

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

June 16, 2022
12:30 p.m.-2:00pm

Committee Members Present:

Scott Strickland, Labor representative via Zoom
Patrick Priest, Citycounty Insurance Services
Sara Duckwall, Duckwall Fruit
Marcy Grail, IBEW Local 125 via Zoom
Margaret Weddell, Labor Representative via Zoom
Tammy Bowers, May Trucking via Zoom
Matt Calzia, Oregon Nurses Association via Zoom
Andrew Stolfi, DCBS Director, *ex officio*

Committee Members Excused:

John McKenzie, JE Dunn Construction
Jill Fullerton, Clackamas County Fire Department
Lynn McNamara, Paladin Consulting

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Brittany Williams, MLAC Assistant via Zoom
Jeffery Roddy-Wilson, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:03)	Patrick Priest opened the meeting at 1:13pm, welcoming both in person and virtual participants. Theresa Van Winkle reviewed the hybrid meeting rules and explained the technology resources that were used during the hybrid meeting. Sara Duckwall moved to accept the minutes from the May meeting as presented, Margaret Weddell seconded the motion. Theresa Van Winkle shared that Tammy Bowers was absent from the May meeting and would like to abstain from the vote. Voting on these minutes will move to July in order to obtain a quorum able to vote on these minutes.
Department Updates (0:03:13)	Theresa Van Winkle began by sharing that there was a hearing that occurred earlier that day that focused on attorney fees under OAR chapter 436, with the period for public comment ending on June 26, 2022. Additionally, there were two rules that were recently filed, WCD 4-022 that replaces gender specific pronouns was approved and filed with the Secretary of State's Office on June 13 th and the temporary rule, WCD 3-022 which bring disability rating standards into alignment with the Oregon Supreme Court ruling on Johnson versus State of Oregon.

(0:06:32) Sally Coen gave an update on Workers' Compensation modernization efforts specifically efforts around streamlining of language in engagement with workers using current systems while planning for broader implementation of new processes. Some feedback from stakeholders include that there has be more flexibility with required formats, providing workers with more pertinent information, that information should be provided in clear language, and that the use of QR codes would be welcome to more easily access information. Workers' Compensation policy analysts are reviewing current rules and policies in order to identify the things that can be currently addressed.

(0:15:10) Sara Duckwall commented that she supports the approach that Workers' Compensation is taking but wonders how many phases there will be to this process before it is complete and what is the timeline to begin implementation. Sally Coen responded that the number of phases and implementation schedule depends upon the amount of changes required and what the initial body of work includes. Sara Duckwall clarified by asking what the time would look like with minimal changes needed? Sally Coen responded that she expects to see proposed changes implemented by the end of 2022.

(0:16:57) Patrick Priest asked if the current staffing levels of Workers' Compensation can support the tight turn around on these changes. Sally Coen answered that the division is well staffed to accomplish this goal but that they do expect the communication to be the area that takes the longest amount of the time to complete and are preparing for that.

(0:18:23) There was a question in the virtual chat from a non-caucus member asking if the meeting minutes or copy of the report from the last modernization meeting are available to view online. Theresa Van Winkle responded that once the minutes are adopted they should be posted on the website and that copies of materials are available upon request.

HB 4138

(0:19:38) Elaine Schooler from SAIF spoke on the updates from HB 4138. She explained that currently there are not time restrictions for providers to continue to see workers for treatment for injuries that occurred on the job and have filed an accepted claim. Daniel Schmelling from SAIF gave an example of a worker that had been injured at an orchard and sought treatment a week later for a hand injury resulting in the worker taking leave from the remainder of their temporary employment with open ended time-loss authorization. The worker then relocated to Southern California where they were going to seek further medical treatment. Following up the worker about four weeks later, they had not established care yet but were hoping to do so soon. It took approximately 15 weeks for the worker to

establish care again and be released back to modified work. SAIF and the attending physician from Southern California are currently unable to contact the worker.

(0:30:50) Sara Duckwall asked about the processes that take place when there is an open-ended time loss situation where the worker loses contact with their medical provider. Elain Schooler answered that some providers will give an opinion about how the worker should have progressed since the last date of treatment but often times the provider needs to see the worker before anything additional can be done. Daniel Schmelling added that if they do complete an administrative closure process and the worker appeals the claim, the closure would be repealed. Sara clarified by asking if keeping in contact and preparing to seek treatment can keep time loss claims open ended over again? Daniel Schmelling confirmed.

(0:33:06) Patrick Priest stated that he believes that this was a presentation a problem and asked if what other members of the council thought about this? Tammy Bowers confirmed that she believes that this is a problem but she is not certain if this is something that warrants a work group or what the next step is. Patrick Priest agreed and asked for a member of the labor caucus to share their thoughts, Matt Calzia responded that he would like to hear more quantifiable data to determine how prevalent situations such as this are as opposed to this being an isolated incident. Patrick Priest asked what type of data he would like to see to further discussion? Matt Calzia responded that he feels that this may be a statistical outlier and could have explanations involving the wait times to seek treatments, difficulty establishing care with a physician, etc. Elaine Schooler from SAIF responded that they do not keep records of claims and whether or not they have been assigned an end date, but that they are trying to capture situation like this example as they occur. Daniel Schmelling added that when discussing open ended time-loss authorization, the problem is really that there were not guardrails established that ensured that the worker sought follow-up treatment after their initial treatment.

(0:39:47) Margaret Weddell mentioned that she appreciated the amount of work put into this presentation but that she does share Matt Calzia's concerns that this case may be a statistical outlier, especially considering Jennifer Flood from the Ombud's Office for Oregon Workers testimony at the May 2022 meeting where she spoke about the amount of calls that her office receives about worker's having issues accessing authorized medical treatment. She further asked what could be track the data to understand how prevalent this problem is. Elain Schooler answered that access to providers could be a sister issue to this but they are hoping to open the door to discussion of this issue.

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- (0:41:57) Tammy Bowers added that this issue is not an outlier in her line of work. She acknowledged that her workers do have issues finding medical care but that the issues of unlimited time-loss combined with worker's not seeking medical treatment is also an issue that she sees.
- (0:43:38) Scott Strickland noted that anytime a worker is not being treated, either through lack of access to care or their own decision there is a problem. He added that he would like to know what other type of barriers are contributing to the lack of treatment
- (0:45:04) Matt Calzia asked for clarification about the separation of lack of access to care from the issues of open-ended time loss. Tammy Bowers responded that for her she has the issues separated by workers that say that they have been seeking treatment and have appointments scheduled versus workers that have not been seeking treatment.
- (0:45:02) David Barrenburg of SAIF responded with background of the previous version of HB 4138 and its evolution to factor into the presentation today. During the passage of the bill an element of the bill was that MLAC would come back and revisit this issue over the interim. Their request to have a work group formed in order to research and address these issues.
- (0:50:22) Patrick Priest clarified that what he hears is that this is a problem but we are not certain on how to define and address the problem? Sara Duckwall, added that she believes this as a problem of access and continuation of care.
- (0:51:10) Scott Strickland added that there is agreement that the access of care issue is intragyrally to addressing this problem and that he feels a subcommittee would be appropriate to address this. Patrick Priest reiterated that what he hears that Scott agrees that access and continuation of care is the problem and that a subcommittee may be that best approach to addressing the problem. The members present virtually and in-person unanimously agreed.
- (0:53:03) Patrick Priest asked Theresa Van Winkle for guidance about if a subcommittee or work groups is appropriate to address this issue. Theresa Van Winkle answered that it is dependent on time and how much time the committee is able to spend addressing this issue. Noting that right now MLAC does not have any official requests from the governor of legislature.; however, there are items on the workplan to consider. Because starting in late summer or early fall there may be requests from stakeholder groups in preparation of the 2023 legislative session. Sara Duckwall asked if there would be administrative support of a subcommittee or workgroup? Theresa responded that is also dependent on how much time the committee
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members have to dedicate to this issue, but that she is happy to have those internal conversation and work with co-chairs.

- (0:54:39) Scott Strickland proposed that MLAC wait until September to have a subcommittee convene in order to give SAIF and other parties time to do preliminary research. Sara Duckwall asked for clarification about why the group would wait until September. Scott Strickland responded that he is open to meeting on other timelines but that he felt that this would give the groups time to prepare. Tammy Bowers added that she feels that timeline is appropriate and would give SAIF and the trial lawyer groups ability to have research and solutions to present.
- (0:56:40) Elaine Schooler from SAIF responded that they do have proposed language addressing this issue ready that they have shared with the Trial Lawyers Association and that they are ready to continue with discussion on this issue.
- (0:58:04) Keith Semple from the Trial Lawyers Association responded that they are open to the continuation of the discussion on this issue but that they do have concerns about some of the options previously presented. Notably that the proposed 30-day time-loss limits were very concerning, but that they are in support of the discussion on this issue going to the subcommittee or workgroup.
- (0:59:34) Sara Duckwall asked Theresa Van Winkle to clarify what the requirements for forming subcommittees. Theresa Van Winkle responded there is no quorum or member quantity requirement but that there must be representation from both caucuses and stakeholder may be appointed by the co-chairs.
- (1:01:04) Patrick Priest asked if the committee would form a subcommittee in September or if the subcommittee would form now and deliver their first update at the September meeting. Sara Duckwall responded that she would like to see a subcommittee form by the July meeting.
- (1:01:48) Andrew Stolfi added while subcommittees have been around since the beginning of MLAC but that when MLAC was restructured the bylaws were changed and this would be the first time since then that MLAC has completed this process. Theresa Van Winkle added that there are rules around deadlines and things of that nature that are set by the legislature that will have to be discussed when the time comes.
- (1:02:51) Patrick Priest asked Scott Strickland if he felt comfortable moving forward with forming a subcommittee at this point or if there needed to be further discussion with administrators? Scott Strickland responded that he would like to discuss this further between he co-chairs and administrators.
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Patrick Priest added that he is okay waiting to form a subcommittee until meeting with the administrators and reporting back at the July 2022 meeting.

(1:04:17) Brief Recess to address technical issues with the in-person portion of the meeting.

(1:04:19) Meeting reconvened by Patrick Priest.

(1:04:43) Patrick Priest asked if there were any further comments or concerns about the topics that were just discussed. Hearing none presentation began regarding vocational benefits and immigration status.

Discussion of vocational benefits and immigration status begins

(1:05:16) Elaine Schooler of SAIF began explaining that in some cases workers are eligible to receive vocational services during a claim, the issue at hand is that to be found eligible to receive these services workers must be able to provide proof of eligibility to work within the United States. They propose that some of these services be carved out to be available to workers that may not be able to prove their eligibility to work in the United States. She added there are constitution issues with this approach. Julene Quinn added that the issue is a bit broader than access to vocational services and includes constitutional issues. She added that she was not there in any capacity as an OTLA member and this is not an OTLA issue. Noting that broadly this is an issue where a worker gives up a right to sue their employer for an injury occurring on the job and are then given two different types of settlement based on immigration status.

(1:12:58) Aaron Clingerman explained the problem as farm workers coming to the United States to legally work on a H-2A visa who get hurt and their right to be in the United States ends upon their termination. There are some cases where the worker's visa classification can change so that they can continue to stay in the United States and work.

(1:15:40) Sara Duckwall asked for clarification about the type of visas that were being discussed. Aaron Clingerman confirmed that the discussion is about H-2A visas. Sara Duckwall noted that she is in support of moving forward with exploring this issue.

(1:16:20) Scott Strickland, responded that he believes that this is something that should be looked at as well and asked what the next steps should be.

(1:16:41) Patrick Priest asked Theresa Van Winkle what the next steps would be in continuing to explore this issue. Theresa Van Winkle responded that as of

now, the presenters wanted to ensure that this was on MLAC's radar and that the brief internal discussions indicate that here will be someone from Workers' Compensation working on this as well and that the next steps would be an update once official language is formulated. Julene Quinn added that it would be further on in the statute and rule changes when MLAC's input would be needed.

Discussion of Managed Care Organizations Begins

- (1:18:42) Patrick Priest moved on to discuss the MLAC workplan that was shared in the link via Zoom as well as in hard copy at was provided to the in-person portion of the meeting.
- (1:20:12) Sara Duckwall responded that she feels that the Managed Care Organization portion of the workplan was informative and that it is no longer necessary to have on the workplan.
- (1:20:49) Scott Strickland added that he would like to hear from some providers and see more examples communications that are sent out to workers and the process of the come along provisions from the healthcare provider or worker perspective.
- (1:23:02) Sara Duckwall asked if Scott had received the follow-up information that he requested at a previous meeting? Scott said that he had not received that information yet, but that it is on his radar to request that information again.
- (1:23:37) Patrick Priest asked who would organizer getting the worker and healthcare provider perspective? Scott Strickland responded that stakeholder outreach would be great and that the labor caucus can contact some workers who have been through this process. He added that while we did have some great presentations from the Managed Care Organizations he would like to have presentations from other perspectives.
- (1:24:58) Patrick Priest noted that when looking at the workplan he does see that the item on Anne Klein volunteering to give data has been completed but that methods of communication, patient rights, delay in care are still open. Scott Strickland clarified that is correct but that he is interested in seeing these and the issues of come along provisions specifically from the worker's perspective. Patrick Priest asked what needed to happen so that these changes are reflected in the workplan? Theresa Van Winkle responded that there are larger edits reformat that need to be made to the workplan in order to reflect this feedback and format future agendas.
- (1:29:11) Sara Duckwall added that procedurally, there have been a number of challenges to onboarding through Workday and would like to see an easier onboarding process for future members. Additionally, with this lofty
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workplan, does MLAC have enough staff support? Theresa Van Winkle responded that those are things that can be added or addressed during the reformatting of the workplan.

(1:30:44) Theresa Van Winkle added that during the educational sessions there has been interest in having the committee receive training on how to look at Workers' Compensation issues through a DEI lens that would be eligible for current and new members. She added that she would also be taking feedback from the current members before new members join.

**Meeting
Adjourned**

Patrick Priest adjourned the meeting at 2:54p.m.

*These minutes include time stamps from the meeting audio found here:
<https://www.oregon.gov/dcbs/mlac/Pages/2022.aspx>

**Referenced documents can be found on the MLAC Meeting Information page here:
<https://www.oregon.gov/dcbs/mlac/Pages/2022.aspx>