

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

October 20, 2022

1:00pm-3:00pm

Committee Members Present:

Patrick Priest, Citycounty Insurance Services
Sara Duckwall, Duckwall Fruit via Zoom
Margaret Weddell, Labor Representative via Zoom
Marcy Grail, IBEW Local 125 via Zoom
Jill Fullerton, Clackamas County Fire Department via Zoom
Matt Calzia, Oregon Nurses Association via Zoom
Tammy Bowers, May Trucking via Zoom

Committee Members Excused:

John McKenzie, JE Dunn Construction
Scott Strickland, Sheet Metal Workers Local #16
Lynn McNamara, Paladin Consulting
Andrew Stolfi, DCBS Director, *ex officio*

Staff:

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

Agenda Item	Discussion
Opening (0:00:00)	Patrick Priest called the meeting to order and introduced Theresa Van Winkle to call the roll of members. Quorum was met and Patrick Priest introduced the minutes from the July 28, 2022 MLAC meeting. Sara Duckwall moved to approve the minutes as presented, Matt Calzia seconded the motion. The motion passed with voice vote was taken with seven votes in the affirmative, no abstentions, and no objections.
(0:02:33)	Theresa Van Winkle introduced Robert Pardington from the Workers' Compensation Board, he did not have any department updates but offered to answer any questions that the group had.
(0:03:31)	Margaret Weddell asked if copies of the MLAC update was distributed to members. Theresa Van Winkle responded that she was not certain if that

had been sent out to members but that she would send it out after the meeting.

- (0:03:57) Sara Duckwall asked if there were any cases or changes that are coming up that members should expect to see or look out for. Robert Pardington responded that there was the upcoming Workers' Compensation Division Conference with a live questions and answer session following.
- (0:04:55) Theresa Van Winkle added that members are welcome to attend the Workers' Compensation Division educational conference, registration details were sent out prior to the meeting.
- (0:06:03) Theresa Van Winkle gave the WCD rulemaking updates. There were two recent rulemaking meetings earlier in the week on two sets of rules, the first is an amendment to an existing rule about security deposits paid by self-insurers. The second rule is taking place of a temporary rule to bring rules in alignment with the Oregon Supreme Court's decision on *Johnson v SAIF*. Theresa Van Winkle also shared the link to the annual advisory committee meeting from rule adjustments for workers' compensation medical fees and payments.
- (0:07:48) Sara Duckwall gave the first update on the subcommittee on Worker Continuation of Care. She explained that the subcommittee does have a report detailing the information that has been shared at the subcommittee meetings thus far. The subcommittee is still working through the information that they have been given and their next meeting is scheduled for October 28, 2022.
- (0:10:36) Matt Calzia added that the subcommittee has also been looking at how other states address this issue and he is hopeful that the subcommittee hears some solution ideas at the next meeting. Sara Duckwall added that the problem statement will be given back to the stakeholders if a solution cannot be agreed upon by the next meeting.
- (0:12:22) Tammy Bowers asked if the task being given back to the stakeholders is the result of not being able to agree on a solution thus far. Sara Duckwall agreed that was part of the reasoning about giving the task back to the stakeholders. Tammy Bowers addressed the members of the labor caucus and the stakeholders in attendance asking if a solution that could be explored is limiting the number of times that workers can be disengaged from care and being sent a bug letter with the example given of being longer than 30 days without seeing their attending physician. Sara Duckwall responded that they have discussed the use of a bug letter as it has been discussed at the subcommittee level but has some mixed results and its use is considered punitive. Tammy Bowers responded that she did not feel that it is punitive as a worker has the opportunity to respond and
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explain that they are in the process of engaging with treatment. Sara Duckwall supported Tammy’s suggestion of looking at setting a limit on the amount of times these letters are sent out consecutively and that it seemed worth exploring.

(0:16:57) Keith Semple, Oregon Trial Lawyers Association (OTLA) responded that these are the type of tools that have been discussed and that on their part they are more willing to discuss tailored solutions to address the problem.

(0:18:10) Sara Duckwall added that to be clear the subcommittee has not established a recommendation for a hard deadline of 30 days. Keith Semple responded that he understands that this has not been suggested as an official solution but notes that it does keep being brought up in discussion.

(0:18:47) Tammy Bowers asked if the idea of limiting the number of times a B-9 or bug letter can be sent out due to lack of engagement in medical care could be introduced at the next subcommittee meeting or if she needed to attend to introduce it. Sara Duckwall responded that she feels that it could be added in and sounds like a good potential solution. Matt Calzia agreed.

(0:19:23) Patrick Priest noted although it sounded fine to him, not a lot of discussion occurred when the newest refined problem statement was read aloud and asked if anyone on the committee had questions or comments.

(0:19:35) Sara Duckwall responded that she believes that the subcommittee is working on the correct things and that the subcommittee agreed before the refined problem statement was sent to the committee via Theresa Van Winkle. Matt Calzia agreed, adding that the scope can be broadened rather easily to deal with lack of access to care, but that would be beyond the scope and having the refined statement is helpful to keeping the discussion within the scope of the subcommittee.

(0:21:35) Sara Duckwall reiterated that the original charge was to provide a solution by the November 10, 2022, MLAC meeting, this is still the goal and if this cannot be accomplished the issue will be referred back to the stakeholders with a definite timeline to report back with a proposed solution.

Introduction of Legislative Concepts

(0:22:14) Theresa Van Winkle explained that this is the kick off reviews for 2023 legislative session, traditionally, when a party comes up with a concept it is put on the agenda to be presented in front of MLAC. This includes DCBS requested concepts, she urges stakeholders to arrange for presentation as early as possible to be in alignment with legislative deadlines.

(0:24:01) **Workers’ Compensation Division worker leasing coverage reporting (LC 418).** Sally Coen, WCD introduced [LC 418](#) which would modernize

worker leasing company coverage processes. She explained that this legislative concept removes language from the law that states that any changes in coverage have to be manually reported to DCBS and the insurer before and changes can take effect. She adds that some providers have indicated that they prefer to provide coverage under different a multiple coordinated policy. Sally noted that some stakeholders have expressed concern about reporting not being made directly to the division, which other stakeholders have drafted proposed amendments to address those concerns.

(0:28:35) David Barenberg, SAIF, thanked the Workers' Compensation Division for sharing these legislative concepts with them so that they could give their input.

(0:29:12) **Workers' Compensation Division regulatory streamlining (LC 419).** Sally Coen, WCD introduced [LC 419](#) which changes language in two areas. The first change describes a change to the stated definition of average weekly wage for fatality benefits. The law is ORS 656.204 and refers to a definition of average weekly wage found in ORS 656.211, this is actually not applied in this way nor is it consistent with the law. Based on the division research, it is believed that the cross reference was inadvertently cited when it was added to the law in 1995. The second change in the concept clarified payment of benefits due to an insurance company default. Currently the law does not specify entitlement to the advanced funds for surviving beneficiaries in the case of a worker fatality.

(0:31:49) Tammy Bowers asked for clarification about Sally's description of the incorrect citation of average weekly wage. Sally Coen answered that there are two separate definitions of worker average weekly wage in the statute and that this legislative concept would ensure that citation with the correct definition is used.

(0:33:10) Paloma Sparks, Oregon Business and Industry, asked how the definition of average weekly wage will be accurately communicated to workers and employers in respect to paid family leave law? Sally Coen responded that the average weekly wage calculations are from the Oregon Employment Department but that WCD will add that distinction into their communications moving forward.

(0:35:32) **Chiropractic Physician attending physician status.** Theresa Van Winkle introduced Dr. Vern Saboe, Oregon Chiropractic Association.

(0:35:50) Dr. Saboe explained that the Oregon Chiropractic Association's legislative concept is aimed at giving full attending physician status back to chiropractic physicians within the workers' compensation system for patients that have non-complicating neck, spinal, and back injuries. Dr.

Saboe noted that chiropractors are actually the most appropriate physicians to hold attending physician status in the workers' compensation system for these types of cases, as in Oregon chiropractors have a broad spectrum of treatment options.

- (0:39:55) Patrick Priest asked when and why the attending physician status was taken away from chiropractors. Dr. Saboe responded that this occurred on in a special legislative session in January of 1989 Senate Bill 1197. Dr. Saboe noted that during this time there were five chiropractors charged with racketeering as they were administering additional office visit fees. There was also an undercover investigation where someone posing as a went into an appointment claiming that they had been injured at work and then speaking to the physician privately and explaining that they had in fact not been injured on the job, five physicians then committed insurance fraud by charging these visits to the workers' compensation system knowing that the injuries did not occur at work. Dr. Saboe added that additionally there was misreporting about the cost of seeing a chiropractic treatment versus treatment from other types of physicians, explaining that the figures that were presented did not include the costs of treatment or prescriptions.
- (0:44:59) Matt Calzia asked for clarification about the [cost effectiveness study](#) that Dr. Saboe provided for review, being in the draft phase noting specifically the Turner study which shows that the initial appointment with a chiropractor had better outcomes but notes that they need to look further into the long term outcomes. Matt Calzia also asked if Dr. Saboe had the more defined information. Dr. Saboe responded that he does not have that information but will look into it and that he is creating something that outlines more clear definitions and information.
- (0:47:55) Sara Duckwall asked what is not working in the system currently and noted that she is not an aware of a limit to the amount of chiropractic appointments that a worker can receive through workers' compensation. Dr. Saboe explained that there are current restrictions of 18 visits in 60 days, which for most workers is fine but there are cases where these workers need further treatment and have to have a new referral back to the chiropractor for more treatment. Dr. Saboe shared an example of a worker with a non-surgical complex injury that he had worked with that he eventually lost contact with after they were transferred to different attending physician due to this time limit. The worker eventually ended up 100% disabled after having to change the course of treatment and having surgery.
- (0:52:21) Sara Duckwall asked if a Type A provider can prescribe unlimited chiropractic treatment. Dr. Saboe confirmed that they can.
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- (0:53:31) Dustin Karstetter, Washington County, expressed his concern about what happens when a claim under a chiropractic physicians' care goes from uncomplicated to complicated and the worker needs to see a different more appropriate type of physician. Dr. Saboe responded that chiropractors must have the ability to give differential diagnosis and failure to do so is actually falls below the standard of care. He explained that his example specifically differentiates surgical versus non-surgical cases that were being treated and not in the diagnosis stage. Dr. Saboe explained that chiropractic physicians must be able to triage patients and refer them to the appropriate treatment.
- (0:57:02) Matt Calzia asked Dustin Karstetter to confirm his organizational affiliation.
- (0:57:56) Patrick Priest asked Theresa Van Winkle if there were any further testimony or information about this legislative concept. Theresa Van Winkle explained that stakeholders can present information in advance of having legislative concepts drafted and that it will be common to have presentations without having the concept drafted ready for review.
- (0:59:11) Theresa Van Winkle spoke briefly about the legislative concept regarding attending status that is going to be introduced by the Oregon Society of Physician Assistants as it was discussed at a prior subcommittee meeting. Theresa also spoke about a concept that is going to be presented by SEIU that add presumption of PTSD for a group of child welfare workers employed by the State of Oregon.
- (1:00:16) Patrick Priest asked clarification about the group of child welfare workers that the presumption would affect? Theresa Van Winkle answered that her understanding is that the presumption is only for a certain group of workers employed by the department but that she will work on getting more information and representative to present at the next meeting.
- (1:00:40) Kirsten Adams, Associated General Contractors, asked if the chiropractor and physician assistant legislative concepts will be similar to the past legislation that was introduced by the respective groups. Theresa Van Winkle answered that the conversations that she has had indicate that they will be similar.
- (1:02:08) Theresa Van Winkle explained that materials will be made available as they are received and that she will be ensure that there are deadlines given to those submitting information for the committee review.
- (1:03:28) Tammy Bowers asked what time the meeting is on October 28, 2022 is scheduled for and if the agenda with the meeting information had already been sent out. Sara Duckwall responded that the meeting on October 28, 2022, is scheduled for 10:00am. Theresa Van Winkle answered the agenda
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and Zoom information would sent out to the full MLAC committee at the conclusion of the meeting.

Meeting

Adjourned

Patrick Priest adjourned the meeting at 2:05pm.

*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>