

Management-Labor Advisory Committee
Wednesday, September 06, 2006
Labor and Industries Building, Room 260

Committee Members Present:

Sheri Sundstrom, Hoffman Construction Company, Portland, OR
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR
Linda Jefferson, City of Portland, Portland, OR
Lon Holston, Grants Pass, 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
Cory Streisinger, Director, Department of Consumer and Business Services

Committee Member Excused:

John Kirkpatrick, IUPAT District Council, Portland, OR
Tracy Brill, Port of Portland, Portland

Staff Present:

Lou Savage, Director's Office
Myrna Curzon, Director's Office
John Shilts, Workers' Compensation Division
Tracy O'Connor, Information Management Division
Mike Manley, Information Management Division

Meeting was called to order at 1:00

Approve Minutes of April 28, 2006 meeting

Staff noted that there would be a correction to a spelling error of Brenda Rocklin's name. A motion was made by Bob Shiprack to approve the minutes as corrected and seconded by Lon Holston. A vote was taken and all committee members present voted aye.

Sunset Subcommittee Report, John Shilts, Workers' Compensation Division (WCD); Mike Manley, Information Management Division (IMD)

Documents that were previously submitted to the Sunsets subcommittee were presented to the full committee. The documents include a recommendations memorandum as well as study reports on the PPD sunset and the nurse practitioner sunset. Mr. Shilts and Mr. Manley gave a brief overview of the recommendations and the data provided in the reports. Recommendations from the Workers' Compensation Division are that the committee support a bill to remove the sunsets and make the laws permanent.

Committee Discussion: Mr. Manley and Mr. Shilts provided additional explanation on the data on hearing loss as well as chronic condition. The results of the study show that the assumptions and policy decisions that were made were consistent with the intent of the committee when the laws were passed.

Action:

Mr. Shiprack moved that a bill be drafted to remove the PPD sunset, the motion was seconded by Lon Holston. Discussion: A possible concern about the number of claims that have gone through under the new law was mentioned. The data was taken from claims that closed in 2005 and therefore should provide a high level of confidence. There will be some employers with higher work disability awards. There will be continued study and feedback to the committee before the 2009 session. A vote was taken and the following committee members voted aye: Sheri Sundstrom, Bob Shiprack, Linda Jefferson, Lon Holston, Greg Miller, Mike O'Rourke, Lisa Trussell, and Ellen Cutler. There were no Nay votes.

Action:

Mr. Shiprack moved that a bill be drafted to remove the nurse practitioner sunset, the motion was seconded by Mr. Holston. A vote was taken and the following committee members voted aye: Sheri Sundstrom, Bob Shiprack, Linda Jefferson, Lon Holston, Greg Miller, Mike O'Rourke, Lisa Trussell, and Ellen Cutler. There were no Nay votes.

Care Provider Subcommittee Update

John Shilts, WCD and Tracy O'Connor, IMD

Ms. O'Connor and Mr. Shilts provided the following update: literature review is complete; claims and data analysis is complete; worker survey is complete and IMD is currently analyzing data; employer focus group discussions are complete and IMD is currently analyzing the data; data has also been collected from the MCOs. The intent is to report to the committee in November.

Discussion: Data from the self-insureds and the Insurance carriers and Third Party Administrators regarding the costs before 1990 reforms was requested. There was concern about the thoroughness of the study without that data. The department will look for the data available and report back to the subcommittee. The employer focus groups notification was done by letter initially and then by follow-up phone call. An additional session was held in the evening. A suggestion was made that perhaps the department utilize and email survey to solicit additional input from employers.

Legislative Concepts

WCD Legislative Concept –Regulatory Streamlining

Mr. Shilts provided a copy of the legislative concept as well as the fiscal impact estimate. Three main concepts addressed in the concept are streamlining administrative functions regarding temporary rules, change of attending physician and lump sum payments; removing regulatory burdens on stakeholders regarding lump sum payments; and providing the Director sufficient authority to hold managed care organizations accountable for performance.

Committee Discussion: Regarding the recommendation for additional authority for managed care organizations there have not been any recent issues that have come before the department. Regarding the lump sum payment requests, the majority are approved, but there are some instances in which the request is denied. A suggestion was made that the change also include the exclusions when a lump sum payment would not be approved. Additional information was provided on current procedures when a worker requests change of attending physician beyond the allowed three.

Guaranty Contracts

David Lake, Liberty Northwest

Mr. Lake gave background on guaranty contracts. A written outline was provided as well as an example of a guaranty contract. Mr. Lake reviewed the bullet items of the outline. Liberty Northwest recommends that the guaranty contract requirement be discontinued.

John Shilts, Workers Compensation Division

Liberty Northwest as well as other insurers have contacted the department. An internal task force including staff from the Workers' Compensation Division, the Insurance Division and the Small Business Ombudsman is reviewing the guaranty requirement. Staff is looking at the various options available including looking at options used by other states.

Committee Discussion:

If the guaranty contract were eliminated, WCD would have to gather their information regarding the insurance in some other way. There are other models available. That is something that the internal task force is looking at. Other departments as well as employers may also use the data.

Pharmacy Issues

Suzanne Bahr, Shawn Miller, LNW

Written testimony was provided to the committee. Liberty NW uses a pharmacy network provider, allowing them to obtain the prescriptions at a lower cost than the fee schedule. Out of state third-party payers are entering the system. LNW expressed concerns with the impact of third-party payers. LNW recommended that Oregon implement a first fill program in which WCD would contract with a pharmacy benefit management company to cover the costs for all injured workers independent of their claim status with a fill limit of 30 days.

John Shilts, Workers' Compensation Division

The division did have meetings regarding the third-party pharmacy billing issue. The third-party billing companies were going to make a proposal, but to-date no proposal has been made. 85% of the claims that are filed are accepted. The majority of workers who have filed a claim are covered by a health benefit plan.

Committee Discussion:

The committee asked for information on the difference between the costs paid by the insurer with the pharmacy network provider and the price of the third-party payer. Depending on the drug, the difference is between 75-90%. The cost of the first fill would be paid by the insurer. For a worker covered by a health plan, the cost would be covered by their health plan. There would need to be some way to verify at the pharmacy that they do have a workers' compensation claim. A first fill program would also provide more immediate access to prescriptions.

CDA Approval Authority in Mediation

Chris Moore, Oregon Trial Lawyers Association

Draft language amending ORS 656.236 was presented to the committee. The Oregon Trial Lawyers Association is proposing that the mediator would have to be an employee of the Workers' Compensation Board and would be allowed to sign the Claims Disposition Agreement. This is a change from what is in the draft language. This change would speed up the process and would allow the person who is most familiar with the claim to sign the agreement.

Worker Litigation Expenses, Randy Elmer, Oregon Trial Lawyers Association

LC 274 was submitted to the committee. Mr. Elmer summarized the concept, which would authorize payment of reasonable fees, expenses and costs associated with litigation of workers' compensation claims if the worker prevails against claim denial. The reasonableness of the costs would have to be approved by the Workers' Compensation Board.

Action:

A motion was made by Lisa Trussell to approve forwarding the WCD Regulatory Streamlining concept to Legislative Counsel for drafting, Bob Shiprack seconded the motion. A vote was taken and the following committee members voted aye: Sheri Sundstrom, Bob Shiprack, Linda Jefferson, Lon Holston, Greg Miller, Mike O'Rourke, Lisa Trussell, and Ellen Cutler. There were no Nay votes.

The meeting was adjourned.