

**Management Labor Advisory Committee**  
**Thursday, April 14, 2005**  
**Labor and Industries Building, Room 260**

***Committee Members Present:***

John Kirkpatrick, IUPAT District Council, Tualatin, 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  
Diane Janzen, NorPac Foods, Lake Oswego, OR  
J.L. Wilson, NFIB, Salem, OR  
Lon Holston, AFSCME, Grants Pass, OR

***Committee Members Excused:***

Ken Hector, CNF Service Company, Portland, OR  
Lisa Trussell, Associated Oregon Industries, Salem, OR

***Staff Present:***

Myrna Curzon, Director's Office  
Jerry Managhan, Workers' Compensation Division  
Lou Savage, Director's Office  
John Shilts, Workers' Compensation Division  
Travis Wall, Injured Worker Ombudsman

Bob Shiprack called meeting to order at 8:48

**REVIEW MINUTES FROM March 24, 2005 and April 4, 2005 meetings**

A motion was made by JL Wilson and seconded by Mike O'Rourke to approve the minutes as submitted. A vote was taken and the minutes are approved.

Update on PTD, Voc Rehab, and IME bills

John Shilts, Workers Compensation Division

Mr. Shilts gave the committee information on the progress of the bills. SB119 return to work/ vocational bill has passed the Senate and is assigned to House Business, Labor & Consumer Affairs. The House is not listening to Senate bills until mid-May. SB311 IME bill passed Senate and is on the Senate President's desk with consideration for a referral to Ways & Means. SB386 PTD bill passed Senate unanimously and is on its way to the House to the Speaker's desk. There may be a conformance issue with 386 depending on what the committee decides with respect to a definition of regular work.

Chris Davie, SAIF Corporation

Mr. Davie commented on SB386. Mr. Davie presented written testimony to the committee. His testimony focused on the following topics: definition of "gainful employment", definition of "materially improved", hearing or reconsideration after PTD reversal, continuation of benefit after appeal of reversal, "greater weight" to reports based on personal observation, reevaluation of permanent disability after vocational assistance, integration with existing sunsets, and implementation dates.

***Committee Discussion***

Chair asked for an update from staff at a future meeting regarding the comments from Chris Davie.

**Definition of Regular Work**

Judy Johnson, Liberty NW

Ms. Johnson submitted written testimony to the committee. Ms. Johnson commented on the effect of the definition of regular work and the changes made in SB757 from the 2003 legislative session. Ms. Johnson believes there may be unintended consequence that would allow workers who have been released to regular work and are physically able to perform their prior work to then receive disability awards. Examples of

workers that would be in this category would be seasonal workers, construction workers, workers who are unable to perform a nonessential task.

John Shilts, Workers' Compensation Division

Mr. Shilts provided testimony to the committee regarding the discussions that have taken place regarding the definition of regular work and essential functions.

### ***Committee Discussion***

Discussion was related to the injury, how it relates to essential functions of the job, and how it may affect work disability benefits to the worker. Legislative Counsel is working on language that may make changes to the work that was done in SB757. The committee would like to bring that to an open hearing where the public can make comment and examine any proposed changes in detail.

Earnest Delmazzo, Injured Workers Alliance

Mr. Delmazzo commented on proposed amendments to HB2408. He presented written testimony to the committee. Mr. Delmazzo testified in opposition to any amendments that would affect the definition of regular work. He testified that the amendment would affect work disability benefits to injured workers in a negative way. He felt that the amendment would increase litigation and urged the committee to allow SB757 to go into effect before making any major changes.

Travis Wall, Ombudsman for Injured Workers

Mr. Wall expressed concern that the proposal would actually narrow the employability of some injured workers and reduce their wage earning capacity. Mr. Wall also expressed concern about how an amendment as discussed would affect the cost neutrality of the changes that were made in SB757. PPD benefits are inadequate and should not be reduced. Mr. Wall requested that discussions about the proposals include the Ombudsman as well as injured worker support groups.

### **HB2823**

Jerry Keene, Managed Health Care NW and Providence Health Systems Managed Care Systems

Mr. Keene presented detailed information to the committee in prior meetings, but offered to answer questions. Mr. Keene also addressed the concern that the language may be vague.

Delores Russell, Managed Health Care NW

In prior meetings there was some discussion that there should be specific examples of workers who had been harmed before proceeding with this legislation. If any worker were harmed in any way it would represent dereliction of duties. There is no financial motivation for the MCO to not approve a PCP request. MCOs want to apply the same care to an injured worker who wants to use his primary care physician to any other physician who wants to be involved in an MCO as a treating physician. The MCO's interest is that the physicians are competent and capable with no history of bad behavior.

### ***Committee Discussion***

A committee member expressed concern that this not be used to exclude physicians that the worker wants to use as their primary care physician. Mr. Keene responded that the MCOs have been operating in this way even though it is not specifically stated in the law. There have not been any abuses of this power by the MCOs.

Travis Wall, Ombudsman for Injured Workers

Expressed concerns that circulate generally about managed care and the concern about people being able to choose their own physician and make decisions about their own health care. Mr. Wall did not have data to provide but felt that complaints about MCOs have been escalating. Mr. Wall testified that he could not support the bill.

Earnest Delmazzo, Injured Workers Alliance

An injured worker may have had a treating doctor for many years and want the same physician to be their treating physician. Mr. Delmazzo testified in opposition to the bill.

***Action:***

Motion from JL to support the bill Sheri seconded the motion. The motion failed due to insufficient support.

**HB 3224**

Judy Meherens representing Representative Steve March

Ms. Meherens presented written testimony to the committee. The testimony addressed questions and concerns that have been addressed about the bill. Concepts were presented that would narrow the bill. Ms. Meherens is working with legislative counsel on language that would address concepts as addressed in the written testimony.

Ed Johnson, Toledo Oregon

Expressed concern about the bill. Felt that the focus of workers' compensation should be creating jobs for injured workers.

***Committee Discussion:***

Management: Concept is new and may take time to work out. May be something that could be studied over the interim.

Labor: There is some support from labor on the bill, but it needs work. A labor member suggested that the work not wait for the interim.

Vote: Motion to support made by JL Wilson, Seconded by John Kirkpatrick. The motion failed due to insufficient support.

**SB190**

John Shilts, Workers' Compensation Division

Issue began last session during collective bargaining. This bill allows the Home Care Commission to elect coverage for home care workers who provide care for injured workers who are the clients of DHS. The actual employer is the disabled or injured person. The disabled or injured person is the client of DHS. This bill allows the Home Care Commission to elect coverage for the home care workers. Second, this bill also addresses return to work for home care workers. It requires the worker to accept work from another client of DHS if offered to still receive temporary partial benefits.

Chris Davie, SAIF Corporation

Bill was put together by DHS. SAIF provides coverage for these workers. The bill is not written correctly because it was not intended to void all of those conditions under which a worker could decline a job offer and still be eligible for temporary partial benefits. The bill will be amended if it goes forward.

Andy Boger, SEIU Local 503

Support the bill as something that seems reasonable as long as the language is cleaned up as described by Mr. Davie.

***Committee Discussion:***

A motion was made by JL Wilson and seconded by Lon Holston to approve the bill with a do pass recommendation. A vote was taken and the following committee members voted aye. Bob Shiprack, John Kirkpatrick, Lon Holston, Mike O'Rourke, JL Wilson, Sheri Sundstrom, and Diane Janzen.

**SB670**

Mr. Savage stated that the bill was heard by Senate Commerce last week.

John Shilts, Workers' Compensation Division

Mr. Shilts gave the committee a summary of some of the testimony that was given at Senate Commerce to clarify the intent of the bill. The intent of the bill is not to have DCBS create treatment standards, but to review contracts and to assure that the contract does not prohibit the workers' attending physician from advocating for treatment that the worker needs or advocating for time-loss.

***Committee Discussion***

Centered on the attending physician advocating for services or temporary benefits. The worker does have to opportunity for an attorney to advocate for them.

Chris Davie, SAIF Corporation

Mr. Davie stated that he believes Senator walker intends to amend language on page 3 to say, "that are supported by the evidence in the medical record" to clarify when advocating for the worker is appropriate. The provisions in contracts are intended to prevent inappropriate advocating.

Ramona St. George, Oregon Health Systems

Ms. St. George testified in opposition to the bill as written, but would support with amendments. What it does as written is mandate for the director to adopt treatment guidelines. That was not the intent of the bill. It is a job much better done by physicians.

Need to refine the language in 4a for the department to review and approve treatment guidelines rather than develop treatment guidelines. Ms. St. George expressed concerns about the advocacy for legal types of benefits. No problem with the language regarding advocating for medical benefits. Would support the amendment that was discussed by Mr. Davie.

Jerry Keene

Mr. Keene stated agreement with the testimony of Ms. St. George. The attending physician should advocate for treatment, but advocacy for benefits would be inappropriate. That is the job of the attorney. In addition, he urged the committee not to adopt any provision that tells the department to write treatment standards.

Travis Wall, Ombudsman for Injured Workers

Mr. Wall stated that he would have no problem with the bill as it is currently written. However a clarification regarding the authority of the MCO to prescribe activities of the physicians is appropriate. The physician should function as an advocate for their patients.

***Committee Discussion:***

Management cannot support in its current form, but will consider future amendments. Proposed letting it sit until further information.

Next meeting: 4/28/05 at 8:30 am. Location to be announced.

***Action***

JL Wilson made a last minute motion to recommend support of Maureen Bock for the Workers Comp Board. A vote was taken and the following committee members voted aye: Bob Shiprack, John Kirkpatrick, Lon Holston, Mike O'Rourke, JL Wilson, Sheri Sundstrom, and Diane Janzen.

***Meeting Adjourned***