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SB 801-1

Brief summary

Requires self-insured employers to refer workers' compensation claims to SAIF for processing.

Analysis

What the law currently does

Under current law, an employer may choose to self-insure its workers' compensation responsibilities instead of purchasing insurance from SAIF or a private insurer. The Department of Consumer and Business Services, Workers' Compensation Division certifies and regulates self-insured employers and self-insured employer groups. A certified self-insured employer must follow all the laws and rules relating to the processing of workers' compensation claims just as any other workers' compensation insurer.

Under current law, a self-insured employer may process its own claims or contract with a service company for claims processing. A self-insured employer that contracts with a service company remains liable for actions taken by the service company.

Self-insured employer groups are subject to the same requirements for claims processing as individual self-insured employers. References to self-insured employers in this analysis includes self-insured employer groups.

What will change if the bill is enacted

SB 801 with the -1 amendments would require a self-insured employer to refer any claim it received to SAIF. Under the bill, SAIF would be required to process these claims in the same manner as claims from its policyholders, except that a worker's entitlement to compensation on a referred claim would not begin until SAIF received the claim.

SAIF's responsibilities under the bill would include conducting investigations, deciding whether to accept or deny claims, issuing notices of closure, and determining the extent of permanent partial disability. For each processed claim, SAIF would be entitled to bill the self-insured employer an amount equal to the

expenses it would incur in processing an equivalent policyholder claim, or they may negotiate other payment terms.

The self-insured employer would remain responsible for paying compensation in accordance with SAIF's processing decisions. The employer would also be liable for penalties assessed based on certain determinations made at hearing or by the director, including a determination that claim acceptance or denial was unreasonably delayed. The employer would be entitled to seek compensation from SAIF if SAIF's actions resulted in this liability.

Likely impacts, results, or consequences if the bill is enacted

If enacted, the bill would impact stakeholders in a variety of ways.

- SAIF would see an increase in their claim processing workload, which would likely require additional staff. The size of the increase in claim volume is difficult to determine, but self-insured employers accounted for about 18% of total claims reported to WCD in 2019, while SAIF accounted for about half.
- Under current law, an insurer or self-insured employer must pay the first installment of compensation within 14 days of the day the employer has knowledge of the claim. Under SB 801-1, this timeframe does not begin until SAIF has received the claim from the self-insured employer. This could result in benefit delays to injured workers if SAIF's receipt of a claim is delayed for any reason.
- Current law allows a self-insured employer to contract with a service company for claims processing, and many choose to do so. Under SB 801-1, these arrangements would no longer be allowed, which would result in a loss of business for the service companies involved. Some service companies that primarily contract with self-insured employers would see the greatest impact. Self-insured employers with in-house claims processing staff would also be impacted.
- In the event that a worker appealed a claims processing decision made by SAIF, it is not clear whether the self-insured employer, SAIF, or both would be entitled to representation at hearing. Further, SAIF and a self-insured employer may have opposing interests at hearing. For example, SAIF may wish to defend a claims processing decision that the employer considers incorrect.
- Under current law, the division is authorized to assess civil penalties against self-insured employers, insurers, or service companies that fail to comply with rules or statutes. A self-insured employer can be penalized for actions taken by a service company on its behalf.

Under HB 801-1, the division could penalize a self-insured employer for paying compensation late or incorrectly. However, it probably could not penalize the employer for claims processing actions taken by SAIF, such as failing to issue a timely acceptance or denial, because under the bill the employer is not responsible for these actions.

The division may or may not be able to penalize SAIF based on actions it is required to take under this bill. The bill specifies that SAIF is not a self-insured employer's insurer, and it is not clear that SAIF would qualify as a service company in this context.

- The division of responsibilities between a self-insured employer and SAIF under the bill could create confusion or administrative burdens for stakeholders:
 - Both the employer and SAIF would need access to medical billing and case notes to carry out their assigned responsibilities.
 - As amended, ORS 656.455 requires both SAIF and a self-insured employer to maintain separate claim records.
 - Breakdowns in communication about the status of a claim could result in benefits being delayed or paid inappropriately.
 - Workers and their representatives may be unsure who to communicate with about their claims.
 - If claims processing decisions are made by SAIF but compensation is paid by the self-insured employers, self-insured employers may need to establish new accounts payable functions, as most currently have their service companies make payments to workers, vendors, and medical providers.
 - The division's audits may become significantly longer and more complex due to the need to audit and reconcile two sets of records.

The impact to stakeholders could be reduced if a self-insured employer and SAIF agreed that SAIF would pay compensation as well as process claims, but SAIF is not required to do so under the bill.

Questions/relevant information for the bill sponsor or primary proponent

- As amended, ORS 656.262 continues to allow a self-insured employer to suspend benefits to a worker under certain circumstances, such as when the worker seeks treatment outside of an MCO or fails to attend an appointment. Is it the intent of the bill that the self-insured employer, rather than SAIF, will have this authority?
- ORS 656.307 and 656.308, which address issues around responsibility for payment of claims, include references to self-insured employers issuing denials. The bill sponsor may wish to consider removing these references.
- As amended, ORS 656.455(2) continues to allow self-insured employers to process claims from an out-of-state location with the director's permission. The bill sponsor may wish to consider removing these references.

Legislative history

Has this bill been introduced in a prior session?

No Yes Years Bill numbers

Does this bill amend current state or federal law or programs?

No Yes Specify

ORS 656.206, 656.218, 656.245, 656.247, 656.262, 656.264, 656.267, 656.268, 656.273, 656.277, 656.278, 656.283, 656.313, 656.325, 656.327, 656.331, 656.403, 656.407, 656.455, 656.752, 656.780 and 656.802

Is this bill related to a legal decision?

No Yes Case citation, AG opinion, date, etc.

Should another DCBS division review this measure?

No Yes Divisions

Workers' Compensation Board, Division of Financial Regulation

Other impacts

Does this bill have a fiscal impact to DCBS?

No Yes Unknown Explain

The bill would have a short-term fiscal impact on DCBS due to the need for rulemaking, which could be extensive. It may also have an impact on audit costs due to the separation of responsibilities between SAIF and the self-insured employer.

Does this bill have an economic impact to stakeholders?

No Yes Unknown Explain

The bill would result in significant lost revenue for service companies. It may have a positive or negative economic impact on self-insured employers depending on how SAIF's claims handling expenses compare with service company rates.

Sponsors

Sen. Gorsek

Possible interested stakeholders

Self-insured employers, service companies, SAIF, workers' compensation attorneys

Public policy topics

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| <input type="checkbox"/> Agency operations | <input type="checkbox"/> Other lines of insurance |
| <input type="checkbox"/> Building codes | <input type="checkbox"/> Prescription drugs |
| <input type="checkbox"/> Financial institutions and lending | <input type="checkbox"/> Property and casualty insurance |
| <input type="checkbox"/> Health insurance | <input type="checkbox"/> Public records/public meetings law |
| <input type="checkbox"/> Involvement with other agencies | <input type="checkbox"/> Rulemaking |
| <input type="checkbox"/> Licensure | <input type="checkbox"/> Securities |
| <input type="checkbox"/> Manufactured structures | <input type="checkbox"/> Task force/reports |
| <input checked="" type="checkbox"/> MLAC legislative review | <input type="checkbox"/> Worker safety |
| <input type="checkbox"/> New program | <input checked="" type="checkbox"/> Workers' compensation system |
| <input type="checkbox"/> Nondepository programs | <input type="checkbox"/> Other |