

NOTICE OF PUBLIC MEETING  
WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE  
DEATH BENEFITS SUBCOMMITTEE

March 14, 2008  
1:30 p.m. – 3:00 p.m.  
Conference Room F, Labor & Industries Building  
350 Winter Street NE, Salem, Oregon  
(A map is available upon request)

***Committee Members Present:***

Linda Barno, ESIS, Inc., Portland  
Lon Holston, Laborers' International, Local 483, Portland  
Greg Miller, Gunderson LLC, Portland  
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin  
Sheri Sundstrom, Hoffman Construction Company, Portland

***Committee Members Excused:***

Tracy Brill, Portland Fire Fighters Association, Portland  
Ellen Cutler, Harry and David Operations Corp., Medford  
Bob Shiprack, Oregon Building Trades Council, Portland  
Cory Streisinger, Ex-Officio Member, Department of Consumer and Business Services, Salem  
John Kirkpatrick, IUPAT District Council, Portland

Sheri Sundstrom, subcommittee chair, called the meeting to order at 1:30 p.m.

Ms. Sundstrom summarized the agenda for the meeting. The topic for the meeting was Funeral and Burial benefits. The agenda contained: a summary of Workers' Compensation Division activities; a presentation from workers' compensation insurers; a report by Jennifer Flood, Ombudsman for Injured Workers, on her activities and outreach efforts; and time for public comment and committee discussion.

***Summary of the Workers' Compensation Division's activities – Mike Manley, Information Management Division***

The information presented to the subcommittee was divided in two parts (see handout):

The first part came from discussions with regulators and industry groups, more specifically the Oregon Mortuary and Cemetery Board (OMCB) and the Oregon Funeral Directors Association (OFDA). Both groups confirmed the average cost for a traditional funeral was typically around \$6,000, which is currently less than the Oregon death benefit cap of approximately \$7,200.

Both OMCB and OFDA believed the word "burial" was problematic since Oregon has a high rate of cremation. The groups suggested calling funeral or burial benefits "final expenses."

The second part contained information about burial costs. In the absence of government data, the Everest Price Finder Report seems to be the best source of information about funeral/burial benefits. According to Everest, costs for “final disposition” range from about \$2,000 for cremation to about \$5,000 for funerals.

Finally, the back of the packet contained tables that compare other states’ funeral/burial benefits. The tables are current as of January 2007, and are arranged from highest amount of benefits to the lowest.

Mr. Manley offered a word of caution: some states, like Oregon, pay actual costs of funerals/burials up to a maximum; other states, however, pay benefits in a flat amount so they may look higher than they actually are.

Ms. Barno asked if death benefits were included in the figures as well, to which Mr. Manley responded in the negative. He added that the national median cost of burials or funerals is \$6,000, so Oregon’s maximum benefit of approximately \$7,200 exceeds that amount by 20%.

Ms. Sundstrom asked whether Oregon, having an average a little higher than the nation’s \$6,000, is meeting the burial expenses with its \$7,200 allowance.

Mr. Manley responded that, although the locality, the type of services provided, and other factors play a part in the difference in costs, Oregon’s allowance in general meets the burial/funeral costs and actually exceeds it by about 20%. The industry, he added, does not seem to have concerns about the appropriateness of the benefits.

Ms. Barno brought up the question of separating burial and funeral costs. Ms. Sundstrom asked about discussions with industry groups about replacing the word “burial” with the word “funeral” due to the prevalence of cremations. Further discussion took place around using the terms “celebration of life” or “final disposition” rather than “funeral.” Mr. Manley said that he was not a member of the group that discussed those issues with the industry groups so he would not be in a position to comment about any of them.

Cara Filsinger of the Workers’ Compensation Division offered to review her notes and provide to the committee the names of those who talked to the Mortuary Board in case the committee has questions of them.

***How SAIF processes fatality claims – Lisa Wilch and Chris Davie, SAIF Corporation.***

Ms. Wilch explained that at SAIF Corporation, five adjustors process fatality claims in Oregon. Fatality notices come into SAIF from a variety of sources, from employers and the media, to beneficiaries, hospitals, funeral homes, or even OR-OSHA. Once SAIF has notice of a fatality, it determines whether that fatality is its responsibility. If not, SAIF will find out which insurer is responsible for processing the claim and will pass along the information.

If SAIF is responsible for the claim, it will set up a skeleton record to start managing the claim. Depending on the source of the information, SAIF may contact the family of the deceased

worker. SAIF leaves it up to the employer to determine the best time to contact the worker's family, since sometimes the employer has more information and a closer relationship with the family than SAIF does. However, SAIF offers constant reassurance to the employer that it will be there to help the employer throughout the process.

In cases where the death is obviously related to the job, the investigation into the compensability of the claim starts immediately regardless of whether the beneficiaries have started a claim. SAIF might work closely with the employer to investigate what happened. OR-OSHA is also a great resource because it investigates all aspects of the fatality.

If the worker spends time in the hospital before his or her death, SAIF may send a nurse consultant along with the claims adjustor to talk to the family at the hospital. As an example, Ms. Wilch recalled one instance in which donor questions and the harvesting of organs were at issue.

If SAIF has questions about whether a fatality was in the course and scope of the worker's employment (like a heart attack, for example), SAIF waits until the beneficiaries file a claim before it starts investigating. If the employer indicates he suspects substance abuse by a worker, SAIF collects toxicology test results for its files.

To reflect the change in the law in regard to domestic partners, SAIF has also updated its letters and other communication tools.

As to what SAIF actually pays for, Ms. Wilch said SAIF receives bills for a myriad of costs, from catered events (one case in which the employer ended up paying), to necklaces with cremation remains, to standard burial expenses (headstones, urns, etc.). Some items are clearly related to the burial, while others are not, specially lately with the celebration of life events in which the possibilities of what can be done is limited only by the creativity of the relatives and loved ones of the deceased.

Ms. Sundstrom asked if the SAIF panel if they would have concerns about using the words "final disposition" instead of the words "burial" or "funeral" or about the idea of a set amount being paid to the family for burial/funeral expenses as opposed to reimbursing burial costs up to a maximum.

Mr. Davie said expenses are incurred by the funeral home, and sometimes by third parties and if SAIF pays the estate of the worker in a lump sum, there is no assurance that the money will reach the funeral home or the other parties. There could be, for example, funeral homes could call SAIF after six months wondering why they had not received payment for services already provided. To ensure prompt payment of providers, some alternatives may be to send to the estate of the worker a check for the remainder of the allowance after all bills for the funeral have been paid, or to itemize bills in a way that ensures all debtors are paid promptly for services rendered.

Ms. Wilch also added that in modern times, it is difficult establishing who is a part of the estate.

Ms. Barno asked how often problems arose, i.e. how many times had SAIF run into controversial situations where someone might have wanted something outrageous to be covered under funeral expenses.

Ms. Wilch answered there had not been many. The catered event mentioned earlier, she said, was probably one of the most egregious attempts. Going back to the previous issue of what is an estate, she added that the definition of family has changed since the statute was enacted, which makes SAIF's job of managing burial benefit payments more difficult.

Ms. Barno said it would be beneficial to the committee to hear from a representative of the funeral home industry about his or her perspective, and obtain information about what is included in the funeral home's expenses.

Ms. Sundstrom commented that the donor part was interesting, as the harvesting of organs presents a unique situation.

Ms. Wilch explained hospitals do a good job at explaining to the parties that harvesting and all procedures and drugs related to it are paid by the recipients of the organs. Still, she said, SAIF has been billed for organ harvesting before, and has been forced to deny the bills.

Ms. Sundstrom then asked if SAIF would explain the process to the families if SAIF was denying the bills sent to them, to which Ms. Wilch answered in the affirmative, adding that bills she has seen for the process of keeping a body viable for organ harvesting can run well into the \$80,000.

Ms. Barno wanted to know at what point the insurer starts allocating the benefits. For example, she wanted to know whether burial benefits cover transportation of the body.

Ms. Wilch answered that it depended on the situation. If the worker died on the job, then SAIF would cover the transportation and the preparation of the body. If the worker had a hospital stay before the worker passed away, the burial benefits would probably start the moment the worker died.

Mr. Davie asked whether SAIF would prorate the payments if three different providers, for example, billed SAIF for services that amounted to, say, \$10,000. Ms. Wilch responded that Mr. Davie's question was a good one, that she did not know the answer because that situation had not presented itself yet, but added that the hypothetical situation lay the importance of communicating with the families early so that they did not exceed their allowance limit.

Ms. Sundstrom pointed out that cultural differences may dictate that some burials be immediate, which does not leave time to convey to the families that the maximum they can spend is only \$7,200. Ms. Sundstrom wondered what happened when a situation arose in which the family went over their allowed amount.

Ms. Barno also asked Ms. Wilch if there were ever a situation in which the funeral did not take place because the insurer did not make the money available to the family up front.

Ms. Wilch responded that she did not know about the latter question, but that in the majority of cases (about 95% in her opinion), the employer pays the difference if the family spends above what is allowed for a funeral. Additionally, transportation of the body may add up significantly to the total allowed, specially when the accident happens in a place far from the home of the worker.

Ms. Barno brought up questions about families having or wanting food and catering at a funeral.

Ms. Wilch said funeral expenses vary depending on the situation. SAIF, she explained, has the advantage of being a big insurer, which means adjusters have gone through multiple cases and scenarios, and can talk to each other and come to a consensus as to what to pay and what not to pay. Other insurers, however, have neither the resources nor the experience, so when a fatality claim happens every two years, for example, adjusters do not know how to handle a situation. That is why brochures are needed to aid the funeral director in figuring out what is covered and what is not.

Of the ten cases Ms. Wilch saw last year, nine were paid under the cap. Only the catering case was over the allowed amount.

***Outreach report – Jennifer Flood, Ombudsman for Injured Workers.***

Ms. Flood's experience in dealing with fatality claims is growing as she gets more involved with the process. Some claims with which she has dealt have been denied, and some have been accepted, and the only constant throughout has been that there is no set "this is the way it is." Because everything (from food, to transportation, to benefits) varies from situation to situation, families are often confused as to what is covered under the allowance, where – and to whom – the money goes, etc.

Ms. Flood said she would like it if payments for burials and funerals were made in a set amount so that funeral directors as well as families would know exactly on how much money to count, since knowing how much would be there helps the family budget for services. In explaining benefits to families, she often had to use terms like "the typical burial, cremation, etc.," but questions always followed in regard to flowers, arrangements, food, and other details of the funeral.

In her conversations with the OFDA, it became apparent that there is a noticeable shift from traditional funeral ceremonies to "celebration of life" events. For funeral homes, this has translated into the physical expansion of the space to accommodate families' wishes and styles (they now provide "hospitality rooms"), or to allow for catering or other services.

In regards to payment for the funeral services, some families have alternative or previous arrangements (pre-need programs, for example) which exonerates insurers from paying for burial expenses. There are other instances in which friends of the family or the community have made donations to help with the funeral costs and, again, the insurer does not have to pay for burial expenses in these cases. Ms. Flood added she did not want to see legitimate beneficiaries losing out on a benefit that is provided by statute.

Additionally, Ms Flood said the statute does not require the insurer to send the burial allowance to the estate of the worker when the worker does not have any qualified beneficiaries. Some insurers do make the check out to the worker's estate, while others send the check to the worker's last known address. Neither of these actions is required by law. Ms. Flood would like to see the statute refined to make it a statutory obligation for the insurer to send the burial allowance to the estate of the worker.

Ms. Flood gave an example of another concern of hers: the current statute says if that a worker, who was just awarded but has not yet received a permanent partial disability (PPD) award, and who has no beneficiaries for the purpose of workers' compensation, passes away due to a non-work related injury, the insurer does not have to pay the PPD to his estate, only the burial benefits up to the maximum allowed.

Mr. Savage asked Ms. Flood what she would like to see happen.

Ms. Flood said she liked the idea of a flat payment, though she agrees with SAIF that there may be problems in determining who receives the money and whether the insurer will be responsible for paying for services and then sending the leftovers to the estate of the deceased. A flat payment, however, would solve the issue of a family having to make a choice between the celebration of life and a more traditional funeral, and would allow people to plan for final disposition services according to their wishes, which may not be covered under traditional plans.

Ms. Sundstrom asked about transportation of the body and whether a set amount would cover the transportation of the body if the worker died on a jobsite across the country, for example. She was concerned that the set amount may not cover the huge burden of transporting the body, and added that there should be a provision in the statute to cover extenuating circumstances like that.

Ms. Flood pointed out that every situation, by nature, is very delicate and also very different at every step. In cases where the claims have been denied, for example, spouses in a small town may also have to deal with having to face a funeral director, whom they know personally, and to whom they cannot pay for services the funeral directors have already provided.

Ms. Sundstrom said she would like to see a checklist of issues that have come up in Ms. Flood's dealings with fatality claims that the committee had not envisioned until today, like different insurance policies and benefits, and credit cards needing death certificates or that would forgive debt if a person dies.

Ms. Flood reiterated that every claim has something really quirky and really different about it.

Mr. Miller asked what the average funeral director's view is of the workers' compensation system.

Ms. Flood responded that most funeral directors were not even aware that workers' compensation insurers covered burial/funeral expenses. At the meeting Ms. Flood had with OFDA, for example, an attendee approached her with questions about a claim with which he had

been dealing; and a day after the meeting, she was contacted by another attendee who had just seen a customer with a workers' compensation-related fatality claim.

Ms. Flood added that a brochure is on the way for the families of workers that are killed on the job, and that funeral directors will keep the publications handy to give out to clients.

Ms. Barno said a brochure or publication for employers would be really useful, as small employers do not always count with the help of a risk or workers' compensation manager.

Ms. Flood continued on to explain the process that takes place when a fatality happens: First, OR-OSHA sends notifications that have Ms. Flood's contact information at the bottom; when Ms. Flood receives fatality notifications, she contacts the responsible insurer and they both approach the spouse. The spouse is often so fraught, that he or she does not contact Ms. Flood back until a few weeks have passed and emotions have settled down a bit.

Mr. Holston asked if there was any discussion or information in the pamphlet about death certificates and how to obtain them.

Ms. Flood responded that spouses or family members buy the death certificates from the funeral homes. The family members then provide the death certificate to the insurer. She added that sometimes, the worker has to obtain the death certificate from the medical examiner. This often entails either visiting the medical examiner's office or obtaining the full record, which can sometimes be gruesome.

Dan Schmelling, manager of the Benefits & Certifications Unit of the Workers' Compensation Division added that from his experience the funeral director can help the family/beneficiaries determine the number of death certificates they will need. "Original" certificates are needed for the insurers, creditors, IRS, etc. It's easier to order what is needed, plus extras, then to order additional death certificates at a later date. Mr. Schmelling believes the family/beneficiaries have to pay for all of the death certificates.

Ms. Barno asked if there were any issues with the death benefits not being enough, except for catering.

Ms. Flood said that not specifically. A couple of them had financial hardships in addition to the burial, i.e. house payments, etc.

Ms. Sundstrom said the issue of death benefits, regardless of the outcome of the study MLAC has been charged with, has yielded immense amounts of information and the committee is nowhere near making a decision in the matter. She asked Ms. Flood if there are any other issues the committee should be aware of.

Ms. Flood repeated her previous concerns about the cases in which there are no eligible beneficiaries.

Mr. Savage asked if eligible beneficiaries were potentially not the same beneficiaries as listed in the will, to which Ms. Flood answered in the affirmative. She is currently dealing with a case in which the deceased's sister is the beneficiary in his will, but she does not qualify as a beneficiary under the workers' compensation laws.

Committee members asked Ms. Flood for the statutes dealing with PPD after death, which she provided: ORS 656.218 (continuation of PPD benefits after death) and ORS 656.005 (definition of beneficiaries).

John Fowler, a representative for the insurer Liberty Northwest, said that of their own accord, Liberty remits a check for the remainder of the PPD to the beneficiaries or the estate of the worker, although they are not required by law to do so.

Ms. Barno said she had not realized the transportation of the body qualifies under the burial expense. She would like to see transportation and burial costs separated since transportation costs can eat up at the benefit rather quickly.

Mr. Savage added that the policy question then becomes whether the statute trumps the deceased's will.

***Work session – Committee Members.***

Ms. Sundstrom asked if there was discussion to be had that was specific to burial benefits.

Mr. Holston said his concern lay with the death certificates since it was a huge expense and such an intricate part in trying to collect insurance and other benefits. There should be specific statutes or rules which said that under specific circumstances, a beneficiary could get as many death certificates as they needed.

The committee agreed.

Ms. Barno asked if death certificates are included in the burial benefits.

Ms. Wilch said the funeral home often bills the insurer for the death certificates issued to the family.

Mr. Holston raised the question of what expenses the family would choose to cover with the burial benefits, since the money could be better spent in things other than death certificates. He asked what is covered at a funeral, and whether there is a flat amount being paid out to the family.

Ms. Barno commented that a lot of people are now having burials by sea, which can be pricey.

Mr. Holston added: what happens to the rest of the money? Who receives what? In the instances in which there are preplanned arrangements in place, how do those arrangements interact with

the statutory burial benefits? And where does the remainder of the money go if there are preplanned arrangements?

Ms. Sundstrom asked Ms. Flood to request from funeral directors a list of all their services since so many new things were brought up at this meeting of which the members were not aware. When the worker does have preplanned arrangements, the issue circles back to the payment of the flat fee for burial services, and the question again becomes what happens to the benefits when there are preplanned arrangements in place?

Mr. Miller pointed out that the other issue posed by the OMCB was that the words “burial” and “funeral” were changed to “final disposition.”

Ms. Barno was concerned about the possibility of extensive (and expensive) litigation just to determine who the estate is when the worker does not have any qualified beneficiaries and the insurer is giving out a flat amount for burial benefits.

Ms. Sundstrom asked how other states pay out death benefits.

Mr. Manley said it would not be difficult to obtain information from other states’ statutes, provided they specify in statute what they do.

Ms. Sundstrom said there must be a way to figure out what the \$63,500 in Kentucky goes to.

Mr. Miller brought up a concern – if the spouse spends \$3,000 in a final disposition, what happens to the remaining \$4,000?

Ms. Sundstrom reminded Mr. Miller that the committee has not arrived to any conclusions as to how, or to whom, the money will be disbursed.

The committee agreed that “beneficiary” and “estate” are different things, and Mr. Savage added that “estate” is defined by the will, and in the absence of the will, estate is defined by statute.

Mr. Holston suggested changing the name to the subcommittee to the Final Disposition Subcommittee.

Ms. Sundstrom asked Ms. Filsinger what was on the agenda for the next subcommittee meeting.

Ms. Filsinger listed the following possible topics:

- " Beneficiary categories;
- " Lump sums generally and as they relate to the benefits and if the committee wanted to consider changing or adding language about that;
- " Updates to the communications efforts by Ms. Flood and her office; and
- " Benefit amounts.

Ms. Sundstrom said the committee should probably discuss the issues surrounding beneficiary categories next, how other states define “beneficiary,” etc.

Mr. Miller said that changes to domestic partnership laws should be incorporated into the discussion about what constitutes the estate and who are beneficiaries.

Ms. Wilch reminded the committee that statutory language currently fails to reflect the recent changes to the law. SAIF, on their own accord, has started to make changes to their notices to reflect the modifications in the law.

The meeting was adjourned at 2:45 p.m.