

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

January 8, 2021
10:00 a.m. – 12:00 p.m.

Committee Members Present:

Alan Hartley
Kimberly Wood
Diana Winther, IBEW Local 48
Lynn McNamara
Tammy Bowers, May Trucking
Kathy Nishimoto, Duckwall Fruit
Scott Strickland, IOUE Local 701
Andrew Stolfi, DCBS Director, *ex officio*
Jill Fullerton, Clackamas County Fire Department

Committee Members Excused:

Ateusa Salemi, Oregon Nurses Association
Kevin Billman, United Food and Commercial Workers

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Jeffrey Roddy-Warburton, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Kimberly Wood opens meeting at 10:01 a.m. Theresa Van Winkle does roll call. Kimberly Wood moves to approve the October 23, 2020, subcommittee on COVID-19 meeting minutes. Kathy Nishimoto moves to approve the minutes, Lynn McNamara seconds. All members present accept the minutes. Alan Hartley moves to approve the October 29, 2020 subcommittee on COVID-19 meeting minutes, Kathy Nishimoto seconds. All members present accept the minutes. Kimberly Wood moves to approve the December 11, 2020, committee meeting minutes. Kathy Nishimoto has one typographical error that needs to be fixed, but it does not affect the intent of the minutes. Kathy Nishimoto moves to approve the minutes, Lynn McNamara seconds. All members present accept the minutes with Kathy Nishimoto's proposed edits.
(0:06:30) Public testimony	Jim Robinson, gives his testimony on his experiences with a managed care organization (MCO) enrollment dispute and his appeal to the appeals court and his difficulties getting a fair hearing and a lawyer that will take his case. Kimberly Wood asks what is it that Mr. Robinson is asking of the MLAC committee or is he just asking to be heard. Mr. Robinson responds he is absolutely interested in getting MLAC's help with this, he does not believe the rules are fair for injured workers. Diana Winther states that

perhaps the Workers' Compensation Division (WCD) can share some more information on the MCO appeal process, Kimberly Wood agrees with that. Alan Hartley states that perhaps Jennifer Flood has some insight for the committee on this. Jennifer Flood, Ombudsman for Injured Workers, states that her office has worked with Mr. Robinson for the last year and half and they have provided him with as much assistance as they can, but he did not prevail with his dispute at the MCO, WCD, or the ALJ. He is represented by an attorney on his partial denials. Lynn McNamara asks if his claim was placed in an MCO or was the physician that he wanted not accepted. Mr. Robinson responds that he rejected completely that an MCO doctor is equivalent to his own doctor. Scott Strickland states that it sounds like a lot of the issues related to MCO enrollment were the ability to object to that and be heard about your concerns and problems with the procedure. Scott Strickland adds that he personally has had difficulty with MCO enrollment as well. Sally Coen states that at the next meeting WCD can discuss the process of MCO appeals.

**Department
Updates**
(0:24:30)

Sally Coen, WCD Administrator, provides an update on WCD's COVID-19 claim denial audit as part of the October 1, 2020, rule change. As a reminder, Sally Coen states that the temporary rule lays out what companies and claims are subject to the audit. WCD has finished almost all of the on-site file reviews. Sally Coen provides detail on the statistics provided to the committee. She adds that the auditors found there was rarely any treatment beyond a COVID-19 test or an initial medical provider visit to authorize the test and the vast majority of the claims were for health care and assisted living workers. The audits have found that high denial rates do not correlate with inappropriate processing of claims. Sally Coen states that most of the claims that were audited were mostly preemptive or precautionary and were filed without the workers knowledge by a medical provider who authorized the COVID-19 test or by the employer after a potential exposure. WCD will get out the audit reports and a formal summary to the MLAC members. Sally Coen also gives an update on the data call for [accepted non-disabling claim data from the January 8, 2021](#) memo to the committee. She also provides the committee with monthly data reports.

- [COVID reported claim data before 10/1/20](#)
- [COVID reported claim data after 10/1/20](#)
- [COVID denial reasons before 10/1/20](#)
- [COVID denial reasons after 10/1/20](#)

Sally Coen mentions that it is not in the report but WCD has received notice of its first fatality claim of a worker that passed away in November, the insurer was SAIF and they accepted the claim and they will be in the next summary report.

(0:35:30)	Diana Winther asks in regards to the company that did not respond in a timely fashion to the data call, did they ever respond and did they have a reasoning for the delay. Sally Coen responds that she believes that they have not responded and the matter has been referred to the sanctions unit to issue a civil penalty. Diana Winther states the committee would like to hear back on the progress of that.
(0:36:30)	Alan Harley states the preliminary results are heartening and that he likes to see how serious insurers are taking this and placing very capable staff to do the job. Kimberly Wood also agrees with that and appreciates all of WCD's hard work.
(0:39:00) Vocational Assistance Survey – Oregon State Bar	Steven Schoenfeld, Workers' Compensation Section of the Oregon State Bar, gives his presentation on behalf of the committee on the vocational assistance survey results . Steven Schoenfeld states that his committee has some issues with the rules that they would like to have looked at for change, but the committee could not agree on what those changes should be based on the survey. One of the biggest issues he sees with the system is that someone's wages are calculated for either time loss or for vocational training, only their earned wages are considered other benefits are not. Steven Schoenfeld states another issue is with the minimum wage rising it makes it harder for people to get retrained and he thinks will have huge effects on the long-term economy. Diana Winther states that she appreciates the survey and particularly the comments and she is grateful for the vocational rehab program. Kimberly Wood thanks Steven Schoenfeld for the survey results as well but she does have some concerns with how some of the questions were phrased. Kimberly Wood also states that it felt like there was some concerns with the minimum wage issues, that adding in benefits would add a disparity between (for example) carpenters with the exact same experience and one is unionized and one that is not unionized and that is concerning. Steven Schoenfeld responds and states that it is actually less about the category of the occupation and more about the compensation of the actual workers. Alan Hartley adds that these are wonderful issues that he hopes to explore more in the future.
(0:54:30)	Kimberly Wood ask Steven Schoenfeld if he was here on behalf of the committee or himself. Steven Schoenfeld responds that he is here on behalf of the committee, but some of his comments were of his own opinion.
(0:55:30)	Tammy Bowers states that she was more focused in on the comments like the ones about needing a two-year degree, she asks did some of the comments come from vocational counselors. Steven Schoenfeld responds yes some of the comments did come from vocational counselors but he does not have the specifics on where each comment come from. Kathy Wallace, vocational counselor, responds that a lot of the people they work with have been out of school for a long time and might not meet some of

the requirements to finish in six terms on school because they need extra pre-requisites.

(0:58:30)
Oregon Institute
of Occupational
Health and
Sciences Grant
Request

Dr. Ryan Olsen, Oregon Institute of Occupational Health and Sciences, gives his testimony and asks for a [letter of support from MLAC](#) for a grant application and some details of what the institute works on and notes it a grant MLAC has supported in the past. Kathy Nishimoto states that she has used their services and toured their facility and she thanked them for the tremendous work that they do. Kimberly Wood states that MLAC is in support of the grant and will send the letter.

(1:05:00)
COVID-19
rulemaking input

Kimberly Wood begins the discussion to the COVID-19 permanent rule making. Kimberly Wood states that [the committee does have a finalized letter](#) that is ready to go out. Alan Hartley moves to approve the letter, Kathy Nishimoto seconds. All members present vote to approve the letter.

**2021 Legislative
Review**
(1:09:00)

Kimberly Wood states that WCD has two legislative concepts to discuss as well as some other 2021 legislative topics. Sally Coen, Adam Breitenstein, and Matt West join the committee to go over the legislative concepts. Sally Coen goes over the two policy bills WCD is putting forward [LC 556](#) and [LC 557](#). Kimberly Wood asks which concept had the language clean up, Sally Coen responds LC 557. Sally Coen also adds that [WCD does have a budget request that relates to the modernization program](#), which will transform WCD's business processes and to meet the evolving needs of customers and modernizing our technologies. Sally Coen states that WCD will bring back updates on the modernizations progress to MLAC.

(1:18:00)

Tammy Bowers in regards to LC 556 and claims processing locations asks, for example insurers that are located in Nebraska would their adjusters be in Nebraska as well since everyone is working from home. Sally Coen responds the intent is to adjust those remote working locations and we have had request to approve permanent remote locations, and there is an Oregon location where you have Oregon certified examiners who are experts in Oregon processes and the examiners could work remotely as long as they are Oregon certified.

(1:20:00)

Theresa Van Winkle gives a general overview of the 2021 legislative bill process and session that starts January 11, 2021 and how DCBS goes about the process. Kimberly Wood states that member of OTLA should reach out to the committee as soon as possible to talk about legislation they want to propose to get started on the process. Theresa Van Winkle states the Oregon State Fire Fighters' Council proposal has not changed and is just a reintroduction of the 2020 bill.

**Meeting
Adjourned**

Kimberly Wood adjourns the meeting at 11:25 a.m.

*These minutes include time stamps from the meeting audio found here:

<https://www.oregon.gov/dcbs/mlac/Pages/2021.aspx>

**Referenced documents can be found on the MLAC Meeting Information page here:

<https://www.oregon.gov/dcbs/mlac/Pages/2021.aspx>