

## NOTICE OF PUBLIC MEETING

### WORKERS' COMPENSATION MANAGEMENT-LABOR ADVISORY COMMITTEE

**Friday, February 9, 2007**  
**10:00 a.m. – 12:00 p.m.**

Conference Room 260  
Labor & Industries Building, 350 Winter Street NE, Salem, OR  
(A map is available upon request)

#### ***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  
John Kirkpatrick, IUPAT District Council, Portland, OR  
Tracy Brill, Port of Portland, Portland  
Cory Streisinger, Director, Department of Consumer and Business Services  
Lon Holston, Grants Pass, OR  
Ellen Cutler, Harry and David, Medford, OR

#### ***Committee Member Excused:***

Lisa Trussell, Associated Oregon Industries, Salem, OR  
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR

#### **Meeting Agenda**

Approve minutes of January 5, 2007 and January 26, 2007 full MLAC meetings

A motion was made and seconded to approve the January 5, 2007, minutes as written. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Ellen Cutler, and Linda Jefferson. Motion passed.

A motion was made and seconded to approve the January 26, 2007, minutes as written. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Ellen Cutler, and Linda Jefferson. Motion passed.

#### **Discussion of proposal regarding care providers**

The committee provided a brief overview of the proposed care provider changes discussed at the last MLAC meeting and agreed to review and discuss each point prior to taking a vote.

The committee discussed commencement of treatment.

Action: A motion was made and seconded that commencement of treatment should begin from the date of initial visit for chiropractic physicians, naturopathic physicians, podiatric physicians, and physician assistants. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Ellen Cutler, and Linda Jefferson. Motion passed.

The committee discussed expanding the number of days of treatment and expanding the number of visits.

Action: A motion was made and seconded to expand the number of days of treatment to 60 days and to expand the number of visits to 18 visits for the following non-attending physicians: chiropractor, naturopath, podiatrist, and physician assistant. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Ellen Cutler, and Linda Jefferson. Motion passed.

The committee discussed an MCO "come-along provision".

Action: A motion was made and seconded not to recommend changes at this time to the current MCO process as it relates to a "come along provision.". A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Ellen Cutler, and Linda Jefferson. Motion passed.

The committee discussed authorization of temporary disability benefits. The committee asked for clarification in cases where an injured worker is was returned to modified duty. The department provided clarification.

Action: A motion was made and seconded to allow chiropractic physicians, naturopathic physicians, podiatric physicians, and physician assistants to authorize temporary total disability benefits for 30 days from the first date of visit. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Ellen Cutler, and Linda Jefferson. Motion passed.

Action: The committee asked the department to draft suggested amendment language supporting the recommended changes. The department will draft the amendments and the committee will review prior to submission to Legislative Counsel.

The committee discussed education of non-attending providers.

Action: A motion was made and seconded to require all non-attending physician providers to certify they have reviewed workers' compensation education materials. . A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Ellen Cutler, and Linda Jefferson. Motion passed.

The committee discussed a provision for DCBS to report back to MLAC by December 31, 2008 on changes in treatment patterns and cost impact. It was agreed that there would not be significant data by December 31, 2008 and a request was made that the date be extended to December 31, 2010. In addition, a recommendation was made that the committee request the study and report from the department and that no change to statute be made. A sub-committee will meet and discuss the specific information required by the committee.

### **Proposed Legislation**

#### **HB 2244 Sunset removal– Permanent Partial Disability – review amendment language**

Postponed to February 22, 2007 meeting

#### **HB 2247 Sunset removal– Nurse Practitioners – review amendment language**

Postponed to February 22, 2007 meeting

**SB 202 Requires farm labor contractors to provide workers' compensation insurance for workers.** A copy of the bill, analysis, and fiscal impact statement were provided to the committee. The documents are part of the record.

Public Testimony:

Marc Zolton, BOLI and Chistine Hammond, BOLI-Wage and Hour Division

Ms. Hammond provided a general overview of the current farm and forest labor requirements and deficiency in the law. She also gave testimony on the changes this bill recommends.

Committee Discussion: None.

Action: A motion was made and was seconded to support SB 202. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Ellen Cutler, and Linda Jefferson. Motion passed.

**SB 253 Approval of workers' compensation claim disposition agreement.** A copy of the –1 amendments, analysis, and fiscal impact statement were provided to the committee. The documents are part of the record.

Public Testimony:

Randy Elmer, Oregon Trial Layers Association

Mr. Elmer testified the bill would streamline and simplify the disputed claims settlement process. This bill will put the claims disposition agreement and the disputed claims settlement together in the approval process. The bill as drafted does not accomplish the intent and amendments have been provided.

Committee discussion: The committee discussed the suggested change and how it would benefit the worker. The need for a cooling off period was discussed, and it was clarified that this bill would not change the 30-day cooling off period. There was some concern for the un-represented workers entering into these agreements. Abbie Herman, Workers' Compensation Board provided clarification of the un-represented worker's choices.

Action: A motion was made and seconded in support of the –1 amendments to SB253 and support of SB 253 as amended. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Ellen Cutler, and Linda Jefferson. Motion passed.

**SB 404 Payment of certain reasonable fees, expenses and costs associated with litigation of workers' compensation claim.** A copy of the bill, analysis, and fiscal impact statement was provided to the committee. The documents are part of the record.

Martin Alvey, Oregon Trail Lawyers Association

Mr. Alvey gave a brief overview that this bill will allow a worker to recover reasonable costs associated with advancing a case through the litigation process. This only would apply to workers who prevail over their case. Mr. Alvey introduced his client Jeff Farmfarther.

Jeff Farmfarther gave a brief overview of his experience as an injured worker, the litigation process and the cost associated with fighting a denied condition.

Jim Egan, Trail Lawyers Association and Grace Carroll

Mr. Egan introduced Grace Carroll wife of John Carroll a permanent and total disabled worker. Mr. Egan gave a brief overview of the experience of Grace Carroll's husband and the litigation of defending his permanent total disability and the importance of supporting this bill.

Grace Carroll testified to the experience she and her husband had in fighting for his permanent and total disability status.

Chuck Lundeen, Liberty Northwest

Mr. Lundeen testified that Liberty Northwest opposes this bill. He discussed the fees allowed by opinion and orders and fees being absorbed by the workers' attorney. He also talked about the worker requested medical exam as a way for a worker to have access to medical exam reports without cost.

Randy Elmer, Oregon Trial Layers Association

Mr. Elmer provided testimony that this bill is about costs to the worker and not about fees for the attorney. He also talked about the worker requested medical exam.

Chris Davie, SAIF Corporation

Mr. Davie testified that SAIF opposes this bill. This bill allows for injured workers to be reimbursed for cost incurred while defending their claim in the litigation process. This bill does not allow for the insurance carrier to be reimbursed for their costs if they prevail in the case.

Nyla Jerasik, Oregon Workers' Compensation Lawyers Association

Ms. Jerasik testified in support of this bill because it would benefit the worker. She provided brief testimony of her recent experience as a lawyer in a litigation case.

Committee discussion: The committee asked for clarification on what the Board allows for assessed fees. Abbie Herman provided clarification to the Administrative Rules used to determine fees awarded.

Action: None

**SB 405 Vocational assistance benefits provided in workers' compensation claims.** A copy of the bill, analysis, fiscal impact statement, and a document named Recommendations from 2004 MLAC Interim Study on Return-to-Work- Updated Report – January 2007 were provided to the committee. The documents are part of the record.

Public Testimony:

Nyla Jerasik, Oregon Workers' Compensation Lawyers Association

Ms. Jerasik provided testimony in support of this bill and reviewed testimony she had previously testified to in 2004 when the committee reviewed the return-to-work programs. Ms. Jerasik testified regarding her own need for vocational assistance as an injured worker and the need for a change in the system.

Chuck Lundeen, Liberty Mutual

Mr. Lundeen testified in opposition to SB 405 and that this bill recommends review at 60 days of timeloss for vocational assistance eligibility. Mr. Lundeen testified that 60 days is too early for a worker with a serious injury to be ready for a vocation program.

Robert Malone, Liberty Northwest

Mr. Malone testified in response to the suggested changes in this bill. He provided general testimony opposing changes the current system.

Chris Davie SAIF Corporation,

Mr. Davie provided testimony in opposition to the bill, and testified that the bill would likely create a big financial impact to the workers' compensation system.

Committee discussion: The committee reviewed and discussed the document "Recommendations from 2004 MLAC Interim Study on Return-to-Work- Updated Report – January 2007. The committee discussed the following concepts: financial impact of the bill, the importance of return to work, and wage considerations in determining eligibility. The committee asked the Department to provide data on the current system, impact of changes made as a result of the 2004 interim study, and how wage at injury impacts eligibly for the program

**SB 268 Judicial review of orders of the Workers' Compensation Board.**

Postponed to February 22, 2007 meeting

**LC 1941 Guaranty Contracts**

Postponed to February 22, 2007 meeting

Meeting adjourned at 1:25 p.m.