

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE

Full MLAC Meeting

October 4, 2013

9 a.m. – Noon

Committee Members Present:

Tami Cockeram, City of Hillsboro
Carol Duncan, General Sheet Metal, Clackamas
Paul Goldberg, Oregon Nurses Association, Tualatin
Elana Guiney, Oregon AFL-CIO, Salem
John Mohlis, Oregon Building Trades Council, Portland
Kathy Nishimoto, Duckwall-Pooley Co., Hood River
Ben Stange, Polk County Fire District No.1, Independence
Jaron Sue, Marquis Autumn Hills, Portland (via telephone)
Patrick Allen, DCBS Director, *ex-officio*
Theresa Van Winkle, MLAC Committee Administrator

Members Excused:

David Andersen, Andersen Construction Company, Portland
Bridget Quinn, NECA-IBEW Electrical Training Center, Portland

Agenda Item

Discussion

Opening
(0:00:00)

Kathy Nishimoto called the meeting to order at 9:08 a.m. John Mohlis moved to accept the MLAC full committee minutes from June 28, 2013 and August 7, 2013. Tami Cockeram seconded the motion and the committee approved the minutes unanimously (members Andersen and Quinn excused).

**Department Reports
and Information**
(0:00:22)

Theresa Van Winkle, Committee Administrator, provided an update on e-billing standards. The Medical Access Committee (MAC) recommended that processes be improved regarding electronic billing in order to streamline the process.

(0:00:50)

Nanci Johnston, Medical Policy Analyst, Workers' Compensation Division (WCD) presented a detailed update regarding the e-billing project. The Oregon Insurance Division made rules requiring commercial insurance companies to bill electronically as of January 1, 2014. Medical providers are in support of such a move. Currently, California, Texas, and Minnesota have this service available. These states are following some standards of the International Association of Industrial Accident Boards and Commissions (IAIABC). Oregon's rules will be set to IAIABC national standards. Providers will likely not see a significant change to their billing processes unless they currently lack a robust billing system.

Thus far seven meetings have been held, and feedback from those meetings has been considered and implemented where appropriate. The [rules](#) and [guide](#) are available for review. Currently WCD is waiting for national code committees to provide some

workers' compensation-specific codes for use on Explanations of Benefits (EOB) or Explanations of Review (EOR), which is expected sometime in December. At that time a pilot period of approximately 6 months will likely be implemented, and if the system performs as expected WCD will mandate for payers.

A guide will be available to providers to help explain what these changes mean for Oregon. Not all medical providers are not familiar with all of the rules associated with workers' compensation, so WCD has created a 30-minute training video on workers' compensation payment billing. In addition, the division has improved the provider webpage and is working to develop a peer-to-peer workers' compensation training video featuring doctors with extensive knowledge of the workers' compensation system in Oregon.

Kathy Nishimoto asked how medical providers will be made aware of the available training videos. Ms. Johnston replied that notices have been sent out to providers. Additional information is available to providers on the division website. Ms. Nishimoto asked if the training videos would be sent to medical schools in order to show the benefits of the workers' compensation system to newly graduating physicians. Ms. Johnston indicated that it was a possibility, and that the division was open to suggestions for other areas to which to send the information. The videos are currently in the editing process and should be ready for dissemination in January 2014.

(0:08:40) Ms. Van Winkle discussed September's Workers' Compensation Division rulemaking hearing regarding the [2014 Workers' Compensation Rate](#) and reviewed the related [press release](#). The 2014 rates go into effect January 1. Employers will see the new rates on their policies as they are renewed for 2014. She also reviewed details regarding the upcoming [Workers' Compensation Educational Conference](#) and informed the committee that potential dates for November's MLAC meeting would be emailed out next week. The November meeting will primarily be to review 2014 legislation. Additionally, Ms. Van Winkle notified the committee that David Andersen has resigned from MLAC and there would likely be a nominee to fill his position in time for the November legislative days.

(0:11:21) Ms. Van Winkle reviewed the information sent to members prior to the meeting. At the last meeting there had been questions regarding the impact on benefits and methodology for states who have implemented the American Medical Association (AMA) Guides 5th vs. 6th Editions, and how other states use these guides in terms of impairment ratings. Mike Manley, Research Analyst, Central Services Division (CSD) located a study from Michigan State University listing different partial permanent disability (PPD) [ratings](#) from different states as well as a state-by-state [overview](#) of the differences in methodologies for PPD ratings. Ms. Van Winkle noted that the Medical Access Committee (MAC) had considered MLAC's questions at its most recent meeting. MAC's response is summarized in a [memo](#) from Cara Filsinger, Policy Analyst, WCD.

(0:12:45) Ms. Van Winkle apprised the committee on the efforts by the Workers' Compensation Division to survey medical arbiters regarding their opinions on the current standards for impairment rating.

John Shilts, Administrator, WCD gave an overview on the informal survey questions posed to medical arbiters by WCD staff. Arbiters are physicians selected by the director to perform an impartial examination for impairment findings following a claimant's appeal of the findings of an initial claim closure and permanent partial disability (PPD) benefits. These arbiters evaluate individual workers to rate his or her degree of impairment. These ratings are then sent to WCD dispute resolution staff to determine if a change needs to be made to the PPD benefit. About 25 arbiters have responded thus far, but survey results from these arbiters have not yet been summarized.

Questions asked of the arbiters include:

- Do the current standards using the range of motion (ROM) model result in problems relating reliability or accuracy in measuring the impairment of a worker; and if so
 - Are the problems found specific to certain body parts or conditions;
 - Do the problems result in variation in ROM measurements between reviewers in patients with similar conditions;
- Are there alternatives to using ROM measurements as a measurement of impairment, and if so, what are they;
- Are there impairment ratings that are not adequate under current guidelines;
- Are there areas of impairment ratings standards that have incongruous outcomes

WCD has received some helpful feedback from the medical arbiters who have been surveyed. Written reports summarizing the feedback and providing suggestions for improvement should be complete in approximately two weeks.

Paul Goldberg asked if questions were asked of the medical arbiters specifically regarding the American Medical Association (AMA) Guides 6th edition. Mr. Shilts indicated that they had not been asked about the 6th Edition, but that some did give input on the issue.

Mr. Goldberg asked if changes to the impairment rating procedures in Oregon would be handled administratively by rule or if these types of changes would require legislation. Ms. Van Winkle responded that the procedure would be dependent on MLAC's chosen direction. Mr. Shilts agreed, stating that making minor changes could be done by administrative rule but a significant or wholesale change to the model would need to be made statutorily.

(0:19:08)

Ms. Van Winkle reminded the committee of a stakeholder request at the last meeting regarding looking into CROET's ability to fund a study. Dr. Kent Anger from CROET informed Ms. Van Winkle that they do not have anyone with the appropriate level of expertise to conduct this study on staff at this time, so if the study is to go forward it will need to be from outside the agency.

Public testimony
(0:19:56)

Dr. Christopher Brigham, Senior Contributing Editor, American Medical Association (AMA) Guides 6th Edition briefly introduced himself, outlined his presentation, and requested feedback on what sort of information would be most

useful to the committee. Courtni Dresser, Associate Director, Government Relations, Oregon Medical Association (OMA) discussed the MLAC and MAC reviews of the American Medical Association (AMA) Guides 6th Edition since 2008. The OMA wants to ensure that information regarding the 6th Edition is available to MLAC, particularly to the newer members who may not have been part of the earlier conversations. Ms. Dresser introduced Matthew Kremke, Director of Advocacy & Strategic Partnerships, AMA, and reintroduced Dr. Brigham.

Dr. Brigham gave an [overview](#) of the AMA Guides 6th edition. He stated that medical reference changes over time and revisions are made to the guides as appropriate. A standardized approach leads to valid, reliable impairment ratings. The AMA Guides 6th Edition uses the most current methodologies. Prior editions are outdated and no longer reflect current best practices, because impairment is only one aspect of the disability model. Impairment is different from disability, and a standardized approach to determining impairment provides improved inter-rater reliability.

Dr. Brigham reviewed the International Classification of Functioning, Disability, and Health, causes of variance in impairment ratings, and features of the 6th Edition, which focuses on diagnosis-based impairments and classes within these diagnoses. Its purpose is to provide a comprehensive, valid, reproducible, unbiased, and evidence-based rating system. Dr. Brigham reviewed changes in rating values in the 6th Edition compared to 4th and 5th Editions. He stated that results are statistically different between the 6th Edition and the 5th Edition, but not between the 6th Edition and the 4th Edition. As an example, soft tissue injuries are rated under the 6th Edition but are not rated under the other editions.

Considerations in impairment rating considerations under the 6th Edition are:

- What is the problem;
- What difficulties are reported;
- What are the exam findings; and
- What are the results of the clinical studies

The overall goal is to improve the science surrounding impairment rating. Feedback received by the AMA is that under the 6th Edition impairment values are more reasonable, the process is clearer, internally more consistent and more reliable, and the methodology is easier to use with fewer errors and less litigation. In the future, the methodology will be refined, best practices approaches will be established, and evidence-based guidelines, recognition and management of root causes of variable ratings will be determined. Currently there is no plan for the creation of a 7th Edition.

(0:38:53)

Mr. Kremke discussed how the training process and adoption by individual states works. There is a “lag time” between the adoption of the 6th Edition by states and the state actually needing to apply the methodology from the 6th Edition. Dr. Brigham said that implementation is by the choice of the jurisdiction. For example, in Illinois all injuries after certain date were rated with the 6th Edition, but these ratings are not done until the patient reaches maximum medical improvement (MMI) so there is no sudden influx of patients being evaluated under the new guidelines. Training is

easier on the 6th Edition because once the new methodology is learned for one body part it is easier to apply to other body parts, as opposed to the concepts in guides prior to the 6th Edition where concepts and methods are different for each body part. Typically training occurs in a one or two day seminar. The AMA also has resource material available.

Kathy Nishimoto asked about how other states are implementing the 6th Edition, and for those states that currently use the 6th Edition whether they use it exclusively or if they use parts of other editions or their own methodologies in conjunction with the 6th Edition. Dr. Brigham said that with the exception of Connecticut, which allows for the use of whatever guide the evaluator sees fit, states that have implemented the use of the 6th Edition use it exclusively. Mr. Kremke elaborated, stating that currently no states are using the 6th Edition piecemeal.

(0:43:11)

Not on audio due to technical difficulties: Paul Goldberg asked about other states that are considering adopting the 6th Edition, why only 17 states had adopted it and not more, and specifically what is happening in California and New York. Mr. Kremke stated that California does things its own way. Currently California uses parts of the 5th Edition. New York uses its own set of guidelines. Dr. Brigham says that transition from 5th Edition to the 6th Edition has caused a reaction from some stakeholders, but that the goal of the guides is to provide an unambiguous framework.

Ms. Nishimoto asked about Oregon's system specifically, regarding its use of parts of the 3rd Edition, and if Oregon was to adopt the 6th Edition in areas where the 3rd Edition is currently in use would the state need to revamp its entire workers' compensation system. Dr. Brigham stated that given his limited knowledge of Oregon's particular workers' compensation system, his understanding is that the system in Oregon works well and that he would need to know more about the particulars of how the system is devised in Oregon to give an illustrative reply; however, the 3rd Edition is significantly outdated.

Return to audio: Jennifer Millemann, Appellate Review Specialist, WCD, asked about definitions in the 6th Edition regarding the differences between mild, moderate, severe, and very severe. Dr. Brigham stated that there are explicit explanations in 6th Edition and ranges of impairment associated with each. Mr. Kremke discussed the specificity contained in book regarding these definitions, saying that they remove any sense of ambiguity.

Mr. Goldberg asked about how 6th Edition now considers surgical procedures to be an indicator of improvement rather than a reason for a higher impairment rating, and whether the 6th Edition factors in long-range projected prognosis following surgery as a part of the impairment rating. Dr. Brigham stated that in earlier editions it was presumed that with more surgery a patient becomes more impaired, but that was found to be counterintuitive because while some surgeries will result in rateable impairment, overall surgery should be to improve function rather than to worsen it. Under the 6th Edition the possibility of complications either related to deterioration of condition or to surgery is not included because that cannot be reliably predicted. In a situation where the worker's condition was worse following surgery, his or her

case would be reopened and reassessed.

Mr. Goldberg asked if this was the practice in Oregon. John Shilts, Administrator, WCD stated that there is a five year period of aggravation rights in Oregon. The five year period begins with the date of first closure of the claim. After this period it is very difficult to reopen a claim, though if new conditions arise that reopening the claim is a possibility.

Committee discussion
(0:50:21)

John Mohlis asked about the 2009 comparative study and if things would have changed since then, or if that is a good point of reference for the committee. Mr. Kremke stated that did not believe anything substantive had changed but that he would look at it further and touch base with the committee later. Mr. Mohlis would like to talk to other stakeholders before discussing the issue further. Theresa Van Winkle, Committee Administrator, mentioned that other stakeholders had been invited to the meeting. Some were unavailable, others were in the audience observing.

Mr. Mohlis stated that he believed a substantive change to the 6th Edition would require legislative change rather than change by administrative rule. Ms. Van Winkle agreed.

Meeting Adjourned
(0:52:02)

Kathy Nishimoto adjourned the meeting at 10:32 a.m.

*These minutes include time stamps from the meeting audio found here:
<http://www.oregon.gov/DCBS/MLAC/audio.shtml> .

**Referenced documents can be found on the MLAC Supporting Documents page here:
<http://www.oregon.gov/DCBS/MLAC/pages/support.aspx>