



Date: March 3, 2021

To: Members of the Management-Labor Advisory Committee

Re: SB 489 – Workers’ Compensation: Suspension of Benefits, Restrictions on Credits and Offsets, and Retroactive Authorizations of Temporary Compensation

Position: Oppose

The American Property and Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions – protecting families, communities, and businesses in the U.S. and across the globe. We regretfully must oppose Oregon Senate Bill 489.

This bill places new restrictions on the suspension of benefits, permits medical providers to authorize retroactive benefits without any time limitations, and prohibits employers and insurers from taking appropriate offsets and credits for overpayments. APCIA opposes the bill and requests that the Management-Labor Advisory Committee reject the proposal.

Prohibitions on Suspension of Benefits

SB 489 places new prohibitions on a self-insured employer or insurer’s ability to suspend temporary disability benefits. The bill requires that notice of suspension of temporary disability benefits be provided no later than when the compensation would otherwise be payable. This limits an employers’ or insurers’ right to suspend temporary benefits. Insurers and employers should have the right to suspend payments based on changes in medical condition, or changed conditions (such as the claimant being offered a new job) or as new facts becoming known. Placing artificial constraints on the right to suspend temporary benefits, when such suspension is appropriate and consistent with the facts and law, will increase inappropriate compensation payments, discourage timely return to work, and add unnecessary costs, disputes, and delays to the workers’ compensation system.

Retroactive Authorization of Benefits by Medical Providers

Under current law, a treating provider may not authorize temporary disability compensation retroactively for more than 14 days prior to the issuance of the authority. SB 489 would remove the current retroactive authorization of compensation to 14 days. The current statutory 14- day limit on retroactive authorization of temporary disability compensation is reasonable and necessary. Removing the current maximum 14-day limitation on retroactive compensation would likely be extremely costly, and would also encourage gaming of the system and potential underhandedness if medical providers

could award retroactive temporary benefits going back months and months. The provision would lead to potential abuse, more disputes, and unnecessary costs.

Restrictions on Credits and Offsets

SB 489 would prohibit a self-insured employer or insurer from taking offsets and credits against any compensation benefits or payments made more than two years before the offset or credit. Insurers and self-insured employers often must make offsets or credits to future payments based on wrongfully, earlier paid compensation benefits. For example, payments may be made provisionally and then a subsequent administrative determination supports the insurer's position. It is critical that the insurer be able to credit or offset future benefits by amounts of over-payment received by the claimant. There is no justification for prohibiting credits or offsets for compensation benefits and payments made at a certain time in the past. If the compensation benefits or payments were in excess of what the claimant was subsequently determined to be entitled to, the claimant would receive an unjustified windfall if the credit or offset were not permitted. Placing unnecessary and artificial limits on the right to take credits or offsets, creates a disincentive for self-insured employers and insurers to make condition payments to claimants under a reservation of rights.

Prohibition on Credits and Offsets Over \$5,000

SB 489 would prohibit self-insured employers and insurers from taking credits or offsets of greater than \$5,000. As with the two-year limitation on credits and offsets, this proposed restriction lacks justification and appears arbitrary. If, for example, an insurer paid a claimant an inflated sum while appealing the determination and then was successful on appeal in lowering the amount, the insurer should be able to offset future benefits by the amount of the excessive prior payments. To provide that because the amount of overpayment is \$5,000 or more, such a credit or offset is prohibited represents questionable public policy. The claimant has received an unjustified windfall and the insurer has been over-paying the claimant under protest on appeal. It is difficult to justify why the claimant should retain the unjustified windfall just because it is over \$5,000. It would make more sense to allow the insurer to receive a credit or offset against future compensation payments it is making to the claimant who received the unjustified windfall.

For the above reasons, APCI must oppose SB 489 and requests that the Management-Labor Advisory Committee reject the proposal.

Sincerely,



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