

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

June 26, 2008
2:00 p.m. – 3:00 p.m.
Conference Room 260, 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
Jeri Ray, Timber Products Company, Springfield
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
John Kirkpatrick, IUPAT District Council, Portland
Bob Shiprack, Oregon Building Trades Council, Portland
Cory Streisinger, Ex-Officio Member, Department of Consumer and Business Services, Salem

DEATH BENEFITS SUBCOMMITTEE

Sheri Sundstrom, subcommittee chair, called the meeting to order at 2:04 p.m.

There was unanimous consent by the subcommittee that the minutes from June 9, 2008, be adopted.

Lou Savage announced the department submitted a legislative concept for death benefits, which will allow MLAC to fill in the blanks when the committee reaches a decision.

Cara Filsinger, Workers' Compensation Division, presented the evaluation tasks set forth by the legislature in SB 485 for the subcommittee to consider, this includes but is not limited to:

- Burial benefits as it compares to actual cost of burial
- Current formulas for determining benefits – burial and dependent benefits
- Categories of beneficiaries and who is entitled
- Feasibility of providing lump sum payment
- Anything else MLAC wanted to go over

Ms. Filsinger discussed the death benefits discussion option document that reflects possible options for issues covered in the subcommittee. She said the draft language submitted to

legislative counsel changed the statutory terminology from burial to final disposition. Depending on the schedule and decisions of the committee, they will have a vehicle in front of the governor to make changes to the death benefits legislative concept.

Ms. Sundstrom said for the Behursts the concern was what the burial contained and the Willbergers concern was a car left unpaid and student loans, which they had co-signed for with their daughter. Parents are left with bills and there is nothing to pay the bills because they are not considered dependents.

Jennifer Flood, Ombudsman for Injured Workers, took on the task of outreach to the families of work place fatalities and funeral homes. She said since December 1, 2007 to present, she has worked with the families of approximately 17 or 18 fatalities.

The subcommittee considered and questioned the discussion options document for burial benefits, benefits for workers with no dependents, and other topics. The subcommittee discussed the following:

- Statutory Terminology
 - Ms. Flood recommended final disposition of the body and funeral services after discussing terminology with industry people.
 - Ms. Sundstrom said she wanted terminology that would not be questioned as part of the burial benefit to include the funeral service and final disposition of the body.
- Benefit Level
 - The subcommittee looked at multiples of the State Average Weekly Wage (SAWW) to determine a benefit level appropriate for fatalities. Ms. Sundstrom suggested 20x SAWW at approximately \$15,000 for the 2008 fiscal year.
 - Ms. Sundstrom said a worker with no dependents does not receive a benefit. Instead of adding a new benefit, have a benefit level within the final disposition of the body and funeral services. Any funds left over from the final disposition of the body and funeral services, will be given to the estate.
 - Greg Miller asked if someone has a \$15,000 cap and \$10,000 is reached then the extra goes to the deceased worker's estate and the personal representative for that person can do as they wish with the funds.
 - Ms. Sundstrom said this system is not set up to pay for pain and suffering and she is very sensitive to this.

-BREAK- Labor members caucused for 10 minutes.

Ms. Sundstrom asked labor members what they thought of the benefit level suggestion. Lon. Holston said Labor liked the idea, but they prefer the flat rate rather than up to. Labor thought the 20 x SAWW was an appropriate amount.

Ms. Filsinger presented information regarding the Permanent Total Disability (PTD) issue. If a worker is found PTD and they die while in PTD status and they have a spouse and dependents, then they are eligible for death benefits by ORS 656.204, including the burial allowance. If the worker does not have a spouse or dependent, then they are not eligible for it but the burial allowance is included. Ms. Filsinger offered to check the wording again to confirm this is correct.

Ms. Sundstrom said MLAC needs to be sensitive to this area and make a policy decision. She said a stakeholder asked if this comes out of the Workers' Benefit Fund? She asked is this a possibility and how would that work?

John Shilts said on the PTD deaths the majority of those costs come out of the Workers' Benefit Fund. If the death is recent, the insurer or the employer would be responsible for the statutory benefit that was in effect at the time the worker went to PTD.

Lou Savage clarified there would be a distinction between the PTD and the instantaneous. Mr. Shilts agreed with this statement.

Ms. Flood brought up an issue dealing with a worker that dies prior to all their PTD being paid out. This statute loops around to if there are no dependents then up to the burial amount is paid. This is an area Ms. Flood believes needs to be taken into consideration as well if the other part is changed. Ms. Sundstrom requested to see this presented at the next meeting.

Mr. Miller said thinking back to the legislature's evaluation tasks Ms. Sundstrom's proposal addresses it. In regards to the beneficiaries, Ms. Sundstrom said she did not hear from the committee that the beneficiaries need to be changed or they were unreasonable.

Mr. Miller said the Behursts' and Wilbergers' issues are addressed and that is what is important to note.

The subcommittee discussed the following under claims processing on the discussions option document:

- Claims Processing / Benefits for Worker with no Dependents
 - Ms. Sundstrom said when in the midst of a death, there are so many emotions, if a lump sum check is issued to the estate we need to make the service providers are receiving payment. She wishes to ensure the service providers receive their reimbursed before writing a check to the estate.
 - Ms. Sundstrom's suggestion is the option where the insurer reimburses bills submitted up to a limit, but returns the "unused" portion of the benefit to the worker's estate at a specific time.
 - Mr. Savage asked by using the word reimbursement does that mean the insurers just reimburse or do they just approve? Do the insurers decide to approve the bill or is it an accounting process? Ms. Sundstrom said she would like to see no dispute as to what is covered in the reimbursement up to the limit.

- Linda Barno said from previous testimony there did not appear to be a problem with the current process for reimbursement to the businesses or what the reimbursement covered was disputed. She said through administrative rules a timeframe can be made for remaining funds.
- Mr. Holston is concerned people might go out and have \$15,000 dollar funerals. He would also like to revisit this decision in a couple of years to make sure it is working properly.
- Ms. Flood said she received some data from the Information Management Division (IMD). In 2007 there were 32 accepted fatality claims and approximately 21 fatal claims were denied. Burial benefits are not paid unless the claim is accepted.
- Ms. Flood said when the insurance company is direct paying the vendors for their services this is not a reimbursement. The current statute does not discuss reimbursements but talks about allowance.

The subcommittee discussed lump sum payments. Members were uncertain which lump sum payments were the focus of the legislature's evaluation task. Ms. Filsinger offered to listen to the record to see if there was something particular in mind for lump sum payments.

Ms. Sundstrom commended Ms. Barno for recommending discussion of benefit levels for surviving children when a surviving parent dies. Ms. Barno's concern is about a group of individuals 18 to 21 year of age who are solely dependent on one parent and that parent dies. The young adult will receive \$300 a month, however, Ms. Flood added that statute does provide for an increase to \$800 a month if there is no spouse. Ms. Barno wishes the subcommittee to take a look at this issue.

Ms. Sundstrom said there is a window and she asked if they do not go straight to college then they would lose the benefit? Ms. Flood said the question is if there is a gap between graduating from high school and then going to college are they still eligible for benefits?

The subcommittee discussed what happens when the spousal payment is given in a lump sum. Ms. Flood asked if then the child receives the 10% which is \$300 or the \$800 if the parent dies? Department staff offered to come back to the subcommittee with an outline of the problem and some options regarding this issue.

Mr. Savage said in addition to putting together a bill the department would like permission to begin writing a report for MLAC.

The following points are to be discussed at the next subcommittee meeting:

- PTD statutes that have to do with fatalities, as well as the workers benefit fund
- Lump sum payments

Ms. Filsinger said the department would work with Ms. Flood on the benefit levels for surviving children when a surviving parent dies.

Mr. Savage said in terms of statutory terminology, people agreed on final disposition of the body and funeral services and 20 x SAWW for benefit level.

The full MLAC meeting will be on July 9, 2008, at 3:00 p.m.