

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full MLAC Meeting
February 8, 2019
9 a.m. – 12 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 { via teleconference }
Diana Winther, IBEW Local 48
Tammy Bowers, May Trucking
Jill Fullerton, Clackamas County Fire Department { via teleconference }
Lynn McNamara, City County Insurance

Members Excused:

Cameron Smith, Director, Department of Consumer and Business Services (DCBS), *ex officio*

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Jeff Roddy-Warburton, MLAC Assistant
Cara Filsinger, WCD Legislative Coordinator

Agenda Item	Discussion
Opening (0:00:00)	Theresa Van Winkle opened the meeting at 9:06 am.
Meeting Minutes (0:00:53)	Diana Winther noted minutes from the January 11, 2019 meeting are tabled until the next meeting. Diana Winther moved to approve the December 3, 2018 meeting minutes. Committee approves December 3, 2018 minutes (all members present voted yes; Jill Fullerton and Kathy Nishimoto cast their votes later in the meeting).
Department Updates (0:01:38) (0:02:53) (0:11:54) (0:32:02)	Theresa Van Winkle, Committee Administrator, made announcements and provided updates: <ul style="list-style-type: none"> - Update on the forward looking administrative rulemaking calendar. There are two meetings coming up both on February 19, 2019. - Gary Helmer, Senior Economist, DCBS provides an update on the Biennial Report on the Workers' Compensation System. - Todd Johnson, State Relations Executive for the National Council on Compensation Insurance (NCCI) gives a presentation on NCCI Overview. He also discusses the contents of the NCCI cost analysis for HB 2418, and the cost analysis for HB 2413. - Kimberly Wood asks if the 600 classifications are specific to Oregon or are they general classifications used in all the states?

Agenda Item	Discussion
	<p>Todd says they are national classifications but some are Oregon specific. Kimberly asks is the residual market the same as the high risk pool? Todd says yes.</p>
<p>2019 Legislation Review</p>	<p>Theresa Van Winkle introduces HB 2788 Workers Benefit Fund (WBF) balance requirement and the One Pager that goes along with it. This bill would increase the minimum balance of the Workers’ Benefit Fund to 12 months of projected expenditures and clarifying that the balance is not</p>
<p>HB 2788 (0:33:50)</p>	<p>entirely in cash. If the fund balance is projected to fall below the required balance, DCBS must develop a plan to increase the balance and report the plan to MLAC.</p>
<p>(0:35:29)</p>	<ul style="list-style-type: none"> - Diana Winther states that if this is reflecting what the committee has discussed recently then they are on board.
<p>(0:35:49)</p>	<ul style="list-style-type: none"> - Kimberly Wood moves to approve HB 2788, Diana Winther seconds motion. The committee unanimously approves recommendation of HB 2788. (Note: Jill Fullerton voted yes later on in the meeting).
<p>HB 2424 (0:36:55)</p>	<p>Theresa Van Winkle describes HB 2424 “come along” providers in managed care organizations. This bill permits an attending physician or authorized nurse practitioner to refer a worker to treatment by a chiropractor that is not a member of the Managed Care Organization under specialized circumstances. This is the first time the committee has the bill language. Also provided is WCD’s Bill Analysis, and two memos responding to member’s questions (chiropractic physician MCO panel participation and documented history of treatment)</p>
<p>(0:37:40)</p>	<ul style="list-style-type: none"> - Dr. Vern Saboe, Chiropractor from Albany representing the Oregon Chiropractic Association testifies on HB 2424. He believes that this bill is a small fix in a small glitch in the “come along” provision.
<p>(0:39:16)</p>	<ul style="list-style-type: none"> - Tammy Bowers asks why the words “shall” and “must” were changed to “may” in the bill language. Dr. Saboe isn’t sure of the answer to that question, but says he can research that question and find the answer.
<p>(0:40:09)</p>	<ul style="list-style-type: none"> - Tammy Bowers asks if there are multiple chiropractic offices that are having this problem? Dr. Saboe responds that it is more than a particular office it in the geographic area of Portland that his colleagues and patients are complaining about this situation.
<p>(0:40:45)</p>	<ul style="list-style-type: none"> - Tammy Bowers asks if he has any statistics that other offices are willing to provide testimony? Dr. Saboe responds he can survey them. But the issue is MLAC meets on Fridays and that is a heavy patient day.

Agenda Item	Discussion
(0:41:18)	- Kimberly Wood asks if the bill is being presented by the Oregon Chiropractic Association, by him individually, or a group of individuals? Dr. Saboe says by the Association.
(0:42:05)	- Ann Klein from Majoris Health Systems testifies on HB 2424. She responds that it is not a glitch in the system and there is already an avenue in place if an attending physician believes that it is medically necessary to refer out of network or if the worker has a concern about medical appropriateness. Ann responds that there is no statistical evidence to show that this is an issue.
(0:44:28)	- Diana Winther asks about the results of the two appeals that she mentioned. Ann responds one was overturned and the other was upheld.
(0:44:28)	- Lynn McNamara asks out of how many claims. Ann responds 2 out of 16,000 total claims.
(0:45:08)	- Alan Hartley asks if this is a problem that exists at all? Ann responds that it is not a problem.
(0:45:25)	- Tammy Bowers asks if you have an in-network provider and they want to place a referral for 6 visits with a doctor with a pre-existing relationship with the patient, then the MCO can approve that, there is an avenue for this? Ann responds there is an avenue, but she thinks the most common way would be the attending physician that wanting to make referrals would submit a request for approval to refer out-of-network, and the focus for Majoris would be is there medical justification. Access to care would be another reason to approve.
(0:46:08)	- Tammy Bowers asks if a previously established relationship would be grounds for approval? Ann responds for ancillary care that wouldn't be considered. If it is just a general preference then a previous established relationship would not qualify.
(0:46:53)	- Diana Winther asks if a medical justification like having previous injuries or a familiarity with a certain chiropractor that would be beneficial to continue that care? Ann responds that the most common reason she sees is if the patient is in the middle of a course of care and allowing them to finish up that course. Having a long history with one certain physician could be a reason. But, they would also be looking to see if the patient has made any gains with that physician even if they have a long history.
(0:47:49)	- Diana Winther asks what is the time line on approval or disapproval on precertification. Ann responds its on average 3 business days.
(0:48:29)	- Dr. Vern Saboe returns to provide more details about chiropractors being the attending physicians for the life of claims and how the "come along" doesn't apply in specific MCOs.
(0:50:17)	- Alan Hartley asks if the system is designed to say after 60 days of so many visits the case should be given a different level of review.

Agenda Item	Discussion
(0:51:03)	<p>Dr. Saboe responds that in the statute its 18 visits or 60 days, but each MCO has its own guidelines that must be followed.</p> <ul style="list-style-type: none"> - Alan Hartley asks if the referrals are hard to come by. Dr. Saboe responds not in his area (Albany, OR) but in the Portland area yes because of CareMark Comp and Kaiser.
(0:52:06)	<ul style="list-style-type: none"> - Alan Hartley asks if those carriers provide such referrals. Dr. Saboe responds no because they are no longer the attending physician.
(0:52:27)	<ul style="list-style-type: none"> - Alan Hartley asks if the doctor could refer the patient to a certain chiropractor. Dr. Saboe responds the doctor could but it would not be covered.
(0:52:36)	<ul style="list-style-type: none"> - Diana Winther asks if there is an appeals system. Dr. Saboe responds that this is the first time he has heard from Majoris there could be a process to appeal.
(0:53:34)	<ul style="list-style-type: none"> - Diana Winther asks if the bill is more targeted towards CareMark and Kaiser because of the way that they are structured verses Majoris? Dr. Saboe responds yes.
(0:54:34)	<ul style="list-style-type: none"> - Ramona St. George with Majoris Health Systems testifies. She states that in the Majoris system the issue of a chiropractor starting out as the attending physician and transitioning into an ancillary provider wouldn't come up. This is because they are an attending physician for the life of the claim. This also applies for "come along" providers that enter the system as the attending physician. Ramona's issue with the bill is that it goes beyond that.
(0:56:16)	<ul style="list-style-type: none"> - Kimberly Wood asks if she believes this bill erodes the purpose of MCOs and basically undoes the purpose of the MCOs because it allows more providers in than intended. Ramona responds yes.
(0:57:37)	<ul style="list-style-type: none"> - Diana Winther asks if there are any revisions to the bill to solve the problem Dr. Saboe refers to by referencing previous attending physicians. Ramona responds that there is a component in the law for an appeal if a worker or provider believes the change in provider is medically detrimental. That goes through the regular appeals process of the MCO.
(0:59:13)	<ul style="list-style-type: none"> - Diana Winther asks if she is speaking for CareMark and Kaiser. Ramona responds yes and Majoris' model is slightly different.
(0:59:54)	<ul style="list-style-type: none"> - Kathy Nishimoto asks if this bill cuts off care for the worker or is it asking the worker to start care with a chiropractor that isn't on the MCO panel. Ramona responds not solely, the bill would do that the way that it is written. It would also effect the referral process for some MCOs. It also allows for a first referral to a chiropractor as an ancillary provider on a claim.
(1:01:25)	<ul style="list-style-type: none"> - Kathy Nishimoto asks how many claims where the worker starts out with the chiropractor as the "come along" provider and then is referred to the MD and needs additional chiropractic care. Ramona

Agenda Item	Discussion
(1:02:56)	<p>responds Majoris does not because that doesn't really happen in their system.</p> <ul style="list-style-type: none"> - Kimberly Wood asks if the other MCOs are simply following what the law allows? Ramona responds that would have to be surveyed. Kimberly asks if there is a limit to how many visits a chiropractor is allowed as an attending physician. Ramona responds outside of the MCOs yes. Kimberly asks if there is a loophole for a chiropractor in Majoris to remain as an attending physician where outside MCO they would not. Ramona responds that is correct for Majoris.
(1:03:56)	<ul style="list-style-type: none"> - Kimberly Wood asks how many other ancillary service providers are there and what are the other types. Ramona lists all of the different types of providers (Physical Therapy, massage therapy, acupuncture).
(1:04:42)	<ul style="list-style-type: none"> - Kathy Nishimoto asks if the Medical Advisory Committee (MAC) has been involved? Theresa Van Winkle responds no.
(1:05:16)	<ul style="list-style-type: none"> - Chris Kafka, Kaiser MCO Administrator testifies. Chris states that Kaiser's chiropractic physicians are limited to attending status to 60 days or 18 visits. Chris discusses how the referral process works for Kaiser. Kaiser is opposed to the bill.
(1:07:06)	<ul style="list-style-type: none"> - Diana Winther asks if Kaiser has a formal process for making that request. Chris responds that the attending physician would put in the request to Kaiser's referral coordinator and the referral coordinator would in all likelihood approve. If the referral coordinator were to deny, the denial would become subject to review.
(1:07:36)	<ul style="list-style-type: none"> - Alan Hartley asks why would it get denied. Chris responds he doesn't believe the request would get denied.
(1:08:37)	<ul style="list-style-type: none"> - Alan Hartley asks what is the objection to the bill. Chris responds he thinks the bill solves a non-problem and the "come along" provision is about attending physicians not ancillary providers.
(1:09:40)	<ul style="list-style-type: none"> - Lynn McNamara asks how many complaints do they get. Chris responds one out of about 3,000 claims in the past year. But it was less of a complaint and more of a patient treating a chiropractor as a "come along" attending physician.
(1:10:08)	<ul style="list-style-type: none"> - Diana Winther asks what the result of that one time was. Chris says they were certified as a "come along" provider.
(1:11:00)	<ul style="list-style-type: none"> - Kimberly Wood asks Jennifer Flood, Ombudsman for Injured Workers, if she has had any complaints regarding this topic. Jennifer Flood responds that it is not a complaint that comes in often enough to rise to her attention.
HB 2406 (1:12:17)	<p>Theresa Van Winkle reviews HB 2406 the which provides coverage for trainees in certain work experience programs. SAIF informed the committee that they had concern with the original bill language and</p>

Agenda Item	Discussion
	potential unintended consequences with the terminology. Disability Rights Oregon and SAIF met and the result is the -1 amendment to the bill . Also provided was WCD's HB 2406-1 Bill Analysis . SAIF is in support of the amendment.
HB 2087 (1:14:21)	Theresa Van Winkle reviews HB 2087 the Workers' Compensation Division's (WCD) bill increasing the cap on civil penalties outlined in ORS 656.745. The meeting materials include data from WCD about insurers impacted by the cap increase , and a memo regarding Workers' Compensation civil penalties .
(1:14:50)	- Lou Savage, Administrator WCD testifies and provides updates on the bill, the material that were attached and WCD's proposed amendments to HB 2087 . Lou states that all of these penalties are based on compliance issues. He also mentions that Oregon is the only state that has a civil penalty cap.
(1:18:24)	- Tammy Bowers asks if this is going to be a -1 amendment. Lou responds yes.
(1:19:08)	- Kimberly Wood states that the committee can vote to move bill forward based on the fact that the amendment will be made. Theresa Van Winkle states that once they receive the official language it will be distributed.
	Committee takes brief recess at 10:26 a.m.
	Committee resumes meeting at 11:07 a.m.
(1:21:15)	Theresa Van Winkle begins with asking Jill Fullerton and Kathy Nishimoto for their votes on approving the December 3, 2018 minutes, they both vote yes to approve. Theresa asks for Jill's vote on HB 2788, she votes yes to recommend.
(1:22:50)	HB 2424 – vote. Kimberly Wood said the management side have concerns, during the testimony it was stated that this issue is small, and there is already avenues in place to resolve the issues within the MCO's. There is also concern that making a recommendation on this bill would open that up to other ancillary services also seeking similar fixes which would erode MCO's. Diana Winther said labor had similar concerns. Kimberly Wood moved and Diana Winther seconded to not approve HB 2424. Committee unanimously votes to not approve HB 2424.
(1:25:20)	HB 2406 – vote. Diana Winther moved and Lynn McNamara seconded to approve HB 2406 with -1 amendment. Committee votes unanimously to approve recommendation of HB 2406 with -1 amendment.

Agenda Item	Discussion
(1:26:28)	HB 2087 – vote. Committee has not heard any opposition to the bill and are in support of WCD’s intent to have a -1 amendment Alan Hartley moves and Diana Winther seconded to approve HB 2087 with the intent to have a -1 amendment, and those amendments match what WCD has proposed. Committee votes unanimously to approve recommendation of HB 2087 with the proposed amendment.
(1:28:42)	Physician Assistant Authority. Theresa Van Winkle updates on the status of legislation on physician assistant authority. This would expand physician assistant treatment authority to a “type-A attending physician. Meeting materials included were a physician assistant provider map and a provider map with all types of providers . Also provided was the 2006 MLAC Care Provider Study . SAIF Corporation provided a document on provider counts by service year .
(1:30:05)	- Rachael Wiggins Emory testifies on behalf of Oregon Society of Physicians Assistants (PA). She provides an overview of PAs, what their legislative concept entails, and what the next steps of the bill are.
(1:35:22)	- Lynn McNamara asks if the certified providers on the map are a subset of the total? Theresa Van Winkle responds that is correct. Lynn asks why somebody would not choose to be certified in workers’ compensation. Rachael responds in hearing from our PAs, we heard about people not wanting to do the extra paper work, as well as current statute making it difficult to provide care.
(1:36:25)	- Alan Hartley asks how PAs work currently. Rachael responds PAs are partnered with a supervising or collaborating physician and through that relationship a practice agreement is established.
(1:37:10)	- Alan Hartley asks if a PA is certified does that mean the doctor is certified as well. Rachael responds that she believes that is the case but she isn’t 100% sure. Alan asks what is wrong with after 60 days of treatment having a second physician take a look at the patient. Rachael responds that the concern is that sometime the certified physician is not located where the PA practices. Alan asks wouldn’t it be in the best interest of the injured worker to, after 60 days, have a second opinion. Rachael doesn’t believe they are saying that would be a bad thing, they just have instances where injuries are taking longer to heal than 60 days. Alan states that it might be in the patient’s best interest to get a second doctor’s opinion. Rachael responds PA’s are very familiar with getting second opinions. Alan asks if the second opinion could be done by conference call. Rachael responds that could be an appropriate way to do it on some occasions.
(1:40:07)	- Tammy Bowers asks why after 60 days would the PAs not like to refer out when they do prior to the 60 days. Rachael responds that

Agenda Item	Discussion
(1:41:00)	<p>the concern is in instances where they should be able to treat the patient in their scope of practice. Also, some instances the 60 days doesn't seem medically necessary and a patient needs to continue to be seen by the doctor past the 60 days.</p> <ul style="list-style-type: none"> - Diana Winther states that she would like to have more data on this topic and have more people testify as MLAC to here more opinions on the topic.
(1:43:10)	<ul style="list-style-type: none"> - Kathy Nishimoto asks who does the certification, what type of training is it, and how long does the training take. Theresa Van Winkle responds that it is DCBS that does the certification and she will get more information on that. Kathy asks so its not additional medical training. Theresa responds no. Kathy states that she would like to see support from the MAC on this bill.
(1:44:38)	<ul style="list-style-type: none"> - Tammy Bowers states that she would like to see more regarding the education and training. Rachael Wiggins responds it is a 28 month long program, half spent in the classroom the other half is in the field. Once they graduate they are supervised and they supervision fluctuates based on newness, ability, and location of PA.
(1:45:53)	<ul style="list-style-type: none"> - Alan Hartley asks if it is two years of formal training. Rachael responds yes. Alan asks what training the doctors go through. Rachael responds 4 years of medical school and a residency program. Alan asks how long residencies last. Rachael is not sure exactly, but she knows it is several years.
(1:46:14)	<ul style="list-style-type: none"> - Kimberly Wood asks if a patient can come back after a referral or do they have to go to a different care provider. Rachael responds that she believes they can continue the care with their previous PA. Kimberly asks if seeing the second doctor is to see if the patient is on track with their progress or is moving to that second doctor permanently. Kimberly would also like to know what percentage of the cases run into this issue and what is the nature of the claims. Rachael responds that she will work on getting that information.
(1:51:38)	<ul style="list-style-type: none"> - Diana Winther states that she knows this isn't an easy area and she appreciates Rachael Wiggins work and she looks forward to seeing how we can increase worker access to care providers.
(1:53:00)	<p>LC 696 – Oregon Trial Lawyers Concept. Theresa Van Winkle introduces the Oregon Trial Lawyers Association legislative concept (LC 696).</p>
(1:54:05)	<ul style="list-style-type: none"> - Arthur Towers, Randy Elmer, and Keith Semple from Oregon Trial Lawyers Association, gives their testimony. They discuss LC 696 and their summary of LC 696 and what their plan is moving forward with the bill.

Agenda Item	Discussion
(2:08:19)	- Alan Hartley asks if they are going to be coming back with a different draft of the LC. Arthur Towers responds yes, but he isn't sure of all the changes that will be made. Alan requests that the changes be made in time to read them before the next meeting.
(2:09:09)	- Tammy Bowers asks if she should ask any questions now if they know they are going to be making changes to the LC. Arthur Towers responds that they will make the changes before or after they turn LC 696 into a bill, either way they expect changes. Keith Semple adds that they don't have any current changes they plan to make, but they are open for discussion for changes. He doesn't see a totally different version of the bill coming out. They want to have more discussion with stakeholders and MLAC.
(2:10:29)	- Tammy Bowers asks why an acceptance notice would be needed and what is it going to say now (page 3 of LC). Keith Semple responds the acceptance notice would still include the conditions that were accepted and when analyzing questions about compensable injury, what is the major cause.
(2:12:00)	- Tammy Bowers asks if new and omitted condition already addresses this problem. Keith Semple responds no.
(2:13:22)	- Tammy Bowers asks if they could provide data on injured workers being denied benefits, because it isn't something she has seen. Randy Elmer responds with an example of the denial. Tammy asks if the injured worker's injury was to the same body part. Randy responds yes.
(2:14:58)	- Tammy Bowers asks if something can be done about the language regarding diagnostics instead of changing the whole acceptance notice. Keith Semple responds that is a potential avenue. Randy Elmer responds that those are two totally separate things. Tammy states there should be language in the bill regarding diagnostics and not just the acceptance notice change.
(2:16:55)	- Tammy Bowers asks what do they mean on page 7 lines 6-9. Keith Semple responds that the current language does not merely render a worker or more susceptible to injury. There is a lot of litigation over what does "merely" mean when you are talking about rendering a person more susceptible. Rendering a person more susceptible is not weighted as preexisting conditions.
(2:18:55)	- Alan Hartley asks if the existing language is the same as the proposal on line 9 except it has the word merely. Keith responds yes. Alan states that he thought the draft for the most part was on preexisting condition, and that merely would be crossed out Randy Elmer responds where they are changing the language on page 24.
(2:21:50)	- Kimberly Wood states that this draft is essentially a rewrite of a workers' compensation law . She also states that she doesn't see how the committee could go through detail of the effects on every change in the short period of time that the committee has left. She

Agenda Item	Discussion
	thinks the focus should be on the ones that make a huge impact. Arthur Towers responds that they have the four major crises and other issues that they think are significant and some of the other things in the draft are minor. They want to start the conversation and get the ball rolling on this bill.
(2:25:25)	- Diana Winther asks if the first four things listed in the summary are major ones. Diana states that she would be interested to hear more from stakeholders on this bill.
(2:27:10)	- Alan Hartley states he would like them to come back to the committee more focused on the major things that they want to fix in the bill. Arthur Towers responds that they have had conversations with some stakeholders and they are looking forward to feedback on the draft
(2:28:40)	- Ateusa Salemi states that she has seen instances where the diagnosis is a sprain and it is not getting better and then two and a half years later it turns out it is a break after you go to your own medical provider. She is interested in seeing those kinds of impacts.
(2:28:40)	- Arthur Towers asks if there are things in the draft that the committee notices please get back to them before the next time they come to MLAC.
Meeting Adjourned (2:30:33)	Cara Filsinger adjourned the committee at 12:18 p.m.

*These minutes include time stamps from the meeting audio found here:

<https://www.oregon.gov/dcbs/mlac/Pages/2019.aspx>

**Referenced documents can be found on the MLAC Meeting Information page here:

<https://www.oregon.gov/dcbs/mlac/Pages/2019.aspx>