

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

February 5, 2021
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
Scott Strickland, IOUE Local 701
Andrew Stolfi, DCBS Director, *ex officio*
Jill Fullerton, Clackamas County Fire Department
Ateusa Salemi, Oregon Nurses Association
Kevin Billman, United Food and Commercial Workers

Staff:

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

Agenda Item	Discussion
Opening (0:00:00)	Diana Winther opens meeting at 10:02 a.m. Theresa Van Winkle does roll call. Diana Winther moves to approve the January 8, 2021, MLAC meeting minutes Kathy Nishimoto moves to approve the minutes, Lynn McNamara seconds. All members present accept the minutes.
Department Updates (0:02:00)	Sally Coen, WCD Administrator, provides an update on WCD's COVID-19 claim denial audit as part of the October 1, 2020, rule change. To make sure the insurer performed a reasonable investigation of the claim, WCD reviewed 4 specific areas which WCD calls the "three-point contact", those areas being whether the insurer gathered information from the worker, employer and any medical provider. WCD also looked at COVID testing and whether the worker was tested and the results of the test. Sally Coen adds that WCD also looks to see if there is other medical treatment for COVID-19 and whether temporary disability was due to the worker. The WCD audits found that the insurers investigated the COVID-19 claims higher than the industry norm for claims in general. Sally Coen shares one key statistic from the audits is 80% of the workers were tested for COVID and 74% of those workers tested negative, she also adds that most claims were not filed by workers directly most were from the 827 form being filed by medical providers. Sally Coen goes over more statistics on claim filing and reasons why temporary disability was not due that are shared in the report. Sally Coen details the denial rates by company, and WCD found

that the insurers with high numbers of claim denials were driven by high volumes of claims filed for workers who did not test positive for COVID. Sally Coen states that temporary disability was paid in all claims that it was due and in the ones which it was not do. Next, Sally Coen discusses the details of medical bills for COVID-19 from the report. Sally Coen states that WCD will send MLAC the final written summary of there findings after the meeting. Sally Coen states that WCD has not audited any claims processed after the October 1, 2020 rule requirements and that will be the next task.

- [COVID reported claim data – before 10/1/20](#)
- [COVID reported claim data – after 10/1/20](#)
- [COVID denial reasons – before 10/1/20](#)
- [COVID denial reasons – after 10/1/20](#)

- (0:12:00) Alan Hartley states that it is encouraging that the audits are showing that the employers are being very diligent in making sure their claims go through the Workers Compensation System.
- (0:13:00) Kimberly Wood asks if WCD will be providing the report on denials and percentage of denials to the House and Business Labor members. Sally Coen responds yes, they will be provided.
- (0:14:30) Diana Winther asks for clarification on if WCD has ability to penalize employers or insurers with anything they found during the audit process. Sally Coen responds that is correct WCD can not penalize them for things found during the audit process.
- (0:15:20) Sally Coen gives an update on accepted non-disabling COVID-19 claims from the data call. Sally Coen states that in responds to one insurer not responding to the data call, they had a valid reason because they did not have any claims. Sally Coen gives an update on the COVID-19 permanent rule making, and they permanent rules took effect February 1, 2021 and WCD did adjust the rules based on the public testimony included what was submitted by MLAC, WCD would also like any feedback on the rule. Sally Coen provides details on the COVID-19 monthly data reports. Kimberly Wood and Diana Winther thanks WCD for making the adjustments to the rule that MLAC suggested.
- (0:19:30) Sally Coen gives an [overview of Managed Cared Organizations \(MCO\) appeal process](#). She adds that due to the litigation status of the worker who testified at the last meeting WCD can not comment on that case. Robert Anderson, WCD Sanctions and Medical Team manager, provides some general information about the MCO appeal process. Alan Hartley states that he really appreciates the MCO summary.
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- (0:24:00) Scott Strickland also appreciates the summary. He also discusses his experience with the MCO process from when he was an injured worker. Scott Strickland states that the appeal process and procedure is pretty robust. He adds that he would be interested to learn more about how the enrollment process initiates. Scott Strickland state that with the way it is structured the appeals process is a sort of fail safe but that you have to have the initial failure to then get into the appeal process to address the problems. Robert Anderson states that WCD can get more information on the enrollment process, and that there isn't a lot of regulation surrounding the actual enrollment. Scott Strickland states he appreciates that because one of the parts of the process that he struggled with was being told that he was going to be enrolled in an MCO and when he asked if he could have a different MCO which with his provider involved, there was a lot of back and forth and it was a difficult process.
- (0:28:30) Kimberly Wood states that often times workers will seek medical attention before they notify their employer, as well as employers aren't allowed to tell an employee to seek treatment. So an employer may know that a carrier is going to enroll an employee in an MCO but you can't have them start with an MCO provider, which in turn sets up those disruptions. Kimberly Wood believes that the system is setup the right way because we don't want employers to start telling the employees to see certain providers. Diana Winther agrees with that statement. Kimberly Wood states we need to figure out how to get employees to the MCO right away.
- (0:34:00) Diana Winther states that she would like more information on the criteria for why someone is enrolled into an MCO. Lynn McNamara states that she would also like to see the contracting practices. Scott Strickland agrees that he would like to know more about the process as well.
- (0:36:00) Lisa Johnson, Majoris Health Systems, gives details on how Majoris Health handles their MCO contracts. They have different guidelines for different insurers written into the contracts and the contract are approved by the State before they go into effect. Lisa Johnson adds that there is no rule in regards to timing of the enrollment. She states that the contract with the insurers are actually based on what the insurer wants to use as their policy to make enrollment decisions. Diana Winther asks there is nothing statutorily that states you have to manage your enrollment for workers in an MCO a certain way. Lisa Johnson responds that is correct.
- (0:39:00) Kimberly Wood states that she would like some background on why MCO's were created and just some more history on them from WCD. Rob Anderson responds WCD can do that.
- (0:39:30) Theresa Van Winkle begins the discussion about the 2021 legislative review process. Sally Coen in regards to the first bill [HB 2039](#) on
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regulatory streamline states that the bill does address three streamlining areas, claims record storage, processing the landscape contractor business coverage, and cleaning up an outdated civil penalty statute. Sally Coen clarifies that the details of the claims record storage and the remote working will be addressed in our public rule making process and stakeholders will have the opportunity to provide advise.

(0:42:00) Mr. Robinson states that he does have reservations about the storage and office space allowance that is being proposed, because he himself is having trouble getting access to records from the MCO and private insurer and he doesn't think the records should be kept out of state because they are not available in a timely fashion. Mr. Robinson states that he would like to be notified when the public hearing is. Sally Coen states that WCD can add him to the GovDelivery list for notifications.

(0:44:30) Theresa Van Winkle moves on to [HB 2040](#) and discussed the [-1 amendments](#) and the [letter from legislative council](#) and the intent of the changes.

(0:47:00) David Barenberg, SAIF gives his testimony and states that SAIF has some issues with the drafting of the bill and the style and form changes. A letter was sent by a group that included OTLA, SAIF, AFL, OBI, AGC, and American Property Jurors to MLAC to expressing concerns about the style and the changes to the bill. David Barenberg states that after listening to council he still expresses concerns about the changes. SAIF is pursuing an amendment but SAIF is still very enthusiastic about the intent of the bill. David Barenberg adds that the modernization on technology will help to make the system more streamlining for sharing data.

(0:49:40) Keith Semple, OTLA states that he completely agrees with David Barenberg's testimony and he would like to see MLAC approve the language that represents the intent and strike everything else. Keith Semple also supports the modernization goals but we want to make sure the information that is required is maintained in a format that's readable and usable and not coded. Sally Coen states that WCD currently does not code information about specific text on an acceptance or denial notice, also WCD is not the keeper of the official claim record, the insurer is and they will need to provide those upon request. Keith Semple states that in the file is available through WCD the worker would like more than a civil penalty to be issued if the insurer didn't in fact keep the file. Sally Coen responds that WCD does not currently have complete records, so WCD may or may not have the records upon request and nothing about the bill would change that.

(0:55:00) Kimberly Wood in regards to the stylistic changes ask if they are going through the entire Workers Compensation statute, and are they changing all

of them or what's currently before them. Theresa Van Winkle responds it is on what's in front of them not the entire chapter. Kimberly Wood has some concerns with the consistency of only changing part of it and not the whole chapter. Theresa Van Winkle states that the memo from the legislative council provides an explanatory statement on what they do. Kimberly Wood states that she is in line with OTLA and SAIF and their concerns. Diana Winther states that too much litigation over one word can make her nervous despite the best of intentions.

(0:58:00) Theresa Van Winkle moves on to [HB 2915](#) which applies heart/lung occupational disease presumption to City of Portland Police and Fire Disability Fund. She states this is a reintroduction of the bill from the 2020 session. [WCD provides MLAC with the bill analysis](#), and there is [a -1 amendment](#).

(0:59:00) Sam Hutchenson, Bureau Director for the City of Portland's fire disability and retirement [gives his testimony on the bill and the details the target of the bill](#). Sam Hutchenson has two issues with the bill, the first is addressed in the -1 amendment. His other issue is the bill does not have a provision for outlining what claims are covered by the bill when it becomes effective and all the other presumption bill do. Sam Hutchenson has some wording that he will run through government relations group before we lobby to have it in the bill. Diana Winther says thank you for bringing up something that needs to be addressed.

(1:01:30) Kimberly Wood asks if we can table the bill if we need to make amendments or table the voting. Theresa Van Winkle responds yes it can be tabled.

Committee takes a brief recess

(1:03:30) Diana Winther states that the committee is not going to move forward with all the bill at this time but they will move forward with [HB 2039](#) vote, Kimberly Wood motions, Tammy Bowers seconds. MLAC committee voted unanimously to move forward with HB 2039. Diana Winther states that [HB 2040](#) will be tabled due to the [-1 amendments](#) and the discussion from today's meeting and MLAC has some concerns about the stylistic changes. Diana Winther states that based on Sam Hutchinson's testimony HB 2915 will be tabled as well to review the -1 amendments.

(1:06:30) Kimberly Wood asks if there is a way to let legislation know they are in support of the concepts of HB 2039 and HB 2915 but there is amendments that they want to support and they have some concerns with the style changes. Theresa Van Winkle states an update will be sent to them so they are aware. Diana Winther asks if HB 2915 was the bill that was voted on and approved from last session. Theresa Van Winkle responds yes. Diana

Winther hopes that will be conveyed in the summary and that MLAC is in support.

**Meeting
Adjourned**

Diana Winther adjourns the meeting at 11:22 a.m.

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

<https://www.oregon.gov/dcbs/mlac/Pages/2021.aspx>

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

<https://www.oregon.gov/dcbs/mlac/Pages/2021.aspx>