

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

March 13, 2009
10:00 a.m. – 12:00 noon
Conference Room 260, Labor & Industries Building
350 Winter Street NE, Salem, Oregon

Committee Members Present:

Greg Miller, Gunderson LLC, Portland
John Kirkpatrick, IUPAT District Council, Portland
Kathy Nishimoto, Duckwall-Pooley Co., Hood River
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin
Jeri Ray, Timber Products Company, Springfield
Lon Holston, Laborers' International, Local 483, Portland
Linda Barno, ESIS, Inc., Portland
Bob Shiprack, Oregon Building Trades Council, Portland
Sheri Sundstrom, Hoffman Construction Company, Portland
Cory Streisinger, Ex-Officio Member, Department of Consumer and Business Services, Salem

Committee Member Excused:

Tracy Brill, Portland Fire Fighters Association, Portland

FULL MLAC COMMITTEE

Sheri Sundstrom, committee co-chair, called the meeting to order at 10:03 a.m.

There was unanimous consent by the committee that the minutes from February 13, 2009 and February 27, 2009 be adopted.

2009 Legislation

Drew Hagedorn and Susan Lavier, Oregon Self-Insurers Association (OSIA), presented the following bills:

- HB 2705 – Modifies circumstances that require insurer or self-insured employer to contact injured worker for evaluation of eligibility for vocational assistance.

Ms. Lavier submitted supporting documents and an example of a notice of closure with additions to reflect the changes proposed by this bill for the record.

Discussion: John Kirkpatrick expressed interest in making sure the information added to the notice of closure example form available to workers if the bill passes. John Shilts, Workers' Compensation Division (WCD), said the changes to the form can be implemented by administrative rule.

Lon Holston inquired about how prevalent this problem is, the cost per evaluation, and how many evaluations are completed a year. Ms. Lavier said prior to the data from the department, OSIA did not even know this was a problem. The evaluations cost approximately \$400 to \$800 per worker and OSIA is not sure how many are completed per year.

There was discussion about employers having to do evaluations of eligibility for vocational assistance for employees that have returned to their regular work.

Chris Frost, Oregon Trial Lawyers Association (OTLA), claimant's attorney, asked for clarification on the reasons for the proposed changes. Ms. Frost would rather see this taken care of by administrative rule rather than in statute. She raised concerns about workers not reading the notice of closure form with the proposed additions made by OSIA.

Mr. Holston said he does not support the bill and feels there are other ways to fix the problem. He is concerned there is a lack of protections for workers and the system is driving them to litigation.

Linda Barno said she believes this is an honest effort to look at people that have been released for regular work but are not eligible for vocational assistance. They have the option of questioning why they are not getting an evaluation. She said there has to be some accountability for the injured worker.

Chris Davie, SAIF Corporation, said they are supportive of HB 2705. Mr. Davie offered to research the amount of money they have spent in the last year on evaluations of eligibility for vocational assistance. Greg Miller said he would appreciate seeing those numbers at the next meeting. Mr. Holston said he would feel more comfortable with the bill if there was more supportive data.

Sally Currie, Liberty, said she can also bring data regarding amount of money they have spent in the last year on evaluations of eligibility for vocational assistance to the next meeting.

Jennifer Flood, Ombudsman for Injured Workers, said the notice of closure is one piece of paper the worker knows is very important. The evaluation can also be an inconvenience for the worker as well because they might lose wages to go to the appointment to complete the evaluation. Ms. Flood said she would push for the information to be added to the notice of closure and to be in administrative rule rather than the bulletin.

ACTION: No action taken.

- HB 2706 (-2 amendment) – Authorizes insurer or self-insured employer to close workers' compensation claim if preponderance of medical evidence supports closure and attending physician fails to provide closing report after receiving request for report. Requires expedited reconsideration of claim closure unless waived by worker.

Susan Lavier, OSIA, explained HB 2706 with the -2 amendments. She said they often have problems with physicians that do not understand the difference between palliative care and medically stationary and refuse or are unwilling or unable to give administrative closure. The intent of HB 2706 is for physicians to respond with rates of closure within a timeline of 14 days.

Discussion: Mr. Kirkpatrick clarified that currently the division does not have enforcement to encourage doctors to give administrative closure. Ms. Lavier said they would like this bill to pass so they have a mechanism for compliance.

Bob Shiprack asked if OSIA had brought this concept to the Medical Advisory Committee (MAC). Drew Hagedorn, OSIA, said they attempted to meet with MAC and it did not work out.

Kathy Nishimoto expressed concerns regarding very good rural physicians that do not want to treat injured workers because they do not want to deal with the workers' compensation system. She believes the 14 day deadline is not enough time, especially for the rural doctors. Ms. Lavier said OSIA is willing to work with members to adjust the number.

Sally Curey, Liberty Northwest, said from their perspective there are so many cases they cannot settle because doctors refuse to settle claims. This bill would assist significantly in closing and reducing overpayment on claims and it would also reduce reserves posted on accounts because the claims cannot be closed. Ms. Curey said she is happy to go back to Liberty and obtain a formal position on the bill.

Chris Davie, SAIF Corporation, brought forward questions regarding HB 2706. He asked what happens if the attending physician misses the deadline, but sends something at a later time? Ms. Lavier said if they receive an attending physician's report before closure they would use that particular report.

Mr. Shiprack said the expedited reconsideration process does not exist so this will have to be fixed in the bill. He will speak with representatives from the Oregon Medical Association to see what they think of this bill. Mr. Shiprack is in favor of this bill.

Mr. Shilts, WCD, said people are often reluctant to bring in complaints about physicians. He mentioned there were 87 complaints since 2008 in regard to this issue. Mr. Shilts clarified the department does sanction physicians where they refuse to follow the rules, however, they cannot intercede if the physicians do not agree or cannot concur. Many physicians make referrals out to other doctors to do the ratings. Members asked if the 87 complaints were from the same physicians. Mr. Shilts offered to collect that information for the next MLAC meeting.

Mr. Kirkpatrick said his first choice would not be to allow sole determination of the insurer in this instance.

Mr. Miller acknowledged the physicians that do good work. He would also like to hear from MAC regarding the reasons why many physicians dislike the workers' compensation process.

Chris Frost, OTLA, claimant's attorney, and Elizabeth Cushwa, OTLA, would like the opportunity to look at the -2 amendments and they are interested in hearing what MAC has to say about this bill. Ms. Frost brought several concerns to the MLAC members' attention regarding HB 2706.

Mr. Shiprack asked if medical arbiters can look at the claims. Mr. Shilts said if the claim is in the reconsideration process and an arbiter is required they are selected at random.

- HB 2778 (with -1 amendments) – Requires Oregon Department of Administrative Services to adopt process to identify entry level and light duty assignments for injured state workers.

Barbara Smith, WCD, presented a brief summary of HB 2778 and answered questions for members. Ms. Smith explained this concept is currently in administrative rule, but Mary Botkin, American Federation of State, County, and Municipal Employees (AFSCME), had testified at the previous meeting they would like to ensure this is in statute in case executive staff changes and decides to change the administrative rules.

Ms. Barno asked if this bill is creating another tier for state employees. Some management members had difficulty understanding the need for the bill. Cara Filsinger, WCD, pointed out HB 2778 also makes the state as one employer instead of separate state agencies.

Mr. Shiprack said sometimes government does not think like private sector. Ms. Barno clarified this bill provides identifying vacant positions for injured workers for the state to go back to work. Ms. Smith said DCBS has taken qualified injured state workers from other agencies to fill vacant positions.

ACTION: A motion was made and seconded to recommend to the legislature HB 2778 as presented. A vote was taken and the following members voted aye: Linda Barno, Greg Miller, Sheri Sundstrom, Jeri Ray, Lon Holston, John Kirkpatrick, Mike O'Rourke, and Bob Shiprack. The following member voted nay: Kathy Nishimoto. Motion passed.

Workers' Benefit Fund (WBF) Update

Greg Malkasian, Deputy Director, DCBS, presented information about the Worker's Benefit Fund and inquiries from Legislative Fiscal Offices (LFO).

Cory Streisinger, Director, DCBS, said during these difficult economic times LFO is looking at certain funds to move to the general fund. The department has been responding to questions about the WBF balance, purposes, and the projection over time. She said the major purpose of the fund is to cover retroactive payments for injured workers from years ago. The current WBF balance is in the neighborhood of a billion dollars. Ms. Streisinger said 12 months of expenditures in this fund is required at all times.

Meeting adjourned at 11:54 a.m.