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September 13, 2022

Sara Duckwall, management
Matt Calzia, labor
MLAC
350 Winter Street NE Rm 200
Salem, OR 97309

Re: MLAC Subcommittee on Worker Continuation of Care

Dear Ms. Duckwall and Mr. Calzia,

Please find enclosed the statutory provisions provided by the Oregon Trial Lawyers Association to negate the need for legislative action on open-ended time loss authorizations. While we are aware of these statutes, they are inadequate to ensure that injured workers remain connected to their care throughout their recovery. Included with each provision is a brief explanation that highlights the need for additional tools. We believe that a tailored solution that sets clear expectations for workers and providers makes sense to ensure timely and appropriate care and the revisiting of work restrictions on a regular basis.

I will attend the upcoming subcommittee meeting on September 16th and will be available to answer any questions.

Sincerely,

/s/ Elaine Schooler
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1. **Current law allows the insurance industry to cut off payments to workers who fail to appear for medical exams {ORS 656.252(4)(e)}.**

ORS 656.262(4)(e) If a worker fails to appear at an appointment with the worker's attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245, the insurer or self-insured employer shall notify the worker by certified mail that temporary disability benefits may be suspended after the worker fails to appear at a rescheduled appointment. If the worker fails to appear at a rescheduled appointment, the insurer or self-insured employer may suspend payment of temporary disability benefits to the worker until the worker appears at a subsequent rescheduled appointment.

**Response:** An insurer may use this provision as outlined in OAR 436-060-0020(5) to suspend a worker's temporary disability benefits when -

1. the worker fails to attend a previously scheduled appointment with their attending physician
2. the insurer reschedules the appointment with the worker's attending physician
3. the insurer provides the required notices to the worker
4. and the worker fails to attend the rescheduled appointment.

However, this "tool" cannot be used when the worker or attending physician fail to schedule a follow-up appointment.

Example: The worker treats with their attending physician and is provided an open-ended time loss authorization, but a follow-up appointment is not scheduled. If a follow-exam is not scheduled, there is no appointment for the worker to fail to attend, and the insurer cannot suspend temporary disability benefits. Temporary disability benefits would continue to be paid because the time loss authorization is open-ended despite the worker not actively seeking medical treatment.

2. **Current law provides the insurance industry the power to get medical reports on injured workers every 15 days {ORS 656.262(2)(b)}.**

ORS 656.252(2)(b) Advise the insurer or self-insured employer of the anticipated date for release of the injured worker to return to employment, the anticipated date that the worker will be medically stationary, and the next appointment date. Except when the attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 has previously indicated that temporary disability will not exceed 14 days, the insurer or self-insured employer may request a medical report every 15 days, and the attending physician or nurse practitioner shall forward such reports.

**Response:** The insurer may request a medical report every 15 days from the worker's attending physician. However, if the worker has an open-ended time loss authorization and is not actively seeking medical treatment with their attending physician (see above example) their attending physician may not be able to provide an update. In addition, the attending physician is unable to ensure that the worker's work restrictions accurately address the inured worker's current limitations so the employer can offer the appropriate modified work, when appropriate.

3. **Current law gives the insurance industry the power to withhold payments to workers if the health care provider cannot verify the worker's inability to work. {ORS 656.262(4)(d)}**

ORS 656.262(4)(d) Temporary disability compensation is not due and payable for any period of time for which the insurer or self-insured employer has requested from the worker's attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 verification of the worker's inability to work resulting from the claimed injury or disease and the physician or nurse practitioner cannot verify the worker's inability to work, unless the worker has been unable to receive treatment for reasons beyond the worker's control.

**Response:** An insurer may withhold time loss for periods of time when the worker's attending physician cannot verify the worker's inability to work; however, the insurer cannot withhold time loss benefits without the attending physician stating they cannot verify the worker's inability to work. At times, an attending physician is reluctant to stop authorizing time loss benefits without seeing the worker. If the worker does not have a follow-up appointment scheduled or is not required to schedule a follow-up appointment time loss benefits would continue with an open-ended time loss authorization.

4. **Current law gives the insurance industry the power to cut off payments to health care providers who fail to report on the injured worker's ability to return to work. {ORS 656.262(4)(f)}**

ORS 656.262(4)(f) If the insurer or self-insured employer has requested and failed to receive from the worker's attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 verification of the worker's inability to work resulting from the claimed injury or disease, medical services provided by the attending physician or nurse practitioner are not compensable until the attending physician or nurse practitioner submits such verification.

**Response:** Medical providers are an integral part of the workers' compensation system and a worker's access to medical care is increased when medical providers are willing to treat worker's with workers' compensation claims.

Withholding payments to medical providers that have failed to respond to an insurer's request may be a disincentive and increase the "hassle factor" of treating a worker with a worker's compensation claim.

5. **Finally, ORS 656.268(1)(c) allows the insurer to close a claim when the worker fails to seek medical treatment for a 30-day period, unless the worker demonstrates the failure to seek treatment is beyond their control.**

ORS 656.268(1)(c) Without the approval of the attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245, the worker fails to seek medical treatment for a period of 30 days or the worker fails to attend a closing examination, unless the worker affirmatively establishes that such failure is attributable to reasons beyond the worker's control;

**Response:** An insurer may close a worker's claim when they fail to seek medical treatment for a period of 30-days without the instruction of approval of the worker's attending physician or the worker demonstrates the reason to treat was beyond their control.

To administratively close the worker's, claim the insurer must write to the worker and ask –

> If treatment has resumed or they are scheduling a new appointment, or the treatment was beyond the worker's control.

If the worker does not respond or responds that they are no longer treating the insurer may close the claim. However, if the worker responds that they are still treating, are scheduling an appointment or that treatment is beyond their control the insurer cannot administratively close the worker's claim. The worker is not required to attend a medical appointment with their attending physician, they simply need to respond that they intend to treat.