

**MANAGEMENT LABOR ADVISORY COMMITTEE**  
**Thursday, September 16, 2004**  
**Labor & Industries Building, Conference Room 260**  
**Salem, Oregon**

***Committee Members Present:***

Ken Hector, CNF Service Company, Portland, OR  
Lon Holston, AFSCME, Grants Pass, OR  
Diane Janzen, NorPac Foods, Inc., Lake Oswego, OR  
John Kirkpatrick, IUPAT District Council #5, Portland, OR  
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR  
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR  
Sheri Sundstrom, Hoffman Construction Company, Portland, OR  
Lisa Trussell, Associated Oregon Industries, Salem, OR  
J.L. Wilson, NFIB, Oregon Chapter, Salem, OR  
Brad Witt, Oregon AFL-CIO, Salem, OR

***Staff Present:***

Nancy Bieber, Workers' Compensation Division  
Teri Bledsoe, Director's Office  
Jerry Managhan, Workers' Compensation Division  
Mike Manley, Information Management Division  
Lou Savage, Director's Office  
Mary Schwabe, Workers' Compensation Division  
John Shilts, Workers' Compensation Division  
Barbara Smith, Workers' Compensation Division  
Travis Wall, Ombudsman for Injured Workers  
Kevin Willingham, Workers' Compensation Division

**CALL TO ORDER**

Committee member Mike O'Rourke called the meeting to order at 1:30 p.m.

**VOC REHAB SUBCOMMITTEE REPORT**

Sheri Sundstrom reported on the Voc Rehab Subcommittee's work, which involved meeting with stakeholders to discuss how to better integrate voc rehab and get as much usage of all the benefits by all parties.

Nancy Bieber of the Workers' Compensation Division presented what the subcommittee is proposing to the committee, which some will require rule and statute changes. A written report was provided to the committee with first listing the general principles the subcommittee was trying to accomplish when reviewing the programs. With the goals in mind, there was general agreement on a number of ideas, which were listed in the report. Below is a brief summary:

1. Employer-at-Injury Program (EAIP) - Allow the use of this program to support skills building options. Allow to string together separate EAIP periods to comprise the allowable 90 days period, rather than select the best placement period. (rule change)
2. Preferred Worker Program – Allow the employer-at-injury to access this program's benefits one time without jeopardizing the worker's entitlement to future use of the program. If it is clear the worker will have permanent limitations, promote early use of this program. (rule change) Provide

*Management Labor Advisory Committee Minutes*

*September 16, 2004*

*Page 2*

job search assistance to Preferred Workers who are not eligible for vocational assistance, to be paid out of the Worker Benefit Fund. (statute change)

3. Eliminate stay of benefits when an insurer appeals an order of vocational benefits. If the insurer ultimately prevails, incurred costs are reimbursed from the Worker Benefit Fund. (statute change)

4. Reduce the time for eligible worker to begin an authorized training plan (ATP). The subcommittee considered the time frames before a worker started a plan. They had the opportunity to meet with stakeholders and the Ombudsman for Injured Workers. From a voc counselor's standpoint, it can be a struggle for a worker to make a major decision about their future.

5. Require some opportunity for a worker to receive guidance prior to entering into a CDA of vocational benefits. (possible rule change)

The committee discussed some of the questions raised in the report. There were some unanswered questions in regards to timelines. Such as, should the time to determine eligibility be reduced from the current 35 days to 26 days. A chart showing the current process and two samples of proposed processes were provided.

The report also included concepts and options that have not been generally endorsed by the subcommittee and new concepts that came out of conversations held in regards to the original group of ideas.

Sheri Sundstrom recommended that a study be conducted to get a better picture of the timeframes and figure out why some workers take longer to get on a plan. Currently, there are two concepts being drafted by Legislative Counsel, which are item two, third bullet, (provide job search assistance) and item three (eliminate stay of benefits).

**Action:** Sheri Sundstrom moved to accept the Voc Rehab Subcommittee's proposals with general agreement, with the exception of the questions needing to be answered in regards to proposals number four and five. Bob Shiprack seconded the motion. The following committee members voted aye: Ken Hector, Lon Holston, Diane Janzen, John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Lisa Trussell, J.L. Wilson, and Brad Witt.

#### **PTD SUBCOMMITTEE REPORT**

A copy of draft language changes in regards to PTD benefits was provided. The subcommittee tried to address some of the issues around the definition of gainful occupation. One proposal is language to clarify objective standards in the ability to rate and grant permanent total disability. Currently, the law has insurers reevaluating every two years. This change in the statute would change that to five years for some individuals.

The subcommittee considered these issues and staff did a study/interview process of individuals who are on PTD. They found there were workers who had larger periods of time where they had no income and because of no options they often times would settle their claim to an agreement because they had no income.

Jerry Managhan of the Workers' Compensation Division commented that the department is looking at comparable types of systems and how other states set their threshold. A survey is being sent to all the states and the results of this survey will be presented to the subcommittee.

**PUBLIC TESTIMONY**

*Grace Smith* – Ms. Smith is an injured worker who went to work for the state of Oregon after her injury. When she refused to cover up duplicate payments, she said they used her disability as a means to harass and discredit her. She had documentation that she was an exceptional worker. The physical demands of her position were changed and she was not provided an updated job description. There was medical evidence that she needed to be pulled from her job duties and she ended up in the hospital because of doing these duties. Ms. Smith relayed her experience with IME doctors.

**WORKERS' COMPENSATION DIVISION IME STUDY UPDATE**

The department was asked to study the Insurance Medical Examination (IME) situation. John Shilts of the Workers' Compensation Division gave the committee the history of the controversy around IMEs. Last session there was a bill introduced regarding IMEs and MLAC requested staff to develop data in regards to IMEs. During the interim, staff has developed a review for MLAC to consider.

Jan Miller with Workers' Compensation Division is coordinating this study, which included forming a committee. She discussed how data was obtained and provided an IME study plan timeline. Factual data was gathered available through the department, which is collected through medical reporting. The committee then checked into what happens to complaint information. An intake form was developed to be used by the Ombudsman For Injured Workers office and Workers' Compensation Division. They will be looking at the complaint process in more depth.

The next project was to develop a survey that was mailed out to claimant and defense attorneys, IME physicians, IME vendors/facilities, and attending physicians. A second mailing of this survey was done hoping to get more responses.

Currently, the department has formed a committee to review IME letters from insurers to physicians.

**PRESENTATION OF LEGISLATIVE CONCEPTS**

**+ *Cost Reimbursement Proposal (Oregon Trial Lawyer's Association)***

***Subject:*** Award of costs, fees, and mileage for necessary witnesses when attorney fees awarded in an administrative proceeding reviewing a denied claim.

Mr. Martin Alvey with the Oregon Trial Lawyer's Association testified in support of a cost reimbursement proposal for consideration as a legislative concept. This proposal would create a new provision in ORS 656.386 allowing a discretionary award of costs associated with witnesses and reports, which would not diminish an award of compensation. Mr. Alvey, an attorney who represents injured workers, has seen an increase of costs being passed on to injured workers. The committee reviewed the draft language, which has been sent to Legislative Counsel.

Mr. Chris Moore, an attorney from Eugene, also testified in favor of this concept. Mr. Moore did some research on the department's Web site on denied claims where injured workers prevailed. His bookkeeper gave him an estimate of the average spent on an average on a denied claim, which came to about \$150.00 a case. There are some cases he does not spend any money on expert witnesses and some he can spend up to \$2,500.

**+ *LC 239 Aggravation Claims (Oregon Trial Lawyer's Association)***

***Subject:*** Requires aggravation claims for workers' compensation injuries to be established by submission of form signed by attending physician.

***Management Labor Advisory Committee Minutes***

***September 16, 2004***

***Page 4***

Mr. Chris Moore testified in regards to this concept. This concept would eliminate the requirement for the worker's or representative's signature on aggravation claims, and instead, requires that the attending physician sign the claim. This would also eliminate the requirement for the accompanying physician's report with findings and provides that aggravation claims signed by the physician are a "prima facie claim for aggravation." Currently, the existing law requires that the aggravation claim be accompanied by the attending physician's report establishing, based on objective findings, that the worker has a worsened condition due to the compensable injury.

***+ Divested Trust Rights to the AIF Trust Fund (Scott Wroot)***

***Subject:*** This proposal would give workers equal standing to the IAF Trust Fund and its reserves, as well as any assets or surpluses, to both covered employers and their injured employees that currently have any future claim costs covered under the IAF Trust Fund reserves. This would also create a new educational program. The Injured Workers Educational Grant benefit program funded by half of the excess surplus reserves would be a premium neutral program, because the funding would be coming from the profits of the investments of the IAF Trust, and would be administered through the community colleges with two to four years of education depending upon the injured workers educational needs.

Mr. Scott Wroot, co-founder and spokesperson for the Injured Workers Support Group, submitted the concept and read his written testimony.

***+ Certification of Managed Health Care Providers (Jerry Keene)***

***Subject:*** Allows a Managed Care Organization to refuse or terminate authorization of a Primary Care Physician.

Mr. Jerry Keene, attorney at law, on behalf of Managed Healthcare Northwest, Inc. ("Caremark Comp MCO") and Providence Health Plans MCO ("Vantage Onsite MCO") testified and submitted written testimony on this legislative concept. This proposal would amend requirements a managed care organization (MCO) must satisfy in order to qualify for department certification. Proposed language was also submitted.

**PUBLIC TESTIMONY**

*Dr. Joseph Eusterman* – Written testimony, along with additional materials, was provided to the committee concerning "Iatrogenic Disability: Probable Causes-Proposed Remedy." Dr. Eusterman addressed the present definition of "objective findings," which in his opinion contributes significantly to the problem of "iatrogenic disability," i.e., health care provider caused worker disability and its associated huge costs to society: employers, workers, insurers, taxpayers, and government. Dr. Eusterman briefly reviewed a few exhibits included in his packet.

*Ernest Delmazzo* – Mr. Delmazzo commented to the committee about the importance of the IME issue and inquired as to when MLAC will be forming a subcommittee to consider this issue.

MLAC members commented that they are still in the process of gathering information for legislative concepts. The committee is waiting on the department's IME study results.

**ADJOURNMENT**

The meeting was adjourned at 4:15 p.m.