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TO: All entities transacting insurance in Oregon

DATE: January 25, 2024

RE: Paid Leave Oregon as an "Other Benefit" that reduces Short-Term Disability benefits

PURPOSE

This bulletin provides guidance on the Division of Financial Regulation's (DFR) expectations of insurers who write Short Term Disability policies, in light of the recent implementation of the Paid Leave Oregon program.

AUTHORITY

- ORS 742.003; 742.005; 742.007

BACKGROUND

In 2019, the Oregon legislature enacted the Paid Leave Oregon program (PLO), which was implemented on September 3, 2023.

Under PLO, if a worker cannot work because of a serious health condition, the worker can be entitled to paid medical leave. See ORS 657B.010, *et seq.*[1]

[1] Medical leave is one of several purposes for which a worker can receive PLO benefits. The others are family leave and safe leave. See ORS 657B.010 and 657B.020.

For decades in Oregon, insurers have offered a similar benefit, by selling Short-Term Disability insurance (STD). Similar to PLO, STD provides a worker with some degree of income replacement if the worker cannot do their job because of a health condition.

Many STD policies include “Other Income” or “Other Benefit” provisions. According to these provisions, if a worker is eligible for STD benefits, and if the worker is also eligible for any other benefit on the same grounds, then the worker must apply for that other benefit (or benefits) before receiving any STD benefit. Further, if the worker receives any other benefits, the STD benefit will be decreased in the amount of any other benefit received.

In other words, if the STD policy includes an “Other Benefit” provision, the STD policy is the last in line to pay the worker for their missed work. For every dollar in benefit the worker is owed from another source, the STD insurer subtracts that dollar from any amount owed under the STD policy. If the worker is owed more in other benefits than the worker is owed under the STD policy, then the STD insurer may not have to pay any benefits.

These “Other Benefit” provisions read, for example:

> *“We will reduce your disability benefit by the amount of other benefits for which you are eligible. You must apply for such benefits through the highest appeal level that is applicable to such benefits and as a result of the same disability and inability to work for which you are claiming benefits under this policy…”*

Pursuant to these “Other Benefit” provisions, some STD insurers have started requiring their insureds to apply for PLO before receiving any STD benefit and have also reduced STD benefits by the amount of PLO benefits received by the insured.

GUIDANCE FOR INSURERS

If the terms of an STD policy allow the insurer to reduce STD benefits due in any part to the availability of PLO benefits, all plan documents must clearly and conspicuously inform consumers that:

1. They might be eligible for medical leave benefits under the PLO program;
2. The insurer might require the consumer to apply for PLO and, if so, the extent to which the person must pursue their PLO application (such as, “through the highest appeal level,” as set forth above), and;
3. The extent to which STD benefits will be reduced on account of PLO benefits received by the worker.

Further, DFR anticipates all insurers to continue to offer actuarially sound rates that factor all reductions in STD benefits, including those made to account for availability of PLO benefits. If the terms of a STD policy require an insured to apply for and, if eligible, receive PLO benefits, and if the policy benefits will be decreased as a result, premiums for the policy should decrease according to actuarial principles.

Andrew R. Stolfi
Insurance Commissioner and Director
Department of Consumer and Business Services

1/25/2024
Date