

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE

Full Committee Meeting

April 14, 2022

10:00 a.m. – 12:00 p.m.

Committee Members Present:

Jill Fullerton, Clackamas County Fire Department

Scott Strickland, Labor representative

Sara Duckwall, Duckwall Fruit

Lynn McNamara, Paladin Consulting

Patrick Priest, Citycounty Insurance Services

Andrew Stolfi, DCBS Director, *ex officio*

Marcy Grail, IBEW Local 125

Matt Calzia, Oregon Nurses Association

Committee Members Excused:

Margaret Weddell, Labor Representative

Tammy Bowers, May Trucking

John McKenzie, JE Dunn Construction

Staff:

Theresa Van Winkle, MLAC Committee Administrator

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

Brittany Williams, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Patrick Priest opens meeting at 10:03 p.m. Theresa Van Winkle does roll call all members are present except John McKenzie, Margaret Weddell, and Tammy Bowers. Sara Duckwall moved to approve the minutes from the February 11 th meeting as presented incorporating member feedback, Lynn McNamara seconded. Members unanimously votes to approve with Tammy Bowers, John McKenzie, and Margaret Weddell absent .
Department Updates (0:02:20)	Theresa Van Winkle gives the department updates. There will be an invitation from Workers' Compensation Division for a meeting to start the implementation process HB 4138. This will be a meeting for pre-rule making advice but not a rule making meeting.
(0:03:38)	Connie Wold, Board Chair, and Greig Lowell, Project Manager, from the Workers' Compensation Board gave an overview and litigation update . Connie Wold gave a brief over view of the Oregon Workers' Compensation Board, the work that they do, and introduced herself to the newer members MLAC.

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- (0:10:07) Sara Duckwall asked how the board members are selected. Connie Wold responded that there is an application process with vetting of each applicant but that members are appointed by the Governor and confirmed by the Senate, and that each member serves a four year term.
- (0:12:47) Greig Lowell shared case law updates with examples of the impact of HB 4086 (2022). He also discussed the policy impacts of HB 4138 (2022) citing cases from 2019 and 2001 as well as the changes and discussions surrounds claimant cost reimbursement.
- (0:27:07) Sarah Duckwall asked for an example of a good cause exception, where a worker can request an appeal of closure after the 60 day window had closed? Greig Lowell explained and good cause exceptions are commonly found in other areas of law, and can be defined as inadvertent mistake or excusable neglect. He further explained that recent rulings stress the merits or the claims over strictly staying with procedure.
- (0:28:04) Greig Lowell explained that a combined condition is a preexisting condition that has been previously diagnosed or treated and is combined with a work injury. Since a 2017 ruling in *Brown v. SAIF*, in the context of a denial these are treated as two separate conditions that combined, there are some exceptions with initial injury claims such as spondylosis and other degenerative diseases when combined with a back injury Greig Lowell shared that they do not have any appellate decisions involving Covid-19 but have had some decisions involving infectious disease. For purposes of determining the root cause the question is whether employment is a substantial cause more than a minimal cause of the worker's illness?
- (0:44:20) Scott Strickland asked to get a copy of the Workers' Compensation Board presentations to review after the meeting. Theresa Van Winkle and Greig Lowell both confirmed that those materials would be sent out after the meeting for the committee's review.
- (0:44:47) Matt Calzia asked is there are many Covid-19 cases on the docket? Greig Lowell responded that he was uncertain as he does not interact with the claims as they are being deliberated, only when the decisions come out.

**Managed Care
Organization
(MCO)**

Presentations

(0:45:22)

Due to technological issues the order of the presentations listed on the agenda was changed and began with James Washburn from Kaiser Permanente. James Washburn gave a brief overview of Kaiser's history

and on-the-job occupational health clinics and other facilities where members and non-members can be seen. He emphasized that they have been a managed care organization since 1991 and that their integrated managed care organization (MCO) panel includes Kaiser Permanente physicians as well as contracted providers. Their service area includes the Salem and Portland metro areas. He noted that they do have access to 24-hour urgent and immediate care services through their Kaiser facilities and hospitals.

(0:51:30) Ann Klein from Majoris Health Systems gave an [overview of Managed Care Organizations in Oregon](#). Ann Klein's presentation gave a framework that each of Oregon's four MCOs follow and some of the regulations that they are subject to. Ann stressed that each MCO has different policies and approaches to their work. She also added that the overview may not be as in depth as necessary but that she and her fellow presenters are anticipating sharing more information on the topics or interest and any questions raised.

MCOs in Oregon were recommended following the Mahonia Hall reforms in 1990 and began to form in 1991. MCOs have the goals to deliver balanced recovery focused care, adequate benefits, affordability, efficiency, stability, and flexibility. The MCO concept is based on medical peer and utilization review, quality assurance, dispute resolution, and contract review. MCOs do this by contracting with providers based on patient population needs and providing case management to injured workers as they work towards recovery. Enrollment in an MCO begins on the worker's side with a written notice to the worker and anyone on their care team being notified of their enrollment and information on the appeal process. The worker's enrollment is effective three days from the date of mailing and the timing is determined by each insurer to best align with their processes. From there the worker is informed if they are currently being treated in network or not, if they are not they are provided with instructions on how to find an MCO network provider. Workers have 14 days from the date of enrollment notice to continue to be treated off-panel in order to get established with a network provider. Certain providers qualify for come-along privileges allowing the worker to continue being treated by a non-network provider, the MCO handles identifying these providers and facilitating the come-along process.

(1:14:50) Sara Duckwall asked how the MCO enrollment process is triggered? Ann Klein answered that it is determined by the agreement between MCO and insurance provider. These agreements can range from automatically enrolling to workers being enrolled at the discretion on the adjuster.

(1:15:46) Ryan Hearn from Roseburg Forest Products asked how MCO physician reviewers are chosen and what the guidelines for their qualifications? Ann Klein responded that at Majoris they look for board certified physicians

with experience treating injured workers. They have a variety of specialists that they partner with and that quite often these physicians originally begin as network partners.

- (1:16:56) Scott Strickland asked for clarification about the come-along provision processes. Ann Klein clarified that claims that qualify for come-along privileges are workers who have been working with an out of network physician prior to their injury. She added that this procedure is outlined in the statute and is not at the discretion of the MCO for which physicians qualify. Referring physicians can also recommend out of network providers as long as they provide justification.
- (1:19:00) Patrick Priest asked about which parts of the state are not well represented by MCOs. Ann Klein responded that every part of the state is eligible to use an MCO but that there are issues with access and difficulty of medical providers wanting to join MCOs. She added that the south coastal region of Oregon with a large number of aging individuals access medical care can be challenging for workers to find appropriate medical treatment.
- (1:21:20) Scott Strickland thanked Ann Klein for including how Managed Care Organizations fit into an MLAC lens.
- (1:21:56) Patrick Priest also asked about the challenges that MCOs face and what legislative actions can be taken to help ease those challenges. Ann Klein responded that currently the effects of the pandemic on our health care system and provider burnout is the largest challenge.
- (1:23:43) Scott Strickland asked a question of James Washburn about the separation of the Kaiser's MCO and its health insurance branch. James Washburn responded that the MCO is outside of the insurance branch of the organization and that they have recently been building up processes to ensure that the programs are kept separate. Scott Strickland asked if James Washburn had any specific examples of current or future efforts to keep these two entities separate. James Washburn responded that they will send those examples in a follow-up e-mail.
- (1:25:48) David Pyle of CareMark Comp/Managed Healthcare Northwest that operates in Northwest Oregon spoke briefly and introduced their Medical Director, Dr. Jennifer Lawlor. Dr. Lawlor emphasized that she feels that her position is to be a neutral party to help facilitate collaboration among providers to help injured workers. Dr. Lawlor spoke about her work with CareMark and offered to answer any questions during the meeting or after via e-mail.
- (1:30:20) Scott Strickland asked for clarification the MCO roles in the separation of the clinical and financial decisions. Dr. Lawlor confirmed that his
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understanding is correct, but that MCOs also assist and educate providers in ensuring that treatment is compensable and medically appropriate. Scott Strickland asked if there was education provided to the worker about their care and treatment options? Dr. Lawlor said that she is not sure if information is shared directly with the injured worker as it is left to the treating physician to explain to the worker which may or may not happen and noted that this is an area of potential improvement.

Ann Klein added that for Majoris, a [notice](#) goes out to the injured workers about whether or not a treatment is medically necessary and the options that the worker can go through to have these decisions reviewed. Scott Strickland asked if there was a way to receive a sample of this notice in order to assist with MLAC's work. Scott Strickland also asked if the review of these decisions happens in house, both Dr. Lawlor and Ann Klein both responded in the affirmative for their respective organizations.

(1:36:05) Ryan Hearn asked for more specifics about CareMark's service area, specifically if they serve southern Oregon. Dr. Lawlor confirmed that they do not serve Southern Oregon at this time.

(1:36:35) Patrick Priest asked Dr. Lawlor about the challenges of recruiting providers to work with injured workers. Dr. Lawlor confirmed that there is often a hesitancy for providers to treat injured workers because caring for injured workers often involves medical and legal systems. She also noted that providers in some specialties are scarce in Oregon, so those few providers can choose who they work with and if they are not familiar with working with injured workers they may be hesitant to start.

(1:39:30) Jenny Walsh from Providence Managed Care Organization, part of Providence Health Plan Partners, serves workers throughout Oregon with over 8,500 providers including urgent care and hospital facilities. She mentioned the difficulties on access to appropriate medical care in rural parts of the states as well and highlighting the difficulty access to neurologists and mental health providers around the state including the Portland area. She emphasized their MCO does a lot to facilitate collaboration between providers and workers in order to achieve the highest level of rehabilitation.

(1:43:33) Sara Duckwall asked for an example of when an injured worker would not want to use an MCO. Jenny Walsh responded that a case that is several years old or one that is more complicated would probably not want to enroll if it meant switching over from their current providers. She added that in this case many providers would be subject to utilization reviews.

(1:45:04) Scott Strickland asked about the areas where there are difficulties in health care access, what would an injured worker do? Dr. Lawlor answered that

CareMark will work with providers and workers to try and find the best options for care and that she believes that there needs to be several choices for care given to workers. She also added in response to the previous question that when a worker has a very straightforward case that would be resolved easily that a worker may not need to be enrolled in a MCO . Anne Klein added that Majoris routinely partners with a non-network providers to ensure that workers can get the correct treatment in a reasonable and timely manner.

(1:49:07) Theodore Heus of Quinn and Heus, asked how disability prevention consultation plays a roll in the MCO process. Dr. Lawlor answered that a disability prevention consultation could happen at the request of an insurance adjuster when an injured worker is not improving or advancing in their return to work and it is not clear from their medical records why they are not making forward progress. Dr. Lawlor added that in that case she will be provided a list of what the adjuster’s concerns and meets with the provider to ensure that the patient is receiving the correct line of care. She added that she usually collaborates with the providers at that point to help research alternative treatment options if appropriate.

(1:52:30) Patrick Priest asked the committee if there were any additional follow-up information that should be requested or questions for our panel. Theresa Van Winkle gave information about the next meeting which will be in a hybrid format.

Meeting Adjourned Patrick Priest adjourned the meeting at 11:57 a.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>