

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

April 3, 2009
9:00 a.m. – 12:00 noon
Conference Room 260, Labor & Industries Building
350 Winter Street NE, Salem, Oregon

Committee Members Present:

Linda Barno, ESIS, Inc., Portland
Tracy Brill, Portland Fire Fighters Association, Portland
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
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

FULL MLAC COMMITTEE

Bob Shiprack, committee co-chair, called the meeting to order at 9:04 a.m.

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

Mr. Shiprack requested John Shilts, Administrator, Workers' Compensation Division (WCD), to discuss the department's budget and layoffs. Cory Streisinger, Director, DCBS, explained DCBS will not be affected by the 30% funding cuts since DCBS is not generally funded. As Oregon's job market shrinks, so does DCBS' revenue.

Mr. Shiprack asked if there were any layoffs because of fund reductions. Ms. Streisinger discussed the DCBS management action plan, which included reductions in staff in the Building Codes Division and WCD and elimination of 27 vacant positions within DCBS. Ms. Streisinger provided budget materials and the list of affected positions to the members.

2009 Legislation

Drew Hagedorn and Susan Lavier, Oregon Self-Insurers Association (OSIA), gave a brief overview of HB 2705 with the proposed -1 amendment.

- HB 2705 (-1 amendment) – Modifies circumstances that require insurer or self-insured employer to contact injured worker for evaluation of eligibility for vocational assistance.

Discussion: Bob Malone, Liberty Northwest, provided information requested by members at the last meeting regarding vocational eligibility evaluations. He submitted documents for the record.

Lon Holston said after receiving clarification regarding HB 2705, he is comfortable with the bill.

Elizabeth Cushwa, Oregon Trial Lawyers Association (OTLA), said they are in support of the bill as amended.

ACTION: A motion was made and seconded to support HB 2705 with the -1 amendment. A vote was taken and the following members voted aye: Linda Barno, Greg Miller, Sheri Sundstrom, Kathy Nishimoto, Jeri Ray, Tracy Brill, Lon Holston, John Kirkpatrick, Mike O'Rourke, and Bob Shiprack. Motion passed.

Mr. Hagedorn and Ms. Lavier, OSIA, gave a brief overview of HB 2706 with the proposed -3 amendment.

- HB 2706 (-3 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.

Discussion: Cara Filsinger, Legislator Coordinator, WCD, reviewed a memo to the committee from Mr. Shilts, Administrator, WCD, regarding follow-up information from the Sanctions Unit.

Sheri Sundstrom asked if the department receives more requests other than the 73 provided in the memo. Ms. Filsinger said Jennifer Flood, Ombudsman for Injured Workers, most likely receives more. Mr. Kirkpatrick was concerned Mr. Shilts memo may not document the entire problem.

Mike O'Rourke expressed concern that the worker might suffer for the changes proposed by this bill. Ms. Lavier clarified this bill would address those cases where the physician does not respond to requests for administrative closure. Tracy Brill agreed with Mr. O'Rourke and she believes this does have the potential to cause more harm. As Ms. Brill understands it, this only applies to a limited number of claims, but it can affect all claims.

Ms. Sundstrom said she would like to see more in-depth work on this issue during the interim. Mr. Shiprack was concerned that the Medical Advisory Committee (MAC) did not weigh in on this issue. He would like to see this on MAC's next agenda.

ACTION: There was no action taken. The issue will be discussed during the interim.

Ms. Lavier, OSIA, gave a brief overview of HB 2707 with the proposed -1 amendment.

- HB 2707 (-1 amendment) – Requires receipt of verifiable documentation of wages received from all subject employers of injured worker to establish eligibility for

supplemental temporary disability benefits. Instructs Director of Department of Consumer and Business Services to adopt rules for payment and reimbursement of supplemental disability benefits.

Discussion: Ms. Lavier clarified several points of the bill for members.

Mr. Kirkpatrick explained employers have elected to cover assumed wages for volunteers where some do not.

Ms. Sundstrom expressed interest in discussing volunteer issues. Ms. Filsinger said there will be a volunteer subcommittee and Jeri Ray, the chair, is working with the department on plans for the subcommittee.

Chris Davie, SAIF Corporation, said he does not believe the -1 amendment actually does what Ms. Lavier explained as the initial concept. Mr. Shilts said the department also reviewed the amendments and he would support what Chris Davie indicated. Staff has identified concerns regarding the amendments.

The committee discussed the process for getting bills scheduled with amendments in legislative committees before the deadlines. Ms. Filsinger explained OSIA can speak with the House Business & Labor Committee staff to schedule the bill for work session before the April 17th deadline pending MLAC approval of the new amendments.

Mr. Hagedorn explained he would like MLAC to look favorably on this bill and they will return by the April 17th MLAC meeting to discuss new amendments. Mr. Shiprack requested all parties get together quickly to discuss the issues.

ACTION: No action taken.

Randy Elmer and Elizabeth Cushwa, Oregon Trial Lawyers Association (OTLA), presented HB 3345 urging MLAC to approve the bill. Ms. Cushwa thanked the committee and explained there were concerns expressed by several parties, which they have no problem addressing in amendments.

- HB 3345 – Modifies circumstances under which attorney fees may be awarded in workers compensation claims. Requires adjustment of amount of certain attorney fees based on increase in average weekly wage. Authorizes imposition of penalty and awards of attorney fees for late payment of amounts due under disputed claims settlement.

Discussion: Greg Miller, Attorney Fees Subcommittee Chair, questioned why he did not receive the bill language before the committee meeting. He believes as a courtesy they should have sent the bill language to MLAC members after all the work they put into working on this issue. Ms. Sundstrom added she appreciated the Workers' Compensation Board (WCB) had looked to MLAC to weigh in on the attorney fee issue.

Lon Holston said mistakes were made, however, he asked what can be resolved so the bill might be able to move forward. Ms. Sundstrom recommended OTLA get amendments drafted addressing stakeholder concerns and bring them back immediately to the April 17th MLAC meeting.

Ms. Sundstrom said there were concerns raised regarding reclassification and stacking of fees. Roger Pearson, Managing Attorney, WCB, clarified in reviewing board decisions and ALJ decisions appealed to the board, where there are caps; there are fees less than the caps.

Mr. Davie, SAIF Corporation, participated with OTLA, Liberty NW, and other stakeholders to review the bill and provide feedback. Mr. Davie believes SAIF and other stakeholders can agree to a concept.

Sally Currie, Liberty NW, agreed with Mr. Davie. She mentioned a few issues regarding penalties and attorney fees for late claim settlement and notice given in writing in five days instead of two. Otherwise Liberty is in agreement with the concept.

Mr. Shiprack reiterated Charlie Cheek, Legislative Counsel, requested sunsets not be placed in the bills. Lou Savage said the sunset could have been narrow enough that Mr. Cheek placed it in the bill during the drafting.

Mr. Miller said he would like all the members to receive the amendments.

Mr. Shiprack said OTLA can speak with the House Business & Labor Committee staff to schedule the bill for work session before the April 17th deadline pending MLAC approval of the new amendments.

ACTION: No action taken.

- SB 110 – Modifies scope of benefits paid in workers compensation death claims.

Mr. Savage gave a brief summary of the bill and mentioned because the bill is on the House side, MLAC must comment on the amendment proposed by Senator Larry George. Mr. Shilts presented Senator George's proposed -1 amendment.

Mr. Kirkpatrick asked why Senator George decided to propose this amendment. Mr. Shilts said that Senator George had expressed concerns about creditors collecting debts during the committee hearing.

Kathy Nishimoto said this amendment places the burden on the insurance companies to determine the beneficiary. Ms. Nishimoto gave an example of her son and his relationship with his biological father and step father. She pointed out in this situation the biological father would receive the benefit when her son has grown up all his life with his step father.

Ms. Sundstrom said Senator George's proposed amendment is a generous opportunity, however, she does not believe this is what the committee intended during the discussions in the death benefits subcommittee. Mr. Holston said he appreciates Senator George's concerns.

ACTION: A motion was made and seconded to not accept the -1 amendment. A vote was taken and the following members voted aye: Linda Barno, Greg Miller, Sheri Sundstrom, Kathy Nishimoto, Jeri Ray, Tracy Brill, Lon Holston, John Kirkpatrick, Mike O'Rourke, and Bob Shiprack. Motion passed.

Public Testimony

Tom Barrows, Oregon Podiatric Medical Association, explained HB 2978, which adds podiatric physicians and surgeons to the definition of attending physician for purposes of workers' compensation law. Mr. Barrows said in the 2007 session MLAC passed out HB 2556, which became law but has not solved all the problems.

Ms. Sundstrom asked if there was a board of podiatrists so the department can go and hear about their concerns. Mr. Shiprack added it would be a good idea to let the law go into effect, flush itself out, and then see if there are any issues.

Legislative Updates

Mr. Shilts, WCD, reviewed the status of bills that passed through MLAC. HB 2193, HB 2197, HB 2045, and HB 2420 have passed through both houses and been signed by the Governor.

Mr. Shilts discussed HB 2869, which requires MLAC to perform a study of interpreter services in the system. HB 3284 requires MLAC to study the operation of Workers' Compensation Board and Hearings Division and report findings to the Legislative Assembly. Mr. Shilts also mentioned several volunteer bills that are highly unlikely to receive a hearing.

There was discussion regarding Washington State's law, which made changes that affect construction employers who are doing work on both sides of the river. The department has been in discussion with Washington on reciprocity negotiations.

Mr. Shiprack asked why Washington created a law before working with Oregon on the issue. Mr. Shilts said it was designed to help Washington employers.

The meeting adjourned at 11:57 a.m.