

Agenda

Advisory Committee Meeting

➤ Implementation of Enrolled House Bill 4138 (2022)

Type of meeting:	Stakeholder committee
Date, time, & place:	Date and time: May 3, 2022, 2 p.m. In person: Basement Room F, Labor & Industries Building 350 Winter Street NE, Salem, Oregon Videoconference or telephone: Join the ZoomGov meeting – https://www.zoomgov.com/j/1609764486?pwd=NGVDVzg0K3J1S09EQ05acExzRGJoUT09 Meeting ID: 160 976 4486 Passcode: 971386 Dial-in: 1 833 568 8864 US Toll-free
Facilitators:	Summer Tucker and Fred Bruyns, Workers' Compensation Division
2:00 to 2:10	Welcome and introductions; meeting objectives
2:10 to 3:55	Discussion of issues – see attachment.
3:55 to 4:00	Summing up – next steps – thank you!

Attached: [Issues document](#)

Workers' Compensation Division Stakeholder Advisory Committee
Claim processing changes related to HB 4138 (2022)
May 3, 2022, 2 p.m.

Background

Effective January 1, 2024, [HB 4138 \(2022\)](#) will make various changes to workers' compensation law related to temporary disability, recovery of overpayments, and medically stationary status. These changes will have direct impact on worker benefits and claim processing procedures.

The division wants input on how stakeholders will be impacted by these changes and if there are areas of the new law that require further clarification. This meeting is intended to be a preliminary conversation. Though the division anticipates rulemaking will be required in the future, specific rule language is not the primary focus of this meeting.

Any stakeholders who cannot attend the May 3 meeting are still welcome to provide input via email before or after the meeting. Please send any written input to wcd.policy@dcbs.oregon.gov.

Issues for discussion

New notices to the worker – ORS 656.262(4)(j)(A) and ORS 656.268(1)(a)

There will be two new written notice requirements.

- The insurer may not end temporary disability benefits until written notice is issued to the worker and worker's attorney. This notice must state the reason temporary disability benefits are no longer due and payable.
- If the worker is declared medically stationary, the insurer must mail or deliver written notice to the worker and the worker's attorney within seven days following receipt of information that the worker is medically stationary.

1. Does additional information need to be included in the notices to ensure workers understand what is happening on their claim? If so, what kinds of information would be helpful to have included on the notices?
2. How customized or standardized should the notices be? Some options include:
 - Insurers creating a custom letter that meets rule requirements
 - Using a standard template created by the division
 - Using standardized language that is required by rule
 - Other?
3. What is the minimum amount of time insurers and claims processors need to adjust processes and computer systems to implement these notices?

Changes to retroactive authorization – ORS 656.262(4)(g) and (j)

The current 14 day limit on retroactive authorization of temporary disability will change as follows:

- Temporary disability cannot be retroactively authorized for more than 45 days before the date the authorization is issued.
- When the required written notice has not been provided, there will be no limit on retroactive authorization.
- Temporary disability may be authorized up to 45 days prior to the date of the notice.
- If the written notice was given more than 45 days after the worker was no longer eligible for benefits, temporary disability may be authorized back to that end of eligibility date. However, the provider must issue that authorization within 30 days following the earlier of the mailing or delivery of the written notice.

4. Do insurers and claims processors need to adjust processes or computer systems to implement these changes? If so, what is the minimum amount of time needed to make adjustments?
5. In general, how should attending physicians be informed of the written notice or the authorization limits?

Changes to temporary disability – ORS 656.262 (4)(j)(A)

There will be a new requirement that insurers may not end temporary disability benefits until written notice has been mailed or delivered to the worker and the worker’s attorney.

6. To confirm stakeholder understanding of the intent of this provision, we seek input on the date temporary disability should be paid through once the notice is mailed or delivered. Possible scenarios:
 - Written notice is issued *before* the event that ends temporary disability.
Example: The worker signs a modified job offer (for full wages) that starts in two weeks. The insurer sends written notice to the worker before the modified duty starts.
 - Written notice is issued *on the same date* as the ending event.
Example: The insurer negotiates a verbal release to work with the attending physician, and sends the written notice the same day.
 - Written notice is issued *after* the ending event.
Example: The worker is released to regular work on March 1, and the insurer receives the regular work release on March 5. The insurer sends the written notice on March 6.
 - Other?
Example: The worker is performing modified work, but the amount they earn each week varies. As a result, for some weeks, temporary partial disability (TPD) is payable, and in other weeks, no TPD is payable. The insurer provides written notice after each week where no TPD is payable.

Changes to temporary disability, special circumstances exception – ORS 656.262 (4)(g)(A) and (B)

There will be certain circumstances where provisions of ORS 656.262 (4)(g)(A) will not apply. ORS 656.262 (4)(g)(A) contains two provisions:

- That temporary disability is not due and payable after the worker’s attending physician or nurse practitioner ceases to authorize temporary disability, or for any period of time not authorized by the attending physician.
- Temporary disability can be authorized for no more than 45 days prior.

ORS 656.262 (4)(g)(A) will not apply in these circumstances:

- i. During periods in which there is a denial under the jurisdiction of the Workers’ Compensation Board that affects the worker’s ability to obtain authorization of temporary disability;
- ii. During periods in which there is a dispute over the identity of, or treatment by, an attending physician or nurse practitioner that affects the worker’s ability to obtain authorization of temporary disability; or
- iii. When the new written notice (required before ending temporary disability) has not been given.

7. What specific dates should define the beginning and end of the periods in circumstances (i) or (ii)? For example, should the period for (ii) begin the date a request for hearing is submitted?
8. Are there any situations where clarification would be needed regarding the exceptions in (i) through (iii)?

Changes regarding medically stationary status and closure process – ORS 656.268 (1)(a)

Currently, one of the triggers for closing the claim is when the worker has become medically stationary and there is sufficient information to determine permanent disability. The new law will specify that the physician or nurse practitioner may not retroactively determine a worker to be medically stationary more than 60 days prior to the date of the determination. Additionally, within seven days following receipt of information that the worker is medically stationary, the insurer will be required to mail or deliver written notice to the worker and the worker’s attorney.

9. If the attending physician declares a medically stationary date more than 60 days prior, is a specific process needed in the administrative rules to address this issue?
10. What are the intended impacts to the claim closure process if:
 - The written notice is not issued at all?
 - The written notice is issued more than seven days after receiving the medically stationary information?
 - The notice of closure and written notice are issued at the same time?
 - The notice of closure is issued *before* the written notice?

Other

11. What other issues should the division consider regarding HB 4138 related claim processing changes?