HB 4138 -5 STAFF MEASURE SUMMARY

House Committee On Rules

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Meeting Dates: 2/18

WHAT THE MEASURE DOES:

Amends provisions of workers' compensation laws related to payment of temporary disability benefits. Requires insurer or self-insured employer to provide written notice to worker that temporary disability benefits will end. Requires written notice to: be mailed within five business days of receipt of information; and state reason for ending temporary disability benefits. Replaces 14-day retroactive authorization with 60-day retroactive authorization from written notice that temporary disability benefits will end. Clarifies that no statement from attending medical provider may establish medically stationary status more than 60 days before the worker is notified that the worker has become medically stationary. Limits recovery of overpayments, offsets, or credits for wage loss to no more than 50 percent of the worker's total award. Removes requirement that hearing for failure to process or an allegation that claim was processed incorrectly be requested within two years of alleged action or inaction.\

Awaiting fiscal impact; no revenue impact

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-5 Replaces the measure. Amends provisions of workers' compensation laws related to payment of temporary disability benefits (benefits). Requires insurer or self-insured employer to mail or deliver written notice to worker or worker's attorney prior to ending benefits and requires notice to state the reason benefits are no longer due and payable. Allows attending physician to retroactively authorize benefits for up to 45 days from date of notice that benefits will end or back to the date benefits were no longer due and payable if authorized within 30 days after either the mailing or delivery of notice, whichever is earlier. Allows attending provider to retroactively approve benefits up to 45 days and provides that provision does not apply during periods where there is a denial or dispute that affects the worker's ability to obtain benefits or when written notice that benefits will end has not been provided as required. Establishes that no statement from an attending medical provider may establish medically stationary status more than 60 days prior to its issuance except in the case of overpayment due to fraud. Requires insurer to mail or deliver written notice within 7 days of receipt of information that the worker is medically stationary. Provides that insurer may not declare an overpayment of any compensation paid more than two years before declaration. Limits recovery from worker's permanent partial disability compensation of overpayments, offsets, or credits for wage loss to no more than 50 percent of the worker's total award. Applies to claims that exist or arise on or after January 1, 2024. Clarifies that provisions do not apply to disputes with a final determination made prior to January 1, 2024.

BACKGROUND:

Workers' compensation law requires most employers to provide their workers with workers' compensation insurance coverage; the law provides an exclusive remedy for job-related injuries and occupational diseases.

Temporary disability or time loss is a wage replacement benefit designed to compensate a worker who has missed work and lost wages due to a work injury. Time loss rates are calculated as 66.6 percent of a worker's average earnings with a minimum and maximum weekly benefit. A worker who is able to return to work, but is earning less because of the injury, is eligible for time loss benefits reduced based on the wages paid by the employer.

Time loss must be authorized by the worker's attending medical service provider and generally continues until the worker is determined to be "medically stationary" meaning the worker's condition cannot reasonably be expected to improve with either further treatment or the passage of time. Current law allows an attending physician to retroactively authorize time loss benefits up to 14 days.

House Bill 4138 with the -5 amendments makes changes to the time loss statutes and establishes new limits on the recovery of overpayments made to an injured worker by an insurer. The measure requires insurers and self-insured employers to provide written notice to workers before suspending time loss payments. It expands the window for an attending medical provider to retroactively authorize time loss from 14 to 45 days and establishes conditions under which a worker that has received notice that time loss payments will cease can work with their provider to authorize time loss back to the date that the worker's eligibility ended. The measure also establishes a 60-day retroactive limit for the declaration that a worker is medically stationary. Related to overpayments, the measure limits recovery to no more than 50 percent of the worker's total award and establishes a two-year window for an insurer to declare an overpayment. The measure applies to claims that exist or arise on or after January 1, 2024.