

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE

Full MLAC Meeting

December 3, 2018

1:30 p.m. – 3:30 p.m.

Committee Members Present:

Alan Hartley
Kathy Nishimoto, Duckwall Fruit {via teleconference}
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
Diana Winther, IBEW Local 48
Tammy Bowers, May Trucking

Members Excused:

Lynn McNamara, City County Insurance
Cameron Smith, Director, Department of Consumer and Business Services (DCBS), *ex officio*

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Jeff Roddy-Warburton, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Kimberly Wood opened the meeting at 1:31pm. Committee members introduced themselves.
Meeting Minutes (0:00:15)	Alan Hartley moved to approve the minutes from the October 3, 2018 meeting, and Tammy Bowers seconded. The committee approved the meeting minutes unanimously.
Department Updates (0:01:20)	Theresa Van Winkle, Committee Administrator, made announcements and provided updates: <ul style="list-style-type: none">- Upcoming administrative rule hearings, division one procedural rules and multi-lingual page for workers, and routine medical fee schedule rules. Recent rule making advisory committee of medical fee payment, medical service, and managed care organizations that took place in November. Forthcoming meetings have not been scheduled yet.- Under 2019 Meetings on MLAC web page: The tentative MLAC meeting schedule is posted for the legislative session. Committee will be meeting on January 11th and 25th, 2019 for further review of Legislative Concepts.
(0:03:15)	<ul style="list-style-type: none">- At upcoming Senate Executive Appointments Conformation Meetings: Three re-appointments Tammy Bowers, Alan Hartley, and Aida Aranda, and one new member for labor Jill Fullerton with Clackamas County Fire Department. Jill Fullerton's term should start in January and she will attend the meetings.

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Workers' Benefit Fund Balance Study	Theresa Van Winkle reviewed SB 1558 (2014) which required the study of the Workers' Benefit Fund (WBF) balance.
(0:04:33)	<ul style="list-style-type: none"> - Follow up question from last meeting regarding to fund sweeps, and a section in the report that talked about risks to the Workers' Benefit Fund. The question asked was how frequently those might happen? The memo outlines transfers since 2003 for all DCBS funds. Specific to WBF, Last time this took place was in 2003 and it was a little over \$250,000 and was specific to reduction in employer PERS contribution rates.
(0:05:10)	<ul style="list-style-type: none"> - Theresa Van Winkle reviewed the draft MLAC recommendation. It is not included in the draft report. The recommendation increases the minimum statutory balance of the WBF to 12 months projected expenditures, and it clarifies that the balance is not entirely in cash. It also requires DCBS to report to MLAC if the projected expenditures could cause the fund balance to dip below the 12-month requirement. It also directs the department report to include the action plan to address fund situation.
(0:06:12)	<ul style="list-style-type: none"> - Kathy Nishimoto asked about fund sweeps and who pays into the premium assessment operating account? Theresa Van Winkle answered that it is based on insurance premiums and that self-insured individuals and groups pay in also.
(0:06:44)	<ul style="list-style-type: none"> - Kathy Nishimoto asked since the fund balance is at 23 months right now and we are going to change to 12 months, is there anyway to transfer the excess funds in to a new catastrophic funds to cover for natural disasters? Theresa Van Winkle responded that it would take legislative directive. DAS and Legislative Fiscal would need to be involved as well. A bill would be required to establish that.
(0:07:42)	<ul style="list-style-type: none"> - Alan Hartley moved to accept the draft recommendations and Tammy Bowers seconded the motion. The committee unanimously approved the recommendation. Theresa Van Winkle will track down a bill vehicle before the January meeting and will give update.
2019 Legislative Concepts	Theresa Van Winkle stated that Legislative Concepts will be broken up into two separate groups. Stakeholder presentations first and Lou Savage discussing LC-522, both will have public testimony.
(0:09:02)	LC 3108 – “Come along” providers in managed care organizations.
(0:09:47)	<ul style="list-style-type: none"> - Dr. Vern Saboe, Chiropractor from Albany representing the Oregon Chiropractic Association describes an issue with the come along provision when it doesn't apply to ancillary service providers in two particular scenarios. The first is when local occupational medicine doctor refers the patient to a chiropractor, but the occupational doctor wants to stay the attending physician. That means the chiropractor is an ancillary provider and not the

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	attending physician, so the come along provision would not apply to the chiropractor and the patient would not be able to see them. LC-3108 would fix that issue. The second scenario is where chiropractors are the attending physician for the life of the claim with a limited number of visits. If the patient needs more treatment it has to be pre-certified and the chiropractor gets to remain the attending physician. The issue is two of the MCO's CareMark Comp and Kaiser where the attending physician is for a limited amount of time, and at the end of the scheduled visits the injured worker must see an osteopathic physician who will take over the case as the attending physician, therefore the patient will no longer be able to see the chiropractor anymore because they are an ancillary service provider. This bill would fix that.
(0:13:57)	- Alan Hartley asked what do the MCO's think about this proposal? Dr. Saboe said he has not run it by any of the MCO's. Alan Hartley asked, what is an established patient? Dr. Saboe stated that it is a patient that has a history with a certain physician.
(0:14:44)	- Kimberly Wood asked is there a definition of established patient in the bill? Dr. Saboe replies that it is already in statute. Theresa Van Winkle clarified that it is documented and there is further clarification in administrative rule.
(0:16:20)	- Kathy Nishimoto asked how often does this situation occur? Dr. Saboe stated that he doesn't know how many occurrences of this have happened over the past few years, that it is not a great number but it is significant.
(0:17:30)	- Ramona St. George, CEO of Majoris Health Systems said she believes that it adds unnecessary complexity to the come along provision. She is concerned about the housekeeping on the bill, where "shall not" was changed to "may not" which would change the application of the bill. The language of the statute has stood for 30 years. She also suggested finding out how many cases this applies to and clarified the definition of established patient.
(0:21:25)	- Diana Winther asked if Ms. St. George thinks everyone should be treated the same way? Ms. St. George believes opening the flood gates to come along providers is not a good idea.
(0:22:45)	- Kimberly Wood asked is there anything that prevents the chiropractors from joining the MCO's? Ms. St. George replied that it is up to each MCO and not every chiropractor that applies might be accepted.
(0:24:50)	- Alan Hartley asked in the ancillary function how long does it take for an MCO to credential a chiropractor who wants to be part of Come Along and how much work is that? Ann Klein with Majoris Health System answered its probably a week or less, but in regards to numbers and volume it can be a 30-60 day turn around. Alan Hartley asked would this draft allow you to say sorry we are

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	<p>overrun right now? Ms. Klein responded she doesn't see where that is provided. Ms. St. George stated there is no provision in the draft other than not meeting the criteria, but there is no ability to say we are just to busy and there shouldn't be.</p>
(0:26:41)	<p>Theresa Van Winkle mentioned that since some people were unable to make it to the meeting and if anybody needs information regarding the topics discussed in the meeting to please contact her after.</p>
(0:27:05)	<p>Vocational Assistance Changes</p>
(0:27:30)	<ul style="list-style-type: none"> - Two representatives from the Oregon Association of Rehabilitation Professionals Adele Bostwick and Kathy Wallace presented their concept. They have three parts to their proposed changes to ORS 656.340. Kathy Wallace and Adele Bostwick took turns discussing the contents of their concept from the International Association of Rehabilitation Professionals proposal
(0:36:34)	<ul style="list-style-type: none"> - Diana Winther asked about the request to include the health care costs and would it exclude fringe benefits, and for clarification the change from 80% to 95%. Adele Bostwick responded that employer provided housing and utilities are calculated into their adjusted wage, they suggest that the health care cost is also included and they should be able to get training as close as possible to the income they were earning before.
(0:38:30)	<ul style="list-style-type: none"> - Alan Hartley and Diana Winther asked does family status have an effect on whether or not somebody qualifies due to the cost of family insurance compared to a single person's insurance? What value is placed on the insurance? Kathy Wallace replied that she believes that it would be the value of the insurance of the injured worker as a single person.
(0:40:48)	<ul style="list-style-type: none"> - Kathy Nishimoto asks has NCCI looked at this to see what it would do with the rating? Theresa Van Winkle responded since it is not in LC form and is just the one pager, it would be difficult for the organization to have looked into it.
(0:41:20)	<ul style="list-style-type: none"> - Tammy Bowers asked what is the reason behind the jump from 80% to 95%? Adele Bostwick responded that they were initially thinking 100%, because 80% was just a random number that was chosen in 1988, but with the increase in minimum wage and the 80% has never changed, they don't believe that 95% is unreasonable.
(0:43:15)	<ul style="list-style-type: none"> - Alan Hartley mentioned that as minimum wages go up other wages will go up as well. Adele Bostwick commented that that is not necessarily true.
(0:45:15)	<ul style="list-style-type: none"> - Kathy Nishimoto asks of the 300 employees a year that go through vocational rehab, is there data that shows how many of those

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(0:48:22)	<p>people are doing better financially? Kathy Wallace answers yes, there is. Those who use vocational rehab recovered 68% of their pre-injury wages, those that did not only recovered 41%. Kathy Nishimoto also wants to know if it states how long (in years) it took the person to recover those wages? Kathy Wallace is unaware of that.</p>
(0:52:58)	<ul style="list-style-type: none"> - Sherry Sundstrom with Hoffman Construction discussed the past changes to work disability awards in permanent partial disability and the impact on workers in construction. She questions whether there is data on the success of vocational rehabilitation training programs. Ms. Sundstrom said few of her workers have successfully completed a vocational program. She expressed concerns about making such extensive changes without a cost impact.
(0:56:15)	<ul style="list-style-type: none"> - Keith Semple from Oregon Trial Lawyers Association expresses similar concerns with injured workers not being eligible for vocational rehabilitation due to the 80% limit and the work disability award.
(0:57:06)	<ul style="list-style-type: none"> - Dave Barenberg SAIF Corporation states that they aren't going to testify specifically on this topic because they are waiting to see language or a legislative concept. He plans to look at his data and come back to MLAC.
(0:58:00)	<p><u>Post Traumatic Stress Disorder (PTSD) occupational disease presumption.</u></p>
(0:58:40)	<ul style="list-style-type: none"> - Karl Koenig and Nelson Hall, Oregon State Fire Fighters Council . They bring their thoughts, ideas and insight on PTSD and occupational disease amongst public safety workers and the gap in access that must be closed to ensure they get the coverage they need for job-related trauma.
(1:11:00)	<ul style="list-style-type: none"> - Nelson Hall discussed the negative changes that were to be made to Chapter 656 which is specific to mental health claims and states there shall not be mental health claim under workers' compensation unless they fit the list of defined categories. Those include meeting the highest burden of proof with clear and convincing evidence.
(1:12:48)	<ul style="list-style-type: none"> - Nelson Hall stated that this presumption would be a stand alone presumption that would be inserted as ORS 656.802(7). It is not an effort to rewrite 656.802 or the mental health statute. This is for workers already statutorily defined under ORS.181A. 355, paragraphs 11, 15, and 16.
(1:20:00)	

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(1:24:15)	<ul style="list-style-type: none"> - Tammy Bowers asked what is the presumption aspect? Nelson Hall answered the presumption is on the legal side and presuming the exposure. We will presume that as a public safety worker you are exposed to trauma due to the line of work. We are going to also assume that the mental health disorder somebody has obtained is due to the line of work they are in. - Tammy Bowers asked what about somebody that is going through a stressful situation in their personal life as well (death, divorce, addiction,etc.) how will that effect their claim of PTSD from trauma at work? Nelson Hall responded that legislation would make a policy determination that will not be up for debate and legislation will presume that the PTSD is from work. - Alan Hartley asked if anxiety disorder contributes to PTSD and visa versa? Nelson Hall responded yes, anxiety can be under that category of trauma stress disorder. - Alan Hartley asked won't this open up the employee's life to scrutiny to find out where the trauma stems from? Nelson Hall stated the goal is just the opposite of that.
(1:33:50)	<ul style="list-style-type: none"> - Ateusa Salemi asked what chapter numbers in the definition of first responders listed under? Nelson Hall clarified it is 181A.355 sub paragraphs 11,15, and 16. Ateusa Salemi asked if there is a special certification that the first responders have to have? Nelson Hall stated they do not try to define or limit who the attending or treating medical professionals physiological credentials must be instead they used the same sentence out of the existing mental health statute that refers to the diagnoses must be generally recognized in the medical and psychological community. - Kathy Nishimoto asked if the City of Portland program for the police and fire fold into this presumption? Nelson Hall answered this presumption would apply to the City of Portland. - NOTE: testimony on this topic continued later in the meeting.
History of MLAC (1:35:55)	Former co-chairs Bob Shiprack and Lisa Trussell discussed the history of MLAC, the Mahonia Hall negotiations, how it all began and how it got to where we are now. They shared stories and answered questions.
2019 Legislative Concepts (2:12:28)	<p><u>Post Traumatic Stress Disorder (PTSD) occupational disease presumption</u> Sam Hutchison from the City of Portland's Fire and Police Disability Fund provided his views on the PTSD presumption one-pager. He stated that there is a significant increase in scope compared to what is in the document and what Nelson Hall is proposing. He is not against the bill and looks to support it, he just wants to see the bill first.</p>

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(2:16:25)	<ul style="list-style-type: none"> - Kimberly Wood asked if he has any data on the number of claims that have been filed as well as the outcomes of those claims? Sam Hutchison replied that he can get that for FPD&R. - Alan Hartley stated it needs to be total claims and total lives involved and what is the population covered. - Theresa Van Winkle asked how many PTSD claims have been approved? Sam Hutchison stated that there have been 3 to 4 PTSD claims approved. He said that it is more difficult for them to file PTSD claims then it is for workers' compensation, due to the standard set in 1990 being much higher. City of Portland standard is set to be compared to other fire and police workers where as workers' compensation's standard is set to be compared to any other worker.
(2:19:40)	<ul style="list-style-type: none"> - Kimberly Wood asked if it would be correct that it would be less of an impact to fire and police if they switched their definition to match that of the workers' compensation versus a presumption? Sam Hutchison answers yes we would have more claims approved under the workers' compensation definition but not to the level of the presumption.
(2:20:48)	<ul style="list-style-type: none"> - Dave Barenberg from SAIF asked would it be helpful for SAIF to go through how one of these claims is handled? The committee responded yes.
(2:22:15)	Lou Savage, Administrator from the Workers' Compensation Division spoke briefly on LC 522 Civil Penalty Cap , and determine to discuss the topic at the next meeting instead.
General announcements	Theresa Van Winkle mentions that the details of the Mahonia Hall Report and where they are linked on the MLAC webpage.
(2:24:51)	
(2:25:15)	Theresa Van Winkle cancels the December 19 th , 2018 meeting. The next meeting is January 11 th , 2019.
Meeting Adjourned	Kimberly Wood adjourned the committee at 3:57 p.m.
(2:25:45)	

*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>