

WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE  
**Full Committee Meeting**  
December 11, 2020  
10:00 a.m. – 12:00 p.m.

***Committee Members Present:***

Alan Hartley  
Kimberly Wood  
Diana Winther, IBEW Local 48  
Lynn McNamara  
Tammy Bowers, May Trucking  
Kathy Nishimoto, Duckwall Fruit  
Ateusa Salemi, Oregon Nurses Association  
Kevin Billman, United Food and Commercial Workers  
Scott Strickland, IOUE Local 701

***Committee Members Excused:***

Andrew Stolfi, DCBS Director, *ex officio*  
Jill Fullerton, Clackamas County Fire Department

***Staff:***

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

<b>Agenda Item</b>	<b>Discussion</b>
Opening (0:00:00)	Kimberly Wood opens meeting at 10:02 a.m. Theresa Van Winkle does roll call. Kimberly Wood moves to approve the September 11, 2020 meeting minutes (with Kathy Nishimoto's edits). Kathy Nishimoto moves to accept the minutes, Alan Hartley seconds. The meeting minutes are approved by all members present. Tammy Bowers asks about subcommittee MLAC meeting minutes, Kimberly Wood states that we will address those at the next meeting and for people to send in their edits if they have any.
(0:03:00)	Theresa Van Winkle begins discussion on the 2021 tentative MLAC schedule.
(0:04:30)	Sally Coen, Workers' Compensation Division (WCD) Administrator discusses the department updates. Sally Coen gives a status update on the COVID claims audit. WCD is auditing denied COVID claims as outlined in the October temporary rule. WCD is auditing 12 companies, 9 insurers and 3 self insured employers. Combined those 12 companies have reported 260 denied claims as of October 1, 2020. Sally Coen adds that not all of those claims will be audited just the denials that are final as of the date of the audit. The last of the audits will be started next week and might take a

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few weeks. Once review of the claims is complete WCD will be putting together the draft reports for the processing locations for the insurers and self insurers to review. Sally Coen states that once the report is done WCD will have a summary for MLAC. Sally Coen states that WCD is finding some common themes during the audit, the primary one being that employers are being very diligent about referring their employees for COVID testing if they have been exposed. Sally Coen adds that in many cases it is unclear if the worker meant to file a claim, and it was the medical provider that generated a 827 Form when the worker came for a COVID test.

(0:12:00)

Sally Coen's next update is on status of permanent rulemaking. In regards to the COVID claims processing, the temporary rule is in effect as of October 1, 2020 and can only be in effect for 180 days, WCD has quickly moved into permanent rule making for administrative rule. WCD issued proposed rules on November 18, 2020, and the public hearing is scheduled for January 5, 2021, with written comments accepted until January 8, 2021. Those rules will be effective on February 1, 2021. Sally Coen clarifies the process of permanent rule making, all input must now come via the public comment process. Sally Coen states that one change that was made was while the rule requires specific steps that an insurer must take during its investigation of a COVID related claim, we have now included a specific exception for denying a claim for other reasons not related to COVID. There was also additional language change proposed in the auditing and monitoring section of the rule . The language changes are to help insurers know the expectations with COVID claims, it was also help prevent insurers from getting out of an audit.

(0:15:00)

Sally Coen states that WCD has also being in rule making for removing the Social Security number from the 801 and 827 claim forms. The final rules are effective January 1, 2021. WCD encourages the use of the new forms immediately once they are distributed, and be exclusively used as of March 1, 2021. Sally Coen in regards to educational outreach states that WCD sent out an educational flyer on November 12 that addresses COVID and workers' compensation claims. WCD also created a new webpage for that information and have posted on DCBS social media.

Sally Coen gives an update on WCD data call to obtain more information about the accepted non-disabling claims, something that is not reported to WCD. WCD has decided to ask for detailed information (like exposure, disease, type of industry, medical serves provided, and status of testing) and not just raw numbers. The data call was sent out to the companies that make up at least 1% of the total claim volume over the past year . Every insurer and self-employed insurer that have had at least 5 COVID claims were included as well. So far, 20 of the 31 insurers have responded to the data call and the deadline is December 15, 2020. Sally Coen states that

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there has been a total of 250 accepted non-disabling claims reported which is a large increase. All the results will be presented to MLAC in January.

(0:17:00) Kimberly Wood states that it was good to hear that employers were referring their employees for testing because it was a fear that employers were discouraging employees to file claims but it is encouraging to hear that isn't the case. Kimberly Wood states that she would like to discuss the rulemaking changes as a committee without directly asking/stating anything to WCD because that needs to be done through public testimony as Sally Coen stated earlier. Kimberly Wood talks about the two big topics discussed at the rulemaking advisory committee meeting. The first main topic was the section that states the insurer must obtain a medical opinion, and there were concerns that an insurer shouldn't have to get a medical opinion. The second main topic is in regards to WCD and their broad authority to do audits and some language changes on that.

(0:22:00) Alan Hartley states that both the potential changes concern him, and it is important to send a message that this is important. Alan Hartley believes that the language "shall" in regards to a doctor was important to everyone and we need to find a different way to address the concerns other than changing the terms. Kathy Nishimoto states that she wants to concur with what Alan Hartley just said and would like to see the word changed back.

(0:23:00) Tammy Bowers states that she listened in on the advisory committee meeting and she understands the concerns about the term "shall" and "may" on medical reports she agrees with the change. In regards to the change in the audits section, she would like to see it much more forceful and required.

(0:24:00) Lynn McNamara states that whether or not the committee decided to put in public testimony as a group she would have put in her own testimony that she agrees that the wording makes a difference, and she understands where WCD is going especially on the audits and she doesn't want it to get watered down with the language.

(0:25:30) Diana Winther states that she has some concerns about the changes and wants to discuss them because the language changes the intent of what they have created. Diana Winther states that she does have more of a concern about the audits section and that the committee crafting a letter together does seem to be the appropriate thing to do.

(0:26:30) Kevin Billman states that he is in favor of MLAC crafting a letter together to propose exactly what we want the language to say. Ateusa Salami states that she doesn't have anything new to add but agrees with the concerns already stated.

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Kimberly Wood states that if everyone one agrees she and Diana Wither will draft up a letter and circulate it to each side of the committee and give feedback. Kimberly Wood also states that she appreciates WCD's educational outreach that they have done and thanks WCD for the data call information and MLAC would like to continue to see the reports they give them. Kimberly Wood asks if MLAC could get the reports monthly and can the reasons of denial be added as part of the data. Sally Coen asks for clarification on if Kimberly Wood is just asking for the denial reasons to be added to the monthly report they send out; Kimberly Wood responds yes and asks if that can be sent to the committee members. Sally Coen responds yes.

(0:32:00)

Greig Lowell, Workers Compensation Board (WCB), goes over the details of the [WCB memorandum](#) . Greig Lowell has four cases that he discusses with the committee. Greig Lowell also gives updates on the Board's administrative rules, and adds that the board does not have any decisions on COVID related cases yet. Kimberly Wood in regards to the first two cases Greg Lowell mentioned having references to MLAC, asks is that traditionally something that is put on our desk or do we need something else. Theresa Van Winkle responds that if MLAC wants to take that up with that particular stakeholder wants you to review it the MLAC can go forward with that. Kimberly Wood states that is something Diana Winther and herself will discuss but if the they are changed that we want to help make recommendation on.

(0:53:30)

Kimberly Wood moves on to the topic of the MLAC Subcommittee COVID-19 discussion and MLAC's plan moving forward. Kimberly Wood states that MLAC will move forward without the Oregon Health Authority (OHA) being able to speak to the committee due to them unfortunately being too busy, hopefully sometime in the future OHA can come to a meeting. Kimberly Wood states that MLAC now needs to make a recommendation to the legislature on the administrative fix as well as the presumption.

(0:56:30)

Diana Winther starts by thanking MLAC, WCD, and all the stakeholders for all of their hard work. Diana Winther states that she would like the legislature to consider a policy decision rather than something the committee can solve for them. She also adds that she appreciates the changes made to the 801 and 827 forms as well as the education outreach WCD has done. Diana Winther states that having MLAC look at COVID-19 made sense and it brought forth some positive things, but she isn't sure MLAC can have a solid decision about a presumption and doesn't like the idea of MLAC creating legislation.

Alan Hartley states that Diana Wither's statement is a very good way to summarize what MLAC has been doing. Alan Harley adds that on the

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(0:59:00) management side, we have not been able to find the data to support a presumption but that does not mean this is not a problem. It is a policy issue for the State of Oregon to address and it is not really an issue for MLAC to address any further.

(1:00:00) Tammy Bowers states that she agrees with both Alan Hartley and Diana Winther. Tammy Bowers adds that MLAC has spent a lot of time receiving testimony and input from stakeholders, and reviewing data and to her it doesn't seem like the data supports a presumption, but that doesn't mean that this isn't an issue and a policy is much more appropriate.

(1:01:20) Lynn McNamara agrees with everyone as well, and states that this is a bigger problem than workers' compensation and if we could have solved this issue with the data that they were given then MLAC would have done that, but that isn't the case and it is better put to the legislature.

(1:01:40) Kathy Nishimoto agrees with what everyone has said, and adds that we looked over the data and statistics a lot and it just wasn't enough there for a presumption and we do need to continue on looking at the data.

(1:03:20) Kevin Billman states that he agrees with everything that has been said thus far and adds that everyone is worked very hard but at this point MLAC is unable to move any further.

(1:04:00) Scott Strickland agrees with what Diana Winther and we need more guidance from the legislature and we need something more to render an opinion on other than just what we have gotten so far.

(1:05:15) Ateusa Salemi agrees that MLAC can not come to a decision right now and that the next step is to send a letter and ask for the legislature's input.

(1:06:00) Kimberly Wood thanks all the members for their input. Kimberly Wood states that ultimately MLAC cannot come to a conclusion because we have two different goals. Management has been looking at the system and trying to determine if the system is broken and if so, we need to fix the system and that is why we are looking at the data. Labor side believes that it is more of a public policy decision that needs to be in place for the people that are higher risk. From management's point of view workers' compensation is not the right system to address the concern that labor has. Kimberly Wood states that she believes it is a public policy issue that the legislature needs to resolve. Kimberly Wood states that it is less of management and labor butting heads and more that each side has a different point of view with different issues to solve.

Kimberly Wood states that the next step will be for Theresa Van Winkle and Cara Filsinger (WCD) to help MLAC draft a letter to talk about what

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MLAC did well and all the changes they have made, and to add in what Sally Coen mentioned about employers reporting as well not just the employees. Kimberly Wood states the fact that they did look at the data and it does not support a failure in the system or something along those lines should be added in the report and this should be a policy decision. Each side will submit its own letter and MLAC would like to get that in by the first of the year 2021. Theresa Van Winkle will check and see if that time frame works. Kimberly Wood tells members that if there is anything they believe was missed or they disagree with please get a hold of your co-chair. At the next meeting MLAC can go over the letter January 8, 2021.

Theresa Van Winkle states that DCBS will send out a GovDelivery notice about getting the legislative concepts going. Kemberly Wood asks if MLAC can get the legislative timeline calendar again. Theresa Van Winkle responds we can do that once the calendar is released.

(1:17:00)

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**Meeting**

**Adjourned**

Kimberly Wood adjourns the meeting at 11:21 a.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>