

WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE

**Full MLAC Meeting**

October 1, 2018

1:30 p.m. – 3:30 p.m.

***Committee Members Present:***

Alan Hartley, Shari's Restaurants {via teleconference}  
Lynn McNamara, CityCounty Insurance  
Kathy Nishimoto, Duckwall Fruit  
Kimberly Wood, Perlo Construction  
Aida Aranda, Oregon and Southern Idaho Labor-Employers Training Trust {via teleconference}  
Kevin Billman, United Food and Commercial Workers {via teleconference}  
Ateusa Salemi, Oregon Nurses Association {via teleconference}  
Diana Winther, IBEW Local 48  
Cameron Smith, Director, Department of Consumer and Business Services (DCBS), *ex officio*

***Members Excused:***

Tammy Bowers, May Trucking

***Staff:***

Theresa Van Winkle, MLAC Committee Administrator

<b>Agenda Item</b>	<b>Discussion</b>
<b>Opening</b> (0:00:00)	Diana Winther opened the meeting at 1:30 p.m. Committee members introduced themselves.
<b>Meeting Minutes</b> (0:01:37)	Lynn McNamara moved to approve the minutes from the February 16, 2018 and June 24, 2018, meetings. Kimberly Wood seconded. All members present voted aye.
<b>Department Updates</b> (0:02:03)	Theresa Van Winkle, Committee Administrator, made announcements and provided updates: <ul style="list-style-type: none"><li>- Regarding meeting logistics and possible future live streaming of meetings</li><li>- Agenda change for today's meeting due to scheduling conflict for one of the scheduled witnesses (Dr. Vern Saboe).</li><li>- <a href="#">Follow up memo</a> on the medical arbiter presentation at the last meeting.</li><li>- <a href="#">Follow up memo</a> on Employer-at-Injury Program usage.</li><li>- 2019 employer pure premium and assessment rate <a href="#">announcements</a></li><li>- Discussion of <a href="#">future meeting schedule</a>. Committee needs to meet at least once more in 2018 and will meet regularly in 2019 for legislative review.</li></ul>

Cameron Smith reiterated the news on the 2019 employer rate reductions and commented on the savings for employers over the past 20 years.

<b>Agenda Item</b>	<b>Discussion</b>
<b>Workers' Benefit Fund Balance Study</b> (0:09:35)	Theresa Van Winkle reviewed <a href="#">SB 1558 (2014)</a> which required the study of the Workers' Benefit Fund balance. Ms. Van Winkle reviewed the provisions of the legislation and the requirement to study the fund balance by January 1, 2019.
(0:14:08)	Gary Helmer, Senior Economist, DCBS, walked through and discussed the <a href="#">draft report</a> and asked for feedback on the content of the report. Questions from the committee included (report page numbers cited if relevant):
(0:24:03)	<ul style="list-style-type: none"> <li>• (page 6) Cameron Smith asked about the reduction in fatalities and Permanent Total Disability (PTD) claims and whether that is a nationwide trend. Mr. Helmer indicated for fatalities it is a national trend, but PTDs are state specific. Oregon's drop is in part due to statutory change in definitions of PTD.</li> <li>• (page 6) Theresa Van Winkle asked why the chart excludes payments to Oregon Institute of Occupational Health Sciences. Mr. Helmer said that payment is considered an agency expenditure in the agency's accounting system.</li> </ul>
(0:32:31)	<ul style="list-style-type: none"> <li>• (page 8) Alan Hartley asked if the long term liability will be paid for by employers. Mr. Helmer indicated that if you assume the state will continue operating and collecting money, then the long term liability is not a big concern.</li> <li>• Kimberly Wood asked if the long term liability is decreasing. Mr. Helmer said it is going down slightly each year due to declines in the Retroactive Program expenses.</li> <li>• (page 9) Cameron Smith commented on process of forecasting. Mr. Helmer commented on alternative methods.</li> </ul>
(0:44:46)	<ul style="list-style-type: none"> <li>• (page 13) Diana Winther clarified the impact of cutting the Retroactive Program is that there would be no cost of living increases to beneficiaries. Mr. Helmer said that it would be cuts to widows and child beneficiaries.</li> <li>• Diana Winther commented the scenarios are helpful.</li> </ul>
(0:48:06)	<ul style="list-style-type: none"> <li>• (page 15) Kimberly Wood clarified the fund balance is currently at 23 months and what the impact of the 2019 assessment reduction will be. Mr. Helmer said he current equilibrium rate is 2.5 cents per hour, so the fund balance will slowly decline.</li> <li>• Cameron Smith commented the assessment reduction will still be find even with a mild or severe recession.</li> <li>• Kimberly Wood asked if 2.4 cents is the lowest rate. Mr. Helmer said it was 2.2 cents for a couple of years in the mid 1990s and explained what changes happened when the WBF was created. The current rate is based on the economic forecast for the next five years. In the past there have been new programs added without increasing the assessment rate.</li> </ul>
(0:50:42)	<ul style="list-style-type: none"> <li>• Diana Winther clarified what recommendation the committee needs to make and the impact of needing to make quick</li> </ul>

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(0:55:00)	<p>adjustments to address a recession. Mr. Helmer said the department makes assessment decisions once per year. In prior recessions the department did not increase the assessment because there was a surplus in the fund. Increasing assessment rates during a recession may not be feasible.</p> <ul style="list-style-type: none"> <li>• Alan Hartley asked what was the rationale for changing from 12 months to six months in 2014. Theresa Van Winkle responded the change was in case the expenditures for worker claims for the bankrupted employer groups. Mr. Helmer said he is not sure why six months was selected, but that we were anticipating additional costs that would impact the fund balance. Ms. Van Winkle said that other DCBS funds have six month balance requirements.</li> <li>• Kimberly Wood clarified then change in 2014, but now we know what the actual expenses are.</li> <li>• Diana Winther commented that reaching the fund balance threshold has no penalty but it triggers the department to take actions to address it. Mr. Helmer agreed. He commented using “no lower than six months” is hard to determine what to do next. In the department fund balance policy, we say we want a fund balance between six and twelve months; if outside that need to have a plan to address it.</li> <li>• Diana Winther said if the need to change occurs outside the annual assessment process, then the only choice is to cut programs. She asked who makes those decisions about programs. Cameron Smith indicated that they would rely on MLAC for direction, but the policy direction for the department is that we would be fine as long as we are above six months. He indicated that twelve months is a more comfortable number</li> </ul>
(0:57:44)	<ul style="list-style-type: none"> <li>• Diana Winther asked what requirements there are on the legislature to take the funds. Ms. Van Winkle indicated they do so through legislative action.</li> <li>• Lynn McNamara asked if we have considered a catastrophic event set aside, for example a recession or earthquake. Could the policy say shoot for 12 months, no less than six, but a certain amount set aside for catastrophic events.</li> <li>• Diana Winther asked if that happened, whether it would protect the fund from sweeps. Ms. Van Winkle indicated she does not know.</li> <li>• Kimberly Wood asked if we have authority to do a set aside. Ms. Van Winkle indicated it would require a law change.</li> <li>• Kimberly Wood commented her preference for saving for potential events. She expressed concerns staying at six months, but having 23 months makes the fund a target. She doesn't want to have to raise rates.</li> </ul>
(1:01:04)	<ul style="list-style-type: none"> <li>• Lynn McNamara commented they don't want to cut benefits. Diana Winther agreed.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Alan Hartley said the six months balance was used to anticipate unknown costs. He prefers 12 months. Diana Winther concurred.</li> <li>• Kimberly Wood said she prefers reversing the scenario examples.</li> <li>• Cameron Smith clarified the next meeting date and clarified the report is due January 1.</li> </ul>
<b>2019 Legislative Concepts</b> (1:03:02)	<p>Theresa Van Winkle provided several background documents that outline provider authorities in the workers’ compensation system. <a href="#">One handout</a> describes attending physician status and the scope of practice for the provider types. The <a href="#">other handout</a> provides a chronology of law changes and MLAC involvement in this topic area.</p>
(1:07:00)	<p>Kimberly Wood asked for clarification of type A versus type B physicians. Cara Filsinger, Workers’ Compensation Division, clarified that the “A” and “B” refers to the statutory numbers. Type A providers have unlimited authority to be attending physicians; Type B have limits.</p> <p>Lynn McNamara asked who prepared the documents. Ms. Van Winkle responded the department prepared the information about law changes and MLAC activities.</p>
(1:09:00)	<p>Diana Winther asked about the 2015 study of cost and attending physician status. Ms. Van Winkle clarified that legislation did not pass.</p> <p><u>Physician Assistant Attending Physician Status</u> Elizabeth Remley and Rachael Wiggins Emory, representing the Oregon Society of Physician Assistants, presented their <a href="#">concept to change physician assistant authority</a>.</p>
(1:16:00)	<p>Ms. Remley provided background on who physicians assistants are, their training, scope of practice, licensing, and the practice agreements with supervising physicians. She commented on rural area access and that people often have a physician assistant as their primary care provider. She stated there is confusion of different authorities and treatment time frames in workers’ compensation for the supervising physician (medical doctor) and the physician assistants.</p> <p>Ms. Emory provided information about the top five injuries that workers suffer: strains and sprains, cuts and punctures, contusions, inflammations, and fractures. Of these, time off ranges from 24 days for cuts to 91 days for inflammation. Most of those, that exceeds the 30 days physician assistants’ authority in workers’ compensation.</p> <p>Ms. Remley said they want to find a way to allow physician assistants to continue treating their patients and avoid redundant or excess visits to</p>

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	other providers. They believe this is a technical ask, as their licensing statute allows delegation of other duties. Understands that workers' compensation is different.
(1:20:21)	<p>Kimberly Wood asked how many physician assistants are in rural areas. Ms. Remley responded she needs to find out, but many in her organization are rural providers.</p> <p>Lynn McNamara asked there are alternatives to full attending physician status. Ms. Remley said full status would be the cleanest way and remove all confusion. Extending the time would be a possibility.</p> <p>Alan Hartley asked how many occasions that 30 days for treating is not enough time. Ms. Remley answered they don't have hard data on that topic, but insurance companies may have information.</p>
(1:23:38)	<p>Alan Hartley stated this may be an anecdotal problem. Ms. Remley said they are working on getting information.</p> <p>Kathy Nishimoto asked what is the educational training in workers' compensation for physician assistants. Ms. Remley said she needs to look into that, but they do get training in billing and charting.</p> <p>Kathy Nishimoto said on the job injuries are different. At her company they want their workers to see appropriate providers. Ms. Remley responded that the physician assistant should refer to specialists if needed.</p> <p>Alan Hartley commented on the duration of treatment for physician assistants and when a referral is needed. Ms. Remley indicated there would be referrals to the specialist as needed.</p>
(1:29:05)	<p>Kimberly Wood asked for clarification on the data presented. Ms. Emory clarified the data.</p> <p>Kimberly Wood said one alternative would be to allow the supervising physician to allow for a longer treatment period if they felt it was appropriate, if the statute allows. Ms. Remley responded that it could be with electronic signature.</p> <p>Ms. Remley asked Kathy Nishimoto why she would prefer the one visit happen. Kathy Nishimoto said she prefers her workers get the best care possible.</p> <p>Theresa Van Winkle pointed out physician assistants must review educational materials prior to providing services.</p>

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	<p>Alan Hartley said they don't have the same training as a medical doctor but they do have supervision</p>
	<p>Diana Winther asked if they can describe an acceptable timeframe that doesn't go to full attending physician status. Ms. Remley responded that there is already a process for supervising physicians to do chart review, they might be able to fit in that process.</p>
	<p>Theresa Van Winkle said they will see if there are department data sources or information from insurers. Ateusa Salemi asked if the data can include distance information – workers may have to travel long distances, during winter months that may not be possible.</p>
<p><b>General announcements</b> (1:34:26)</p>	<p>Theresa Van Winkle reviewed the upcoming schedule for legislative reviews.</p> <p>Theresa Van Winkle highlighted the <a href="#">upcoming rulemaking calendar</a> for the division. This information will be provided at each meeting.</p>
<p><b>Meeting Adjourned</b> (1:37:11)</p>	<p>Diana Winther adjourned the committee at 3:07 p.m.</p>

\*These minutes include time stamps from the meeting audio found here:  
<http://www.oregon.gov/dcbs/mlac/Pages/2018.aspx>

\*\*Referenced documents can be found on the MLAC Meeting Information page here:  
<http://www.oregon.gov/dcbs/mlac/Pages/2018.aspx>