

**WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE**

Friday, November 3, 2006

1:00 – 3:00 p.m.

Conference Room 260

Labor & Industries Building, 350 Winter Street NE, Salem, OR

Committee Members Present:

Sheri Sundstrom, Hoffman Construction Company, Portland, OR
Linda Jefferson, City of Portland, Portland, OR
Greg Miller, Gunderson LLC, Portland, OR
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR
Lisa Trussell, Associated Oregon Industries, Salem, OR
Ellen Cutler, Harry and David, Medford, OR
John Kirkpatrick, IUPAT District Council, Portland, OR
Tracy Brill, Port of Portland, Portland
Cory Streisinger, Director, Department of Consumer and Business Services

Committee Member Excused:

Lon Holston, Grants Pass, OR
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR

Approval of Minutes:

Approve minutes of September 6, 2006 full MLAC meeting and August 15, 2006 Care Provider Subcommittee meeting. John Kirpatrick noted that his business location in both sets of minutes should be corrected. With that correction, he moved that the minutes from both meetings be approved as corrected. Mike O'Rourke seconded the motion and all members present voted aye.

Care Provider Study, DCBS – Information Management Division (IMD) & Workers' Compensation Division (WCD)

John Shilts, WCD

A written report titled "Workers' Compensation Care Provider Study" was provided to the committee. Mr. Shilts provided an overview of the work done on the Care Provider Study.

Mike Manley, IMD discussed the literature review portion of the Care Provider Study. The purpose of the literature review was to determine if research literature exists to support or oppose a change regarding the roles of various care providers in the workers' compensation system.

Bryan Skalberg, IMD discussed the worker survey portion of the study. The purpose of the worker survey was to provide information on access to providers, and the quality of care as reported by injured workers.

Tracy O'Connor, IMD discussed the data analysis portion of the study, an area of study based on bulletin 220 data, claims data, and data provided by employers and insurers for claims prior to 1990. The purpose of the data analysis was to determine if the current regulatory restrictions on the various care provider types affects the quality of care provided to injured workers.

John Shilts, WCD discussed the employer focus groups portion of the study. The purpose was to get an employer perspective about whether they felt there were issues related to access to providers and availability of quality health care. He provided a memorandum with options for discussion and clarified that the Workers' Compensation Division is not submitting the options as recommendations, but rather options to trigger discussion.

Committee Discussion: A request was made for clarification on the statutory references regarding chiropractors. Clarification was provided by Mr. Shilts on the current requirements in statute related to participation of chiropractors in a managed care organization. The committee chair requested that the Care Provider Subcommittee meet to review the study, and that discussion of the study be on the next full committee agenda.

Legislative Concepts

Oregon Chiropractic Association Legislative Concepts

Dr. Vern Saboe, Oregon Chiropractic Association

Dr. Saboe discussed changes that the board has made to improve quality and accountability since the 1980s. He provided a one-page document with data on chiropractor participation in managed care organizations. In addition, he discussed options for changes to restrictions on chiropractors in the workers' compensation system and requested direction from the committee regarding which concepts the committee could support.

John Schmidt, Oregon Doctors of Chiropractic

Dr. Schmidt testified regarding cost effectiveness of chiropractic care, the effect of current restrictions on quality of care, and expanding the treatment duration and numbers of visits for chiropractors in treating injured workers.

Oregon Podiatric Medical Association Legislative Concepts

Tom Barrows, Oregon Podiatric Medical Association

Podiatrists have a clearly defined scope of practice. The association will be bringing forward a bill to return podiatrists to attending physician status in the workers' compensation system. Under the current system podiatrists can treat for first 30 days, but typically patients are not seeing a podiatrist until 60 days after injury. In addition, podiatrists cannot receive a referral from an emergency room physician. Patients have to seek a referral from the primary care physician.

Dr. Gauntt, Oregon Podiatric Medical Association

Podiatrists have education comparable with MDs and DOs, including education in their specialty area as well as continuing education requirements. They use conventional medical practice and philosophy for treating foot and ankle conditions. Podiatrists see a small number of injured workers, but can provide quality care within their scope of practice.

Dr. Johanson- Oregon Podiatric Medical Association

A podiatrist's unique specialty can provide a benefit to the worker, insurer, and employer. For foot and ankle injuries, a podiatrist can treat quicker and return the patient back to work sooner with controlled costs. It is redundant to send the patient back to the referring physician. This redundancy adds cost to the carrier as well as increasing the patient's time off work.

Oregon Trial Lawyers Association Legislative Concepts

Martin Alvey, Oregon Trial Lawyers Association

LC272 Administrative Law Judge (ALJ) Mediator Approval of a Claim Disposition Agreement - This concept would allow the ALJ mediator to approve both the Claims Disposition Agreement (CDA) and a disputed claim settlement (DCS). Currently an administrative law judge (ALJ) can sign the DCS, but a member of the Workers' Compensation Board (WCB) must sign the CDA. Often injured workers have a need for signatures on the settlement to be expedited due to financial need.

Abbie Herman, Roger Pearson WCB

A memo dated October 30, 2006 was provided in response to an initial draft of the concept and is part of the record. LC 272 wouldn't have a fiscal impact on WCB, but would require some internal changes. It usually takes from 7 to 10 days from arrival in Salem to WCB approval; however, WCB does honor a request for expedited approval. WCB could provide a checklist for training to ALJ mediators which would allow them to do the review that is now done by WCB. Under LC272 people could have documents drafted or have form documents to fill in blanks that could be signed at the mediation conference.

Committee Discussion: There is seldom a dispute between the ALJ decision and WCB; disputes are usually because of a technical language issue, not the content of the agreement. Substantive problems are rare. This expedited process would not allow any leeway for "buyer's remorse." Currently, there is a 30 day waiting period if you do not have an attorney. If you have an attorney you can waive the 30 day waiting period.

Martin Alvey, Oregon Trial Lawyers Association

Attorney Fee Lien Provision (ORS 656.388) - This concept would allow a lien provision for attorney who has previously worked on the claim to go to the ALJ and show work done on claim to be able to receive attorney fees.

Martin Alvey, Oregon Trial Lawyers Association

Vocational Rehabilitation Omnibus Bill - This concept would make changes to some sections of vocational rehabilitation statutes, making it easier for an injured worker to get voc rehab and start the process sooner. The biggest lag is between claim closure and the start of the voc rehab program.

Committee Discussion:

The committee requested a summary of the MLAC Voc Rehab Subcommittee recommendations.

WCB Quarterly Report

Abbie Herman, WCB was asked to briefly discuss the significant court cases from the Court of Appeals. One case dealt with arthritis and determining whether or not there was a pre-existing condition. The second case dealt with defining material contributing cause.

Public testimony

Patrick Richards

Mr. Richards provided written testimony to the committee and read the testimony into the record. He has qualified for voc rehab through the state, but would like to see the insurance company bear a greater level of responsibility.

Ramona St. George, Oregon Health Systems

Ms. St. George discussed briefly the LC related to MCO sanctions that was discussed at the September MLAC meeting. At that time no objections to that concept were mentioned. Ms. St. George testified

that the department already has sufficient authority to levy sanctions, and expressed concern about unintended consequences from this concept.

Committee Discussion: The concept of allowing existing providers to treat in an MCO when patients have an existing doctor/patient relationship was discussed. Issues arise when a provider does not meet the credentialing criteria that the MCO requires of other providers.

Written testimony was submitted by Third Party Solutions.

Written testimony was submitted by Liberty NW.

Meeting was adjourned.