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Katie Bruns

Policy Analyst

Workers' Compensation Division

503-947-7767

SB 489

Brief summary

Proposes changes to temporary disability compensation by removing the restriction on retroactive authorization for temporary disability compensation, prohibits an insurer/self-insured employer from suspending temporary disability without providing the worker with written notice of the suspension within a specified timeframe, and limits the insurer/self-insured employer's ability to recover overpayments of wage loss benefits.

Analysis

What the law currently does

When a worker files a claim for an on-the-job injury, they may be entitled to wage replacement if an authorized provider finds the worker is unable to perform their regular job duties. Wage replacement is also called temporary disability compensation.

Under current law, an attending physician or nurse practitioner is limited to a retroactive authorization for temporary disability to 14 days before the date the authorization is issued. This law was enacted in 1995 because prior to this limit, there were instances where a provider would authorize retroactive temporary disability anywhere from 30 days to two years prior.

There are numerous ways in which temporary disability compensation may be suspended. Currently, there is not a requirement for the insurer/self-insured employer to send written notification to the worker explaining the reason for the suspension prior to the due date of the next payment.

An insurer or self-insured employer may offset any compensation payable to the worker to recover an overpayment from a claim with the same insurer or self-insured employer. When overpayments are recovered from temporary disability or permanent total disability benefits, the amount recovered from each payment cannot exceed 25 percent of the payment, without prior authorization from the worker. There is no limit to the amount that can be recovered nor is there a time limit for recovery.

What will change if the bill is enacted

This bill would remove the restriction on the authorization of retroactive temporary disability compensation. Deleting this provision would allow limitless retroactive temporary disability benefits.

In conjunction with removing the 14-day limit, the bill also adds a provision that states the insurer/self-insured employer cannot suspend temporary disability benefits without notifying the worker in writing no later than the date on which the wage loss benefits would have been paid.

This proposed change would limit the insurer/self-insured employer's ability to recover overpayments of temporary disability benefits. Specifically, a credit or offset may not be taken against any benefits or payments owed to a worker that were paid more than two years before the credit/offset would be taken and never in an amount greater than \$5,000. This provision would not apply when a credit/offset is sought for a fraudulent claim.

The bill would go into effect on the 91st day after the 2021 legislative session ends, and would apply to benefits and payments that become payable on or after the date of this Act.

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

Workers may have increased temporary disability benefits due to the removal of the limit on retroactive temporary disability benefit authorization, and will also receive written notice when their benefits may be suspended. The bill could potentially cause insurers/self-insured employers additional administrative management of the claim, and potentially subject them to penalties and penalty-related attorney fees. Since self-insured employers, or employers through their insurer, would not be able to recover the overpayments, a claim could cost more than it would have if the overpayment had been recovered.

The division will likely have to visit the temporary disability rules to come up with new processes for implementing the proposed changes to current law.

Questions/relevant information for the bill sponsor or primary proponent

1. If an attending physician or nurse practitioner can authorize temporary disability retroactively without limit, would that include when they haven't seen/treated the worker for weeks or months?
2. If an insurer is limited to recovering an overpayment at 25% of ongoing benefits, and the bill limits recoveries back to two years, would the insurer be unable to recover older overpayments as the claim progresses?
3. Is the reference to "claim" in the proposed bill referring to the initial claim, an aggravation claim, a new/omitted condition claim, etc. separately, or to the worker's overall claim?

4. Is there any conflict with the law which allows for adjustments at claim closure? The language currently limits the recovery to 25% from each payment for temporary disability and permanent total disability payments.

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

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 WCB

Other impacts

Does this bill have a fiscal impact to DCBS?

No Yes Unknown Explain There could be an increase in the number of penalties issued and closure disputes that come before the director and the Workers' Compensation Board.

Does this bill have an economic impact to stakeholders?

No Yes Unknown Explain The bill could increase the amount insurers/self-insured employers pay for temporary disability, result in more penalties and attorney fees, and reduce the amount they are able to recover on overpaid claims.

Sponsors

Sen. Taylor

Possible interested stakeholders

Insurers, self-insured employers, attorneys, labor organizations

Public policy topics

- Agency operations
- Building codes
- Financial institutions and lending
- Health insurance
- Involvement with other agencies
- Licensure
- Manufactured structures
- MLAC legislative review
- New program
- Nondepository programs

- Other lines of insurance
- Prescription drugs
- Property and casualty insurance
- Public records/public meetings law
- Rulemaking
- Securities
- Task force/reports
- Worker safety
- Workers' compensation system
- Other