

**Management Labor Advisory Committee
IME Subcommittee
Wednesday, December 15, 2004
Hearing Room 343 State Capitol Building
Salem, OR**

Subcommittee Members Present

Ken Hector, CNF Service Company, Portland, OR
Brad Witt
Sheri Sundstrom, Hoffman Construction Company, Portland, OR
Lon Holston

Subcommittee Members Absent

Staff Present

Lou Savage, Director's Office
Myrna Curzon, Director's Office
John Shilts, Workers' Compensation Division
Cara Filsinger, Workers' Compensation Division
Jan Miller, Workers' Compensation Division
Travis Wall, Injured Worker Ombudsman

The committee received written testimony from the Oregon Self-Insurers Association.

Review Minutes from December 9 Subcommittee Meeting

There was a correction made to the name for Oregon Self-Insurers Association. The minutes were approved as corrected.

Item 4 - Distance Injured Workers Must Travel to IMEs

There was initially no one signed up to testify on this item. Public Testimony was allowed on this item later.

Public Testimony on Item 4, Distance Injured Workers Must Travel to IMEs

Mr. Morris Haney, WMCI Prime Evaluations – Mr. Heine expressed concern about insufficient doctors being available in rural locations. Some specialists do not travel. IME facilities do recruiting even in communities the size of Medford. Doctors who have already examined the person will decline. In addition, social contacts between doctors may also cause a doctor to decline. In eastern Oregon facilities have to schedule a day and determine if there are enough exams to pay for flying the doctor there. Sometimes there is an extra charge to the insurer; however, the extra charge is based on spreading the travel cost out over a full day of exams.

Dr. Joseph Eusterman, IME Physician – Dr. Eusterman testified that generally those who do impairment findings expect to travel.

Ernie Delmazzo – Injured Worker Alliance – Mr. Delmazzo gave examples of cases in which the worker was asked to travel an unreasonable distance. SB812 was originally going to set a 60 mile limitation with WCD having the power to make exceptions. Mr. Delmazzo requested that the committee set a mileage and allow the director the authority to make exceptions. Mr. Delmazzo also recommended that an IME physician be hired to work in Eastern Oregon and be paid from the Worker Benefit Fund.

Travis Wall – Injured Worker Ombudsman, Mr. Wall testified that his office found that one insurer was using one particular set of IME resources and therefore causing workers to travel unreasonable distances. He testified that recommendations already made to the committee would help. He also agreed with the concept of working to increase the number of providers in the local community.

John Shilts, Workers' Compensation Division (WCD) –Mr. Shilts recommended that the committee consider some allowance to the insurer or the self-employed insurer if they do not meet their 60 day deadline. WCD will break out the time frames and identify if exceptions can be made by rule.

The Workers' Compensation Division is streamlining and trying to lower costs. They are working on a medical quality initiative, generally around certification, protocols, and the concept of once again having a medical director. The initiative is in infancy stages right now. WCD would like to come to MLAC in the future and talk about the initiative. The goal is to achieve significant gains for the system.

Work session on item 4 - Distance Injured Workers Must Travel to IMEs

- Look at SB 369 legislative history – look for clues in the record of why “and place” was deleted. Also look for suggested language about what could be put back in statute.
- Recommend language for “time and place” – including exceptions for conditions requiring a specialist, physician availability, physician conflict of interest, and any other reasonableness factors. Requested draft language from WCD.
- Asked WCD to get input from Medical Advisory Committee on increasing physician availability through having doctors travel for IMEs. Also asked OMA to survey and talk to physicians to find out what the deterrents are or what would make it more attractive to them.
- WCD to determine if statutory changes would be necessary to allow an exception from sanctions for failure to determine accept/deny in 60 days if there are difficulties determining a time & place reasonable to the worker. Map out current time frames for various decisions relating to WCD authority to impose sanctions.
- Recommend language allowing WCD to mediate disputes in scheduling IME exams and determining “reasonableness” of travel requirements for worker. Estimate fiscal impact of adding WCD staff to do this expedited process.

WCD estimate fiscal impact of adding a medical director.

Public Testimony on Item 5 – Lack of information provided to injured workers

Ernie Delmazzo, Injured Worker Alliance – Mr. Delmazzo recommended a focus group coordinated by WCD to develop something. Mr. Delmazzo also recommended requiring certified mail.

Travis Wall, Injured Worker Ombudsman – Mr. Wall reported that in his office the most common complaint from injured workers is not understanding the process. There is a large amount of information that workers get sent about their claims--too much to read, a lot to process, small print. Mr. Wall recommended a variety of approaches to meet the varied needs of workers.

Worksession Item 5 – Lack of information provided to injured workers

- Ask the Department and the Ombudsman for Injured workers to work together to develop an education tool for injured workers.
- Require that insurers include in the IME cover letter information about the nature and purpose of the exam, and the toll free numbers for WCD and the Office of the Injured Worker Ombudsman.
- Add interactive area on the state’s web site of FAQs regarding IMEs.
- Require that the insurer send the notice of the exam by certified mail.

Public Testimony Item 6 Worker not showing up for the exam

Dr. Joseph Eusterman, IME Physician – IME vendors go to great lengths to make sure that the worker knows about the exam and encourage them to come to the exam. Dr. Eusterman estimated that he has 10% no shows.

Ernie Delmazzo – Injured Worker Alliance Mr. Delmazzo stated that perhaps a solution to the long distance traveled may help reduce the no show. He recommended again that a physician be hired to work in Eastern Oregon and be paid from the Worker Benefit Fund.

Dr. Steven Fuller, Orthopaedic physician and IME physician with Impartial Medical Opinions (IMO) –Schedulers from IMO have found that if the person is represented the no shows are higher so they put that person at the end of the schedule. Frequently if a person is represented they do not fill out the pain diagram or sign the consent form. Dr. Fuller was not in favor of a no show fee to the worker. He also testified that he did not feel that travel was a significant contributor to the no show problem.

John Shilts, Workers' Compensation Division –If the worker fails to attend the IME the insurer can request a suspension of benefits. There are times when there could be an IME and there are no benefits at that point being paid. He gave a clarification of a point in the IME Report that mentions picking up pieces of the space shuttles as a reasonable excuse for not attending an IME, that person was a fire fighter. Oregon firefighters were asked to go to Texas during the last space shuttle disaster to assist in picking up pieces of the space shuttle.

Chad Marcus, Impartial Medical Opinions (IMO) - IMO schedules one day each month to each of the satellite offices. At a recent day in Eugene there were 6 exams scheduled and 2 of them were no shows. They try to accommodate workers who show up late to the exam.

Travis Wall, Injured Worker Ombudsman – Mr. Wall testified that workers clearly have a responsibility. If an insurer fulfills their obligations in setting the appointment, the worker has a responsibility to show up or must have a good reason for not showing.

Linda Olsen , SAIF Corporation – Ms. Olsen suggested that in the educational information to the worker a piece be added stating the importance of contacting the insurer and the IME facility if the worker is not able to make an appointment, perhaps within 48 hours.

Work Session Item 6 Worker not showing up for the exam

- Require a fee to be charged to the worker for a no show without a call to the insurer or the IME provider to let them know and without a reasonable reason for not calling. WCD to determine a reasonable fee amount and the reasonableness of not calling and not showing up for the exam.
- If the attorney advises their client not to show for an IME exam, then it is incumbent on the attorney to notify the examiner that their client is not going to show up.
- Required language in the notice that goes to the worker - You may also be required to pay a fee for failure to show up at the exam.

John Shilts, Workers' Compensation Division – Mr. Shilts gave the committee clarification about how the suspension process works. If a worker is found to have been unreasonable in missing their examination their benefits are suspended. Jan 2004 to Oct. 2004 there were 184 suspension requests. 96 of those were approved. WCD determines the reasonableness. For those 96 workers whose benefits are suspended if there is in addition

a no show penalty they are no longer getting their time loss benefits from which to pay that. It will have to come from another source or from their benefits when they are reinstated.

The subcommittee reviewed a draft summary of decisions made at the December 14th work sessions. They requested that the department include in information to the worker toll free numbers for WCD and the Ombudsman. The committee also asked that WCD outline which changes require rule and which will require statute change.

Meeting Adjourned

Next Meeting: Thursday, January 6, 2005, 8:00 a.m.

State Capitol Building, Room 357