

Management-Labor Advisory Committee
Thursday, March 24, 2005
Labor & Industries Building Room 260

Committee Members Present:

Ken Hector, CNF Service Company, Portland, OR
Lon Holston, AFSCME, Grants Pass, OR
Diane Janzen, NorPac Foods, Lake Oswego, OR
John Kirkpatrick, IUPAT District Council, Portland, OR
Mike O'Rourke, Plumbing and Steamfitters UA 290, Portland, 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

Staff Present:

Teri Bledsoe, Director's Office
Cara Filsinger, Workers' Compensation Division
Jerry Managhan, Workers' Compensation Division
Dan McNally, Workers' Compensation Division
Lou Savage, Director's Office
John Shilts, Workers' Compensation Division
Barbara Smith, Workers' Compensation Division

CALL TO ORDER

Chairperson J.L. Wilson called the Management-Labor Advisory Committee meeting to order at 8:34 a.m.

REVIEW MINUTES FROM MARCH 17, 2005 MEETING

A motion was made and seconded to approve the minutes with one correction. A vote was taken and the following members voted aye: Ken Hector, Lon Holston, Diane Janzen, John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Lisa Trussell, and J.L. Wilson.

REVIEW OF WORKERS COMPENSATION LEGISLATION

SB 635 – Limits non-subject worker status of foster care providers for purposes of workers' compensation statutes

Dan McNally, Workers' Compensation Division, provided an overview of SB 635. In 1981 there was an exemption added in regards to foster care homes. This bill reverses this to the standard prior to 1981. One difference is if foster care services are being performed in the private residence of the person providing the care.

Action

The motion was made and seconded for a do pass recommendation. A vote was taken and the following members voted aye: Ken Hector, Lon Holston, Diane Janzen, John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Lisa Trussell, and J.L. Wilson.

HB 2717 – Postponement of workers' compensation hearings

Chuck Lundeen, Liberty Northwest

Presented proposed amendments in writing to the bill. Recommended changing from 90 to 120 days.

Chris Moore, Attorney from Eugene Representing Injured Workers

Discussed the reason he received most of postponements is due to the complexity of cases since 1987. It is difficult for both sides to get cases together. They have issues with getting responses from doctors. When he

requests a postponement, he is asked some hard questions and he has to demonstrate his diligence that he has made and effort at or above to get the case prepared.

John Snarskar, The Hartford

Generally would support the idea behind HB 2717, but one of the problems on getting cases postponed pertains to how soon a notice of a hearing is issued. The statute only requires a ten-day notice for a hearing. The Board is doing a better job of getting these notices out. How far out from the notice needs to be considered.

John McCullough, Workers' Compensation Board

He does not see any reason the notice could not get out within the 90 days. As far as the 120 day recommendation, about one-third of their postponements we get are due case preparation and they have shown that they made an effort to get the doctors to respond. They have to show due diligence before a postponement is granted. Changing it to 120 days would not eliminate all postponements, but it would most likely to reduce them. He recommended they consider changing from 90 to 120 days.

Action

Recommended accepting the submitted dash two amendments as follows:

- Line 16, delete "original hearing" and insert "of the postponed hearing" after date."
- Line 17, insert "When the case is one governed by paragraph (b) of this subsection, this 120-day reset requirement is not applicable."
- Page 3, lines 31-33, delete in its entirety (emergency clause).

Recommended accepting the following amendment:

- Page two, line 12, replace 90 with 120.

The motion was made and seconded to recommend a do pass recommendation with the two recommended amendments. The motion was amended to have the notice be changed 60 days from 10 days (page two, line 38) notice. A vote was taken and the following members voted aye: Ken Hector, Lon Holston, Diane Janzen, John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Lisa Trussell, and J.L. Wilson.

SB 751 – Workers' compensation assigned risk plan

John Shilts, Workers' Compensation Division, discussed the bill and suggested the amendment to change the reference to "Insurance Division" to "DCBS."

Action

The motion was made and seconded to accept the suggested amendment and recommend a do pass recommendation of this bill. A vote was taken and the following members voted aye: Ken Hector, Lon Holston, Diane Janzen, John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Lisa Trussell, and J.L. Wilson.

SB 754 – Study of cost effect of denials in workers' compensation claims

John Shilts, Workers' Compensation Division

Mr. Shilts presented testimony explaining the study proposed by this bill.

Travis Wall, Ombudsman for Injured Workers

Mr. Wall testified in support of the study. Decline in disabling claims is a complex issue. Many on the job injuries are not reported. Injured workers depend on public benefits.

Committee Discussion

Discussion by committee members addressed the following topics: secondary providers, concern method of funding the study and the total dollar amount spent for the study, privacy requirements, decrease in disabling claims due to a decrease in manual labor jobs moving to a more service oriented workforce.

Action

No action taken.

HB 3318 – Payment of medical services by employer in non-disabling workers’ compensation claim

John Shilts, Workers' Compensation Division

Mr. Shilts provided information on the changes proposed by the bill. Current limitations reflect past economy.

Action

A motion was made and seconded to move the bill to committee with a do pass recommendation. A vote was taken and the following committee members voted aye: Ken Hector, Lon Holston, Diane Janzen, John Kirkpatrick, Mike O’Rourke, Bob Shiprack, Sheri Sundstrom, Lisa Trussell, and J.L. Wilson.

HB 2294 – Relating to worker’s compensation claims/HB 2405 – Relating to worker’s compensation aggravation claims – and regular work

Krishna Balasubramani, Oregon Self Insurers Association

Mr. Balasubramani testified in support of HB 2294 with amendments to define regular work. Feel it provides consistent definition of ‘regular work.’ Provided written testimony.

Committee Discussion

Committee members discussed concerns about release to regular work as well as whether the job at injury is available at the time of release. Committee asked that additional information be provided regarding the effect of release to regular work on disability benefits.

Action

No action taken and recommended to be on the next MLAC agenda.

SB 804 – Workers compensation claims records of injured workers

Chuck Lundeen, Liberty NW

Mr. Lundeen testified in opposition to the bill. He also addressed Mr. Johnston’s claim and suggested a willingness to provide all claim records from Mr. Johnson's claim to WCD for review.

Committee Discussion

Committee members suggested that perhaps claim review is needed rather than legislation. In addition, a suggestion was made that claimants could sign a waiver to release information so that both sides of the story could be told.

SB 194 – BOLI transfer from WBF to fund activities related to discrimination against injured workers

Annette Talbot, Bureau of Labor and Industries

Ms. Talbot presented proposed amendments to SB194. The focus of the bill is to address BOLI’s concern over lack of information as to the nature of discrimination of injured workers. The study enables BOLI to identify the nature of discrimination and improve information regarding unlawful employer practices. Ms. Talbot suggests further look into a similar study in Texas.

Committee Discussion

Committee members discussed civil rights cases in regards to injured workers. The committee asked for data on the number of complaints from the Injured Worker Ombudsman that lead to investigation.

Action

No action taken.

Informational report at the request of the chairs

MCOs and alternative care providers, Jerry Managhan, Workers' Compensation Division

Mr. Managhan testified that there are times when MCOs cannot find enough providers. No complaints have been made to WCD from either workers or providers regarding alternative care providers and MCOs. Authority to treat cannot go past 30 days for certain kinds of treatment; anything beyond the 30 days requires referral from the attending physician. There are different standards for physicians assistants, chiropractors, and naturopaths.

Medical review unit dispute process, Jerry Managhan, Workers' Compensation Division

Mr. Managhan explained process for billing and provided information regarding the dispute process that is already in place for providers to seek assistance with unpaid claims.

SB 469 – Podiatric physicians to serve as attending physician in workers' compensation

Tom Barrows, OPMA

DPM's received fewer claims as attendings. Less adequate care given when having to work with and through other doctors.

Action

No action taken.

HB 2588 – Study of chiropractic services provided in workers' compensation claims

Vern Saboe, Chiropractic Physician

Mr. Saboe presented testimony on CROET's research regarding neck and back injuries. He asked the committee to consider the benefits of the study and benefits to injured workers. Discussed a study on disc herniation and spinal surgery. The rate of surgeries is up in Oregon and the rate of alternative care is also up. Mr. Saboe also provided data from a Providence MCO study on spinal fusions. The focus of the study would be to identify whether chiropractic care would prevent unnecessary surgeries and increase return to work.

Committee Discussion

Committee members discussed funding for the study and whether CROET would participate in study both financially and otherwise. Current information from Mr. Saboe indicated that CROET would not allocate funds to the study. There was also discussion about whether employers should be mandated to participate in the study.

Action

No action taken.

SB 1001 – Physician assistant services for workers' compensation claims

Robert Peterson- Oregon Society of Physicians Assistants

Mr. Peterson testified in support of the bill. Physician Assistants work heavily with injured workers.

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Action

No action taken.

SB 311 Update

John Shilts, Workers Compensation Division noted senate Commerce Hearing scheduled and gave copies of the -3 and -4 amendments to the committee.

ADJOURNMENT

The meeting was adjourned at 8:30 a.m. The next Management-Labor Advisory Committee meeting will be Monday, April 4, 2005, at 8:30 a.m. A tentative meeting is scheduled for Thursday, April 14, 2005, at 8:30 a.m.