" as requiring that all applicable interpreters listed in the OHA public directory have been contacted and have declined the assignment, calling Certified interpreters first, and then Qualified interpreters, and all applicable Oregon Court interpreters in the same geographic area have also been contacted and have declined the assignment; only then may an unqualified interpreter be accepted.

The Workers Compensation Board will make available a link for interpreters and clients to find the lists of interpreters on these databases, publicly available, as well as the information on how to become a certified interpreter.

https://docs.google.com/spreadsheets/d/17K6H39Usc_fxL-xnNjLrzpVllw0Fi2TA7TZscjzdtH8/pub?single=true&gid=0&output=html

- b. *If no Certified or Qualified interpreter is available, able or willing to serve, the doctor may appoint an interpreter who is not qualified, but only if this unqualified interpreter has passed the oral proficiency interviews at the level required to apply for required to apply for Medical Interpreting Certification with the National Board of Certification for Medical Interpreters (Advanced Mid level on the ACTFL scale) in both languages.*

The interpreters who have been qualified through language proficiency testing credentials shall submit their testing results to the Workers Compensation Board, which will create a Registry of Provisionally Certified

Interpreters who can be called on when no Certified or Qualified interpreters are available.

- c. The only requirement left for the unqualified interpreter to be an Oregon Qualified Healthcare interpreter, therefore, would be to take the 60-hour training required by the Oregon Healthcare Authority.*
- d. In order to maintain confidentiality and impartiality, family members and friends may not interpret. When all local options for qualified interpreters have been exhausted, remote interpreting options may be pursued to maintain the impartiality of the interpreting, as long as the remote interpreter meets the qualifications described herein and documentation is submitted to prove this.*
- e. A medical provider's employee may not interpret unless this employee is a Certified or Qualified healthcare interpreter. This work is non-billable.*

Helen's suggested text:

Because of potential conflict of interest and impartiality issues, use of a medical provider's employee as an interpreter is strongly discouraged, in order to protect the neutrality of the interpretation. Likewise, a medical provider's employee must not assist by completing paperwork for an injured worker with limited English proficiency for the same reason.

Helen's commentary:

I have seen many medical intake forms be invalidated in depositions because of the participation of medical providers' employees as interpreters. Their participation made the information be viewed as biased, not objective.

- f. **Interpreter role:** The interpreter must only interpret at the appointment. The interpreter is not to be left alone with the injured worker at the medical appointment. The interpreter is prohibited from having any interaction with the injured worker before or after the appointment in connection with the appointment, unless the interpreter is the medical staff. The interpreter prohibited from engaging in any advocacy or cultural brokering at Workers Compensation appointments. The interpreter is prohibited from reporting the results of an appointment to any party. Medical staff and the injured worker are the only parties responsible for reporting on the results of Workers Compensation appointments or for making arrangements for appointments.*
- g. **The interpreter is permitted to assist the injured worker in completing paperwork for the doctor in the following manner:** the injured worker completes all the blanks in his or her language, and when necessary, the interpreter writes the English version next to the foreign language statements the injured worker has written. This way the injured worker controls the information on the forms and there is a way to verify the accuracy of the English version. When the injured worker desires the interpreter to complete the form, the interpreter will write the injured worker's statements in the non-English language, and then the translation, and ask the injured worker to sign that the document reflects what the injured worker stated and the interpreter completed this form per the injured worker's request.*
- h. **HIPAA.** Interpreters are considered Business Associates and are therefore required to be HIPAA Certified, and comply with HIPAA practices, including the protection of Personal Health Information. This includes not transmitting*

*any personal health information outside of proper medical channels.
Interpreters must update their HIPAA certification every two years.*

Credentials required in Washington State, for reference:

<http://www.lni.wa.gov/ClaimsIns/Providers/TreatingPatients/Interpreters/acceptedCredentials.asp>

(2) Billing.

(a) Interpreters must charge the usual fee they charge to the general public for the same service.

(b) Interpreters may bill only the insurer or, if provided by contract, a managed care organization (MCO). However, if the insurer denies the claim (1), interpreters may bill the injured worker (2).

1. Helen Eby's comment:

In some cases, interpreters are asked to submit information such as return to work status and other health information for which the interpreter does not possess the requisite expertise and which may be subject to HIPAA or similar requirements. An interpreting contract sometimes even states, "Interpreting billing will not be processed without this information". This creates an ethical conflict for the interpreter. Please include the following text:

Request to include text:

Insurers may not deny the claim based on an interpreter's failure to comply with a request that the interpreter submit a report on the appointment or on anything other than having interpreted at the appointment.

See Washington State list of do's and don'ts, especially "confidential":

<http://www.lni.wa.gov/ClaimsIns/Providers/TreatingPatients/Interpreters/require.asp>

2. Helen Eby's comment:

Where it says, "Interpreters may bill the patient"

Billing the patient may be beyond the scope of what the interpreter may do. Title VI does not allow providers to bill patients for language access services. Please check this text.

(c) Interpreters may bill for interpreter services and for mileage when the round-trip mileage is 15 or more miles. For the purpose of this rule, "mileage" means the number of miles traveling from the interpreter's starting point to the exam or treatment location and back to the interpreter's starting point.

Suggested added text:

Mileage must be calculated using a mapping program that gives the distance from the interpreter's office to the appointment, selecting the shortest route. The interpreter's office may be located at the interpreter's home. The printout of this program must be submitted with the invoice.

(d) If the interpreter arrives at the provider's office for an appointment that was required by the insurer or the director, e.g., an independent medical exam, a physician review exam, or an arbiter exam, the interpreter may bill for interpreter services and mileage according to section (2)(c) of this rule even if:

- (A) The injured worker fails to attend the appointment; or
- (B) The provider has to cancel or reschedule the appointment.

(e) If interpreters do not know the workers' compensation insurer responsible for the claim, they may contact the Department of Consumer and Business Services², Workers' Compensation Division at 503-947-7814. They may also access insurance policy information at <http://www4.cbs.state.or.us/ex/wcd/cov/index.cfm>.

(3) Billing and Payment Limitations.

(a) When an appointment was not required by the insurer or director, interpreters may not bill any amount for interpreter services or mileage if:

- (A) The injured worker fails to attend the appointment; or
- (B) The provider cancels or reschedules the appointment.

(b) The insurer is not required to pay for interpreter services or mileage when the services are provided by:

- (A) A family member or friend of the injured worker; or
- (B) A medical provider's employee.

Helen Eby's commentary:

Neither of these kinds of interpreters should be used.

A. Confidentiality and impartiality are violated when interpreting services are provided by friends and family.

B. If the interpreting services are provided by an employee of a medical provider this employee shall have all the requisite professional qualifications, just as is required for the provider's other employees performing medical services such as giving injections or drawing blood.

Because of potential conflict of interest and impartiality issues, use of a medical provider's employee as an interpreter is strongly discouraged, in order to protect the neutrality of the interpretation. Likewise, a medical provider's employee must not assist by completing paperwork for an injured worker with limited English proficiency for the same reason.

Helen Eby's replacement:

Delete section b.

(4) Billing Timelines.

(a) Interpreters must bill within:

- (A) 60 days of the date of service;
- (B) 60 days after the interpreter has received notice or knowledge of the responsible workers' compensation insurer or processing agent; or
- (C) 60 days after any litigation affecting the compensability of the service is final, if the interpreter receives written notice of the final litigation from the insurer.

(b) If the interpreter bills past the timelines outlined in subsection (a) of this section, the interpreter may be subject to civil penalties as provided in ORS 656.254 and OAR 436-010-0340.

(c) When submitting a bill later than outlined in subsection (a) of this section, an interpreter must establish good cause. Good cause may include, but is not limited to, extenuating circumstances or circumstances considered outside the control of the interpreter.

(d) A bill is considered sent by the date the envelope is post-marked or the date the document is faxed.

Helen Eby's suggested text:
Invoices are often sent by email.
A bill is considered sent by the date the email is sent with the attachment, by a program such as QuickBooks Online.

(5) Billing Form.

(a) Interpreters must use an invoice when billing for interpreter services and mileage and use Oregon specific code:

- (A) D0004 for interpreter services except American Sign Language,
- (B) D0005 for American Sign Language interpreter services, and
- (C) D0041 for mileage.

(b) An interpreter's invoice must include:

- (A) The interpreter's name, interpreter's certification type, number and expiration date, if applicable, type of certification, the interpreter's company name if applicable, billing address, and phone number;

*Helen Eby's commentary:
The interpreter should be certified or qualified. In this case, the certification is recorded and there is a certification number. Certifications are recorded with a number in all deposition records. Similarly, they can be entered into the record of a worker's compensation case.*

Helen's replacement text:

The interpreter's name, Certification type, number and expiration date, the interpreter's company name, if applicable, billing address, and phone number; If an unqualified interpreter was hired, a justification for determining that no Certified or Qualified interpreters were available must be submitted..

Comment from Lorena Ortiz Schneider, in California:

The physicians get a modifier for using an interpreter, but don't always state the name of the interpreter (some forget to state an interpreter was used). This has led to interpreters bearing the burden of proving that their services were actually and reasonably used. We have, as a result, Interpreter Verification Forms that substantiate our presence in the absence of said information documented on the medical reports. So, I agree with your recommendation that the interpreters presence and credentials be identified in the medical reports.

- (B)** The injured worker's name;
- (C)** The injured worker's workers' compensation claim number, if known;
- (D)** The correct Oregon specific codes for the billed services (D0004, D0005, or D0041);
- (E)** The workers' compensation insurer's name and address;
- (F)** The date interpreter services were provided;
- (G)** The name and address of the medical provider that conducted the exam or provided treatment;
- (H)** The total amount of time interpreter services were provided; and

Helen Eby's commentary:

This is vague. It needs to be more specific, because sometimes interpreters' payments are delayed and interpreters are asked for medical information to provide evidence of their presence.

Helen's recommendation:

(H) *The total amount of time interpreter services were provided, in 15 minute increments, substantiated by separate staff signatures stating the interpreter's time of arrival and departure; and*

- (I)** The mileage, if the round trip was 15 or more miles.

Helen's suggested added text:

Mileage must be calculated using a mapping program that gives the distance from the interpreter's office to the appointment, selecting the shortest route. The interpreter's office may be located at the interpreter's home. The printout of this program must be submitted with the invoice.

Helen Eby commentary:

*Add one more line:
This information shall be sufficient to process all interpreter payments. No further information shall be required of interpreters in order to process payments.*

(6) Payment Calculations.

(a) Unless otherwise provided by contract, insurers must pay the lesser of the maximum allowable payment amount or the interpreter’s usual fee.

(b) Insurers must use the following table to calculate the maximum allowable payment for interpreters:

Helen’s recommendation:
Delete this table and replace it with the table below, which is simplified.
Problematic text in this table is highlighted in red.

For:	The maximum payment is:
Interpreter services of an hour or less	\$60.00
American sign language (ASL) interpreter services of an hour or less	\$70.00
Interpreter services of more than one hour	\$15.00 per 15-minute increment; a 15-minute increment is considered a time period of at least eight minutes and no more than 22 minutes.
American sign language (ASL) interpreter services of more than one hour	\$17.50 per 15-minute increment; a 15-minute increment is considered a time period of at least eight minutes and no more than 22 minutes.
Mileage of less than 15 miles round trip	No payment allowed
Mileage of 15 or more miles round trip	\$0.50 per mile
An examination required by the director or insurer that the injured worker fails to attend or when the provider cancels or reschedules	\$60.00 no-show fee plus payment for mileage if 15 or more miles round trip
An interpreter who is the only person in Oregon able to interpret a specific language	The amount billed for interpreter services and mileage

*Helen’s recommendation
The following modifications of the chart simplify it, staying within the spirit of the rules established, but are easier for interpreters to remember and follow.*

For:	The maximum payment is:
Interpreter services of an hour or less – for	\$60.00

spoken languages commonly contracted	
American sign language (ASL) interpreter services of an hour or less	\$70.00
<u>A highly qualified interpreter readily available to interpret a spoken language not commonly contracted..</u>	The hourly rate for these interpreters can be negotiated freely.
Interpreter services of more than one hour	25% of the hourly fee per 15-minute increment, starting at the beginning of the 15 minute block.
Mileage of less than 15 miles round trip	No payment allowed
Mileage of 15 or more miles round trip	Federal mileage rate
An examination required by the director or insurer that the injured worker fails to attend or when the provider cancels or reschedules	One hour fee for no-show plus payment for mileage if 15 or more miles round trip
Cancellation fee	Full fee In CA unless notified of a cancellation within 24 hours, we are paid the full fee (see attached LC section 9795.3).

Comment based on language in California fee structure, from Lorena Ortiz Schneider:

(e) The fees set forth in subdivision (b) shall be presumed reasonable for services provided by provisionally certified interpreters only if efforts to obtain a certified interpreter are documented and submitted to the claims administrator with the bill for services. Efforts to obtain a certified interpreter shall also be disclosed in any document based in whole or in part on information obtained through a provisionally certified interpreter.

The current California fees are:

Our current fees are” \$45 per hour with a 2 hour minimum (\$90) OR the market rate, whichever is greater.”

As for the time spent, in CA we are paid based on a 2-hour minimum. Carriers often only want to pay for the face-to-face time, when the reality is that the interpreter is often at an appointment for much longer. The interpreter assists in any paperwork prior to the appointment, has waiting time and assists in scheduling follow up appointments after the patient has seen the provider, and interpreting for staff when medication is dispensed after the appointment (including more wait time). I don’t know if the OR convention is to pay per hour, but in CA, the geographical distances have led to the establishment of a 2-hour minimum.

(7) Payment Requirements.

(a) When the medical exam or treatment is for an accepted claim or condition, the insurer must pay for interpreter services and mileage if the round-trip mileage is 15 or more miles.

(b) When the injured worker fails to attend or the provider cancels or reschedules a medical exam required by the director or the insurer, the insurer must pay the no-show fee and mileage if the round-trip mileage is 15 or more miles.

(c) The insurer must pay the interpreter within:

- (A)** 14 days of the date of claim acceptance or any action causing the service to be payable, or 45 days of receiving the invoice, whichever is later; or
- (B)** 45 days of receiving the invoice for an exam required by the insurer or director.

Helen's addition:

To be able to enforce these payment deadlines, the interpreter must receive a copy of all correspondence regarding the claim, since these deadlines affect the interpreter's payment timelines. Since this is impractical, the interpreter's payment should not be tied to the date of claim acceptance or the invoice for the exam, since bureaucratic processes can delay these.

Helen Eby's recommended text:

(c) The insurer must pay the interpreter with 14 days of submission of the interpreter's invoice as long as the invoice includes the information on 5 (b). Date of submission is the date of the email on the interpreter's email.

(d) When an interpreter bills within 12 months of the date of service, the insurer may not reduce payment due to late billing.

(e) When an interpreter bills over 12 months after the date of service, the bill is not payable, except when a provision of subsection (4) (c) of this rule is the reason the billing was submitted after 12 months.

(f) If the insurer does not receive all the information to process the invoice, the insurer must return the invoice to the interpreter within 20 days of receipt. The insurer must provide specific information about what is needed to process the invoice.

Helen Eby's commentary:

"all the information to process the invoice" is a very vague statement. This could lead to questions that are not clear at all.

Helen Eby's addition:

If the interpreter's invoice included all the information in section 5 (b), the insurer is assumed to have all information needed to process the invoice.

(g) When there is a dispute over the amount of a bill or the appropriateness of services rendered, the insurer must, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each service billed.

(h) The insurer must provide a written explanation of benefits for services paid or denied and must send the explanation to the interpreter who billed for the services. If the billing is done electronically, the insurer or its representative may provide this explanation electronically. All the information on the written explanation must be in 10 point size font or larger.

(i) Electronic and written explanations must include:

(A) The payment amount for each service billed. When the payment covers multiple injured workers, the explanation must clearly separate and identify payments for each injured worker;

(B) The specific reason for non-payment, reduced payment, or discounted payment for each service billed;

(C) An Oregon or toll-free phone number for the insurer or its representative, and a statement that the insurer or its representative must respond to an interpreter's payment questions within 48 hours, excluding weekends and legal holidays;

(D) The following notice, Web link, and phone number:

"To access the information about Oregon's Medical Fee and Payment rules, visit www.oregonwcdoc.info or call 503-947-7606";

(E) Space for a signature and date; and

(F) A notice of the right to administrative review as follows:

"If you disagree with this decision about this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required supporting documentation to the Workers' Compensation Division, Medical Resolution Team, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."

(j) The insurer or its representative must respond to an interpreter's inquiry about payment within 48 hours, not including weekends or legal holidays. The insurer or its representative may not refer the interpreter to another entity to obtain the answer.

(k) The insurer or its representative and an interpreter may agree to send and receive payment information by email or other electronic means. Electronic records sent are subject to the Oregon Consumer Identity Theft Protection Act under ORS 646A.600 to 646A.628 and federal law.

Stat. Auth.: ORS 656.726(4); Stats. Implemented: ORS 656.245, 656.248
Hist: Amended 3/11/13 as Admin. Order 13-051, eff. 4/1/13
Amended 3/12/14 as Admin. Order 14-052, eff. 4/1/14
Amended 3/12/15 as Admin. Order 15-058, eff. 4/1/15

436-009-0998 Sanctions and Civil Penalties

(1) The director may impose sanctions upon a medical provider or insurer for violation of these rules in accordance with OAR 436-010-0340.

(2) If an insurer applies a contract or fee discount agreement to a provider's bill that is incorrect, the insurer must pay the provider's bill at the provider's usual fee or according to the fee schedule, whichever is less, and the insurer may be subject to a civil penalty.

(3) Although insurers may contract with provider networks for certain services, the insurer is responsible for their own actions as well as the actions of others acting on the insurer's behalf. If an insurer or someone acting on the insurer's behalf violates any provision of these rules, the director may impose a civil penalty against the insurer.

(4) If the director finds a pattern and practice, or an egregious violation of applying incorrect discounts to providers' fees under these rules, by an insurer or someone acting on the insurer's behalf, the director may issue a civil penalty up to the amount allowed under ORS chapter 656.

This report was prepared by:

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