WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full MLAC Meeting
July 15, 2020
1 p.m. – 5 p.m.

Committee Members Present:
Alan Hartley
Kimberly Wood, Perlo Construction
Tammy Bowers, May Trucking
Lynn McNamara
Kathy Nishimoto, Duckwall Fruit
Ateusa Salemi, Oregon Nurses Association {via teleconference}
Kevin Billman, United Food and Commercial Workers
Diana Winther, IBEW Local 48

Committee Members excused:
Andrew Stolfi, Director, Department of Consumer and Business Services, *ex officio*

Staff:
Theresa Van Winkle, MLAC Committee Administrator
Rebecca Hunt, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Diana Winther opens up meeting at 1:00 PM.
0:00:28	Theresa Van Winkle does roll call.
00:01:36	Diana Winther requests that the review of meeting minutes be moved to Friday. The committee agreed. Theresa Van Winkle confirms that everything that has been submitted thus far from the Division has been posted on the MLAC website.
00:03:00	Diana Winther asks about the COVID claims breakdown data as of July 10th, specifically the last page regarding claims by industry, private insurers, and the last category. Theresa Van Winkle states that this information has not been submitted to the Division yet.
0:05:07	Todd Johnson from National Council on Compensation Insurance (NCCI) gave testimony regarding item filing E1407, which is the exclusion of COVID-19 losses from employer experience rating, which was submitted for consideration to the Division of Financial Regulation on July 8th. This item proposes that losses directly to the COVID-19 pandemic and reported under the CAT12 loss code would be excluded from experience rating. CAT12 claims include all claims contributed to the pandemic with

	accident dates of December 1, 2019 and subsequent months. This would ensure that in the future, companies would not incur higher workers' compensation costs solely based on COVID-19 claims.
0:08:33	Kimberly Wood confirms that Todd Johnson had indicated that only one third of businesses in Oregon have experience mod rates. Todd Johnson confirms and states that NCCI files and calculates mod rates for forty-two states, and the one-third figure applies to the forty-two states in general but Oregon is relatively similar to the national figure as far as experience mods. Kimberly Wood confirms that self-insured employers do not have an experience mod rate, in which Todd Johnson says yes, because the mod rate helps calculate their insurance premium. Kimberly Wood confirmed with Todd Johnson that there are about one hundred self-insured employers, and there are also many small businesses. Todd Johnson agreed, and added that there are not enough statistics to create an experience mod if a small business is incurring a small number of claims based on a low number premium. Kimberly Wood asks if, in a small business with only ten employees, nine of them got sick, would that have the potential to bring them to the premium threshold and make them have a mod rate. Todd Johnson says that it depends on the severity and frequency.
0:11:43	Diana Winther asks if Todd Johnson has data on self-insured employers, who are not getting the benefit of the mod rate not being affected by the E1407. Todd Johnson states that he does not have data on what the impact is on self-insured employers.
0:13:25	Holly O'Dell from SAIF Corporation testifies about system and policy changes that would help strengthen the experience and outcome for Oregon workers in light of COVID-19. She suggests that if MLAC could design mandates and procedural strength in processing coronavirus condition and exposure claims, the following could be considered: 1. Insurers should treat COVID-19 condition and exposure claims as potentially compensable. 2. COVID-19 condition and exposure claims should be treated as potentially compensable, even when there are multiple exposures to the same worker. 3. COVID-19 exposure claims should be treated as workplace injuries rather than occupational diseases and insurers should use a lower material cause standard.

4. Insurers should investigate all COVID-19 conditions claims and potential exposures, including investigating the sources for the employer to understand whether the exposure was work related.
5. Insurers should seek a medical opinion before issuing a denial in complex cases where workers were exposed both on the job and off the job.
6. Insurers should not require a positive test to establish an illness claim when the worker has a presumptive diagnosis.
7. Insurers should pay interim time loss in COVID-19 or related claims.
8. If workers should need to quarantine due to exposure or outbreak at work, insurers should pay time loss for the period of medically recommended quarantine.
9. Insurers should accept time loss authorizations from appropriate medical professionals, which during the crisis should include public health officials and authors of medical manuals or standing orders at healthcare employers.
10. Insurers should not require workers use accrued leave during times of quarantine before time loss kicks in.
11. Insurers should describe to workers how to receive the relevant work release for periods of time loss or illness.

0:27:17	Alan Hartley confirms with Holly O'Dell that they would not have to go through legislature to adopt what SAIF is proposing and already doing. Holly O'Dell says that yes, they have gone through each mandate on the list and determined what the statutory driver was, what existing rules and industry guidance there were to back them up.
0:27:50	Ateusa Salemi mentions the mandate that would provide time loss pay during processing, and asks if its guidance or is SAIF requiring this from their employers. Holly O'Dell states once the claim is submitted and benefits are indicated, the point is the employee would not have to use accrued leave, SAIF would pay the time loss benefits. This is required right now that carriers are not allowed to offset sick leave when benefits are due. Regarding benefits while a claim decision is being made, Holly O'Dell states this is called interim time loss, and is required of any workers' compensation claim. SAIF applies their policy of interim time loss with the understanding that COVID exposure claims are potentially compensable, and the decision is taking longer than 14 days to make. Regarding who pays time loss and how its is allocated, Holly O'Dell says at SAIF, once the claim has been accepted for on the job exposure or the

	worker is ill, time loss is paid until the worker is released to return to work, as long as the worker has a medically indicated time loss claim, and it is always paid by the insurer. The employer does not pay these benefits, SAIF pays them as their carrier. Ateusa Salemi also asks for Holly O'Dell to confirm that the time loss is sixty six and two thirds of the salary and paid after the 14 day waiting period, and if this takes place even if a worker has multiple exposures and multiple claims, or if each claim is treated separately. Holly O'Dell states that it is a three-day waiting period for any claim except if the worker is hospitalized. The three-day wait and the sixty-six and two thirds salary would apply fresh to every claim of a new exposure. The worker would however use sick leave if they are exposed, but test negative and are sent back to work before the 3 days of time loss.
0:33:03	Kathy Nishimoto asks about the other states that have a COVID presumption, if they also had excluded ordinary life illnesses from being covered, and if that is why they had the presumptions. Holly O'Dell states that she will research what other states regular law is and if that's what affected having the presumption, so when the committee is ready to review those or have those discussions, she can provide them. While she has not been able to identify the impetus as to why each state has entered into a presumption, but she can identify where there was a law that may not have covered COVID without a presumption. Kathy Nishimoto referred to the tenth item on the list, regarding workers not utilizing sick leave. She asks what if a worker wants to use the 80 hours of Family First Act at one hundred percent of salary and then use their unemployment, on top of an extra six hundred dollars a week, and not utilize the sixty-six and two thirds. Holly O'Dell says that there is a provision that if a worker voluntarily wants to use sick leave, they can. She is not aware of how an unemployment claim would be processed or relate to a workers' compensation claim.
0:36:43	Lynn McNamara asks the department if they share the same view as SAIF in regards to whether these items could be implemented through rule or other administrative action, rather than statutory. Sally Coen, Acting Administrator for Workers' Compensation Division (WCD), answered that some research would need to be done on whether or not the civision has authority. She says that there are some things regarding the appropriateness of a denial that they may not have authority to do. There are administrative rules that speak to doing a reasonable investigation before a carrier denies a claim based on the Unfair Claims Settlement Practices law, which is in

	the Insurance Code. Generally, the jurisdiction over matters concerning a claim lies with the Board, so more research is needed. Lynn McNamara requests to know if it is not Workers' Compensation Division that has the authority, which administrative body does, versus the legislature. Sally Coen agreed to provide an update.
0:38:10	Diana Winther asks Sally Coen to identify which items from SAIF's list are already in place and what needs to be put into place, as well as what the WCD has the authority to put in place, and if there is capacity to do those things. Sally Coen agreed.
0:39:20	Diana Winther asks Holly O'Dell what this list will look like when it stops being policy and become legislation and whether or not SAIF has the capacity to generate language around a policy. Holly O'Dell answers that SAIF can develop language, including specifics from what they have learned from their claims. Diana Winther asks to have some sort of language developed soon.
0:41:12	Diana Winther asks Holly O'Dell if she thinks it necessary to specify that COVID is a workplace injury, especially in the light of the evolving nature of the virus. She states that we may declare it an injury now, but find out three years later that it is an occupational disease, and now harm has been done. Holly O'Dell answers she does not believe that for SAIF there is a mandate that this is an injury instead of a disease. She says it is about the standard of proof and the requisite threshold.
0:43:50	Ateusa Salemi asks Holly O'Dell to clarify her previous statement that SAIF was approving claims due to statute. She adds that this may be a question for the department, and if that is the case, why are other insurers not following the law and has there been penalties or other things assessed due to that. Sally Coen states that the division has not assessed any penalties nor received any complaints, however there is an analysis taking place that will investigate whether these requirements are statutory or not.
0:43:23	Diana Winther asks the division if they have the authority to proactively investigate something or is a complaint required first. Sally Coen answers that as practice, the division follows up on complaints, but does not need one to proactively investigate. Diana Winther asks if there is a high number of denials, if the division could then investigate. Sally Coen states that they have the authority to determine if a carrier did a reasonable amount of investigation before denying a claim. Ateusa Salemi asks if there were resources available in WCD to investigate that. Sally Coen answers that we do have a dedicated audit program that are working on

	other audits. If this were a priority, we would have to set aside other audits to begin working on this.
0:46:55	Diana Winther asks Sally Coen if it was found that there was an unreasonable denial, could the division reverse that denial? Sally Coen answered that WCD does not have the authority to determine whether a denial was unreasonable or not, and that it is likely under the purview of the Workers' Compensation Board's authority. She states that WCD has the authority to determine if an insurer conducted a reasonable investigation before they deny a claim but does not have authority over the decision itself. Diana Winther asks Sally Coen to give some clarity on what the process would be should they find that a carrier did not give a reasonable amount of investigation later.
0:48:08	Kimberly Wood asks Sally Coen if the division has found that a carrier did give what the division thought was a reasonable investigation but the outcome was not supported by the investigation. Sally Coen states that she would have to do research, as she cannot recall any instances where that took place.
0:49:14	Ateusa Salemi asks what the penalty would be if it was found that an insurer did not conduct an adequate investigation. Sally Coen states that the director has the authority to issue a civil penalty of up to $180,000 in any one-year period.
0:49:57	Diana Winther asks Holly O'Dell if an employer tells a worker to stay home due to an exposure but did not get that directive from a medical professional directly and do not work in the medical industry, does that still count for time loss authorization? Holly O'Dell answers that they have not encountered that scenario yet. So far, workers are sent home to take a test and come back if they are healthy or stay home because they are ill. They seem to come from three channels: doctor; they work in a medical setting and the protocols are written by doctors; or in outbreaks at places like retail, public health officials are already involved and have collaborated with employers and shared with workers. She states they will be looking out for that instance however to make sure it can be covered for that disability. Diana Winther states that her concern is that an employee, not in the healthcare field, will do what their employer tells them to do without questioning the need to go to a doctor or not. She asks what would be needed to fill that gap. She asks if it is as simple as requiring an insurer to inform the worker that they need to get a doctor's note. Holly O'Dell says that SAIF could support notifying an employer or a worker. She states

	that they have experienced through more efficient and available testing, those workers are only staying home for about seventy-two hours. She states that once a worker gets a test, they can connect their quarantine needs to that medical service period. Diana Winther requests that Holly O'Dell use that in their documents they are drafting for MLAC.
0:54:35	Diana Winther asks about the investigation process for workers that are exposed to many customers but not necessarily a positive-testing coworker. Holly O'Dell states that if there is someone who is sick and at work and no one who is positive and off work, that is the easiest determination that it is work related. If someone works where there is limited customer exposure and no one sick at work, but someone sick at home, they find that typically that person was exposed before or after the job, and was off work for a longer period. That scenario is clear that it was not work related. They also experience exposure in both places and exposure in neither place. SAIF has only received a few of the latter scenarios and takes the stance that this is likely a medical question of where the exposure occurred, involve a weighing analysis of where you are exposed at work and where you are exposed at home. The standard is to either accept the claims as work related or get a medical opinion and not issue a denial. Generally, the medical opinion is far more expensive than the claim. So practically, they are being accepted versus getting medical opinions.
0:58:25	Kimberly Wood asks Holly O'Dell to clarify if her answers regarding quarantines were about quarantines due to a work exposure and not because an employee was exposed at home and was asks to self-quarantine. Holly O'Dell confirmed that she meant workers quarantined due to workplace exposures.
0:59:15	Tammy Bowers asks if the quarantine leave fund was approved yesterday. Theresa Van Winkle confirmed that it was. Diana Winther asks if a worker qualifies and receives funds from that, are they still able to file a claim. Holly O'Dell states they can file a claim, and benefits of the claim cannot be offset by benefits received from this fund. Theresa Van Winkle states that there are specific parameters for this fund and specific directives given to DCBS. She will provide the link that was presented yesterday and put it on the MLAC website.
01:01:28	Diana Winther asks if a medical opinion comes back with a determination that it was more likely than not work related, does the worker have the ability to challenge that through a WRME or a different process? Holly

	O'Dell answers that worker can file a request for hearing at the Board and have time to appeal their denial. There are also a couple of ways to get an opinion, like a WRME or if a worker paid for an IME and the attending physician determines that it was work related, the carrier would repay the costs it took to work up the case for hearing to the injured worker, as well as pays their attorney fee if they win.
01:03:22	Diana Winther asks if SAIF has a recommendation of when the fourteen day waiting period before time loss determination is made should be applied or not applied in regards to COVID-19. Holly O'Dell states that it is statutory for appropriate interim time loss to be paid. Once carriers are understand that Coronavirus is a potentially compensable claim and that exposures are potentially compensable, perhaps that will follow. One thing SAIF has done voluntarily is to delay decision until testing comes back because that is the reasonable thing to do . By the time it comes back, sometimes the interim time loss has paid out the quarantine period. One thing that would be beneficial is to understand whether a reasonable investigation is occurring because if insurers are waiting to get the test results, understand where the condition occurred, figure out medically what happened and work with the employer on an investigation, perhaps interim time loss would have already covered quarantine and the worker will be back and get benefits whether the claim is accepted or denied. She also suggests determining where a carrier's process is failing. Diana Winther asks Holly O'Dell if SAIF would feel comfortable outlining that waiting for test results is apart of a reasonable investigation. Holly O'Dell agreed and will add it to the list of things that SAIF is doing.
01:07:25	Diana Winther asks if Holly O'Dell could see a clear disadvantage of doing this through the legislative process, as she finds that this process is more stakeholder involved. Holly O'Dell answers that SAIF's preference is to do so through the regulatory process due to the complexity of workers' compensation, the detail required as well as the need to specify the period these unique rules are in place for during this emergency period. Due to the complexity of workers' compensation, the same stakeholders are involved in rulemaking and maybe even to a greater extent due to the accessibility of the rulemaking process that is specific to workers' compensation and stakeholder's familiarity with agencies involved. It is more nimble and easier to correct any unintended consequences.
01:11:33	Ron Atwood, attorney, testifies reminding the committee that workers' compensation's intent is to compensate for injuries on the job. He states

	that it is important to allow the employer to determine if the worker was exposed to COVID on the job. He states that he agrees with Holly O'Dell, that these should be labeled as injuries, and that COVID being an injury is already covered in the statute. In regards to the 60% cap on time loss, he states it is actually sixty-six and two thirds and is this number because it is not taxable, and is trying to approximate the regular net pay. He testifies in regards to interim time loss, that amount paid is not paid back. He addresses the investigation piece of the conversation, and states that if a claim is denied, that employee can get a lawyer. He also says that these types of claims require more in-depth investigations, thus it would be easier to tell if a reasonable investigation took place. In regards to whether or not changes should be made legislatively or through rulemaking, his preference is rulemaking. He talks about what the legal parameters are around an employer disclosing that there had been a positive employee in the workplace and what impact that would have on that individual's claim. If a worker is exposed and they tell their employer, the employer is barred under federal law from telling other people that that person has COVID, so the claim will be forwarded to the carrier or the third party administrator for processing. A sophisticated employer would be able to trace who has been exposed without exposing the employee.
01:23:00	Diana Winther asks how, without a presumption, could a worker prove that they were exposed without knowing whether there were other cases in the workplace. Ron Atwood states that when a case goes to a hearing, the workers are often there by themselves and the judge listens to their story, making them the only witness. If a witness can say they were exposed by a place that is often times enough. An employer can then bring in another witness, and while a manager cannot breach confidentiality, co-workers talk. It can also be proved by the person who is absent from work. He also states the fact that there is an investigation being done speaks for itself, as an employer would not do that kind of investigation if there were nothing to be found. Diana Winther states that she would like to see some of the burden of proof come off the worker. She states that if a case were to go to hearing, some people will not continue to go through with the process. Ron Atwood reiterates that if there is to be a presumption, it must allow an employer to determine if there were an exposure in the workplace, however the current language would not allow that kind of investigation. He also suggests that making individual claims compensable is not the right way to give an employer an incentive to do the right thing.
01:32:16	Kimberly Wood adds that in the past, discussions have been had about

what education needs to occur, and the need for employers to notify workers that they have the right to file claims if they need it. If an employee does not know where they were exposed to COVID, then the employee should file the claim and then that now becomes the insurer's responsibility to conduct an adequate investigation. This investigation would likely then involve the employer talking with not just the workers but others to find out if they have been exposed, and then disclose that they had an exposed individual on their jobsite, and how this may or may not have resulted in an exposure (did or did not work the same shift, did or did not work on the same floor, etc.)

01:35:15 Ateusa Salemi informs the committee that she has a policy from an employer that states that they are not required to notify staff of infection in general, using HIPAA privacy as the excuse to say that they will not say if there was an outbreak, due to the water cooler effect. Kimberly Wood says that in general, you do not have to identify the person; you can just say that someone was sick. She suggests that education is needed to address the lack of understanding of HIPAA on the employer side as opposed to making a rule that affects more people. She states there are multiple ways this can be addressed and should be addressed and education is one of those. Ateusa Salemi asks if there are employers who are not going forward after they are educated, are not letting their employees know they have the ability to file a claim, where does that injured worker go. She states that education is not enough and these things are still allowing employees to fall through the cracks and that is the problem, education alone is not the solution, and testimony given last week proves this. Kimberly Wood states that alone, no it is not. It is one component, but is a necessary component, and last week, the committee only heard one side of the story. She states that even if an employer has a high number of denials, this does not mean they are incorrect. She reminds the committee that SAIF spoke about the high number of denials they had however they still paid time loss and they still paid for the test, it was just determined that it was not work related. Diana Winther agreed that education does not solve everything, speaking from her own experience. She also states that this is health and safety issue rather than a workers' compensation issue and we will work with other agencies that have better control over those things. However, there are some overlap and MLAC's responsibility is to determine whether or to a worker has the ability to submit a claim based on the current system.

01:43:50 Tammy Bowers suggests that the employer Ateusa Salemi references

	should be investigated by DCBS. In regards to divulging information, she states that part of a reasonable investigation includes telling an employer if they have any other employees that were sick or exposed that could have been exposed to the party that is filing the workers' compensation claim. She also notes that if carrier denies a claim but an attorney is successful in showing that there was an unreasonable denial, then they will get penalties with the attorney fees.
01:45:50	Kathy Nishimoto comments that a presumption will not help in an instance where a sick employee is told to come back to work. She states that in her own experience, the health department gets the positive test and does contact tracing from there. During that process, they are asks whom they have been around, and then the health department tracks those employees. She says the fact that the health department is involved means that it would be difficult for an employer to hide an outbreak. Diana Winther states that it is not especially hidden, but it does substantially delay the process. Kathy Nishimoto states that a presumption that won't fix the issue. Diana Winther states that the presumption addresses the fact that if a worker does not know there is an exposure in the workplace, the worker gets the benefit of the doubt.
01:50:30	Keith Semple testifies on behalf of Oregon Trial Lawyers Association regarding the mechanics of workers' compensation claims. He disagrees that the system appears to be processing the claims just fine. Stating that SAIF has lots of accepted claims, but Providence and Gideon has almost every single claim denied. While we don't know the specifics but its seems odd that they have a huge amount of denials compared to other insurers, even though they are the number 2 and number 3 insurer behind SAIF. A deep audit of the outliers should be done to find out why so many are being denied. OTLA is supportive of education for employers. He also states that an unreasonable denial is only ever proven when a worker can not only go to hearing and win under the burden of proof that they have, but also can show that the evidence was so overwhelming that the insurer did not have a reasonable chance of success. He believes that changes to help injured workers would not be able to accomplish this through administrative change; it would need to be statutory. He thinks a presumption would be a good idea to help give the employee the benefit of the doubt. He states that the determination of exposure at a workplace should tie into the nature of the work itself, and the presumption should reflect that.
02:00:20	Tammy Bowers asks Keith Semple if on an injury claim with a material

	cause threshold, is the burden of proof on the worker or on the employer. Keith Semple says the burden proof would still be on the worker, and there has been a suggestion that if there is an unreasonable denial, and if a worker did not have a supporting medical report to establish compensability, no lack of investigation on the employer's part would be deemed unreasonable.
02:01:25	Kimberly Wood asks Keith Semple if the claim under the current system was an injury and the burden of proof on the employee, what is the burden of proof if the presumption shifts and the burden of proof is now on the employer. Keith Semple answers that the material cause standard, the employee as it stands right now would need to prove the workplace exposure was a material cause of the need for treatment. Under an occupational disease standard, since you have to prove the major cause of the condition, if you did not ultimately have that condition, you would not be able to meet that burden, which could cause some denials of benefits. Under the presumption, depending on how you word it, you'd start with the expectation that if a worker was diagnosed with COVID, it would have been presumed to have occurred out of their employment without them making a case under a material cause standard. The employer would then have to prove that they did not get it at work via an investigation into other non-work related exposures, would take that to a doctor and ask for an IME, and then get a medical opinion to back up the claim that it did not happen at work. Once the rebuttal is given, it is between the worker and the employer to prove the other is wrong.
02:07:57	Kimberly Woods asks how OTLA would like MLAC to address the issues of retaliation and safety. Keith Semple feels that MLAC should stay focused directly on the workers' compensation and the inner workings of 656 as opposed to 659A or any other OSHA regulations.
02:09:15	Alan Hartley asks if the concerns about sharing with employees be resolved with a very stringent set of reporting requirements, on a HIPAA protected basis and with a short timeline. Keith Semple answers that he likes the idea that there is a reporting system component as he suspects that it is tough to get information from the public health department. If a mechanism to put this in place falls outside of chapter 656, it may not be able to be tackled by MLAC. It would be helpful if the worker had a mechanism to get the data, but does not necessarily prove the worker was exposed to COVID at work. Alan Hartley states this may help Ateusa Salemi's concern about employers not sharing information. Maybe the

	employees should know for their own safety. Keith Semple states he would like to see this be a part of the health and safety process that there has to be disclosure to workers as it connects with evidence for a worker to prove their claim. He states the more challenging piece is what is done with that forensic information; can it be converted into a medical probability or is it too much speculation on the part of the doctor? Alan Hartley states that is the point of the investigation.
02:13:43	Kimberly Wood asks Keith Semple if MLAC were to consider an expedited denial process, would it be done legislatively or statutorily. Keith Semple believe it would be statutory, but that the time it takes to litigate claims is a challenge to the worker who is waiting for benefits. However, it also takes time to develop claims and provide evidence, but it is all needed. He suggests that expediting the time between denial and litigation is what would really help the worker. He states that what really is challenging to the worker is getting medical opinions. Kimberly Wood referenced Holly O'Dell's testimony when she says that it was easier to resolve claims when there was clearly exposure at work and no outbreak at home or it was clearly at home and no outbreak at work. She then talked about ones where there was no exposures at work or home, and then they looked at the types of work it is. She asks Keith Semple if he has concerns about how SAIF gives reasonable doubt and weighs the likelihood. Keith Semple states the no exposure at either place scenario is what would lead to not everyone getting the presumption. After looking at how many people someone works with, would determine if they would get a presumption. However, it seems other insurers are not giving the benefit of the doubt. If someone works on the front lines and with many people, those are the people we would want to relieve of the burden of speculating what may or may not have been the cause.
02:19:54	Lynn McNamara asks how it would be broken down between employees who have constant contact and those who do not. She gives an example of a grocery worker who has many different jobs within the company, of varying degrees of exposure to customers. Keith Semple states that where you divide the lines and how broad the categories will be. He states that is another discussion and is something to think about. Diana Winther asks if perhaps the discreet nature of what that individual does in the workplace be utilized by the employer or insurer as what they are using to rebut the presumption. Keith Semple states yes, this could be raised.
02:23:20	Diana Winther referenced drafted language of what a presumption would

	look like and asks if it is still in operation or if there has been any changes. She asks if OTLA has worked on something similar. Keith Semple states that they have been discussing and focusing on who would receive the benefit of a presumption, but does not know if there is language that has been distributed. He states that if MLAC would like to see language if it is developed, he can make that happen. Diana Winther believes it would be helpful to know who would the benefactor of a presumption. Keith Semple states he would share it as soon as possible.
02:25:25	Rich Reynolds, the senior manager for workers' compensation for Providence Health and Services, testified about their process for COVID-19 specific claims. They had 34 accepted non-disabling claims, three accepted disabling claims, and fifty denied claims. They were denied based on facts during the investigation. Sedgewick, Providence's third party administrator, makes phone contact on every claim, and investigatory questions are asked. They follow up with COVID-19 test results if a test was administered. They look at if there was any travel outside the area, what community-based exposures could have taken place, when the symptoms developed, are the symptoms aligned with CDC guidelines, does the worker have underlying health conditions that mimic COVID-19 symptoms and are those personal medical conditions in the symptomology confirmed by a licensed medical professional. Any claim is investigated using the facts of that individual claim.
2:30:54	Lynn McNamara asks how Providence via Sedgewick handles a quarantine that may result from a perceived exposure. Rich Reynolds answered that if provisional time loss needs to be paid due to the length of investigation, it is paid. If it is determined the claim would be denied based on the facts, the payments would not be recouped however there are other benefits available for employees that have a non-work related exposure. Lynn McNamara asks if he knew how long it takes from notice of exposure through investigation. Rich Reynolds says majority of cases are determined within a fourteen day or less period.
2:33:19	Ateusa Salemi asks Rich Reynolds if they have investigated the higher rate of denials in comparison to other carriers and employers. Rich Reynolds said that he cannot speak to what the other carriers or employers are doing, and what their instincts are, but that Providence's process has been consistent across every jurisdiction in Oregon, and includes the deep dive investigation process. Ateusa Salemi asks what Rich Reynolds thought about the testimony that claimed that many claims were denied because

	tests were unavailable when the pandemic first started. Rich Reynolds states that Providence did not deny claims based off of negative tests, just the facts. In fact, Providence accepted claims just based off exposure symptomology and the fact-based investigation. Ateusa Salemi asks if he was local to Oregon and Rich Reynolds explained that he is based in Renton, Washington.
02:35:53	Kimberly Wood asks if in any claim that is denied, a test is done, and there is interim time loss, was time loss and the test paid for. Rich Reynolds states they pay for the test and any medical evaluation that was done. If a claim is denied, they will pay for medical charges and lost time until the compensability decision is made as required by statute, so that the burden is never put back on to the employees. Kimberly Wood asks if of the fifty claims that were denied, were there any that needed further medical treatment. Rich Reynolds says he does not have the exact figure and will let the committee know. Kimberly Wood also asks if any cases needed longer than the quarantine time, and of those denied, how many tested positive but it was determined it was not due to a workplace exposure, and how many were actually negative. Diana Winther requested to know how many of the denied claims received interim time loss. Rich Reynolds agreed.
02:42:05	Tammy Bowers says that someone had testified that they had a claim early in the process, and it was denied because they were unable to even get a COVID test. She asks Rich Reynolds if there is a change in how things are now. Rich Reynolds states they have been nimble and adaptive. He states that without details, it is hard to know why that person was denied, but that they could talk to Sedgewick or go as far as a formal appeal. Tammy Bowers asks if Providence's employees feel like their claim was not handled correctly, is there someone internally they can speak to? Rich Reynolds answers that they can speak to human resources and a team of workers' compensation consultants, which are the go-between employees and Sedgewick. He states that their list of consultants and which region they service is listed on their HR portal, which they all have access to as that is how they report a self-reported claim to Sedgewick. The caregivers always have access to that list and it is always published. If the specific person handling their case is out of office, anyone on that team can actually help them. Lynn McNamara asks Rich Reynolds if the denial letter that goes to the worker includes the information about the workers' compensation contacts. Rich Reynolds answers that it would not be in the

	official denial letter from Sedgewick, however, they have a list of HR resources available to them and it is listed on their HR portal.
02:47:00	Diana Winther asks if Providence accepts exposures as disabilities resulting in time loss. Rich Reynolds answers that yes, if there is a confirmed workplace exposure, they pay for those claims. Diana Winther explains that she views Providence employees like grocery clerks in that they are on the front lines and have no control over who they are exposed to. She asks if an employee is exposed at work and doesn't know it, how is that addressed in the investigatory process? Rich Reynolds states that they would look at the patients seen for symptomology. Diana Winther asks if there is not a confirmed case of COVID, and an employee makes a compensation claim for COVID, would they then be more likely than not to be denied. Rich Reynolds says that this would be case-by-case and he could not say definitively.
02:51:15	Diana Winther asks Rich Reynolds about "doffing and donning" and PPE failure during their investigation process. Rich Reynolds said that they can look at the process of taking on and off their PPE, and if the employee touched their face or something along those lines, that would not be PPE failure, it would be what the employee did. Diana Winther asks if this would be an accepted claim. Rich Reynolds states that it would be.
02:52:34	Kimberly Wood asks if an employee is exposed, they obviously should not be at the hospital. If that person needs to stay home, is the time paid by workers' compensation, through other means, are the employees required to use their sick leave and vacation, or is there no coverage? Rich Reynolds states that there is coverage. The employees are advised to call the newly established call center if they have questions, concerns, or are symptomatic. There, they are referred to appropriate resources if needed. If the employee believes this was a workers' compensation issue, they help point them in that direction. If the employee does not think it happened at work, they will point them to ways to file for leave. They are entitled to paid leave and sick leave benefits.
02:55:54	Diana Winther suggests a recess at 3:57 PM
02:55:57	Committee resumed at 4:10 PM.

02:56:22	Diana Winther advised the committee that there is written testimony on the MLAC website and to review it as some may have been posted during the meeting. She suggests that the committee goes down the list and if the issue is a threshold question, it needs to be determined whether it will definitively be addressed by Friday, if it will be taken up later, or if we need to collaborate with another agency to address. The committee agreed.
02:57:40	The first item on the list, regarding the Social Security Number on the 801, which may discourage undocumented employees from filing a claim. Diana Winther states that this is important and within MLAC's purview to fix, however it has also been discussed before and would need stakeholder input. She suggests flagging it for something to discuss after Friday. The committee agreed, and Diana Winther asks Theresa Van Winkle to start reaching out to the stakeholder group for input, check what the division may have for information. Theresa Van Winkle agreed.
02:59:20	The second issue discusses employers not letting employees know they can file for COVID-19. She states there is an educational piece to this and referenced a one pager that discusses this issue, but has been working with Jennifer Flood, Oregon's injured worker ombudsman, to make this a little more worker based. She says she has also heard of asking agencies who already contact people, like the Health Authority, to mention that employees can file a claim. Kimberly Wood suggests that while it is a good idea, they may already be at their limits, and would prefer education to come from the division. She also mentioned that the department provides a flyer with the filing information on it, as well as the requirement that all employers post a notification of the worker's carrier and claim filing information. She asks if this should be decided at a later date since there is something along the lines of education already at job sites. Diana Winther says that the committee could discuss what it should cover, but not exactly what it should say. She suggests the division create something for the committee to look at. She expressed that the notification is not COVID-19 specific, which is important because this is a new pandemic and may not be thought of as something someone can file a claim for. She asks the committee if an additional poster should be posted at job sites. Ateusa Salemi states that she agrees that most people do not think of COVID-19 as being something they can file a claim for. She states that this should be an education piece for both employer and employee and would support this being a separate education piece. Diana Winther asks Theresa Van Winkle if the division could get something made that would represent

	that. Theresa Van Winkle states that they could, however due to current budget climate, it would have cost, so it may take some legwork to decide how that can be done. Kimberly Wood states that there is a website where things need to be posted and is free. She also suggests that a press release to notify employers that a poster is coming which would be relatively inexpensive. She says that she would like to see the poster to look similar to the poster that is already there, such as, "if you believe you have contracted COVID-19 on the job…" She states that like the other poster, we need to not necessarily to encourage them too, but let them know if they have a need to file, they can. Diana Winther asks if this should say, "if you believe you have contracted it" or "do you believe you have been exposed to it." Kimberly Wood states that it would best to discuss this at the end of the discussion about what is or is not in MLAC's purview.
03:09:33	Diana Winther moves on to the third issue regarding employers that try to coerce employees into not filing a COVID-19 claim. She asks the division if through the investigation, it is found there was an inducement not to file, if that results in penalties. Sally Coen states they do have the authority to issue a civil penalty to an employer if the division finds that they have induced the worker not to file a claim. Diana Winther asks Sally Coen if the division receives these types of complaints. Sally Coen answers that they do, but she says they are not often . She states that the majority of the complaints that are received come from BOLI and the division has a team that looks at those complaints. Diana Winther asks how often a civil penalty is issued. Sally Coen answers that they are very rare because the statute has a high burden, with language that says "intentionally or repeatedly," that the employer has done this. So, the division issues many warnings and does lots of education. Diana Winther asks what happens to the worker if they were told not to file a claim; are they able to file a claim after? Sally Coen states that they are. Kimberly Wood states that this would be something to include in the educational piece to the employer. She states it could be offered to the employee if they want to know next steps after they were told not to file. Diana Winther confirms with Kimberly Wood that she would like to see a phone number given to employees if they are told not to file, Kimberly Wood says yes.
03:13:19	Diana Winther moves on to the next issue regarding retaliation, states that this may be under BOLI's purview, and suggests collaborating with them. Alan Hartley suggests that this is a part of the coercion education piece, stating it could say, "furthermore, if your employer retaliates against

	you…" on the poster. Lynn McNamara states that she is envisioning the poster referencing that the COVID -9 situation is new, but things in the workers' compensation system is not new, including retaliation and the penalties for such. Kimberly Wood suggests at a later date, prioritizing the information as not to overload an employee so they don't read the poster.
03:17:35	Diana Winther moves to the next issue regarding having a lack of the necessary means to report an exposure. She states that while it is important, she thinks there is a person in every situation that is a designated person to take workers' compensation claim questions but also report if they felt they were exposed, but is unsure if it can be mandated or is in someone else's wheelhouse. Tammy Bowers states that DCBS or OSHA have rules about bloodborne pathogen exposures, such as if you have been exposed, you need to report it at the start of your shift, as well as a law requiring workers to report all on the job injures or illnesses so it may be easier to add COVID. Theresa Van Winkle states that this could be added, and for reference is it under the section one general Oregon OSHA rules, and are under the general references to what the employers responsibilities are and what the employers responsibilities are to it is applicable to everything under OSHA jurisdiction. Kimberly Wood does not think this is a blood borne pathogen but believes this is a place to start for something that is airborne. Tammy Bowers states that there are rules that already set the precedent for the responsibility to report if you wanted to add COVID-19. Theresa Van Winkle states that the provision did not go through legislation but is being carried through Oregon OSHA and is in the very early stages. Diana Winther asks Theresa Van Winkle if we could recommend to the Governor that OSHA adopt a rule that address processes for COVID exposure in the workplace. Theresa Van Winkle suggests as an alternative before Friday, she can verify with OSHA staff that this rule is under consideration for the current rulemaking activities. Kimberly Wood asks if they are asking the Governor for OSHA to create a COVID-19 reporting requirement. Diana Winther agreed, saying that it is important for the workers' compensation system when a worker is trying to prove a claim that there would be some documentation to substantiate that, but that she does not believe the committee has the authority to create a rule like that. Kimberly Wood asks if there is a requirement that it would need to be reported to OHA that you have a work exposure. Diana Winther says yes. Kimberly Wood asks if the recommendation is asking another agency to do the same thing. Diana Winther asks Kathy Nishimoto if they are required to report if they have a positive case or an exposure. Kathy Nishimoto

	states she would not know she had an exposure unless there was a positive. Diana Winther states that she was speaking more along the lines of retail or healthcare, and those they interact with exhibited signs of being positive but the employer does not have the ability to track. Kathy Nishimoto says that OSHA has already begun their forums asking for stakeholder input. She believed the first meeting for general manufacturing and processing is Thursday from 3:00 PM to 4:30 PM. Nurseries, construction, and retail are Friday, worker perception of exposure impacts is on Tuesday. These forums are to help OSHA establish an infectious disease standard specific to COVID. Theresa Van Winkle states the under statues for reporting that is set by OHA rules, and the department can do research on that as well. Tammy Bowers asks Theresa Van Winkle if she said that OSHA is already starting to develop a reporting requirement on COVID currently to which Theresa Van Winkle states that they are and it is currently tied to the forums Kathy Nishimoto referenced. The committee agreed to recommend this only if OSHA has the capacity to do so and to recommend the appropriate funds are given. Diana Winther mentioned that Jennifer Flood does have a flyer being drawn up to have the contact information all in one place.
3:29:11	Diana Winther moved on to the next issue regarding the lack of standard application as to whether COVID is a workplace injury or occupational disease under the statues. She states that education is a huge piece of that and it has already ben discussed that press releases and posters would pick up that piece. She prefers the injury processing as it is the most appropriate, but does not think it is best to make COVID 19 claims to be exclusively processed as an injury. Kimberly Wood asks if there a self-insured employer or carrier went the route of an occupational disease because that is a harder standard, what would the recourse be for someone? Tammy Bowers states that if an insurance company decides to handle it as an occupational disease claim and issues a denial, when an attorney requests a hearing, they can absolutely challenge that it is not an occupational disease, but that it is an injury. She also points out that there was no testimony that someone's claim was handled as an occupational disease. She also states that she agrees with Diana Winther that it looks like this part is working and it being handled as an injury, and if we mandate it, it would take away an employees right to try this as an occupational disease if they wanted to. Kimberly Wood asks if the department could determine if this was an injury or an occupational disease. Theresa Van Winkle believes it is under the Board's jurisdiction

	and Sally Coen is not sure if that is coded on what is reported to the division or not, but can research that information. Lynn McNamara states she was looking at the definitions provided and feels it would be a push to try to define COVID as an occupational disease.
03:34:45	Diana Winther moves on to inconsistency across carriers. She gave the example of how exposure is handled in terms of acceptance/denial. She states that there is the template that SAIF has been using and we have asks them to bring language to the committee of what that would look like. There is also the presumption and OTLA via Keith Semple will let us know what that language would look like. She sees both of those things addressing the inconsistency in how things are happening because it is going to provide a requirement either way. She suggests that we may need to see the language from them. Kimberly Wood asks to table this for the next meeting, as it is a big topic. She requested to DCBS if someone wants to submit materials that there is a cut off of 11:00 AM, and anything that is submitted after is not to be considered because there is not enough time to review materials with conclusions needing to be made the next day. She also requested that only the people requested to testify actually testify on Friday so that the list can be discussed. Diana Winther agreed, and says that she would like OSHA, SAIF, and OTLA to be present at next meeting. Kimberly Wood also requested that testimony is only given for an hour before it is cut off, speakers are given 10 minutes and only a couple minutes for questions. The committee agreed.
03:40:48	Tammy Bowers suggests that because the eighth, ninth, and tenth issue on the list all deal with the same thing. She would like DCBS to investigate the employers who issued a denial without an adequate investigation, as it would solve all three issues. Diana Winther will ask Theresa Van Winkle to ask Sally Coen if this could be done. Theresa Van Winkle agrees and requested that if there are many questions after a meeting that they are given to Cara Filsinger or herself right away so that there is time for staff to put the information together. Note: the following items were submitted for the record: - ODA, OHA, OSHA Food Processing Response Toolkit – part 1 and part 2 - Oregon OSHA face covering advisory notice - Written testimony American Property Casualty Insurance Association

	- WCD memo on definition of "injury" and "occupational disease" claims - Written testimony from Dr. Sean Green - Written testimony Portland Business Alliance - Written testimony Oregon State Fire Fighters Council - Written testimony Associated General Contractors - Written testimony Oregon Business & Industry member - Written testimony National Federation of Independent Business (NFIB) - Written testimony agricultural employer representatives - Written testimony, Oregon Business & Industry - Written testimony Oregon State Chamber of Commerce - Updated reported denial reasons as of 7/10/20
Meeting Adjourned	Diana Winther adjourns meeting at 4:53 PM.

*****These minutes include time stamps from the meeting audio found here: https://www.oregon.gov/dcbs/mlac/Pages/2020.aspx