

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

October 14, 2022  
10:00am-12:00pm

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

Sara Duckwall, Duckwall Fruit  
Matt Calzia, Oregon Nurses Association  
Patrick Priest, Citycounty Insurance Services

***Staff present via Zoom:***

Theresa Van Winkle, MLAC Committee Administrator  
Cara Filsinger, Senior Policy Analyst, Workers' Compensation Division (WCD)  
Brittany Williams, MLAC Assistant

<b>Agenda Item</b>	<b>Discussion</b>
Opening (0:00:01)	Theresa Van Winkle opened the meeting and discussed the minutes from the previous meetings, Matt Calzia made a motion to approve the minutes from the previous two meetings, Sara Duckwall seconded the motion. The motion was approved via a unanimous voice vote with no objections or abstentions.
(0:02:24)	Sally Coen, WCD discussed <a href="#">the survey</a> of other states based on subcommittee questions from previous meetings, that was sent out to their partners in other states. She noted that the division has received a few additional responses and that they will be sent out to members.
(0:03:53)	Matt Calzia asked if information from California had been received, as that was one of the states that the subcommittee was interested in reviewing. Sally Coen responded that they had not received an answer from California yet, but that she would ensure her team reached out them to get their responses.
(0:04:24)	Sara Duckwall asked if there was any synthesis that the division had done after reviewing and compiling the responses that they had received. Sally Coen answered that they had not done that yet as they are still focusing on getting responses compiled and sent to members.
(0:04:54)	Theresa Van Winkle shared that a synthesis document and pertinent information will be compiled and sent to the subcommittee members including the updated survey responses. Additionally, the information that was requested from Dr. Bowman at the last meeting was not available in the resource that he believed that it was, but they will continue looking for it.

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- (0:05:27) Matt Calzia stated that he had gone through the AMA position statements and was not able to find anything about it. Theresa Van Winkle agreed and shared that it may be from another medical association and that they will continue to look there.
- (0:06:11) Theresa Van Winkle asked if there were any additional information requests or questions that the subcommittee members would like to be addressed as this is the last subcommittee meeting scheduled.
- (0:06:23) Sara Duckwall asked if any of the stakeholders present would like to say anything additional.
- (0:06:42) Matt Calzia responded that he had no objections and nothing else that he was requesting at this time.
- (0:07:03) Ann Klein, Majoris Health Systems shared that as a managed care organization, Majoris can set requirements and guidelines for frequency of visits and currently their guidelines state that injured workers with any type of work restriction in place must see their attending physician no less than every 30 days. Majoris believes that it is important for frequent reassessments to be completed in order to accurately understand the worker's recovery. She noted most workers are able to meet this expectation but that there is a small subset of cases where the organization has to intervene to get that cadence going again, she is going to look into getting that information in a more quantitative form and will share that with the subcommittee. Ann expanded that there are a number of reasons that this happens including worker no shows, cancellations, providers taking time for vacations and in these cases the providers usually reach out to the clients to get those appointments restarted.
- (0:10:43) Matt Calzia asked if the 30-day expectation is part of the agreement with providers. Ann Klein confirmed that it was part of their agreements.
- (0:11:58) Dave Barenberg, SAIF stated that for most injured workers the system is working and there are a small number of workers, that are hard to quantify, that have trouble with the system. There are measures on the insurance side that can be used to address these few workers that feel punitive and that some of the solutions that have been discussed include setting guidelines on frequency of worker and provider visits, completely ending open ended time loss without a specific guideline on amount of time but that there is an end date listen by the attending physician that can be reevaluated as needed.
- (0:15:09) Kirsten Adams, AGC agreed with Dave Barenberg's comments about having providers setting end dates for time loss and not necessarily specific limits for everyone. Kirsten added that she feels that would solve a lot of the issues that are being discussed and that one thing that might be a
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possibility is to have MAC issue a best practices statement to provide a professional opinion on timeframes for providers to consider.

- (0:17:06) Sheri Sundstrom, Hoffman Construction spoke about her experience working with injured workers since 1992. Following the Mahonia Hall reforms, Hoffman had to rapidly adapt and found that engagement with managed care organizations and worker access to care are very important to building to building the infrastructure for their workforce. She echoed Kirsten Adams' suggestion about looking to MAC for providing guidance. Sheri noted that she has seen the positive results that arise when recovery and healing are worker-centric with returning to work being the ultimate goal.
- (0:22:57) Sara Duckwall asked Sheri Sundstrom to expand on her comments that they do not have any open-ended time loss issues at Hoffman. Sheri Sundstrom responded that the only cases where they have workers go out on time loss from the get go is if a worker is bedridden or in the hospital immediately. Hoffman provides light duty of any type and communicates with the provider and the worker clearly from the beginning. Hoffman gives the providers light duty information as soon as the worker is able to return to it. Due to some union agreements they focus on working with the worker and provider to set up modified or light duty work. She emphasized they focus on clear communication throughout the life of a claim. Sheri added that in projects that are over \$90 million they engage in a contractor-controlled insurance program which ensures Hoffman employees as well as their subcontractors.
- (0:26:20) Matt Calzia asked Sheri Sundstrom to outline the process of workers starting light duty work or bona fide job offers and how their time away for treatment impacts their work. Sheri Sundstrom responded that for every worker that files a claim they complete a transitional work agreement that is signed by both the worker and provider that lists the new modified duties and work restrictions. For follow-up visits they request that appointments occur at the end of the day or as early in the morning or late in the day as possible, with the worker being paid for the full day on the day of injury. She noted that prior to 2009 they were paying workers for the entire day when they had appointments that this system was abused as no one could track it. Sheri shared that in Arizona there is a union requirement that workers get paid for the entire day of their injury and up to two hours for the first three subsequent visits she doesn't have any reference for how that system is working but wanted to share.
- (0:31:41) Jovanna Patrick, OTLA shared that from her perspective she is hearing from Sheri Sundstrom that there is not an issue within the current system as long as there is strong employer engagement. Jovanna added that employer education about how they can use the current tools is something
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important to discuss. Her clients are often told by their employers that they must take an entire day off of work to attend appointments. She also addressed that sometimes workers cannot get appointments that occur on weekends, first thing in the morning, or at the end of the day. Jovanna Patrick also noted that we do not currently have data that shows the number of workers not engaging in care or information showing that the workers with open ended time loss are the ones not engaging in care.

- (0:36:36) Kirsten Adams wanted to note that the company that Sheri Sundstrom represents is quite large and is able to have a position that can follow those claims at the level that Sheri is able to. Kirsten also emphasized that smaller companies may not be able to have someone that is able to assist at that level.
- (0:38:06) Matt Calzia asked if there is any equation or scales that companies may be able to use in order to better understand the needs of the human resources department in order to complete these claims. Kirsten Adams noted that she does not have an equation for that believes that it is probably a scale of company growth versus safety team and HR teams but it is probably based on the company and their needs.
- (0:39:45) Caitlin Breitbach, Small Business Ombudsman Office responded that the ability of businesses to ensure that these claims are completed in a timely manner varies and that the size of the company can become an obstacle in things getting processed appropriately. She noted that the anecdotally, the desire to help workers is there but the knowledge is often not, adding that while the education is available they cannot make employers seek it out. Most of the calls that they receive have to do with employers with under 50 employees where claims have stalled out for whatever reason with no set end time. This can become a problem when no one is certain what to do next and there is no timeframe given and claim costs rising.
- (0:42:55) Sheri Sundstrom reiterated that she has been able to use the tools provided and noted that it does take a village in order to make the system run efficiently which smaller businesses often don't have. She added she feels open ended time loss would be a huge problem for them if they were not able to have someone use the given tools like Hoffman is able to, adding that she knows that a lot of their subcontractors don't have access to using MCOs adding to the complications they have to deal with.
- (0:45:51) Dave Barenberg responded to Jovanna Patrick's comments, noting that there are a number of issues that she brought up that should be addressed including some that are on the MLAC work plan including intimidation, retaliation, access to the system, and addressing language barriers. SAIF has nearly 55,000 policy holders of whom 75% have less than ten employees with most never having a claim. A lot of employers may not be
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able to offer light duty options to workers. When this legislation was passed it was presented without data and mostly on anecdotal stories and he is surprised that is not occurring when discussing this issue. He does not feel that it is too much to ask that workers check-in with their physicians regularly. He noted that while there are tools that insurers can use but that they lead to workers getting kicked out of the system and that is not the goal.

(0:51:16) Keith Semple, OTLA expressed that he is hearing some contradicting statements and would like clarification. Noting that one of the major goals is to get workers back to work but that a lot of the times employers can't offer modified duty, that a lot of these employers are small businesses but that they have insurers to assist them with their claims. Keith commented we have workers that are doing what the doctors ask, and we have workers that aren't doing what the doctors ask them and are totally disengaging in care and that is the small number of workers that we are concerned about. He appreciated hearing what Hoffman is able to do in using the present tools to successfully get workers back to work. Adding that the only way that cutting time loss off on a specific date is worker centric is that it puts the obligation on every single worker on time loss in the state regardless on the circumstance instead of using the current tools to deal with the very few workers that we are actually concerned about.

(0:54:30) Matt Calzia asked Dave Barenberg about the use of bug letters as an effective tool to help with worker engagement, referencing that it is used in a number of the states that responded to WCD survey. Dave Barenberg asked that Dan Schmelling, respond.

(0:55:53) Dan Schmelling, SAIF responded that a bug letter is not a threat but that it does threaten to terminate time loss and close the claim. Explaining that if the worker has not engaged in treatment within 30 days or within the timeframe outlined by their attending physician the bug letter basically says have you given up on your treatment, if so we are closing your claim, and if you disagree please let us know and make an appointment to see your doctor. If the worker responds and says that they are seeking care, even if the worker does not see their doctor, they cannot close the claim. If the worker has not contacted their physician in another 30 days, they can send another bug letter but it is the same process continuing over until the claim is closed. Noting that it is a tool that they can use but it essentially kicking the issue down the road and threatening the worker.

(0:58:21) Matt Calzia asked for clarification about when a bug letter would lead to a claim being closed. Dan Schmelling responded that if a worker does not respond within a given timeframe or they respond that they will no longer seek treatment that the insurer is supposed to close the claim. He added that he does not view this as a tool make the worker engage in treatment,

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it should only have to be used when a worker has given up on treatment and is ready to have their claim closed. He does not view this as way to manage time loss, at that point they will reach out to the attending physician to see if they can reauthorize time loss.

- (1:01:03) Sara Duckwall asked if the advantage for having an end date for time loss would be that there will be a solid schedule of when follow-up appointments would occur. Dan Schmelling agreed stating that when they don't have to reach out to the physician for confirmation of engagement it is easier instead of having to reach out and ask for updates.
- (1:02:24) Jovanna Patrick responded that she does not share Dan Schmelling's view of bug letters noting that in the bug letter a worker must respond with the physician's name and when their next appointment is scheduled. She shared that she sees insurers use bug letters to cut off time loss often and that they are effective tools to manage time loss but it is only one tool. She noted that there are a number of other tools that can be used including having the adjuster schedule appointments for workers and bona fide job offers.
- (1:04:26) Dan Schmelling responded that he was only speaking for SAIF and that he cannot speak to what bug letters look like from other insurers. He added that although they can stop time loss as soon as the worker does not engage he does not feel that they do.
- (1:04:26) Jovanna Patrick responded they can cut off time loss if they do not have time loss authorization from the attending physician.
- (1:05:15) Matt Calzia clarified that his question was meant to understand the way that bug letters can be used to get engagement of care.
- (1:06:11) Dan Schmelling responded that in that case they can use the bug letter as a heavy-handed threat of cutting off time loss to gain compliance and that they expect adjusters to guide workers through the system. He added that having a set timeframe would add predictability into the system.
- (1:07:48) Jovanna Patrick responded that predictability in the system is great but that this is not a one size fits all situation and that any type of rule that would have a one size fits all cutoff date would be punitive for everyone. A bug letter is a specific step taken address an individual claim. Jovanna Patrick then responded to Dave Barenberg's previous comment about only providing anecdotal evidence to support prior legislation saying that they have been sharing actual hard numbers and situations that are actually occurring. Adding that we should not change the rules to affect everyone when we are talking about a very limited number of workers who are not following the rules and there are already tools in place to deal with them.
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- (1:09:36) Sara Duckwall commented that Dr. Lawlor stated that they used a date versus a time frame for treatment and asked how having an open-ended time loss achieves is beneficial in getting workers back to work or what it achieves.
- (1:10:52) Jovanna Patrick responded that we do not have a one size fits all system and that it is very rare we see workers with straight releases or workers with open ended time loss authorization with no follow-up engagement scheduled. What she sees most often in open ended time loss situations is like what Lon Holston shared at the previous meeting, when someone is post-surgical or preparing for physical therapy or waiting for an MRI something that does not have a specific date.
- (1:11:51) Sara Duckwall asked for confirmation that Dr. Lawlor stated that she did not have open ended time loss.
- (1:11:56) Jovanna Patrick responded that from her understanding they were able to get scheduled follow-up appointments scheduled but not every 30 days.
- (1:12:10) Sara Duckwall asked for clarification that she was discussing time loss that was not opened ended and not limited to 30 days.
- (1:12:15) Jovanna Patrick responded that Lon Holston stated that he went through physical therapy and the he saw his doctor at the schedule that his doctor chose and that sometimes the doctor had nothing to say to him because he was still waiting for treatment. Sometimes there are valid reasons that treatment isn't scheduled and that is okay as it is dependent on the physician and course of treatment.
- (1:13:00) Sara Duckwall noted that we head MAC say that they were surprised that open ended time loss was occurring and that they didn't see that as best practice.
- (1:13:08) Matt Calzia noted that while that was a comment from MAC that they were surprised, after discussing it with them, their responses were incongruent with their surprise. Dr. Bowman noted that often scheduling treatment comes down to insurance approval and said that having open ended was beneficial as it did not over burden their practices. Sara Duckwall agreed that they were discussing longer windows but that she did not hear any discussion about open ended being beneficial, but that it may be best to review the minutes. Matt Calzia agreed that they should review the minutes.
- (1:14:38) Ann Klein responded that it is a fair point that sometimes there are occasions where it is helpful to have time while processes occur but that
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having regular check ins can provide support to the worker and ensure that everything is in order and occurring correctly.

- (1:15:26) Matt Calzia asked a question regarding that giving the example about a colleague that saw an orthopedic surgeon after going through physical therapy and was told that they needed to have another more invasive surgery. He asked what the value is in having someone waiting to have surgery see their attending physician when there is no medically necessary reason.
- (1:17:04) Ann Klein responded that Majoris does have the expectation of continued check-ins while waiting for surgery to engage in conservative care to ensure that best outcomes when the surgery does occur.
- (1:18:05) Paloma Sparks, Oregon Business and Industry expressed frustration with the perspective that this is a small issue so why would anything be done to address it when historically that has not been the case when presented with small issues on the worker side, giving the example of retaliation laws that were passed. Additionally, she hopes that all parties share the goal of getting workers back to work and that the highest priority should be motivating the worker to prioritize that as well. She notes that everyone can work to together to address the issues such as delays in appointments.
- (1:20:20) Jovanna Patrick responded that in the previous meeting Dr. Bowman did note that occasionally physicians can assist with getting patients into treatment but often there is nothing they can do but wait for authorization or treatment to begin. She noted that she has heard from everyone that everyone what has spoken as agreed that engagement on all sides is the key. Their opinion is that there is a solution other than a one size fits all solution and that the insurer is in a better position to direct treatment pace than the worker.
- (1:23:33) Sara Duckwall asked how requesting a solution other than open ended time loss is a one size fits all solution? Jovanna Patrick responded that if insurers do not want to have open ended time loss who does that fall on versus what is the process if there is blanket time loss expiration after a certain amount of days. She noted that there are currently no other states with no open-ended time loss in their system. For the insurer to reach out to doctor and ask them to put deadlines on something they are concerned about makes sense and would not be a one size fits all solution.
- (1:25:08) Sara Duckwall responded that she believes that that there were approximately seven states that had no open-ended time loss. She asked if doctors setting appointment schedules with buffers on occurrence frequency to account for scheduling issues was a one size fits all solution? She gave an example of a physician setting a 90-day time loss
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authorization while a worker waits for treatment estimated to take six weeks.

- (1:26:25) Jovanna Patrick responded that that is a solution that works for that doctor and their practice. She added that that is a great practice and that if there is way to get doctors to commit to that without adding to their paperwork and wanting to drop out of the system then it is a great solution. But that a rule that cuts off benefits after X days regardless of the doctor's opinion of the situation is a problem.
- (1:27:30) Sara Duckwall responded that she believes that that is the discussion, would be that individual doctors would choose their follow-up schedules.
- (1:27:41) Matt Calzia asked if there is anything currently preventing doctors from setting those authorization limits or incentivizing limiting the authorization? Jovanna Patrick responded that physicians are able to set those requirements on their own accord and that almost all of the releases that she sees are tied to ending or next appointment dates.
- (1:28:41) Sara Duckwall responded that she heard that there is some type of problem with it on the business side from the Small Business Ombudman's Office among others.
- (1:28:55) Caitlin Breitbach responded that when her office receives calls from employers having questions about the system there is often not a data that they can pull from and they have to look at things case by case. Noting that it could lead to issues with experience modifiers going up and cost of claims going up for smaller businesses when there are no checks and balances between how long people are going to be out and when they have to touch base with their doctors. She does not have any specific time frame recommendation but that 30 days does not seem like enough. She added that it could be a detriment to small businesses when trying to control time loss but there is no specific data or proposed solution.
- (1:31:56) Keith Semple, OTLA added that no one benefits from workers staying in the system indefinitely and that OTLA has no desire to coddle workers who are not trying to engage in care. The solution needs to be more tailored and not a one size fits all response when these issues are happening. Noting that a targeting solution to the problem could look something like in the cases where a worker is not engaging in care letters to the worker and the doctor to educate both parties to address the problems. Keith gave an example of a restriction lasting 90 days and on day 90 the worker can't attend the appointment for a good reason.
- (1:37:00) Sara Duckwall noted that she felt that Keith Semple's example could be mitigated by the 45 day look back policy and asked him if that was correct.
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- Keith Semple agreed the 45 day look back does help with that issue but that the issue that we are now discussing are situations where doctors are doing things versus not doing things as far as putting limits on time loss authorizations.
- (1:37:59) Sara Duckwall responded that she is unclear of how ending open ended time loss isn't put on the doctor versus the worker. Keith Semple responded that that doctors are the ones that are putting the authorization dates and that when that happens the doctors should be contacted just as the workers are contacted.
- (1:39:11) Kirsten Adams clarified that her comment what Caitlin Breitbart had stated about the effect of time loss on small businesses. Following up about the difficulty for small businesses trying to cover for staff that are out as well as the financial piece. She feels that the idea of having time loss set by the doctor as opposed to a set date could come into play by being fair to the worker while giving the business some certainty on progress of returning to work.
- (1:40:38) Dave Barenberg suggested that one thing that could be done is to reach out and work with MAC to set out some best practices for providers and noted that some of Keith Semple's suggestions make a lot of sense to him. He suggested that perhaps a subcommittee of the subcommittee would be helpful to come up with some solutions and next steps.
- (1:44:39) Sara Duckwall voiced her support for that and asked Matt Calzia for his opinion, he agreed as well.
- (1:45:05) Sara Duckwall if they should spend the remaining time with committee discussion. Theresa Van Winkle and Matt Calzia agreed. Sara Duckwall shared that a status report is due at the MLAC meeting on October 20, 2022, with a recommendation due at the November 10, 2022, meeting.
- (1:46:35) Sara Duckwall stated that she is in favor of forming a subcommittee from the subcommittee to come up with some possible solutions. Theresa Van Winkle added that the schedule could change with approval from the co-chairs if needed.
- (1:47:45) Matt Calzia suggested that getting the full MLAC committee opinions on next steps would be helpful. Theresa Van Winkle and Sara Duckwall agreed.
- (1:48:10) Theresa Van Winkle shared that the next steps would include sending tentative meeting dates for a meeting before November 10, 2022, and that she will get the synthesized documents prepared and circulating as soon as possible.
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Sara Duckwall and Matt Calzia thanked the group for coming together today and their continued willingness to collaborate on this issue.

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**Meeting**

**Adjourned**

The meeting was adjourned at 11:07 am.

\*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>