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Presentation by
Holly O'Dell, vice president of legal and strategic services at SAIF
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Thank you Chair Winther. My name is Holly O'Dell. I serve as the vice president of legal and strategic services at SAIF. Prior to SAIF, I worked as a public health nurse. At your request, I want to provide additional detail about our approach to COVID-19 and exposure claims, especially investigations of these claims. I also understand there are questions around SAIF's thoughts about system changes or clarifications that could be made to help strengthen the claims experiences and outcomes for all Oregon workers.

Our claims approach is specific to SAIF and has evolved over time. Our philosophy has both a substantive entitlement component and a processing component. Internally, articulating what might feel basic has helped us ensure alignment across hundreds of claims, given the rapidly evolving nature of the crisis.

On the substantive entitlement side, first, SAIF treats COVID-19 condition and exposure claims as potentially compensable. In Oregon, if an individual worker was exposed at work instead of at home, infections are compensable work-related conditions. Examples include a staph infection acquired at work, needlestick exposures, and cases where a worker is exposed to tuberculosis and requires testing to determine whether they acquired the disease. While this might seem extremely basic, this is not necessarily the case in other states, where diseases of ordinary life are sometimes excluded from workers' comp, and a presumption or a change in the law is needed to cause COVID-19 to even be considered a compensable claim. Quarantine or exposure claims are also potentially compensable. This is because a medically-necessary period of quarantine to prevent spread of disease represents disability under Oregon law, as it clearly interferes with and limits a worker's ability to engage in tasks, actions, and daily activities. Of note, this chance at a claim extends to multiple claims for the same worker, who may experience more than one episode of quarantine or exposure.

Second, SAIF treats COVID-19 conditions and exposures as injuries, rather than occupational diseases. With an occupational disease employment conditions must be the major cause of the disease, where with an injury, work need only be a material contributing cause—a much lower threshold—of the worker's disability or a need for medical treatment. Case law supports this. In Oregon, when conditions develop during a finite period as a result of a discrete event, like COVID-19, they are analyzed as injuries. These injuries are medically case-specific. SAIF does not require a positive test for an illness claim and accepts exposures for workers who have a presumptive diagnosis.

If MLAC determines there are insurers who appear to be issuing unreasonable denials—either denying these claims out of hand or applying an inappropriate standard—additional oversight and enforcement is critical. Perhaps WCD might consider putting the industry on notice that suspiciously high denial rates will result in an audit of each of that insurer's claims and associated consequences.

Third, related to entitlement to benefits, SAIF pays appropriate time loss. We pay interim time loss when making a decision to accept or deny takes more than 14 days. We accept public health recommendations given to an individual worker or standing orders on the books of employers in the medical industry as time loss authorizations. We pay time loss for

medically-directed quarantine, which, as noted above, is a period of disability. We pay time loss during illness. We do not require workers to use sick leave or other benefits before time loss for quarantine or illness kicks in.

In all, SAIF has paid time loss in 80% of our claims. It is my understanding that the elements of our approach are required by statute, and that this would be a fairly straightforward area in which to enforce appropriate actions and hold insurers accountable for violations. In addition to putting the industry on notice about each of these requirements—and specifically how they relate to this crisis—WCD could penalize insurers for an unreasonable delay and failure to pay compensation. Using industry standard time loss percentages for these claims would be a relatively easy way to identify where deep dive audits are needed.

Overall, the substantive, or entitlement, component of our claims processing approach reflects existing law which, in Oregon, covers COVID-19. When there are any ambiguities, we try to interpret provisions liberally, in favor of the worker. The second component of our claims approach relates to processing. This is where we have spent the most time ensuring that our philosophy reflects the needs of workers and policyholders during the crisis, and an area I know you asked to hear more about.

For processing, when we become aware of an outbreak associated with employees of a policyholder we insure, we frequently reach out to make sure the policyholder knows COVID-19 is a potential work-related condition, to encourage the policyholder to educate employees about claim filing and to find out whether there are claims that need to be filed. This is a voluntary action and could by systematized by mandating that various agencies who interact with employers during outbreaks provide education and make responsibilities clear.

When we do get a claim, we investigate on a few fronts. First, we proactively reach out to document work releases on behalf of workers who are quarantined. We talk to the employer about any quarantine they may have authorized or any public health recommendations given related to workers exposed during an outbreak. Later, for prolonged illnesses, we talk to workers about where to obtain a time loss authorization from their provider if they'll be off work for an extended time after the initial quarantine. While the statute generally requires insurers to process the claim, the statute doesn't specify required activities. WCD can mandate that reasonable claims processing, for these claims, must include specifics like checking with the employer to see if they released the worker for quarantine or whether public health officials have provided guidance in the case. A new rule could require insurers to notify workers who have filed claims related to COVID-19 that periods of quarantine or COVID-19 infection are eligible for time loss and share the various ways that authorization can be obtained.

One of the most important components of the claims investigation is figuring out where the worker was exposed. SAIF does not wait for workers to produce evidence or proof of where they got the condition. Instead, we investigate to understand the source and, when needed, seek medical opinions. We make it our job to understand whether exposure was likely at work. Existing rules require each insurer to conduct a reasonable investigation based on all available information in determining whether to accept or deny a claim. It seems that under current case law, if a worker tests positive for COVID-19 after work exposure, the insurer would likely be unreasonable if it denied that claim absent a medical opinion explaining that it is more likely this worker contracted the condition off the job. Like with time loss, WCD

could mandate specifics required that constitute a reasonable investigation of these unprecedented claims. Alternatively, a new rule could detail investigatory actions, where compensability is unclear, which must occur prior to a claims decision, such as requiring medical opinions in cases where the worker was exposed both on and off the job. The rules currently require a reasonable investigation.

SAIF appreciates the flexibility that currently exists for carriers to act in a reasonable manner, and believes we are exercising strong judgment in case-specific situations. On the other hand, we have listened to the testimony detailing some of the concerns workers may experience when minimum, crisis-specific requirements are not yet clearly articulated or enforced system-wide. I am available to share more about our experiences. As of Friday, we had received 626 claims, and we have certainly learned a little bit more with each.

To recap, should MLAC desire to design mandates to ensure substantive and procedural strength in processing COVID-19 condition and coronavirus exposure claims, the following could be considered:

1. Insurers should treat COVID-19 condition and coronavirus exposure claims as potentially compensable.
2. Each new claim for COVID-19 or coronavirus exposure should be treated as potentially compensable, even if there are multiple exposures for the same worker.
3. COVID-19 and coronavirus exposure claims should be treated as injuries rather than occupational disease; insurers should use the lower material cause standard.
4. Insurers should investigate all COVID-19 claims and potential exposures, including investigating any sources at the employer, to understand whether the exposure was related to work.
5. Insurers should obtain a medical opinion before issuing a denial in complex cases where the worker was exposed both on 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 related claims.
8. If workers are required to quarantine due to a COVID-19 outbreak or potential exposure at work, insurers should pay time loss for the period of medically-authorized quarantine.
9. Insurers should accept time loss authorizations from appropriate medical professionals including public health officials and authors of medical manuals or "standing orders" at healthcare employers.
10. Insurers should not require workers to utilize sick leave or other benefits for periods of quarantine before time loss kicks in.
11. Insurers should provide notice to workers describing how to receive the relevant work release for time loss related to a period of quarantine or COVID-19 illness.