

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

November 10, 2022
11:00am-12:00pm

Committee Members Present:

Patrick Priest, Citycounty Insurance Services
Marcy Grail, IBEW Local 125
Sara Duckwall, Duckwall Fruit via Zoom
Margaret Weddell, Labor Representative via Zoom
Jill Fullerton, Clackamas County Fire Department via Zoom
Matt Calzia, Oregon Nurses Association via Zoom
Tammy Bowers, May Trucking via Zoom
Scott Strickland, Sheet Metal Workers Local #16 via Zoom
Andrew Stolfi, DCBS Director, *ex officio* via Zoom

Committee Members Excused:

John McKenzie, JE Dunn Construction
Lynn McNamara, Paladin Consulting

Staff:

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

Agenda Item	Discussion
Opening (0:00:23)	Co-chair Scott Strickland opened the meeting and Theresa Van Winkle called the roll of members. Minutes from the October 20, 2022 meeting were discussed, Tammy Bowers made a motion to approve the minutes as presented, Margaret Weddell seconded the motion. The motion passed with a voice vote with seven votes in the affirmative, no objections, and Scott Strickland abstaining.
Department Updates (0:02:49)	An update from the Workers' Compensation Board was sent out during the last meeting and members were asked if they had any questions for the Board representatives present.
(0:04:09)	Theresa Van Winkle shared an rule hearing update for two items, one about a clarification about claims administration and the implementation of HB 4086 from the 2022 Legislative session. There is also a hearing about

HB 4138 and changing the name of the The Ombuds Office for Oregon Workers. Theresa Van Winkle also shared a draft schedule of tentative 2023 meetings and legislative reviews.

Subcommittee
update report
(0:09:25)

Sara Duckwall presented [the letter](#) resulting from the requested stakeholder meeting, she noted that there was not a presented solutions and that the next step would be going to MAC for their input on the problem statements. Matt Calzia added that MAC's best practices, their opinion on limiting time-loss and withholding payments would be what is requested when the MLAC subcommittee goes to speak with MAC.

(0:12:00)

Margaret Weddell praised Sara Duckwall and Matt Calzia for their work and leadership on the subcommittee. Margaret shared her concerns about MLAC members attending a MAC meeting to request guidance on best practices as she feels that would mean that MLAC feels there is an problem and is looking for solutions to this problem. Margaret suggested that speaking to the Oregon Medical Association may be a more appropriate.

(0:17:23)

Sara Duckwall thanked Margaret Weddell and read the problem statement from the subcommittee, highlighting the problems that lead to the subcommittee formation.

(0:18:14)

Margaret Weddell responded that the solution of strengthening the bug letters that was presented should be sufficient to answer the problem statement. Adding that MLAC going to MAC implies that best practices are currently not being followed.

(0:18:56)

Sara Duckwall responded that there were four items that stakeholders asked to address with a solution and they have not done so adding that the Oregon Medical Association (OMA) may be a good place to reach out to in addition.

(0:19:24)

Scott Strickland asked if there was a reason that stakeholders couldn't go to MAC or have not done so already to address these concerns, noting that he does share some of Margaret Weddell's concerns.

(0:20:32)

Matt Calzia responded that during the course the subcommittee meetings there was a lot of the same discussions happening and some barriers to agreements on proposed solutions. The subcommittee asked stakeholders to meet and discuss resulting in the letter that was presented earlier in the meeting. He noted that he does share the concern about setting the wrong precedent of the subcommittee going to MAC.

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- (0:22:56) Margaret Weddell responded that when she was initially discussing proposed solutions, she was envisioning the subcommittee functioning as a facilitator for the discussions and work between the stakeholders not leading those conversations or bringing forward a rule change concept.
- (0:24:01) Patrick Priest noted that it seems that this particular issue of the issue has had a lot of discussion and there was previous legislation brought forward that resulted in a law change where the stakeholders could not agree then and there was discussion about MLAC investigating the issues further if there could not be an agreement. He feels that it seems appropriate to him to fulfill their charge to contact MAC in order to address this issue.
- (0:25:41) Matt Calzia responded that the subcommittee did have MAC members come to some meetings to give their input.
- (0:26:40) Margaret Weddell clarified that she is not saying that we should not seek information from other bodies but at this point in time, any further work on the subcommittee would be creating a legislative concept and that any legislative concepts should come from the stakeholders.
- (0:27:25) Scott Strickland agreed that this was driven by HB 4138 but that that was driven by stakeholder concern and collaboration with MLAC mediation and input. Scott noted that from what was presented it seems that there is a stall in work between the stakeholders and that MLAC is now stepping in and driving the discussion on this issue.
- (0:29:41) Sara Duckwall noted that she does hear Scott's concern but that the subcommittee members are not sure where to go to find guidance on this issue in order to fulfill the charge that they were given to address the agreed upon problem statement.
- (0:30:33) Kirsten Adams, Associated General Contractors, noted that it does seem like MLAC does gather information in order to make an informed decision and going to MAC to gather information seems in line with what MLAC has done previously and fully within the current subcommittee charge.
- (0:31:27) Dustin Karstetter, Washington County, agreed with Kirsten Adams and noted that going to MAC or OMA would be a good opportunity to speak to the providers that are directly involved in the problem statement. Adding that he feels if you go to any TPA provider you would find anecdotal evidence of providers not following a best practice or providing the appropriate information.
- (0:33:58) Marcy Grail stated that she feels everyone can agree that there is a problem and the subcommittee has done a thorough job in guiding this information. She shared her concern about the seeming lack participation of the
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stakeholders and noted that if there is a lack of participation on their end that may be a sign of something larger that is beyond the current charge.

- (0:35:23) Sara Duckwall agreed that stakeholders should be more vested in finding solutions but that they are not finding that level of participation by all stakeholders and the subcommittee is unsure of how to proceed because of that.
- (0:35:45) Marcy Grail responded that ultimately what should happen is that a decision should be made from the information that has been provided.
- (0:36:40) Matt Calzia added that from his position on the subcommittee he appreciates not further chasing something that the stakeholders aren't engaging in themselves by going to MAC. He questioned MLAC's position on presenting legislative concepts and how far MLAC should be leading stakeholders to introduce those legislative concepts.
- (0:37:47) Margaret Weddell, stated that she feels that the subcommittee charge is fulfilled as a solution was reached by recommending that the insurers restructure their bug letter in order to be more effective.
- (0:38:30) Scott Strickland added he would be comfortable adding in more partners to the conversation if we are having an issue with stakeholder engagement as members of MAC have already spoken at the subcommittee.
- (0:39:58) Tammy Bowers noted there are two separate issues going on currently, one of which can be resolved with the changes in the language to the B-9 letter according to that administrative claim closure statute. The other issue that has not been resolved is the issue of open-ended time loss. Tammy noted that SAIF Corporation has brought forward a number of solutions that have not been agreed to and that without resolution of the second issue the issue is not solved at all. She added that MLAC has gone to MAC for guidance numerous times and she feels that it is appropriate now.
- (0:42:39) Keith Semple, Oregon Trial Lawyers Association, spoke about the history of HB 4138, noting that the OTLA came in MLAC with a legislative concept with statutory language and engaged in discussion at that time to see if MLAC would approve it. He noted that he and his team have participated through the subcommittee process and emphasized that just because there is no consensus doesn't mean that there has not been engagement.
- (0:49:29) Sara Duckwall responded that she agrees that engagement has occurred but that there a solution has not agreed on. She asked Keith Semple if they are opposed to MLAC going to MAC for guidance.
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- (0:49:55) Keith Semple responded that OTLA is not formally opposed to MLAC going to MAC but that they not feel that MLAC needs to go to MAC and that other stakeholders can go to MAC directly.
- (0:50:27) Scott Strickland asked Theresa Van Winkle if there were legislative concepts waiting to be presented or if the conversation can continue. Theresa van Winkle responded that she does not have any but that if anyone does want to present on a legislative concept to direct message her via Zoom.
- (0:50:50) Elaine Schooler, SAIF, spoke about the collaborative nature of the process thus far with four proposed solutions with various levels of information behind them. She feels that going to MAC for comment seems no different than asking Workers' Compensation Division to provide information and comment. She feels that the solutions are being taken to broader debate when the subcommittee has not yet completed their charge.
- (0:55:04) Margaret Weddell asked Elaine Schooler to comment on Scott Strickland's early comment and the concern that at this point MLAC is not facilitating a solution so much as driving a solution in place of the stakeholders. Elaine responded that she feels that there has been engagement thus far but that where it currently lies is that if there is a solution is identified then statutory language can be drafted.
- (0:58:40) Scott Strickland reiterated that his concern is that the feedback from the subcommittee is that they need more information and the discussion is how to go about getting that information.
- (0:59:10) Kirsten Adams responded to the comments about stakeholder going to MAC as opposed to MLAC going to MAC. She feels that MLAC members asking these questions of MAC serves more of a peer to peer request and ensures that the appropriate amount of attention and care is given to the request.
- (1:00:28) Scott Strickland thanked Kirsten Adams and noted that we are currently over time and recommended that we continue this discussion at the next meeting.
- (1:01:01) Patrick Priest asked for clarification on what we are currently doing, asking if there needs to be a vote for the subcommittee to continue or how to proceed. He added that going to MAC seemed appropriate to him.
- (1:01:41) Scott Strickland responded that he feels that the report is still being discussed and that once discussion has been concluded then a vote would need to take place. He echoed Patrick Priest's comments noting the amount
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of stakeholder involvement and the work that Sara Duckwall and Matt Calzia have done.

- (1:02:37) Sara Duckwall noted that she and Matt Calzia do not have specific recommendations at this point but that she is concerned as the next MAC meeting is on November 18, 2022, so a decision about attending the MAC meeting needs to happen before that time. Sara Duckwall added that she is happy to stay in order to continue the conversation in order to do that.
- (1:03:21) Matt Calzia added that he able to stay a bit longer in this meeting in order to get an answer prior to the MAC meeting.
- (1:03:46) Tammy Bowers added that she is in favor of having MLAC members attend MAC the meeting and asked if there was another MLAC meeting scheduled before the end of the year.
- (1:04:06) Theresa Van Winkle responded that the next full MLAC meeting is scheduled for December 22, 2022.
- (1:04:25) Scott Strickland asked if we knew when the next MAC meeting after November 18, 2022, is taking place. Theresa Van Winkle responded that there is not one scheduled and that it is actually a point on the agenda at the next MAC meeting.
- (1:04:54) Dustin Karstetter asked if there was a specific ask that would be made at the upcoming MAC meeting beyond asking what their best practices would be, which would fall under the fact-finding mission of the subcommittee.
- (1:06:58) Scott Strickland responded that the discussion that has been occurring is around MLAC going to MAC and making that ask versus the stakeholders reaching out to MAC and making that ask directly.
- (1:08:16) Tammy Bowers expressed her concerns about setting the precedence about MLAC members not being able to go to other groups in order to gather information and ask questions.
- (1:09:00) Scott Strickland responded that he does not feel that is what is occurring, the discussion that is underway is around how that reaching out should occur.
- (1:09:24) Sara Duckwall responded that she feels that the subcommittee has been charged with leading this discussion and that going to MAC is the route they are recommending.

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- (1:09:40) Matt Calzia responded that he is having concerns after hearing the discussion about attending a MAC meeting bringing stakeholder proposals. He feels that it is reasonable to ask stakeholders to go to MAC directly instead of MLAC members attending on their behalf.
- (1:11:58) Sara Duckwall asked Matt Calzia if they needed to have another subcommittee meeting to determine who the correct people to go to MAC would be.
- (1:12:20) Matt Calzia agreed and noted that he feels that even having the co-chairs caucus with the sub-committee members would be helpful.
- (1:12:35) Scott Strickland stated that he is in favor of having another subcommittee meeting.
- (1:12:47) Sara Duckwall asked Scott Strickland if there is another subcommittee if there would be the possibility of having MLAC's approval before attending the MAC meeting.
- (1:13:31) Scott Strickland said that he feels that after the conversation that has occurred at this meeting, he would feel comfortable to for the subcommittee to move forward how they see fit after there is further discussion at another subcommittee meeting.
- (1:13:54) Tammy Bowers expressed her frustration about the reservations for allowing the subcommittee to move forward especially because the next MAC meeting is occurring soon.
- (1:15:06) Theresa Van Winkle added that the next MAC meeting would occur either January or February.
- (1:15:53) Patrick Priest moved to acknowledge that the sub-committee fulfilled their charge and made a report. He also moves that after this discussion the subcommittee members can come agreement about how they would like to proceed on their own. Margaret Weddell seconded the motions.
- (1:16:41) Scott Strickland agreed with Patrick Priest's motion and voiced his support of the subcommittee to complete their fact finding.
- (1:17:02) Margaret Weddell added that she is in support of the sub-committee deciding how to move forward after hearing the concerns that have been presented.
- (1:18:05) Scott Strickland asked Theresa Van Winkle if it would be possible to have immediate off-line discussions to decide further details. Theresa Van Winkle confirmed.
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- (1:18:32) Sara Duckwall expressed her concerns about the tightness of the schedule in order to have this conversation before the upcoming MAC meeting.
- (1:19:11) Scott Strickland noted that he is available to meet on Monday, Patrick Priest confirmed that he is as well as did Theresa Van Winkle.
- (1:20:06) Sara Duckwall noted that she is unavailable for follow-up on Monday and asked for confirmation that the subcommittee will receive guidance from the co-chairs after they meet.
- (1:21:14) Scott Strickland asked if there was further discussion on the seconded motion before voting.
- (1:21:19) Dustin Karstetter asked if he could ask a clarifying question. Scott Strickland responded that committee member only discussion was occurring.
- (1:21:35) Sara Duckwall asked if the co-chairs could meet and direct the subcommittee given the scheduling difficulties. Scott Strickland agreed that there would be guidance from the co-chairs after their conversation.
- (1:22:34) Matt Calzia agreed that guidance from that co-chairs on how to move forward is needed and asked for a deadline on when the subcommittee would be receiving this guidance.
- (1:23:07) Patrick Priest clarified that his motion was to entrust the subcommittee chairs to describe on how to move forward.
- (1:24:28) Sara Duckwall thanked Patrick Priest for clarifying and agreed to meet offline to decide how to move forward.
- (1:24:57) Scott Strickland called the seconded motion to a vote. The motion passed with a unanimous voice vote in the affirmative with no abstentions and no votes in the negative (members John McKenzie and Lynn McNamara excused) .

Meeting

Adjourned

Scott Strickland adjourned the meeting at 12:29pm.

*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>

