Date: January 29, 2015

HB 2211

SUBJECT: Authorizes Director of Department of Consumer and Business Services to impose civil penalty for workers' compensation claims processing violations by service company. Specifies that director may impose only single civil penalty for each separate violation by employer, insurer, managed care organization or service company.

SPONSOR: At the request of the Oregon Self-Insurers Association

Existing Law:

- Allows the director to assess civil penalties against an employer, insurer, or managed care organization for failing to comply with workers' compensation statutes, rules, or orders of the director.
- Limits civil penalties to $2,000 for each violation or $10,000 for all violations within any three-month period.
- Requires the claims of injured workers employed by self-insured employers be handled in the same manner as insurer-covered claims and subjects these employers to the director's rules regarding claims.

This bill:

- Allows the director to assess a civil penalty against a service company for violations of claims processing requirements identified in audits of processing performance.
- Provides the director may only assess one penalty for each separate violation by an employer, insurer, managed care organization, or service company.

Analysis:

1. Insurers and self-insured employers may choose to process their workers' compensation claims or use a service company to handle claims. While larger companies tend to self-administer their claims, roughly 80% of insurers and self-insured employers use service companies. Insurers may have up to eight different service companies at any time; about 25% currently use multiple companies. Self-insured employers may have three different claims processing locations, though none currently use more than one. When conducting claims processing performance audits, the director reviews claims at all locations and then compiles performance data and reports for the insurer or self-insured employer that reflect both the separate locations' and entity's aggregate performance. To limit potential disruption caused by audits, the director reviews records for all companies at a service company at the same time. Insurers with multiple claims locations must wait until all locations are audited to receive complete performance data and reports.

2. If the director determines claims processing performance falls below established standards in any audit category, the insurer or self-insured employer responsible for the claims is assessed a civil penalty for each deficient category. The total of these penalties may not exceed the $10,000 maximum, regardless of the number of processing locations. For insurer groups comprised of several companies, each company is separately subject to the maximum penalty. While a variety of arrangements exist between the parties regarding who pays the penalty for performance deficiencies, service companies often do so.

3. The bill adds service companies to the list of parties subject to civil penalties under ORS 656.745, but limits the penalties to a single situation: processing deficiencies identified in claims processing performance audits. Service company representatives indicate that it is administratively burdensome to review audit summaries and determine how processing violations and resulting penalties should be allocated among multiple processing locations. They advocate that their time is better spent focusing on the causes for claims processing errors, examiner training, and oversight. Since audit reports provided to the insurer or self-insured employer separate performance results by processing location, these considerations may reflect arrangements where a service company's clients delegate the bulk of performance review (along with penalty payment) to their service companies. The operational processes of large, multi-state service companies handling many clients may also be a factor that may not be a concern for smaller, local service companies with fewer clients.

   Providing the director the ability to penalize service companies for processing violations immediately following their audit could provide insurers more rapid performance feedback for that particular claims administrator, rather than waiting for all such locations to be audited. This would also eliminate situations where one service company's poor performance is "masked" by adding up multi-location results where strong performance occurred among the other service companies used by an insurer. However, the bill's permissive language does not require the director to penalize the service company instead of the insurer, nor does it require the director to change audit methodology. Even where the director did penalize the service company, the insurer or self-insured employer ultimately responsible for the claims would receive information about the penalties.

4. The bill states the director may only assess one penalty for each separate violation by the parties listed in ORS 656.745. Where the director penalizes the service company for violations in one or more claims processing categories, the director could not also penalize the responsible insurer or self-insured employer. This provision limits the director's authority to address violations of the statute, rules, or orders in cases where more than one party is responsible for the violation.

5. By specifying the director could impose service company penalties in only this one audit-related circumstance, the bill does not change other provisions under ORS chapter 656 where the director imposes civil penalties for claims processing violations in a single claim. The insurer, employer, or managed care organization would still receive those penalties and any affected service company would already be involved in the processing issue.

6. The bill references deficiencies identified in "audits associated with claims processing performance." The director conducts various performance audits associated with claims processing. An "Annual Audit" primarily reviews the timeliness of claim payments and certain processing actions, and the accuracy of reports filed with the director. However, other audits address specific aspects of claims processing such as those occurring prior to claim closure. Audits may also be conducted at one or a few locations based on complaints from injured workers or medical providers. Proponents indicate their intent is to only allow service company penalties related to the Annual Audits, but the bill's general language would allow such penalties for most, if not all, claims-related audits conducted by the director.

7. The bill, in combination with the civil penalty maximum and the director's practice of auditing all insurers at a processing location, may result in service companies with a small number of clients receiving proportionately higher penalties than larger companies with many clients. In the latter case, assessed penalties will reach the $10,000 "cap" more quickly, and the service company and some clients will avoid penalties that would currently be imposed on all responsible insurers and self-insured employers.

8. Current law requires the director to adopt standards for certification of workers' compensation claims examiners by insurers, self-insured employers, and service companies. The director is also provided authority to impose civil penalties against these parties for failing to comply with examiner training, certification, and records requirements. By limiting service company penalties to audit performance deficiencies, HB 2211 conflicts with the director's authority under ORS 656.780 to penalize service companies for claims examiner certification violations.

Questions and/or suggested amendments:

1. If the bill's intent is to limit service company civil penalties to particular types of audits, it may be helpful to clarify the basis for these penalties. However, the nature of the director's audits can change over time and specificity tied to a particular audit may later require revisiting statutory language.
2. The bill may need to reference ORS 656.780 (examiner certification penalties; see #8) as an exception to the limitation on service company penalties.

Fiscal Impact to DCBS: The bill does not increase the agency's administrative, regulatory, or enforcement duties. Adjustments in planned audits, locations, and completion timeframes routinely occur as needed. Civil penalties assessed for audit violations would still be assessed, but possibly imposed on a different party. It is not expected that the bill will create a fiscal impact for the agency.

Other Economic Impact: Insurers and self-insured employers that use service companies to handle their claims, and large service companies with several clients, may incur lower total civil penalties based on performance audit results. Due to the civil penalty maximum for any three-month period, poor performance by a service company on behalf of some insurer and self-insured employer clients may not be penalized, while similar performance on behalf of other clients is sanctioned. Small service companies with fewer clients may incur the same dollar amount of civil penalties as occurs currently, but the proportionate amount given the number of clients may be higher than those imposed on larger service companies that reach the penalty maximum sooner. Also, since civil penalties are paid into the Workers' Benefit Fund, a decrease in the total dollar amount of civil penalties assessed in a given period will result in a decrease to that fund.

Support: Oregon Self-Insurers Association

Opposition: Unknown

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