

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

July 28, 2022
10:00am-12:00pm

Committee Members Present:

Scott Strickland, Sheet Metal Workers Local #16
Patrick Priest, Citycounty Insurance Services via Zoom
Sara Duckwall, Duckwall Fruit via Zoom
Margaret Weddell, Labor Representative via Zoom
Tammy Bowers, May Trucking via Zoom
Matt Calzia, Oregon Nurses Association via Zoom
Marcy Grail, IBEW Local 125 via Zoom
Lynn McNamara, Paladin Consulting via Zoom
Andrew Stolfi, DCBS Director, *ex officio*

Committee Members Excused:

John McKenzie, JE Dunn Construction
Jill Fullerton, Clackamas County Fire Department

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Cara Filsinger, Senior Policy Analyst, Workers' Compensation Division (WCD)
Brittany Williams, MLAC Assistant via Zoom
Jeffery Roddy-Wilson, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:03)	Scott Strickland opened the meeting at 10:06am, welcoming both in person and virtual participants.
(0:01:00)	Theresa Van Winkle asked Patrick Priest if he would like to discuss the changing of the agenda to reflect premeeting discussions.
(0:01:10)	Patrick Priest moved to move the first action item up the agenda to be discussed before the minutes are reviewed.
(0:01:51)	Scott Strickland agreed and called on input from the rest of the committee members. Hearing no questions or further discussion, the agenda was adjusted to reflect these changes.
(0:02:26)	Theresa Van Winkle explained the follow-up information that she researched from the last MLAC meeting regarding committee members abstaining from the vote approving meeting minutes. She noted that a

change to the bylaws was not necessary but that the abstaining votes would be noted.

- (0:04:05) Scott Strickland began the next item on the agenda, the appointment and creation of a subcommittee. Theresa Van Winkle explained a vote from the committee is not necessary but that the formation is done through an appointment from MLAC with equal representation from both labor and management caucuses.
- (0:05:17) Scott Strickland shared that in their discussions the co-chairs have decided that one formal member from each caucus would be appropriate with invitations for MLAC members and stakeholders to attend subcommittee meetings.
- (0:06:05) Patrick Priest said that the management caucus is in support of the formation of subcommittees as outlined by Scott Strickland, consisting of one member from each caucus and management caucus has a volunteer to serve on the subcommittee.
- (0:06:38) Scott Strickland shared that the labor caucus also has a volunteer to serve on the committee.
- (0:07:25) Theresa Van Winkle asked Scott Strickland how in-depth he wanted to go into the subcommittee charge and this time and noted that subcommittee meetings are subject to public meeting law and that all notifications will be sent out in accordance with those. Meetings can be held virtually with in-person viewing options at the Labor and Industries building.
- (0:08:25) Patrick Priest explained that the charge of the subcommittee would be a follow-through on the commitment to further explore the workers' continuity of care and how long workers could go between seeing their attending physicians while receiving workers' compensation benefits related to HB 4138. Adding that at the last MLAC meeting the topic of lack of access to care and while that is a part of the issues to consider, access to care is a larger issue that is beyond the scope of MLAC.
- (0:10:05) Scott Strickland agreed with Patrick Priest that the focus of the subcommittee should be focused to workers continuation of care.
- (0:11:13) Sara Duckwall requested that a timeline for the subcommittee that is created from MLAC in order to respect the committee's deadlines. Scott Strickland confirmed with Theresa Van Winkle it was possible to create a timeline for the subcommittee based on MLAC's workplan and current schedule.

-
- (0:12:27) Marcy Grail comment that she is in favor of limiting the scope of the committee to continuation of care.
- (0:12:50) Lynn McNamara agreed with the previous comments about limiting the scope of the subcommittee noting that an additional subcommittee can be formed to look into other issues if needed.
- (0:13:15) Margaret Weddell asked if the co-chairs had an opportunity to draft the purpose or scope of the subcommittee. Scott Strickland responded that there is not currently a draft, that it is his understanding that the discussion can be had first and that those drafts can be completed and sent out before the documents are officially published.
- (0:14:30) Patrick Priest suggested that there may be proposed amendments or changes to the bill drafted that may be a good starting point for determining scope or the subcommittee. Patrick Priest asked Elaine Schooler from SAIF Corporation if she would confirm that that information is available.
- (0:14:58) Elaine Schooler, SAIF confirmed that this information is available and that SAIF would be happy to share that with members, building on the discussion from last month's MLAC meeting the beginning the discussions around proposing guardrails for the unlimited time loss would a good starting point.
- (0:15:42) Scott Strickland agreed that having stakeholder input would be beneficial before issuing the charges and scope with an appropriate timeline.
- (0:16:41) Sara Duckwall suggested that the August MLAC meeting serve as the first meeting for the subcommittee and that the subcommittee have their business wrapped up by the November MLAC meeting. Scott Strickland asked when the November MLAC meeting is scheduled. Theresa Van Winkle responded that the meeting is currently scheduled for November 10, 2022, so it may be better to have the last subcommittee meeting take place before the October MLAC meeting with a presentation and wrap-up due at the November MLAC meeting. Scott Strickland agreed and added that the timeline would be confirmed after discussion with the subcommittee members.
- (0:20:12) Sara Duckwall asked if the co-chairs would be getting together to finalize timelines and finish discussion points from today in order to draft that charges and timelines. Scott Strickland confirmed that they would. Theresa Van Winkle added that a [subcommittee webpage](#) would be developed and that documents and information would be published there as well.
-

(0:21:13) Scott Strickland introduced the [minutes](#) from the May 19, 2022 MALC meeting and asked for any additional edits. Hearing none Marcy Grail moved to approve the minutes as presented from the May 19, 2022 meeting. Sara Duckwall seconded the motion, a voice vote was taken and the minutes were approved with seven affirmative votes, Tammy Bowers abstaining, and no votes in the opposition.

(0:23:57) Scott Strickland presented the [June 16, 2022 MLAC meeting minutes](#). Tammy Bowers moved to approve the minutes as presented, Patrick Priest seconded the motion. A voice vote was taken and the minutes approved with seven affirmative votes, Lynn McNamara abstaining, and no votes in the opposition.

Department Updates

(0:25:30) Theresa Van Winkle shared that Workers' Compensation had a number of rulemaking meetings occurring in August 2022 including amendments made to OAR 436-035 involving disability rating standards, amendments to OAR 346-050 involving employer insurer coverage responsibility, and an advisory committee meeting about implementation of HB 4138 and HB 2040. For all of the advisory committee minutes the agendas are pending and will be shared via GovDelivery confirmed. Additionally, the department of financial regulation is having meetings regarding the Oregon Statistical Plan for Workers' Compensation and Employers Liability Insurance.

(0:27:29) Robert Pardington and Lauren Eldridge, Workers' Compensation Board shared case law updates and addressed member's question about the Supreme Court Case Johnson V. SAIF. Robert Pardington shared that they were also going to address updates from the Robinette V. SAIF case as well.

(0:29:05) Lauren Eldridge shared a presentation on Johnson V. SAIF. The claimant was a housekeeper who had her left hand closed in an elevator door while on the job. The claimant disputed the lack of permanent impairment and a medical arbiter was brought into the case and awarded her a fifty percent permanent impairment for her left-hand injury and the other fifty percent attributed to a denied shoulder injury claim. The court noted that the decrease in grip strength was attributed to the left-hand injury. The Oregon Supreme Court ruled that the claimant was entitled to the measure of full loss of grip strength due to part of the permanent impairment being in part to an accepted condition.

(0:35:58) Robert Pardington presented on Robinette V. SAIF. Providing background information on the after effects of Karen V. Providence and Johnson V. SAIF on impairments being materially related to approved conditions.

-
- Robinette V. SAIF has to do with a school custodian that injured her right knee with accepted strain to her right hip, knee, and thigh strain. This worker had pre-existing conditions that impacted the amount of impairment for each condition. The ruling determined that distinct loss of function is eligible to be ruled upon independently.
- (0:41:26) Sara Duckwall asked what makes a material claim relatable. Robert Pardington responded that there is no specific percentage used to determine the claim as material. The claim would not be the substantial cause until it reaches fifty percent in which case it would be a major claim.
- (0:45:20) Oregon Institute of Occupational Health and Sciences represented by Dr. Steven Shea, Dr. R. Stephen Lloyd, Dr. Nicole Bowles, and Dr. Erin Flynn shared their [annual update](#).
- (1:25:20) Matt Calzia asked Dr. Bowles if the study that she presented on alternative schedules for firefighters would be expanded to include other health care workers, specifically nurses. Dr. Bowles responded that the study is currently only focusing on firefighter schedules but that other colleagues have approached her with ideas to do similarly studies among other groups.
- (1:26:52) Marcy Grail thanked Dr. Bowles and mentioned that the workers that she represents are often working different schedules and could benefit from studies like this.
- (1:27:10) Margaret Weddell asked if Dr. Bowles or anyone in her organization are measuring the outcomes of workers on these schedules for instance the results of someone making a critical decision 24 verses 48 hours on shift? Dr. Bowles responded that one of the things measured every day is psychomotor vigilance test, subjective data and accident reports will also be collected.
- (1:37:11) Todd Johnson from the National Council on Compensation Insurance presented [about the NCCI](#), their role in Oregon worker compensation system as well as a [summary analysis](#) of HB 4138.
- (1:53:17) Patrick Priest asked how the Covid numbers in Oregon compare nationwide? Todd Johnson responded that generally the rates were lower in Oregon with a rate of about 2% compared to the national trend of approximately 6% but that he can get the exact numbers and follow-up with them after the meeting.
- (1:54:20) Patrick Priest asked who can access the NCCI research and analysis information, what type of lead time is needed for fulfilling information requests, and if there is a cost associated with requesting information. Todd
-

Johnson responded that there is no cost to request research or a legislative analysis that is requested by an MLAC co-chair or WCD and that a typically a full analysis is completed in two to three weeks with express analysis available in less than a week.

(1:56:20) Scott Strickland noted that the presentation showed that insurance department designates NCCI and asked if that was done by statute, rule, or practice? Todd Johnson responded that it is by statute.

(1:56:34) Scott Strickland asked if NCCI had gathered any information about the costs occurred by the workers and their families? He gave an example of workers experiencing medical costs differently due to their financial situations. Todd Johnson answered that they do have that type of data at this time as they are looking at the costs of the system as a whole including gig economies or independent contractor opposed to that costs of individual workers and they do not receive any individual worker data.

(2:00:47) Tammy Bowers asked if NCCI is tracking the rising costs of medical bills? Todd Johnson responded that they do track that information and publish it in two different platforms. The annual DCBS fee schedule changes are evaluated to reflect the rising costs and medical fees. They also produce the annual medical data report which is shared with DCBS which tracks costs throughout Oregon compared to regional and national costs. He added that that report is quite extensive but that it can be made available to MLAC members for review.

(2:03:36) Theresa Van Winkle shared that DCBS has published the latest edition of [Laws Relating to Workers' Compensation and Safe Employment in Oregon](#). Theresa Van Winkle also shared that window for appointments to the Governor's Executive Appointment team is rapidly approaching. She requests that if members or stakeholders have recommendations or additions that they provide those to her by August 5, 2022.

Meeting

Adjourned

Scott Strickland adjourned the meeting at 12:12 p.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>