

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

February 3, 2023
10:00am-12:00pm

Committee Members Present:

Patrick Priest, Citycounty Insurance Services
Scott Strickland, Sheet Metal Workers Local #16 via Zoom
Matt Calzia, Oregon Nurses Association via Zoom
Sara Duckwall, Duckwall Fruit via Zoom
Tammy Bowers, May Trucking via Zoom
Jill Fullerton, Clackamas County Fire Department via Zoom
Marcy Grail, IBEW Local 125 via Zoom
Andrew Stolfi, DCBS Director, *ex officio* via Zoom

Committee Members Excused:

Margaret Weddell, Labor Representative
John McKenzie, JE Dunn Construction
Lynn McNamara, Paladin Consulting

Staff:

Cara Filsinger, MLAC Committee Administrator
Brittany Williams, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:20)	Scott Strickland called the meeting to order and Cara Filsinger called the roll of members.
(0:01:27)	Rachel Stappler, Oregon Society of Physician Assistants introduced their concept aimed at increasing workers' access to health care. She noted that the current system is restrictive as physician assistants have a limited term of providing care. She noted that switching providers causes stress and burden patients. Currently physician assistants are under collaborative status in Oregon, a recent change from their previous supervision status.
(0:04:04)	Tammy Bowers asked how long physician assistants have the ability to hold attending physician status compared to nursing assistants. Rachel Stappler replied that currently physician assistants are able to hold attending status for 90 days while nurse practitioners are able to hold attending status for 180 days adding that the goal of the bill is to make the two equal.

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- (0:05:44) Taylor Sarman, Oregon Society of Physician Assistants added that they are currently working on finalizing the language but they expect the bill to be straightforward with no surprises.
- (0:06:19) Scott Strickland asked if the disparity between the two provider groups was because of the previous supervisory status of physician assistants. Taylor Sarman and Rachel Stappler confirmed that that is the case in addition to the changing attitudes and access to different types of care especially in rural areas of the state.
- (0:08:09) Dustin Karstetter, Multnomah County Risk Management asked if there would be language in the bill that would dictate if certain claims or injuries need to be seen by other types of providers. Taylor Sarman responded that they do not expect to have any of that type language, they are asking that the two lengths of times be equal. Rachel Stappler added that the scope of treatment and referral systems would stay the same.
- (0:10:11) Patrick Priest began the review of the minutes from the January 2023 MLAC meeting. Cara Filsinger noted that there was a correction to the minutes. Sara Duckwall made a motion to approve the minutes as amended. Tammy Bowers seconded the motion as presented. A voice vote was taken with seven votes in favor, no in opposition, and one abstention.
- (0:12:20) Robert Pardington, Oregon Workers' Compensation Board spoke briefly noting that the quarterly report was sent out previously and available online but that he was available to answer any questions.
- (0:13:18) Cara Filsinger gave the Workers' Compensation Division Rule Making update noting that the annual medical fee schedule rules have been published on the Workers' Compensation webpage that feedback is welcome.
- Discussion of SB 214**
- (0:14:04) Cara Filsinger gave an update on SB 214, noting that the division had met with the Oregon Trial Lawyers Association on February 2, 2023 to discuss language that was of concern and that presentation of this bill to MLAC for review and discussion will occur after the discussed changes are completed.
- Discussion of 418**
- (0:14:44) Joe Baessler, AFSCME presented the background of SB 418, noting that they understand that there will be amendments and language changes to this bill but that this is their first attempt at solving this issue of workers attending treatment appointments without losing additional amounts of
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leave or missing more work hours. He noted that is an issue that AFSCME members have spoken to them about and has led to some workers' not attending treatment appointments as a result.

- (0:18:50) Patrick Priest said that the co-chairs had met with caucus groups and that his group has some concern about the language as presented noting that they feel that small business owners could be adversely affected.
- (0:19:23) Kirsten Adams, Associated General Contractors noted that she is glad to hear that everyone is open to amendments and language changes but that she does have some concerns from the business perspective. She noted that the language as presented goes against the exclusive remedy and the no fault tenet of the workers' compensation system. She noted that by adding additional payment requirements to employer outside of the workers' compensation system and that this would add fault to employers going against those initial tenants.
- (0:22:00) Joe Baessler, AFSME responded that he appreciates hearing the concerns and that they make sense and is looking forward to more in-depth discussions. He reiterated that the goal of this legislation is to ensure that workers have the ability to seek treatment and are able to get back to work.
- (0:23:00) Kirsten Adams, AGC responded that that makes sense and that Joe Baessler is correct in statement about wanting to ensure that the no fault tenet is fair to everyone involved in the claim and that Everyone has the shared goal of workers' receiving the treatments necessary to recover and return to work.
- (0:23:13) Sara Duckwall thanked Joe Baessler for his presentation and asked who this bill is aimed at and who they are hoping to reach. Joe Baessler responded that they are hoping to reach the workers who are either cleared to get back to work in some capacity and is having trouble attending their appointments for treatment. Sara Duckwall added that the language that was presented is rather vague and concerning and being more specific in the language would be helpful for further discussion.
- (0:25:15) Tammy Bowers asked Joe Baessler what group he is representing a bit more background on what workers specifically brought concerns. Joe Baessler responded that he is representing AFSCME and that they have members in a variety of locations and vocations. Tammy Bowers thanked him for the explanation and supported Sara Duckwall's previous concerns about the broad language presented, noting that she has some specific concerns. Expanding, that currently the process is normally that the insurance company pays time-loss for the hours associated with the worker receiving treatment. Her concern is that the language as presented would transfer that cost to the employer. She expressed her concerns about the
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three-day waiting period mentioned in the language as currently when someone is injured, they seek treatment and the payment for that is paid by the insurance companies. The language presented would transfer two days of wage payment responsibly to the employer. Joe Baessler that he understands her concerns and that he would like to speak with his team about their proposed solutions that report those back.

(0:29:36) Patrick Priest asked how this concept could relate to the enactment of Paid Leave Oregon and the new leave laws. Joe Baessler responded that they are hoping to keep this legislation separate from those laws.

(0:30:31) Theresa Van Winkle, Department of Consumer and Business Services explained that according to the enacted law, paid leave through Paid Leave Oregon cannot run concurrently with leave through workers' compensation.

(0:30:50) Patrick Priest asked if that covers the waiting period as well? Theresa Van Winkle responded that she is not certain but will reach out to the work group and report back with the answer. Sara Duckwall asked if it would be a similar situation as using sick leave. Joe Baessler responded that AFSME is aiming at not making workers take their sick time for these periods no matter where it came from. Theresa Van Winkle added that after reviewing the law, it appears that sick leave or other time off can be taken prior to a claim being accepted.

(0:33:40) Scott Strickland added that he has also heard the concerns about lack of access about ability to attending treatments appointments as barriers to workers' engaging in treatment. He noted that he hears the concerns from the management side and asked if the majority of the concerns are focused on the possible issues with the exclusive remedy tenet mentioned earlier and if there are any proposed solutions.

(0:34:54) Patrick Priest responded that some of the current concerns include the unintended costs and consequences stemming from some of the vagueness in the presented language. In their pre-meeting discussion they discussed the concerns that they had with the language but not any proposed solutions.

(0:36:10) Tammy Bowers noted that she works with systems in other states and most states have a 3-day waiting period. She does not know of any state that does not have a waiting period. Some states like Tennessee have a seven-day waiting period. She noted that employers paying the waiting period would be similar to removing a co-pay for the insurance. She also noted there would be additional work for the Workers' Compensation system in auditing and changing this system. Additionally, from her reading of the bill it does not distinguish if the targeted workers were

already on time-loss benefits or if this was specifically during the waiting period.

(0:38:00) Joe Baessler responded that their intention was to have this work with people who have had their claims accepted and where having to take time off to attend appointments. Tammy Bowers thanked him for clarifying and noted that it seems like that might affect the previous laws designating the current four-hour system.

(0:39:40) Tammy Bowers added that another concern that she has is how this would affect workers' that are already receiving time loss benefits. Noting that she would hate to see a change where the employer would have to pay the time loss for missed appointments as opposed to the insurance company, which is already paying time loss. Joe Baessler responded that that was not their intention with this bill.

(0:40:25) Kirsten Adams, AGC added that while she does not have any current proposed solutions but would offered to be a part of the conversation about this issue in anyway possible. Joe Baessler responded that he is happy to work with Kirsten on this.

(0:41:28) Jill Fullerton, thanked Joe Baessler for bringing this issue forward and noted that she believes that this is a legitimate issue as the time off that the receive are valuable and that this could help works attend their appointments. She added this could be a solution that helps workers get that help that they need while ensuring that they get back to work as soon as possible.

(0:43:08) Keith Semple, Oregon Trial Lawyers Association thanked Joe Baessler for bringing this issue forward and added they look forward to being part of the conversation on this bill, noting that this is a huge issue for workers.

(0:44:09) Patrick Priest thanked Joe for presenting today and asked what the next steps on their end are as MLAC is interested in hearing this issue. Joe Baessler responded that they are starting to work with their partners on changes and addressing concerns and would be happy to report back with those compromises.

(0:45:30) Scott Strickland added that having to go through the process of working with the Legislative Counsel on language can be difficult and that hearing more feedback on this issue has been helpful for him to wrap his head around the issue and information presented.

(0:46:05) David Barenberg, SAIF noted that he empathizes with Joe Baessler about the concerns about the drafted language. He added that the broadness of the bill as written would be quite expensive and hard to administer but that

SAIF is interested in meeting together with them to discuss and refine this bill. He is hopeful that they can meet and work together on this issue moving forward with this bill.

(0:48:18)

Joe Baessler added that AFSCME is very open to setting meetings with stakeholders to refine the language and come up with the best way to ensure that workers are getting the care that they need.

(0:49:02)

Patrick Priest asked why a new category of benefit is being proposed outside of the Workers' Compensation system? Joe Baessler responded that creating a new category of benefit was not the intention. They are hoping to lay out the problem and collaborate on ways to fix that issue.

(0:50:29)

Patrick Priest called for any additional discussion. Hearing none, he asked for a motion to adjourn the meeting. Marcy Grail motion to adjourn the meeting, Matt Calzia seconded the motion as presented. A voice vote was taken with eight votes in the affirmative, none in the negative, and no abstentions.

Meeting

Adjourned

Patrick Priest adjourned the meeting at 12:04pm.

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

<https://www.oregon.gov/dcbs/mlac/Pages/2023.aspx>

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

<https://www.oregon.gov/dcbs/mlac/Pages/2023.aspx>