Exhibit
"4"

ENGRAV LAW OFFICE

Diana Godwin, *Of Counsel*
D: (503) 224-0019
F: (971) 275-1218
[redacted]

ADMITTED TO PRACTICE IN
OREGON AND WASHINGTON

February 11, 2019

TO THE WORKERS' COMPENSATION DIVISION

Via e-mail to: fred.h.bruyns@oregon.gov

RE: PROPOSED CHANGES TO OAR 436-009, OAR 436-010, and OAR 436-015

FROM: Diana Godwin on behalf of OREGON PHYSICAL THERAPISTS IN INDEPENDENT PRACTICE

Thank you for the opportunity to provide testimony to the Workers' Compensation Division on the proposed changes to OAR 436-009, Oregon Medical Fee and Payment rules, OAR 436-010, Medical Services rules, and OAR 436-015, Managed Care Organizations (MCOs) rules.

I represent Oregon Physical Therapists in Independent Practice (OPTIP), a trade association of approximately 100 physical therapist-owned out-patient clinics located throughout Oregon. They provide substantial rehabilitation services to Oregon injured workers.

Proposed Amendment to OAR 436-009-0010(9) "Billing the Patient/Patient Liability", and OAR 436-009-0010(13) "Missed Appointment (No Show)."

We support the addition of language in subsections (9) and (13) to permit a provider to bill a workers' compensation patient for a missed appointment if the provider complies with the new requirements set out in subsection (13)(b). Currently – and for too long – the Division 9 rules have not allowed a medical provider to charge a "no show" fee to a workers' compensation patient when the patient fails to show up for a scheduled appointment without any prior notice. And except for instances where a worker fails to show for an appointment for an arbiter exam, director required medical exam, IME, worker requested medical exam or a closing exam, the insurer has not provided any compensation to a provider when the worker fails to show for a scheduled medical treatment. When a worker "no shows" without any notice the provider has no opportunity to schedule another paying patient in that time slot, but the provider still incurs all the costs of maintaining and running a medical clinic, including staff costs and overhead. Moreover, if there is no financial downside, the worker may be more careless in attending medical appointments, and failing to show up for care can delay the worker's return to work.

Proposed Amendment to OAR 436-010-0220(5) "Managed Care Organization (MCO) Enrolled Workers."

We support the addition of the new subsection (5)(b) to allow a worker to contact the MCO for help in locating a provider willing to provide treatment when the worker is unable on his/her own to find three willing providers in a specific medical category in the worker's GSA. However we suggest that the last sentence in this subsection be amended to read:

> "If the MCO is unable to provide a list of three providers who are willing to treat the worker **within a reasonable period of time given the worker's condition**, the worker may choose a non-panel provider in that category."

We also support the addition of the new subsection (5)(c) to allow a worker to choose a non-panel provider for medical care if the MCO has fewer than three providers in the specific medical category in the worker's GSA.

Proposed Amendment to OAR 436-010-0290(2) "Palliative Care."

We support the proposed change to the NOTICE the insurer must send when disapproving a request for palliative care, but we suggest that the words "AND PROPOSED TREATING PROVIDER" be added after "ATTENDING PHYSICIAN." We advocate the addition of the proposed treating provider to the notice of disapproval because my clients – private practice physical therapists – are often the ones who will be providing palliative care and are often the ones who prepare the written palliative request for the attending physician to sign and submit to the insurer. The current rules allow palliative care to begin once the physician submits the request, so a treating physical therapist can be at financial risk if the request is disapproved. Subparagraph (c) states that the insurer "must send written notice approving or disapproving the request to…the provider who will provide the care," so it makes sense that the heading of the "NOTICE" of disapproval should also reference the treating provider.

Proposed Amendment to OAR 436-015-0030(6) "MCO Plan – Choice of Provider."

We support the amendments to this rule to echo the amendments to OAR 436-010-0220(5), as outlined in my testimony above. Again, however, we suggest the addition of the words "**within a reasonable period of time given the worker's condition**" to subparagraphs (a) and (b).

Proposed Amendment to OAR 436-015-0037(3) "MCO-Insurer Contracts."

We support the change in subparagraph (c)(A) of subsection (3) to allow a worker to continue treatment with his/her medical provider for at least 14 days – instead of 7 days – after the mailing

date of a notice of enrollment in an MCO. As was discussed in the December 17, 2018 meeting of the Rulemaking Advisory Committee, the current rule allowing a worker to continue treating with a current provider for only 7 days after mailing can mean that a worker may have only one or two days after *receiving* the notice of MCO enrollment to find and move his/her care to a new provider among the panel of MCO contracted providers.

Again, thank you for the opportunity to submit this testimony and for the Division's consideration of our proposed changes.

Diana E. Godwin
Attorney at Law
1500 SW 1st Avenue, Suite 1170
Portland, OR 97201
Phone: (503) 224-0019
Fax: (971) 275-1218
E-mail: [redacted]

Cc: Client