

WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE

**Full Committee Meeting**

February 11, 2022

10:00 a.m. – 12:00 p.m.

***Committee Members Present:***

Jill Fullerton, Clackamas County Fire Department

Scott Strickland, IOUE Local 701

Margaret Weddell, Labor Representative

Tammy Bowers, May Trucking

Sara Duckwall, Duckwall Fruit

Lynn McNamara, Paladin Consulting

Patrick Priest, Citycounty Insurance Services

Andrew Stolfi, DCBS Director, *ex officio*

Marcy Grail, IBEW Local 125

John McKenzie, JE Dunn Construction

***Committee Members Excused:***

Matt Calzia, Oregon Nurses Association

***Staff:***

Theresa Van Winkle, MLAC Committee Administrator

Cara Filsinger, Senior Policy Analyst, Workers' Compensation Division (WCD)

Jeffrey Roddy-Warburton, MLAC Assistant

Brittany Williams, MLAC Assistant

<b>Agenda Item</b>	<b>Discussion</b>
Opening (0:00:00)	Scott Strickland opens meeting at 10:03 p.m. Theresa Van Winkle does roll call all members are present except John McKenzie and Matt Calzia. Scott Strickland motions to approve the minutes. MLAC committee unanimously approves the minutes for the January 21, 2022 , January 28, 2022 , and the February 4, 2022 meetings (John McKenzie and Matt Calzia excused).
<b>Department Updates</b> (0:02:30)	Theresa Van Winkle gives the department updates. Theresa Van Winkle states that there are no upcoming rule making activities except for the public hearing on February 15 for the annual update on medical fees and payments and interpreter services. Theresa Van Winkle gives an update on the legislative process for bills HB 4086, HB 4113, SB 1585, and SB 1560.
<b>HB 4138</b> (0:07:30)	Scott Strickland begins the discussion on HB 4138 and states that MLAC would like an update on the progress made by stakeholders.

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- (0:08:00) Jovanna Patrick, OTLA, states that OTLA and SAIF have agreed to language that an [amendment was submitted](#). OTLA and SAIF have also agreed to continue to engage in further discussion.
- (0:09:00) Elaine Schooler, SAIF, states she wants to echo what Jovanna Patrick said and adds she is optimistic for further discussions and finding more common ground.
- (0:10:10) Sara Duckwall asks what do they anticipate the discussion on worker access to medical providers looking like going forward. Elaine Schooler responds she thinks it will be a continuation of what we have been talking about for workers maintaining regular contact with their providers throughout their recovery and receiving appropriate work restrictions and the goal is to get them back to work. Jovanna Patrick echoes what Elaine Schooler stated.
- (0:12:00) Margaret Weddell asks since we just got the new language could OTLA and SAIF give a brief summary of the agreements that have been made so far in the discussions. Elaine Schooler goes over the four separate pieces to the agreement. The first is extending the time period for retroactive authorization. The second is insurers sending notice requirements to workers when their time loss benefits are going to change. Third is the medically stationary date being limited so the physician can't back date more than 60 days. And lastly insurers are required to declare overpayment within two years of the payment being issued, which aligns with the two-year limitation workers have for challenging inaccurate time-loss payments. They have asked that the language be made effective January 1, 2024. Jovanna Patrick adds that on the most recent amendment that was sent OTLA and SAIF had already agreed on the one other provision that is not listed and that was in regards to over payments being properly claimed and a notice of closure being sent out, and workers being able to keep 50% of the PPD.
- (0:19:00) Michelle Northington asks if this also includes in-home medical workers and traveling medical workers. Elaine Schooler responds these changes respond to all Oregon subject workers. Jovanna Patrick adds that as far as the effective date, they chose January 1, 2024 for insurers to have time to process the changes, and the rules will apply to all open claims on January 1<sup>st</sup>, 2024.
- (0:20:55) Tammy Bowers in regards to retroactive claims, asks will the new rules apply to a claim that is reopened from 5 years ago, is that going to be an issue. Jovanna Patrick states that it would only apply to cases that don't have final decision.
- (0:22:15) MLAC takes recess for caucus.
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MLAC reconvenes meeting at 10:47 a.m.

(0:25:00) Tammy Bowers moves to approve the conceptual amendments to HB 4138, Sara Duckwall seconds. MLAC members unanimously vote to approve HB 4138 with final amendments (John McKenzie and Matt Calzia excused). Scott Strickland thanks everyone for their efforts.

**MLAC Work Plan**  
(0:27:50) Scott Strickland begins the discussion on the MLAC work plan. Lynn McNamara states that MLAC should have the list of topics up on a shared screen and go through the topics one by one. Scott Strickland states that the list focuses on worker access to care and tailoring communication for language barriers. (Sara Duckwall shares her screen and types updates in the MLAC work plan as an active document as the meeting goes on).

(0:32:00) **Work plan topic 1: Workers access to information regarding workers' compensation**

Lynn McNamara wonders if there are any other formats such as videos, or podcasts or any other different ways that workers can be reached besides the white sheet of paper with a lot of words on it that may not meet with workers where they are. Scott Strickland responds that was a big part of our discussions on the form of communication, especially for workers that my struggle with advanced English literacy.

(0:33:40) Tammy Bowers states that she believes it was Scott Strickland that had the great idea for the 801 form that workers fill out or on one of the notices to put a QR Code on them that workers can scan and it will take you to a video available in different languages that can help the workers understand information better.

(0:35:00) Lynn McNamara discusses the idea of an employee/worker friendly website that would allow them to figure out where to go next in the process if they are at a stopping point and they are confused. Scott Strickland adds some sort of flow chart or interactive webpage would be nice.

(0:36:00) Patrick Priest asks if there is a way to determine where our information bottlenecks or where the problems typically arise, does DCBS have any data on that. Scott Strickland asks if there is any data collected on workers primary language, or language competency. Tammy Bowers states that the 801 form has a box that asks what the workers primary language is. Sally Coen, WCD Administrator, acknowledges that is correct. Scott Strickland asks if there is any demographic data on that. Sally Coen states that she will check. Scott Strickland asks Jennifer Flood if the Ombudsman has

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any anecdotal information on numbers of requests for translators or anything along those lines. Jennifer Flood, Ombuds for Oregon Workers, responds that anywhere from 21%-24% of the calls received at the Ombudsman's office are Spanish speaking callers. Patrick Priest adds that it is also important to not only make sure workers have access but to also make sure they understand what they are being told. Patrick Priest also believes that something like a complaint box would be helpful to improve the system.

(0:41:10) Michelle Northington adds that it should also be considered how many pages the form is, some of the ones that she receives are upwards of 233 pages long. She adds that short and simple really does help.

(0:43:30) David Barenberg, SAIF, states that the issues really need to be dealt with in a round up level, not really in a piecemeal fashion so that things are consistent, so we can find some pieces of communication that can be cut out of the forms. He adds that we need to look towards the future as well for options to do things electronically. Scott Strickland adds that format especially will be important in the more digital age. David Barenberg states that we need to take a look from things from the worker's perspective.

(0:45:30) Sally Coen states that one of WCD's process improvement projects for our modernization program is looking at the required notice information that insurers are required to send to workers and we will be having some upcoming stakeholder meetings to get more input, and the MLAC members will be invited to participate in those.

**Work plan topic 2: Ongoing intimidation of and retaliation against workers**

(0:46:20) Scott Strickland states that this topic originated around some very concerning information that was came up during COVID presumptions discussions, and a lot of the concerns was what the data was really capturing. It was not just in terms of when the claim is filled but before it is filled and the conversations that happen and how we can capture that information to understand if a worker was intimidated or concerned about filing a claim and the ones that don't ever enter the system. He adds that MLAC was depending on anecdotal reports because workers were not filing claims and entering the system.

(0:47:55) Jill Fullerton states that she thinks this is a super important topic that MLAC should look into and it is a tricky topic. She adds that she isn't sure what type of education to suggest or endorse for a worker that is starting a new job as mandatory training for things like what intimidation is and looks like in the workplace. Marcy Grail agrees with Jill Fullerton adds

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that she thinks it is an ongoing issue for workers who have been at one job for a long tenure and the intimidation or harassment is “just the way it is here” at that job so the education shouldn’t just be focused on newly hired employees. Scott Strickland agrees as well.

(0:51:00) Tammy Bowers adds that during the pandemic we had BOLI issues, unemployment issues, and OSHA issues mixed in with COVID. The Governor really wanted MLAC to look at COVID. It took a long time to figure it all out and there has been a lot of criticism over the final decision. MLAC had to discuss a lot of things that actually were not in MLAC's arena. In the future if there is another pandemic, how can MLAC just focus on what MLAC is supposed to focus on?

(0:52:40) Jennifer Flood adds that part of the Ombuds for Oregon Workers expanded role is work place safety and health and one of the biggest issues is retaliation for raising safety issues and she does believe that there will be work done on this by a variety of agencies.

(0:53:45) Theresa Van Winkle reads Jody Phillips Polich’s comment from chat that stated many of the workers that she comes across didn’t know about the form or how to file the form because the employer didn’t provide them with that information. Jody Phillips Polich’s suggestion is to add what employers are required to provide to workers. Scott Strickland adds that is a great point as well as adding when this information is provided to workers.

(0:55:20) Michelle Northington states that we need to do more to protect the in-home care workers against retaliation because it is currently a big issue. Scott Strickland states that gets to the point of the method of communication, how is this information going to be communicated.

**Work plan topic 3: Use the experience and discussions of MLAC during COVID to continue addressing systemic concerns and prepare for future pandemics**

(0:57:20) Lynn McNamara states that it would be useful to go back and look at what is MLAC’s actual role and what is really OSHA’s role because MLAC got in the middle of that last time, as well as how to address what did work and did not work in making the situation better. Scott Strickland agrees and states that along with DCBS putting together the handbook and doing trainings for new members, and we can build on that and continue.

(0:59:00) Patrick Priest asks if this is more about COVID, the functioning of MLAC, or workplace safety and wants to know what lessons were learned just amongst MLAC. Lynn McNamara responds personally she wasn’t thinking about the functioning of MLAC and the decisions made, but more about

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what were the sticking points like how claims were processed. Tammy Bowers adds that during the pandemic we had BOLI issues and OSHA issues and the Governor really wanted MLAC to look at these issues. It took a long time to figure it all out and there has been a lot of criticism over the final decision, and MLAC had to discuss a lot of things that actually were not related to MLAC and in the future how can MLAC just focus on what MLAC is supposed to focus on.

(1:02:40) Scott Strickland asks for any suggestions on how to start that process. Tammy Bowers states that she would like to ask Andrew Stolfi or Theresa Van Winkle if there is a section in the handbook that we could add a sentence or two to address this. Lynn McNamara agrees with Scott Strickland's statement about a good starting point is taking down some notes and maybe a subcommittee would be appropriate.

(1:04:00) Andrew Stolfi, DCBS Director, said in his experience it really does benefit to do a good accounting of what we went through, what actions were taking and what lessons were learned so that the next time something similar happens and all new people are involved, it would be nice to know that the last people did in a similar situation. He adds whether or not that is something that is in the handbook will be something to discuss.

**Work plan topic 4: Further review of MCO enrollment with particular interest in ensuring that enrollment does not delay a worker's treatment**

(1:07:00) Scott Strickland states that this is something he was interested in giving his experiences as an injured worker, now a medically stationary worker. Scott Strickland discusses his difficulties with a claim processor telling saying that he didn't have a right to object to an MCO enrollment even though he received paperwork stating that he did have the right. Scott Strickland adds that he was able to navigate that thankfully, but others may not have been able to.

(1:09:30) Ann Klein, Majoris MCO, stated that she would like to volunteer her organization's services to help support and educate on the MCO processes, history, purpose and intent as well as ensuring access to data.

**Work plan topic 5: Management stakeholder concerns about time-loss**

(1:11:30) David Barenberg, SAIF states that this is the issue that started with doctors having the ability to have open-ended time loss and sometimes in the system workers lose connections to their health care and sometimes get lost. He adds that there is a broader issue that might have many different remedies so on SAIF's part they are happy to come up with a problem

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statement and try and define those issues work with MLAC and OTLA and focus on an outcome everyone supports.

(1:13:20) Patrick Priest shared a statement that he made to Scott Strickland in an email stating concerns were made about deficiencies in the system of ensuring timely and ongoing connections to medical care, and requesting that MLAC support forming a subcommittee to look at the issue, discuss improvements, and make recommendations for those that are appropriate. Scott Strickland responds that is helpful in framing the idea that workers are keeping up with all of the changes that we are seeing with COVID, delays, telemedicine, and making sure the medical care keeps up with all that and agrees a subcommittee would be helpful.

(1:15:30) Marcy Grail asks if we have every looked into a focus group to test out those messages and information. Scott Strickland that's a good point, how can we get some real data a feedback for people. Theresa Wan Winkle states that as far as what is being described with conversations with industry and other stakeholders yes, and she believes there was a listening tour as well. Scott Strickland responds that he likes that and its important to be present in the communities that need listened to the most.

(1:17:10) Jill Fullerton asks what is a listening tour. Theresa Van Winkle responds that it is essentially like a town hall. Jill Fullerton agrees that seems like a good way to get some different perspectives from the workers themselves.

### **Work plan topic 6: 2023 session preparation**

(1:18:30) Scott Strickland states that he knows there will be some WCD concepts potentially coming up, and a notice went out in September that the committee is ready to start talking about concepts, but that will be a wait and see approach for MLAC.

### **Work plan topic 7: case law litigation updates**

(1:19:20) Scott Strickland states that the board has suggested a number of topic areas that MLAC could consider discussing as policy. Margaret Weddell states that in the past the board's managing attorney and the board have been reluctant to come forward and discuss politically sensitive cases. In the past the board and the board's managing attorney have brought to MLAC discussion of recent court cases that may raise more MLAC issues we might want to discuss. She adds that she hopes MLAC will consider not only accepting and encouraging the board's input but also that MLAC invites them for a discussion. Theresa Van Winkle responds yes, we do that, and the board is always at the MLAC meetings. Margaret Weddell adds that she thinks that the board doesn't really recommend anything, but

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advises on court decisions that the involve policy that MLAC might be interested in.

**Work plan topic 8: Ongoing updates and annual reports due**

(1:21:50) Scott Strickland asks when in 2022 the OIOHS annual report is due. Theresa Van Winkle responds that she does not know the date but she will check in on that.

(1:22:30) Sara Duckwall asks where would we put in the reviewing of the NIOSH data, would that be in ongoing updates or would that be a different session preparation. Theresa Van Winkle responds that she was thinking the same thing. Scott Strickland states that he would put it in the ongoing updates. Sara Duckwall asks if that is 2024. Theresa Van Winkle states we can leave it there for now, it might be later in 2025.

**Work plan topic 9: Educational sessions on topics as needed**

(1:23:40) Scott Strickland states that one thing he thought that might be helpful is DEI insight and training for members.

(1:24:50) Tammy Bowers asks Greig Lowell if he would be willing to talk about the class that he teaches called “You Had an Injury, Now What”, and who conducted it was it the State or Oregon and if that is something MLAC could attend. (Greig Lowell joins the meeting later and answers this question).

(1:27:00) Marcy Grail states that while we are talking education she would like to encourage everyone not to forget about mental health and people need to be educated on it.

**Work plan topic 10: Overview of boards commissions and small entities**

(1:27:40) Sara Duckwall states that this is a required training and she can not find it anywhere on Workday. Theresa Van Winkle responds that there is required trainings for board and commission members to take every year, and if people can not get access to that she states that we can do alternative methods of training. Scott Strickland adds that we can talk about training and delivery and communication within MLAC as well.

(1:31:00) Patrick Priest reads a comment from Jody Phillips Polich that was in the chat about her interest in mental health claims and that is an area that is long overdue for reform. Jody Phillips Polich adds that mental health claims are subject to a completely different standard than any other claim in the workers’ compensation system and the issues regarding this type of

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claim have not been looked at in a very long time. She adds that this is a topic she would be more than happy to present to MLAC.

(1:32:40)

Greig Lowell, Workers' Compensation Board (WCB) joins the meeting to answer the questions he was asked from earlier. He states that he does the training at educational conferences and WCD conferences, the workers' compensation bar annual meeting and they are always happy to get out and talk and outreach is very important. Greig Lowell adds that they are aware of policy implications and if those are things MLAC would like to here more about they are happy to talk. In regards to the training her gives called "You Had an Injury, Now What", he thinks it is a great idea, but the presentation would be a little different for say employers versus attorneys. He adds that we are always looking at different ways to connect different groups. Tammy Bowers thanks Greig Lowell for his willingness to teach the class if needed.

Scott Strickland thanks everyone for their hard work.

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**Meeting**

**Adjourned**

Scott Strickland adjourns the meeting at 12:00 p.m.

\*These minutes include time stamps from the meeting audio found here:

<https://www.oregon.gov/dcbs/mlac/Pages/2022.aspx>

\*\*Referenced documents can be found on the MLAC Meeting Information page here:

<https://www.oregon.gov/dcbs/mlac/Pages/2022.aspx>