



Date: January 28, 2022

To: Management-Labor Advisory Committee

Re: HB 4138 - Retroactive Authorizations of Temporary Compensation, Medically Stationary Status, and Restrictions on Credits and Offsets

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 HB 4138**.

This bill permits medical providers to authorize retroactive time loss benefits without any time limitations, restricts the appropriate determination of medically stationary status, prohibits employers and insurers from taking reasonable offsets and credits for overpayments, and removes the two-year time bar on filing claim processing disputes, thereby permitting stale claims to be raised.

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 time loss benefits. HB 4138 would remove the current retroactive authorization of time loss benefits to 14 days. In its place, the bill creates a 60-day limit on retroactive authorization of time loss benefits starting from the day the insurer sends notice of termination of time loss benefits.

The current statutory 14- day maximum limit on retroactive authorization of temporary disability compensation is reasonable and necessary. Removing the current 14-day limitation on retroactive compensation would be extremely costly and could also encourage gaming of the system and potential chicanery 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.

The replacement of the current 14-day retroactive maximum from date of authorization with a 60-day maximum retroactive application from the date of notice of termination of time loss benefits is also problematic in application. The bill is silent as to the maximum retroactive application when a notice of termination has not been sent. The bill would allow retroactive benefit authorization without any time limit when a notice has not been sent or if the retroactive authorization takes place prior to the

termination letter. The bill is also unclear in relation to cases when a termination notice is sent: is the 60-day limit triggered by issuance of the letter or receipt of the letter?

Medically Stationary Status

Under current law, the medical provider may determine the claimant has reached medically stationary status on the current date or at a date in the past depending on the medically appropriate day the claimant became medically stationary. There is no restriction on the application date of medical stationary status. The bill, however, creates an artificial limit on determining the date stationary status was reached to no more than 60 days prior to the suspension of benefits letter. By preventing the medical provider from determining the appropriate date stationary status was achieved, the bill would allow claimants to continue to collect temporary disability benefits even after reaching stationary status. If enacted, HB 4138 would lead to unnecessary costs as claimants would be permitted to collect time loss benefits even after the claimant had in fact reached medically stationary status.

Restrictions on Credits and Offsets

HB 4138 would limit a self-insured employer or insurer from taking offsets and credits against overpayment of permanent disability to 50% of the claimant's award. This would provide an unjustified windfall for the claimant receiving an overpayment. There is no justification for prohibiting credits or offsets for overpayments of benefits. 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 proper credit or offset is not permitted.

Removal of Two-Year Limit on Requesting a Hearing

Under current law, a claimant has two years to file a dispute alleging failure to process a claim or incorrect claim processing. HB 4138 would remove the time bar, permitting a claimant to file a dispute at any time, even years and years after the claim processing. Clearly there needs to be some time bar for filing a dispute. Claim files need to be closed at some point and witness recollections and facts are lost after years expire. The current two-year period to file a dispute is without a doubt a reasonable and ample time for a claimant to file a dispute. Extending the time for a claimant to bring a dispute on his or her claim indefinitely is not a reasonable or valid timeline and permits the filing of stale claims.

Sincerely,



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