

WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE  
**Full Committee Meeting**

May 19, 2022  
12:30 p.m.-2:00pm

***Committee Members Present:***

Scott Strickland, Labor representative  
Lynn McNamara, Paladin Consulting  
Patrick Priest, Citycounty Insurance Services  
Andrew Stolfi, DCBS Director, *ex officio*  
Marcy Grail, IBEW Local 125 via Zoom  
Margaret Weddell, Labor Representative via Zoom  
Sara Duckwall, Duckwall Fruit via Zoom

***Committee Members Excused:***

Tammy Bowers, May Trucking  
John McKenzie, JE Dunn Construction  
Matt Calzia, Oregon Nurses Association  
Jill Fullerton, Clackamas County Fire Department

***Staff:***

Theresa Van Winkle, MLAC Committee Administrator  
Cara Filsinger, Senior Policy Analyst, Workers' Compensation Division (WCD)  
Brittany Williams, MLAC Assistant  
Jeffery Roddy-Wilson, MLAC Assistant via Zoom

<b>Agenda Item</b>	<b>Discussion</b>
Opening (0:00:03)	Scott Strickland opened the meeting at 12:36pm, welcoming both in person and virtual participants. Theresa Van Winkle reviewed the hybrid meeting rules and explained the technology resources that were used during the hybrid meeting. Lynn McNamara moved to accept the minutes from the April meeting as presented, Sara Duckwall seconded the motion, a voice vote was taken and the motion unanimously passed with Tammy Bowers, John McKenzie, Matt Calzia, and Jill Fullerton excused.
<b>Department Updates</b> (0:07:22)	Theresa Van Winkle shared that there are not any workers' compensation rule making updates at this time. There are updates SB 533 in regards to come-along provider requests, prior reports are available on the MLAC website.
(0:08:41)	Sally Coen, Administrator Workers' Compensation Division (WCD), gave an overview of <a href="#">the annual Managed Care Organization (MCO) denial of come-along provider request</a> , this annual report comes from legislation that

---

was passed in 2014, this is the first year that the report shows zero denials. Robert Andersen from Worker's Compensation Division's resolution team is present and available to answer any more technical questions.

(0:12:07) Scott Strickland mentioned that when he was enrolled in an MCO, he saw a provider that was not enrolled in the particular MCO location but was elsewhere. This seems like a bit of a data black hole and are there ways of addressing this? Or do we have data on the number of people that switch MCOs once they are enrolled because of issues like this? Sally Coen deferred to Robert Andersen to answer that they do not have that level of detailed reports today, but that they may be able to get that information directly from the MCOs. Sally Coen confirmed that they can talk to the MCOs and ask them for that level of detail. Scott added that when he was enrolled in an MCO that there was a blanket period of time that you could switch MCOs for any reason and he would be interested to see if there was information exploring the rates of workers switching MCOs during that time.

(0:15:20) Ann Klein from Majoris Health System added that MCOs may not be the most accurate source to find this information. As an MCO they only see when a participant is disenrolled not necessarily the reason, the carrier would have more of that detailed information. Addressing Scott's question about one provider being enrolled in an MCO in one location as opposed to another is most commonly caused by a particular clinic holding the MCO contract, not the organization in general or the clinic within the organization where a physician is employed.

(0:17:02) Patrick Priest asked for clarification about why this is the first year zero denials are being reported. Sally Coen responded that they are not entirely certain why there are zero denials this year as their enrollment numbers have remained relatively steady.

**Legislative  
Updates**

(0:18:05) Theresa Van Winkle shared that all five of the bills that MLAC recommended to be enacted have been signed by the governor. HB 4138, the time loss bill, had a pre-rulemaking stakeholder meeting on May 3rd and the information from that meeting is available on the DCBS webpage. Theresa also mentioned that there is one rule that DCBS is still taking public testimony on which would replace gender specific pronouns in 24 rules.

(0:19:45) Jennifer Flood, Ombuds Office for Oregon Workers, spoke about SB1585 which has to deal with a data sharing information with the Oregon Health Authority (OHA) about Covid-19 deaths. An agreement was reached with the Authority that filtered data down so that an agreement did not have to be made with the Oregon Employment Department. From OHA's list of

---

---

178 workplace fatalities involving Covid, 55 were actually employees. After reviewing the data, four claims had already been filed and 51 letters were sent out on May 2<sup>nd</sup> and the department has received eight phone calls from the deceased worker's estates inquiring about benefits.

(0:21:40) Theresa Van Winkle shared that the next round of executive appointments, which should include MLAC, will happen in mid-September.

(0:22:26) Patrick Priest recognized Lynn McNamara for her seven years serving on MLAC and thanked her for her help in guiding the committee. Theresa Van Winkle added a thanks for her leadership and assistance. Scott Strickland also thanked her for her service.

### **Covid-19 Claim updates**

(0:24:00) Sally Coen, WCD Administrator, gave an update on the second [Covid-19 denied claim audit](#). The first denied claims audit took place in February 2021 and was done under the more general, reasonable investigation rule. This second audit took place under the more specific Covid-19 reasonable investigation rule. The audits were not to assess the correctness of these decisions, only to assess the reasonableness of the investigation into a claim. The companies audited are notified of the findings at the conclusion of the audit. During the second audit, no violations were found and no penalties were issued. Auditors did find some things of note including about 60% of the claims showed that wages were lost because of the claim and temporary disability was paid to about 15% of participants. Comparing the 2021 audit to this audit found that testing percentage had increased from 80 to 89%, the number of workers testing positive also increased to 58%. Less workers were filing claims based on exposure and more were filing claims on actual infection.

(0:32:37) Lynn McNamara asked if the companies audited were the same during each audit. Sally Coen answered that a few additional companies had been audited the second time based on the criteria of having five or more cases reported but the vast majority were the same.

(0:33:26) Dr. Vern Saboe, chiropractor, asked if it was documented or noted what type of Covid-19 test was performed. Sally Coen answered that it was not noted during their audit.

(0:34:29) Matt West, WCD Deputy Administrator, gave an update about [reported Covid-19 claims](#). He noted early in the pandemic they were asked to share claims data which they continue to do weekly and monthly. Matt shared the monthly data and noted that while WCD receives a lot of claims, they do not get all claims reported, particularly accepted non-disabling claims or claims from the City of Portland Fire and Police Disability and

---

---

Retirement. He also noted that insurers have a 60 day window to process claims so there is lag between the claim being filed and those numbers being reflected in their data. As of May 2, 2022, there were 6,588 Covid-19 claims reported to WCD. The largest share of claims occurred in healthcare settings followed by public service claims as well as outbreaks during the 2020 Wildfire season. He added that the acceptance rate for accepted disabling claims for exposure is 82%, Covid-19 disease disabling claims are 88%, and fatalities rate is 52%. The most common claim denial reasons are that the exposure is not compensably related to the claimant's employment. At the last MLAC meeting a member asked about rate of denied claims and there have been 1,374 denied disabling and non-disabling claims. There have been 80 total appeals, 65 had been fully denied claims, 4 were denied fatality claims, 14 partially accepted claims, and one denied aggravation claim.

- (0:41:50) Lynn McNamara urged DCBS to get the information about the non-disabling claims in order to have the most accurate information, noting that over the past few years it was frustrating to not have a full picture of claims when making decisions. Matt West answered that a bill passed in 2021 that allows DCBS to request information on those non-disabling claims that does not go into effect until July 2023.
- (0:43:09) Patrick Priest asked if there were any perspective how Oregon's response compares to other states. Matt West shared that the WCD policy team was keeping track of Oregon's response compared to other states but that he does not have any specific data on that today. Patrick Priest shared that at a nationwide self-insurer conference that he attended, it was noted that Oregon had one of the lowest claim rates.
- (0:44:08) Andrew Stolfi added that Oregon had one of the lowest rates of Covid infections. David Waki added that the National Council on Compensation Insurance (NCCI) keeps track of that comparative information that might be helpful to look at. Scott Strickland added that even getting a comparison of metro areas could be beneficial.
- (0:45:50) Keith Semple, attorney, added that he noticed that some of the 3<sup>rd</sup> party claims processors that were not on the list provided by WCD. He asked if there are self-insurers and processors that were not included and what the deciding factors for inclusions would be. Matt West responded that they are all listed under the insurer that they used but not broken out specifically by processor. Keith Semple asked if there was a size limit to the number of self-insured employers that are listed. Matt West responded that there is not a size limit to be included in this data but there could be up to a 74 day lag between a claim being filed and when it is included in their data.

---

(0:48:01) Scott Strickland asked for clarification about the prospect of having at 74 day lag between claim filing and inclusion in DCBS data. Matt West responded that once a claim is submitted that the insurer has 60 days to make a decision about the claim and there is then a 14 day period for the insurer to report that decision to their division.

(0:48:53) Dr. Vern Saboe made a comment regarding the inclusion of data including the type of testing used feels that the type of testing that was used in a claim is something that all stakeholders would be interested in having information on. He explained the different levels of accuracy between he tests and how that information is beneficial to making claimant decisions.

**Omsbuds Office  
for Oregon  
Workers  
overview**

(0:50:23) David Waki and Caitlin Breitbach, Small Business Omsbudsman , gave an [overview](#) of their experience working with workers’ compensation systems and with small businesses. They explained the Small Business Omsbudman’s educational and engagement efforts around the state. David Waki is the chair of the Oregon Workers’ Compensation Review and Advisory Committee (ORAC), and explained that this committee reviews state and national recommendations and hears employer disputes with their workers’ compensation insurers, these meetings happen quarterly. David Waki added that answering inquires is the office’s main focus. The most common questions that their office gets is: “do I need to buy workers’ compensation insurance?” David adds that this is a complicated question and the omsbudsman will work with employers to determine if they need workers’ compensation insurance and then direct them to resources for finding the correct insurer for their needs. The omsbudman’s office also assists in appeals of workers’ compensation audits. David Waki gave an example of a non-profit that acted as a storefront for getting recycled materials to educators. The non-profit were initially listed as a recycling program but upon review it was determined that they were actually a store. Caitlin Breitbach added that another aspect of their job is helping employers objecting to non-complying employer penalties that they received for not having appropriate workers’ compensation insurance. She gave an example of an RV dealership that was initially given a \$60,000 penalty and after review had an adjustment down to \$7,000 because of an employer classification error. David Waki added that their office is usually the last resort for non-complying employers trying to find relief.

(1:04:05) Patrick Priest asked if there was anything that their office has found when working with employers to make accessing workers’ compensation insurers easier? David Waki responded that employers being able to get quotes online has been helpful but that he will give the process of

---

---

simplification some thought. Caitlin Breitbach added that the Secretary of State's office has a small business page that is helpful for small businesses to help trigger the idea that workers' compensation insurance is needed and that they try and get the message out as much as possible to let people know that they may possibly need to get that coverage.

(1:06:20) Scott Strickland asked if their office provides any workplace safety resources or puts small businesses in touch with those resources. David Waki responded that that is something they are open to and encourage but that their office specifically does not provide workplace safety training.

(1:07:57) Jennifer Flood, Ombuds Office for Oregon Workers, noted that her office had recently undergone a name change. She added that DCBS Director Andrew Stolfi and Governor Kate Brown had recently expanded her office's role to help workers answer questions about their concerns regarding their rights and responsibilities while navigating the Oregon OSHA system. The Ombuds office is under DCBS but kept separate from WCD. Jennifer said in her office there are five ombuds, two of which are fluent in Spanish, and that they use language link technology to assist Oregon workers in any language necessary. Their office receives approximately 600 inquiries a month with 20% of those calls in languages other than English. Nearly 84% of the time they are able to resolve inquiries by answering questions or providing information. Approximately 77% of inquiries are resolved within the same day. The most common questions are about medical services including questions about enrollment in a Managed Care Organization, how to find treatment, and what to do if a claim is denied. She adds that they also answer questions about how time loss is calculated and the general process that a worker goes through in filing claims. She added that while the ombuds are not attorneys and cannot provide legal advice, being involved in litigation is also part of their job, she added that in the case of denials they always urge the claimants to seek legal representation and direct claimants to other avenues of assistance adding that her office does try to connect claimants to the most helpful services possible. The Ombuds office also deals with employer issues such as difficulties with return to work restrictions.

(1:17:12) Lynn McNamara asked if remote work being so prevalent effected the employer accommodation process? Jennifer Flood answered that they have not seen any hiccups with that. Lynn McNamara clarified that she was speaking about employees having access to specific equipment or technology for accommodations. Matt West answered that WCD does not have any data on the prevalence modifications done in remote settings, he added that they did urge their staff to speak to employers to think outside of the box about the possibility of remote accommodations.

- 
- (1:19:30) Patrick Priest asked if the percentage of Spanish speaking calls that the office received is comparable with the amount of Spanish speaking workers in the state. Jennifer Flood answered if the rate of Spanish speaking calls is higher that it could be because of the amount of Spanish speakers working in dangerous, manual, or agricultural work, which have higher incident rates. She added that her staff have worked diligently to build relationships with those communities and urge them to call when necessary.
- (1:20:42) Jennifer Flood added that her office also works with unrepresented workers who have claim disposition agreements. The Omsbuds office does not get involved in the financial aspects, just explanation what benefits the claimant is giving up and what benefits they will still be receiving.
- (1:23:48) Lynn McNamara asked how the Omsbuds office knows that a CDA has taken place. Jennifer Flood responded that it is the employer's responsibility to explain the CDA to the claimant. Once a CDA is filed with the Workers' Compensation Board, the board will recommend that the claimant contact the Omsbuds office.
- (1:25:10) Jennifer Flood added that another aspect of their work is facilitating claims that involve a workplace fatality, this process is done as directed by MLAC in 2007 legislation. She adds that when OSHA sends out a letter it notes the Ombuds office contact information. She notes that workers' compensation insurance typically does not begin issuing payment until a claim is accepted and that it is important that the deceased worker's family understands that. She added a note about Kid's Chance of Oregon scholarship fund that has been established for the children of workers killed on the job. This scholarship is not a part of her office but the office does make it a point to inform the families of the deceased workers of this and other resources available to them. The office does outreach and training to both insurance companies and organized labor among other groups. Workplace safety and health is another aspect of the office that was established in January 2022.
- (1:30:34) Scott Strickland complimented Jennifer Flood on her office's assistance in his personal claim and asked her for an example of the work that she does on a daily basis. She responded that a large part of her job is ensuring that time loss checks are accurate as well as responding to inquiries.
- (1:32:43) Theresa Van Winkle added an example of a situation that she worked with Jennifer Flood in resolving in whether or not it would be appropriate to use the Department of Consumer and Business Services agency address to assist an claimant without a mailing address with receiving their benefits. Jennifer Flood added that it is common to get calls from workers about that as well.
-

---

**Meeting**  
**Adjourned**

Scott Strickland adjourned the meeting at 2:08p.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>