

WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE  
Subcommittee on Worker Continuation of Care Meeting

August 25, 2022

1:00pm-3:00pm

***MLAC Members Present via Zoom :***

Scott Strickland, Sheet Metal Workers Local #16

Sara Duckwall, Duckwall Fruit

Margaret Weddell, Labor Representative

Matt Calzia, Oregon Nurses Association

John McKenzie, JE Dunn Construction

Andrew Stolfi, DCBS Director, *ex officio*

***Staff present via Zoom:***

Theresa Van Winkle, MLAC Committee Administrator

Cara Filsinger, Senior Policy Analyst, Workers' Compensation Division (WCD)

Brittany Williams, MLAC Assistant

Jeffery Roddy-Wilson, MLAC Assistant

<b>Agenda Item</b>	<b>Discussion</b>
Opening (0:00:12)	Theresa Van Winkle opens the meeting and sharing details about the meeting format and procedures for those wanting to speak with details about the Zoom meeting being recorded and chat messages being public record.
(0:01:58)	Sara Duckwall and Matt Calzia introduced themselves as the MLAC management and labor caucus members serving on the subcommittee.
(0:02:17)	Theresa Van Winkle called the roll of MLAC members, DCBS staff, and stakeholders present via Zoom.
(0:06:31)	Sara Duckwall requested to go through the <a href="#">subcommittee charge</a> before beginning the conversation so that everyone present could fully understand the scope of what should be being discussed. Theresa Van Winkle gave instructions on how to find the charge that is posted online and read the charge in its entirety. Theresa Van Winkle mentioned that if issues did arise that needed to be discussed outside for the subcommittee charge that they would be addressed outside of this meeting time.
(0:10:05)	Elaine Schooler of SAIF, discussed the overview of the subcommittee charge involving HB 4138, giving a brief history of this issue. She highlighted the time loss discussions and the commitment that was made to

---

continue on with the discussion about worker continuation of care. Elaine Schooler detailed the purpose of the time loss system and the two types of time loss benefits, noting the difference between total and partial time loss. She added that in order for workers to receive time loss benefits they must be authorized by a physician currently there is no requirement for physicians to include an end date in the time loss authorization. It is critical that workers stay in contact with their physicians and continue to receive treatment but this is not currently enforceable by statute and the Medical Advisory Committee has raised concerns about this and its impacts. Elaine Schooler urged the committee to reach out to the Medical Advisory Committee to discuss this issue further and hear their perspective.

(0:17:05) Jovanna Patrick from Oregon Trial Lawyers Association stressed the need to acknowledge that there are real life difficulties with workers receiving care and that it may not be possible to fix these issues in the workers' compensation system as many of them are larger issues of access. Adding that having a hard rule where benefits end at 30 days would cause a hardship to workers and could cause more practitioners to leave the managed care setting because of added requirements that may not make sense in practice. She asked who the gatekeepers are for receiving medical care and listed first and foremost the physicians themselves who can decide whether or not a worker needs to be seen again within 30 days and whose schedules can also delay treatment. Jovanna Patrick explained some of the existing tools that insurance companies can use to mitigate "doctor dodging" including the use of modified work, light duty, and bug letters. Jovanna Patrick stressed that from management's point of view workers are the reason that they are not being seen in a timely manner. She stressed that putting the burden on workers when they are not the ones dictate when or if they receive treatment. She shared several instances where workers were made to adjust their treatment schedule based on employer feedback and scheduling. She also shared examples of her clients being made to wait longer than 30 days to receive treatment due to the provider's office being booked out nearly two months. Jovanna Patrick emphasized the disparities for workers who do not speak English or do not have access to telemedicine. She added there is no data available to back up the claims that time loss is a wide spread problem, or as to why the current procedures are not enough to catch those few workers that are doctor dodging and how those cases will be caught in this 30 day limit.

(0:28:38) Sara Duckwall requested that the committee focus on working to find holistic solutions as opposed to speaking about a 30 day limit, which has not been proposed or how that applies to the current subcommittee. Jovanna Patrick responded that she will keep the information more broad but that the 30 day limit was proposed in previous time loss conversation and discussed with the Medical Advisory Committee so she felt it important to address. Jovanna Patrick finished by stating that if this issue is

---

---

wide spread enough to warrant legislation that the solution should not be so broad as to effect the workers that are following the protocol and keeping up with their treatment.

- (0:31:48) Matt Calzia referenced the previous proposal of the 30 time limit and asked if the discussion should start from a certain position or from a blank slate? Sara Duckwall responded that she would like to start from a blank slate to understand what the issues are and to find a solution. Matt Calzia agreed that he would like to start from a blank slate as well.
- (0:32:59) Kevin Anderson from SBH Legal discussed a case that included a worker needing surgery but being told that before they could be scheduled for surgery that they needed to lose 25 pounds and quit smoking. The worker was put on light duty and told that to come back to the doctor when both of those things occurred. Nine months later the worker had not returned to seek treatment as they had not lost the weight or stopped smoking. Bug letters were not appropriate to trigger the worker to see the doctor as the doctor did not need to see the worker until they met the requirements of receiving surgery.
- (0:36:38) Keith Semple from Oregon Trial Lawyers Association, who also worked on the case cited by Kevin Anderson, discussed the perspective of his client. In this case the client needed to lose weight and stop smoking before he had surgery with no other instructions for engagement given from the attending physician or employer. There was no further communication between the doctor and the worker while he was working on quitting smoking and losing weight and working on the light duty assignment that was given to him. Keith Semple added that his client would have been happy to meet with his doctor while this process was happening but he was never asked to do so.
- (0:39:16) Kevin Anderson responded that the only process that could have happened in that situation would be for a notice to go out to the worker asking them to stop smoking or to contact the worker's representative and asking what is going on. He stressed that in this particular case, he did not feel that there were a lot of options for contacting the worker or seeing them move through the process at a more appropriate speed.
- (0:40:28) Kirsten Adams, Associated General Contractors responded to Jovanna Patrick's testimony and agreed that getting everyone's concerns out on the table and being able to discuss those questions or concerns fully will be helping moving forward to find a solution.
- (0:41:44) Scott Strickland asked a question of Kevin Anderson, asking him to point out how an additional burden on the worker would have helped to resolve that situation he discussed as the communication breakdown seemed to
-

---

happen between the physician and insurance provider. Kevin Anderson answered that he did not see an added burden on the worker being the solution but that there needs to be a clearer expectation between insurers and providers about how to handle claims such as this. He added that this claim was open and kept with the status quo because there was no clear rule about the providers understanding the need to communicate timelines and requirements to the worker, versus the worker's responsibility to remind the physicians about the process. Scott Strickland answered that his understanding of the issues being discussed with hard limits on time loss would impact the workers directly as opposed to the insurers or providers, where the communication issues occurred in this case.

- (0:45:32) Jessica Giannettino Villatoro, AFL-CIO, asked a clarification of Kevin Anderson about the example that he shared. Asking him if there was a hard stop rule, would it be the worker's responsibility to discuss that with the attending physician? Kevin Anderson responded that he does not if a hard rule about a set number of days is the best option but that there needs to be a better system for providers and workers to understand with is expected of them. Jessica Giannettino Villatoro discussed the hardship that she sees with a hard time limit would put on workers and the need for increasing capacity potentially expanding the pool of acceptable treatment providers to include physician assistants, etc. She added that another issue that should be considered is 2/3 wage replacement as opposed to full wage replacement and explored the burden that places on minimum wage and other workers.
- (0:51:17) Keith Semple added that nothing proactive was done on the part of the employer or insurer to reach out to the client in the previously discussed case. He added that the provider and client in that case were not part of a managed care organization (MCO) where there are requirements for doctors to see clients every 30 days.
- (0:53:55) Jennifer Flood, Oregon Ombud for Injured Workers discussed the difficulty of workers accessing medical treatment especially for the workers whose primary language is not English. She added that her office has received numerous calls about workers being refused treatment because there is such a tight turnaround time for treatment on workers' compensation claims. She finished by stating that the fix for these issues should not fall as a burden on workers.
- (0:56:19) Karl Koenig, Oregon State Fire Fighters Council, added that conditions for fire service are huge on workers returning to light work or duty and are part of their collective bargaining, but that is not the normal way things like that are handled. He is not in favor of having a hard date time limit and that workers should be able to focus on making themselves whole to return to work.
-

- 
- (0:58:18) David Barenberg, SAIF stated that he is frustrated by the conversation as it was his understanding that it was already decided to put aside previous issues and to begin the conversation for a point of sharing concerns not to railroad a specific previously proposed solution. He urged the group to escalate the discussion and that the rhetoric be toned down in order to move forward in a more collaborative way.
- (1:01:37) Elaine Schooler of SAIF requested to go back and discuss the other tools mentioned in communicating with workers stating that a lot of these mechanisms are either ineffective or place an undue burden on workers. She spoke about cutting off benefits to workers who do not attend a follow-up appointment with their physicians. She added that that option is not available if the worker does not schedule a follow-up appointment. She explained that the cutting off of payments to providers could mean that more providers are unwilling to treat workers' compensation cases. Elaine Schooler added that closing the claim administratively when the worker is not medically stationary is unhelpful to the worker and shifts the medical services to the worker, and that the claim may be reopened or the closure reversed and all of those options seem harsh to the workers. She noted that previously SAIF did propose a hard time limit and they would be in support of discussion about that again but are open to other solutions. She addressed the discussion of a hard time limit being a burden to providers by stating that this would be no different than any other timeline dependent treatment. Elaine Schooler closed by stating that hearing again from MCOs about their timelines might be beneficial as the group moves forward.
- (1:07:27) Keith Semple responded to the topic of a hard deadline, and brought up an e-mail that he had received from SAIF that stated that a proposal from SAIF would be the 30 days hard stop rule. He added that he apologies on behalf of his group if that is not the case.
- (1:10:04) Theresa Van Winkle asked if Kate Suisman would like to go next as she had been waiting to speak for quite a awhile. Kate Suisman responded that is fine to wait to speak until the current topic is resolved.
- (1:10:22) David Barenberg of SAIF requested that we start the conversation on a clean slate where both sides understand there is an issue and that the groups that need to talk about all of those issues and work together. He requested that we move forward without any preconceived notion and that their group is open to any solution. He asked what would be helpful for them moving forward as far as presentations or discussions.
- (1:12:35) Matt Calzia responded that he is a registered nurse and that he does have questions around the Medical Advisory Committee (MAC) as well as MCOs. He added that he would love to engage with the MAC and that
-

---

from his experience there can be a distortion between policies and procedures that aren't medically based. He also stated that he believes that the MCOs are taking direction from RN care managers and that through those care managers, the complexities of the system can get a little more ironed out. He added that he believes that this issue is being framed as a compliance issue and that historically, incentivizing compliance has better performance outcomes over punitive measures. He cited the previously discussed example of the worker that was told to lose weight and stop smoking before having surgery as being an opportunity to use a more incentivizing approach. He asked if we are looking at punitive measures to find a solution to this issue? He also asked if there was room to discuss incentivizing as a tool to find a solution to this issue?

(1:17:10) Elaine Schooler of SAIF responded that she did not see any potential solutions as punitive or incentivizing and that is probably falls somewhere in the middle. She emphasized that SAIF is not trying to make this a "gotcha" situation, but to ensure that workers are engaging with their providers so that there are not gaps in care.

(1:18:38) Matt Calzia asked for clarification about Elaine's use of the word provider and asked if she was referring to the attending physician or more broadly who could be the person to authorize the time loss or the person who monitors that worker's progress. Elaine Schooler responded that she was referring to providers who provide treatment, adding that there are some restrictions about who can provide that authorization like chiropractors only being able to serve as the attending for 60 days or 18 visits. Elaine Schooler addressed Jovanna Patrick's previous statement about HB 4138, which was supposed to address how to fill in those gaps by enabling retroactive authorizations due to scheduling limitations.

(1:20:44) Matt Calzia shared an example of a discussion that he had with a MAC member who spoke about a worker having a minimally invasive procedure and was seeing a general practitioner regularly but not the specialist due to scheduling constraints, but the specialist was the technically the attending physician. Matt Calzia asked if there was room to allow other practitioners to provide input and updates for workers in cases similar to the one that he described? Elaine Schooler responded that that could be a possible solution but brought up the concern about overlapping restrictions and the confusion that could cause for employers trying to work within conflicting restrictions. Elaine added that she felt that broadening the pool of providers could also be more beneficial.

(1:24:51) Jovanna Patrick brought up a few concerns around engagement, specifically around workers who are enrolled in a work hardening program, where a worker is engaged but not seeing their attending physician. In these cases providers may not want to see the worker during

---

---

that program, but the worker is still engaged in their care. She added that she agrees with Elaine's comment about providers being unable to change work restrictions until they see a worker. Further stating that she feels both sides see this as a problem and that she would like to keep in mind not penalizing the worker in the case where the issue is on the physician's responsibilities.

- (1:27:02) Kate Suisman at the Northwest Justice Project added that the lens that she has through the eyes of the workers, many of whom are in low wage jobs or do not speak English. She helps workers navigating this system on their own. Many of her clients are in rural areas and have numerous barriers to accessing care that is no fault of their own. She noted that she does not understand the proposal being discussed today fully but that the focus should include removing barriers to workers and not increasing them. She added that she hopes that her client's point of view can be taken into account as the subcommittee moves forward.
- (1:29:20) Theresa Van Winkle added that today's meeting is a discussion on general topics in order to hear a few perspectives and that next meeting will focus on information request follow ups. Sara Duckwall agreed and urged the group to wrap up discussions if they are able so that there can be discussion about the stated problems and needed follow up.
- (1:30:59) Theresa Van Winkle shared the subcommittee's initial thoughts about moving forward and shared a number of information requests that have already been submitted including gathering information about what other states are doing to address these issues and gathering information from previous Medical Advisory Committee meetings.
- (1:32:34) Sara Duckwall asked to confirm the next meeting is tentatively scheduled for September 16<sup>th</sup> but that it is not confirmed yet. Theresa van Winkle confirmed.
- (1:32:56) Scott Strickland added that he is interested in hearing from MCOs, providers, and workers about their perspective in this issue. Theresa Van Winkle added that she does have a matrix from the division that details insurance to provider time frames for treatment that she will share.
- (1:34:40) Sara Duckwall stated that the issues that she heard include the disagreement whether or not the current tools in place are working or not, she added that having something in writing to further solidify what is working and what is not would be helpful for her. Matt Calzia agreed and said that would be helpful for him as well. Sara Duckwall added she heard that another problem is that there are not enough providers. Sara Duckwall added that she sees workers not being able to see their existing providers as a problem and also that there is problem of workers not being able to
-

---

afford to take time off to seek treatment. Matt Calzia added that he also heard confusion around workers not being able to get into see a provider in a timely fashion and there is a gap around providers wanting to release workers without seeing them. Additionally he requested an estimation about the number of bug letters that are being sent out to workers due to nonengagement and the responses to those letters. Sara Duckwall added that she does see a few things that could be included in solutions including workers being incentivized to make appointments, taking time off to seek treatment as being an all or nothing situation in regards to working hours, and a few other ways of taking down barriers for workers

(1:39:50) Matt Calzia requested to hear from a MCO nurse care manger to see what the process looks like on their end.

(1:42:01) Theresa Van Winkle gave a final call for questions or concerns before adjourning and gave an overview of next steps and how to contact her after the meeting with any questions or concerns.

---

**Meeting  
Adjourned**

The meeting was adjourned at meeting at 2:51pm.

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

<https://www.oregon.gov/dcbs/mlac/Pages/subcommittee-on-worker-continuation-of-care.aspx>

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

<https://www.oregon.gov/dcbs/mlac/Pages/subcommittee-on-worker-continuation-of-care.aspx>