

Management Labor Advisory Committee
Monday, November 14, 2005
Labor and Industries Building, Room 260

Committee Members Present:

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
Lon Holston, AFSCME, Grants Pass, OR
John Kirkpatrick, IUPAT District Council, Tualatin, OR
Lisa Trussell, Associated Oregon Industries, Salem, OR
Tracy Brill, Port of Portland, Portland
Gregory Miller, Gunderson LLC, Portland, OR
Linda Jefferson, City of Portland, Portland, OR
Ellen Cutler, Harry and David, Medford, OR
Cory Streisinger, Director, Department of Consumer and Business Services

Sheri Sundstrom called meeting to order at 9:00 a.m.

Introduction of New MLAC Members

MLAC members, Cory Streisinger and Lou Savage introduced themselves.

Introduction of Key DCBS Staff

The following staff were introduced: John Shilts, Workers' Compensation Division (WCD) Administrator; Jerry Managhan, WCD Deputy Administrator; Dan McNally, WCD Budget and Legislative Coordinator and acting Communications Manager; Mary Schwabe, WCD Compliance Manager; Kevin Willingham, WCD Reemployment & Dispute Resolution Manager; John Hofer, WCD Policy Manager; Cara Filsinger, WCD Policy Analyst; Jennifer Flood, Ombudsman for Injured Workers; David Waki, Small Business Ombudsman; Abigail Herman, Workers' Compensation Board (WCB) Chair; Michael Wood, Administrator OSHA; Mike Manley, Information Management Division (IMD); Tracy O'Connor, Information Management Division (IMD).

Committee Discussion:

Abigail Herman asked the committee for input on the quarterly report from WCB to MLAC. The committee asked for information on timelines and length of time to resolve cases as well as rulemaking issues that the committee might be interested in. The committee asked for the first report at the next MLAC meeting in February.

Confirmation of Co-Chairs

Labor Co-Chair - John Kirkpatrick nominated Bob Shiprack. Lon Holston seconded the nomination. A vote was taken and all labor members voted in favor. Motion passed.
Management co-chair – Lisa Trussell nominated Sheri Sundstrom. Greg Miller seconded the motion. A vote was taken and all management members voted in favor. Motion passed.

Introductory Remarks on MLAC's Work

Cory Streisinger summarized a letter from Governor Kulongoski and highlighted a few points. Governor Kulongoski relies on MLAC consensus on changes to the Workers' Compensation system. An issue the governor has asked MLAC to look at in the interim is care providers. Governor Kulongoski also expressed interest in receiving advice from MLAC on SB311, key pieces of legislation from the 2003 session which are scheduled to sunset, PPD benefits, and the role of nurse practitioners.

Recap of Major MLAC Bills from 2005 Legislative Session

John Shilts, Workers Compensation Division

Mr. Shilts reviewed four bills for the committee:

SB 311, IME

Requires claims adjusters to be certified by training approved by the department, requires insurers to choose an examiner from a list maintained by the department, and allows workers to appeal the location of the IME exam.

SB386 PTD Claims

Establishes a higher wage threshold to determine if a workers' wage earning capacity qualifies the worker to receive or continue to receive PTD benefits, adds requirements when a worker's PTD benefits are potentially going to be rescinded, requires that there is an actual change for the better in the worker's condition, worker's benefits will continue until they have had their hearing in front of an administrative law judge at WCB, reimburses insurers for benefits paid on appeal if the insurer's decision is upheld, and provides new vocational benefits if the PTD benefits are rescinded.

SB119

Trying to increase system's ability to bring workers back to work that is commensurate with work they were doing prior to injury. Aimed at increasing program usage of available vocational and return to work programs. Also related are administrative rules to expand the workers assistance programs in WCD.

HB2408

Clarifies injured workers who are released to return to regular work are eligible only based on impairment due to their injury.

Discussion of Interim MLAC Projects

Care Providers

John Shilts, Workers Compensation Division

Mr. Shilts provided committee with a history of care providers in the "Attending Physician Study". He also referred members to the letter from Governor Kulongoski. He made a recommendation that the committee consider forming a subcommittee. The department would provide support.

The following committee members volunteered to serve on the Care Providers Subcommittee: Sheri, John, Lon, Mike, Ellen, Lisa

Review of Sunsets (PPD, Nurse Practitioners)

John Shilts, Workers Compensation Division reviewed with committee bills that have upcoming sunsets. The sunsets are concentrated into two parts primarily in Permanent Partial Disability 656.214 and 656.726. In PPD the date of injury determines what part of the law applies. The nurse practitioner sunset affects the authority of nurse practitioners to provide medical treatment to up to 90 days and authorize temporary total disability benefits for up to 60 days.

Mike Manley, Information Management Division

Mr. Manley gave committee members an overview of the history of PPD and an overview of changes made with SB 757 and HB 2408. He referred committee members to a chronology of PPD benefits titled: "Oregon Permanent Partial Disability (PPD)." Benefits are now adjusted with average weekly wage on an annual basis. The changes raised maximums to over the national median. SB757 was estimated to be cost neutral at the wage levels that were in effect at that time. The bills made substantial changes to the rating of PPD. They eliminated arbitrary distinction of body parts and now look at the return to work status of the worker. Benefits are impairment and a work disability portion based on release to work status. HB2408 mandated that DCBS study the effect of this legislation on PPD awards. IMD would like to work with an MLAC subcommittee to help determine the structure of the study and a report to the legislature. Awards are on a date of injury basis. Before a substantial number of awards become final, it would require 18 months to 4-5 years for the more severe cases to be closed. Mr. Manley explained that most claims coming through right now are from 2003-2004 year injuries. The study would need to take those injuries and apply benefit structures from pre SB757 criteria, SB 757 criteria, and post-HB2408 criteria. The same set of claims would be rated three different ways. This is necessary to capture both mild cases as well as more severe cases to have a valid comparison.

The following committee members agreed to serve on a Sunsets Subcommittee: Bob Shprack, Sheri Sundstrom, Tracy Brill, Linda Jefferson, Greg Miller, and Mike O'Rourke.

Nurse Practitioner Sunset

John Shilts, Workers Compensation Division

The Workers' Compensation Division has a work group working on a study with help from SAIF, as well as the Oregon Nurses Association. They also may need to do a survey of insurers and self-insureds. They have set a goal for the analysis of data for Feb 2006. WCD will report to MLAC at the next meeting.

Committee Discussion

Committee asked that WCD also share information from the workgroup with the MLAC Alternative Care Providers Subcommittee.

Review of SB 311 Implementation

Dan McNally, Workers' Compensation Division

Workers' Compensation Division has divided the rulemaking into two phases, those set to be implemented 1/1/2006 and the second phase are those set to implement 7/1/2006. Mr. McNally summarized the key elements:

1. Reasonable Location – the worker can appeal the location. WCD is currently recruiting for a position to review appeals.
2. Claims Examiner Training – 3-year renewal process currently requires 24 hours of continuing education. Of those 24 hours 3 hours will now be required to be regarding IMEs.
3. IME list – requirement effective 7/1/2006. Insurers must select from a list established by Department. WCD has a draft of the requirements to be certified and be on list of authorized physicians. This Thursday WCD will have the first external meeting to receive input. A second meeting will be held on December 1, 2005.
4. Complaint Process – worker can file complaint with the DCBS regarding a problem that occurs in the IME exam or the IME process. WCD is currently working on developing the complaint process. This will also be discussed in the meetings with external groups.
5. Brochure/Pamphlet – WCD working on brochure/pamphlet tool to provide more information to injured workers. First round of rulemaking gave WCD the ability to get this information out to workers. WCD anticipates having this out by February or March.
6. Exit Questionnaire – WCD getting feedback from internal staff on draft.

Committee Discussion

The Committee recommended that when a complaint comes into the Department the information be forwarded to the Ombudsman's Office.

Medical Quality Initiative

John Shilts, Workers Compensation Division

Mr. Shilts referred the committee to "Background and Discussion Points, Medical Quality Initiative" and directed the Committee to the goals on first inside page. The goal is to increase the quality of care as well as lower the cost of care. WCD is posting meeting notes on WCD web site.

Committee Discussion:

Sheri Sundstrom will pass on information from the International Workers Compensation Institute meeting. Bob Shiprack will provide information based on trust funds. Members of the Committee recommended educating physicians about the workplace, particularly in the rural areas, looking at transparency of hospital and pharmacy charges and rebates to Workers' Compensation carriers.

307 Claims Review

Bob Shiprack suggested as an interim activity that the committee look at responsibility claims, and in particular multiple employer issues.

WCD with the assistance from IMD will get data and report to the committee at the next meeting.

Additional Interim topics

John Kirkpatrick asked that the committee look at the role and effectiveness of the Ombudsman for Injured Workers, expectations, resources, etc.

Committee Discussion

It was also suggested that the committee review the role of the Small Business Ombudsman. Committee asked that Jennifer Flood and David Waki come to the next meeting with a report to the committee on where they are at, goals, etc.

Meeting Schedule

Alternative Care-first week in January

Sunsets – first week in January

Next full meeting: February meetings and every 3 months thereafter through 2006 May, Aug, Nov