

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE

Full MLAC Meeting

September 11, 2020

1:00 p.m. – 3:00 p.m.

Committee Members Present:

Alan Hartley
Kimberly Wood, Perlo Construction
Diana Winther, IBEW Local 48
Lynn McNamara
Jill Fullerton, Clackamas County Fire Department
Ateusa Salemi, Oregon Nurses Association
Andrew Stolfi, DCBS Director, *ex officio*

Committee Members Excused:

Tammy Bowers, May Trucking
Kevin Billman, United Food and Commercial Workers
Kathy Nishimoto, Duckwall Fruit

Staff:

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

Agenda Item	Discussion
Opening (0:06:00)	Kimberly Wood opened the meeting at 1:02 pm. Theresa Van Winkle does roll call.
(0:01:30)	Jill Fullerton leads a moment of silence to honor the victims of 9/11 and everyone that is affected by the wildfires and the firefighters that are hard at work to put them out.
(0:03:15)	Diana Winther goes over the meeting minutes from the previous MLAC meetings (2/7/20, 6/30/20, 7/2/20, 7/7/20, 7/9/20, 7/15/20, 7/17/20, and 8/26/20). All of the MLAC minutes were approved pending a few corrections noted to the minutes from 6/30/20, 7/2/20 and 7/15/20.
(0:10:30)	Sally Coen, WCD Administrator gives an update on the MCO Come Along Report and shares the data with the committee. Sally Coen next reviews the WCD update on implementation of July 20, 2020, MLAC recommendations. The first being the use of a Social Security Number on the 801 Form, a stakeholder group has been formed and the first meeting is September 15, 2020. The second is DCBS developing specific COVID-19 educational materials, there is a WCD team working on that and they will team with the Injured Worker Ombudsman and Small Business Ombudsman to come up with the educational content. Sally Coen adds that WCD will coordinate with Oregon OSHA which may require posters u for

COVID-19. The plan has been sent to the MLAC co-chairs for approval. Kimberly Wood asks what is the time frame on that. Sally Coen responds that we hope to get it out in the middle of September but that will depend on DCBS's communication team and their capacity.

(0:16:40) Sally Coen moves on to reviewing the [WCD memo on the rule proposal](#). Sally Coen reiterates that WCD does have broad general rule making authority and any rule must be consistent with the statute. Rules must also be within the Director's authority and must not encroach on the Workers' Compensation Board's authority. Sally Coen adds that WCD does have the authority to make rules retroactive if it is reasonable under the circumstances.

(0:23:40) Diana Winther asks in regards to the list of things WCD does not have the current statutory authority to adopt is who can authorize time loss, is that in response to being able to authorize time loss through a public health official. Sally Coen responds that is correct, it is under section 2(B) of the proposed rule.

Public Testimony
(0:27:50) Holly O'Dell, Vice President Legal and Strategic Services, SAIF, gives her testimony. Holly O'Dell discusses the issue list that MLAC identified, addressing the rule, and concerns that they have heard that the rule does not provide enough protections with a focus on WCD's authority.

(0:41:00) Kimberly Wood asks if the two items that DCBS does not have authority to over (waiting for a COVID-19 test to come back, and waiting 14 days for an investigation), is it Holly O'Dell's belief that the rule proposal meets all the concerns that are identified. Holly O'Dell responds yes.

(0:43:45) Diana Winther asks in regards to 2(B) and authorization of time loss, how can a worker that is following the direction of the public health authority or their employer get time loss for quarantine without having to go see another medical provider. Holly O'Dell responds that without a statute change we cannot mandate carriers to pay for time loss authorized by providers that aren't articulated in the statute.

(0:46:00) Alan Hartley asks if the public health authority had a doctor under contract that they worked with on COVID-19 cases, couldn't that doctor authorize time loss. Holly O'Dell responds they are seeing clear cut authorizations because people are getting into regular providers, and if a doctor at public health or otherwise absolutely qualifies to authorize time loss, these are the providers we are increasingly seeing treating these cases. Alan Harley states that is kind of a non-statutory work around if the public health authority is willing. Holly O'Dell responds yes, and one element that has been explored in responds to what other stakeholders have identified is

education, either voluntary or mandated efforts to explain to workers how to get an authorization from a provider that is in the statute and where to go to do that, and employers can also help facilitate that.

- (0:48:00) Diana Winther asks WCD for their opinion on these issues on time loss after hearing Holly O'Dell's testimony. Sally Coen responds that she doesn't believe that they are getting a lot of complaints about that anymore, but she is interested in putting guidance as part of the outreach for workers and employers. Jennifer Flood, Ombudsman for Injured Workers, responds in regards to the calls that come into the Ombudsmen's office because of the way the rules are currently, we don't rely on the "oh well it might work," we advise workers to get to their medical provider for the quarantine period.
- (0:53:00) Diana Winther asks in trying to address what people hope a presumption could address, she understands that WCD can take on investigating whether or not the investigation process done by the insurer was sufficient or not, but her understanding is that that does not help the individual worker. If a worker does not have all the information about possible exposure at work, and they have to go to a hearing, what solutions does the worker have and how does this rule fix that. Holly O'Dell responds that she sees there are three issues: the process of how to identify bad actors, the worker having to prove their case, and whether or not the worker has the equity and access to the information about their case. Holly O'Dell gives an explanation and resolution for all three issues.
- (1:04:00) Diana Winther asks if the insurer is required to do the fact gathering from the employer. Holly O'Dell responds yes, the investigation rule requires the history that they are asking about.
- (1:07:00) Diana Winther states one thing she finds concerning is not increasing appeals and not having more appeals be the solution. She doesn't want the system to be overburdened with appeals or the workers with that process. Holly O'Dell responds reducing litigation and having cases resolved at the lowest possible level is one of the core tenets of the workers' compensation system. Holly O'Dell adds that SAIF accepts most claims instead of taking up the time and expense of obtaining a medical opinion.
- (1:10:00) Kimberly Wood asks if WCD can get the data on the number of denials have increased during the COVID-19 period or have we got the same number of denial ratio that we have always had. Sally Coen responds that WCD is continuing to track individual denials, as of September 11, 2020 WCD has received 244 denials (4 currently on appeal). WCD is also tracking the specific reasons claims are being denied. The vast majority are for two reasons, the injury or exposure was not compensability related to their employment or that the worker tested negative for COVID-19. Sally
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Coen states that they will get an updated report out to MLAC. Kimberly Wood asks what about just denials in general, have they increased. Kimberly Wood also asks if WCD can start gathering data on non-disabling accepted claims. Sally Coen responds that she will talk to the research team about updating the overall denial rate. Second, on the non-disabling claims WCD has a statutory provision that talks about what claims have to be reported to the division and there is a legislative concept in the works to allow us to write rules that would require insurers to report all claims to WCD. WCD does have non-disabling claim data and it is thousands and thousands of claims so it will be a big task.

(1:15:00) Diana Winther asks in regards to the two major causes for denial are those broken down in by industry. Sally Coen responds that it is broken down by category but not industry but WCD will look into what it will take to do that.

(1:18:00) Kimberly Wood discussed moving this topic to subcommittee to have these conversations in a less formal fashion. Both Diana Winther and Kimberly Wood will co-chair the subcommittee and all MLAC members can attend. The next meeting September 18, 2020 will be in the subcommittee format.

(1:21:00) Theresa Van Winkle provided a final department update on the 2021 proposed workers' compensation assessment rates.

Meeting

Adjourned

Diana Winther adjourns the meeting at 2:27 p.m.

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

<https://www.oregon.gov/dcbs/mlac/Pages/2020.aspx>

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

<https://www.oregon.gov/dcbs/mlac/Pages/2020.aspx>