

WORKERS' COMPENSATION  
**MANAGEMENT-LABOR ADVISORY COMMITTEE**

**Full MLAC Meeting**

October 17, 2014

10 a.m. – Noon

***Committee Members Present:***

Aida Aranda, Oregon & Southern Idaho Laborers-Employers Training Trust, Corvallis

Guy Boileau, Louisiana-Pacific Corporation, Portland

James Denham, ATI, Albany

Carol Duncan, General Sheet Metal, Clackamas

John Mohlis, Oregon Building Trades Council, Portland

Elana Pirtle-Guiney, Oregon AFL-CIO, Salem

Ben Stange, Polk County Fire District No.1, Independence

Jaron Sue, Marquis Autumn Hills, Portland

Theresa Van Winkle, MLAC Committee Administrator

***Committee Members Absent:***

Paul Goldberg, Oregon Nurses Association, Tualatin

Patrick Allen, DCBS Director, *ex-officio*

<b>Agenda Item</b>	<b>Discussion</b>
<b>Opening</b> (0:00:00)	John Mohlis opened the meeting at 10:01 am.
<b>Review of September 19, 2014 Minutes</b> (0:00:16)	Theresa Van Winkle, Committee Administrator, noted one correction to the September 19, 2014 <a href="#">minutes</a> . Jim Denham moved to approve the amended minutes; Elana Guiney seconded the motion. The committee approved the amended minutes unanimously.
<b>Workers' Compensation Division Updates</b> (0:01:05) (0:02:14)	John Shilts, Administrator, Workers' Compensation Division (WCD) presented an update on the progress of 2014 legislation and current rulemaking regarding Schleiss and Brown.  <a href="#">Senate Bill 1558</a> (2014) dealt with actions that the department was recommending regarding self-insured groups. The bill required that self-insured groups conduct a vote of members in order to determine if they wanted to continue as a self-insured group. It also allowed the use of Workers' Benefit Fund (WBF) to pay claim costs to injured workers for groups that were already out of operation as well as any that chose to dissolve voluntarily, gave the Director of the Department of Consumer and Business Services (DCBS) more authority regarding decertified self-insured groups, and to set additional financial requirements for the remaining groups. The bill passed and DCBS adopted new requirements by administrative rule. The <a href="#">administrative rules</a> now require looking at commonly used financial ratios in order to help determine acceptable financial health of the groups. WCD has paid out \$180,000 to date for ONET's obligations out of the WBF and will be taking over payments for other defunct self-insured groups shortly.

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Oregon Employer's Trust (OET) members voted and their board opted to decertify by the September 15 deadline. Once their security deposit is exhausted, WCD will start paying their remaining claims. As of now two public groups and two private groups remain. WCD will be applying the new financial standards to these groups over the next six months, but there are currently no concerns regarding their financial health.

(0:07:38) [HB 4104](#) (2014) addressed interim medical benefits. Workers covered by both a health benefit plan and a workers' compensation claim are entitled to medical benefits while the workers' compensation claim is being determined. The bill set a new process for providing and coordinating health benefits. The division held a joint rulemaking processes with the Oregon Insurance Division . The rules were signed today and take effect January 1, 2015.

(0:09:32) WCD has been doing a great deal of work in the area of electronic data interchange. Workers' compensation as a whole is not on the cutting edge of technology in this area nationally, so there is room for improvement. The first area where WCD is investigating the possibilities for electronic data exchange is medical bill and payment reporting. WCD produces a significant amount of data and make their decisions based on that data so they require good information . Insurers and self-insurers with certain claim volumes are required to report medical billing data to the department. WCD uses this information to monitor medical costs and to help set their medical fee schedules. The International Association of Industrial Accident Boards and Commissions (IAIABC) sets electronic standards for reporting this information. Insurers who sell workers' compensation insurance in multiple states only have one standard to follow. Effective October 1, reporters must use a new standard for medical billing. WCD intends to suspend reporting penalties for the first quarter of 2015 to ease the burden on reporters, although the division expects reporters to use the new standard. The second area WCD is investigating is electronic medical billing between providers and payers. There are some newly adopted standards, which are effective January 1, 2015. Under the current standards, providers in Oregon are not required to use electronic billing, but if they do, they must use the standards. Insurers and self-insured employers must accept electronic billing, but one-year exemptions are available.

(0:14:33) WCD is working on rules regarding the [Schleiss v. SAIF](#) and [Brown v. SAIF](#) cases. To review, *Schleiss* addresses how permanent disability awards are to be calculated and determined. This case has had a heavy impact on whether impairment can be apportioned. The primary change WCD is looking at through rulemaking is to make a specific statement regarding qualified preexisting conditions. Under *Brown*, the scope of the otherwise compensable injury of the combined condition should be defined under an injury incident-based approach and not by the condition specifically accepted by the employer or the insurer. Prior to *Brown*, most rules referred to accepted conditions by the employer or insurer, but the court said it needs to be under an injury basis.

WCD identified several rule divisions impacted by this decision. Much of the discussion has been about the timing of possible rulemaking, as *Brown* is a Court of

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Appeals decision and could be overturned by the Supreme Court. Additionally, the legislature may opt to amend statutes. WCD is primarily interested in processing disputes and determining eligibility correctly. Without a definitive change to the rules that pertain to compensable injury, WCD is significantly out of step with what the common law is today. The division is leaning towards rulemaking now, but has not made a final decision. They are aiming for rules in place by February 1 if we do opt to take that route so that the rules are in place prior to legislative session.

Guy Boileau asked about consequences. Mr. Shilts indicated that the division has tried quantifying that, but it may be a bit premature given that they do not know which rules will be changed. It is difficult to pin down at this time and possibly may continue to be even after completing the rules.

Jaron Sue asked about electronic data reporting criteria. Mr. Shilts stated that 100 accepted disabling claims in a year was the threshold.

(0:27:23)

Mike Manley, Information Technology and Research Section (IT&R), Central Services Division (CSD), DCBS discussed the recent release of a major [study](#) performed by IT&R. Oregon's Workers' Compensation rate ranking study has been conducted every two years, starting in 1986. Following other studies where Oregon's workers' compensation rates were shown to be higher than those in other states, Oregon chose to do its own comprehensive study. At that time, their study showed Oregon as having the 6<sup>th</sup> highest workers' compensation rates in the country.

The goal of the Oregon rate ranking is to produce an average rate comparison, controlling for differences in industries between states. The study surveys all 50 states plus the District of Columbia. States report factors for voluntary market manual rates as of January 1, along with other factors. IT&R takes this information and creates a weighted average by Oregon payrolls. Findings from this study show that Oregon has moved from having the 6<sup>th</sup> highest rates in the country in 1986 to 43<sup>rd</sup> highest in 2014.

The effects of class changes are relatively minor, but they do change from year to year. Over the last 10 Oregon studies the median index rate tracks closely with Bureau of Labor Statistics employer costs. California had the largest change relative to benchmark at 33%, and Illinois had the largest decrease relative to benchmark at -24%. Generally, workers' compensation rates are declining nationally. The gap between low cost and high cost states has been shrinking. States can track rates over time with the percent of study median figure, which is less volatile than ranks.

The [interactive map](#) allows people to look at information by state, by percent of study median, links to news releases, information about the summary, etc. There is a more detailed version of the study available, which should be available by the end of the year.

John Mohlis asked how the study started. Mr. Manley stated that his understanding is that it came as a request from the governor's office to the then-DCBS director. Carol Duncan asked about the possibility of including OSHA rates. Mr. Manley said

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that inclusion of that type of data would be prohibitively complex to include.

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**2015 Legislation Review**  
(0:52:25)

John Shilts, Administrator, Workers' Compensation Division made some general comments about legislative review. He provided bill analyses for [LC 270](#), [LC 519](#), [LC 675](#) and [LC 677](#), which are intended to assist the committee in understanding the legislative concepts.

Elana Pirtle-Guiney asked if LC 519 has been seen as a recurring problem. Mr. Shilts stated that the division has rarely heard that it is from workers, but they have heard that it is a problem from a small subset of providers.

Guy Boileau asked if there was any opposition to LC 677. Mr. Shilts indicated that he is not aware of any.

Theresa Van Winkle, Committee Administrator, discussed a Bureau of Labor and Industries (BOLI) primer on workers rights.

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**Public Testimony on Previously Presented 2015 Legislative Concepts**  
(1:05:49)

Mark Davison, Oregon Self-Insurers Association (OSIA) discussed a proposal for an alternative security fund. He indicated that he had been vetting the concept with the department for several years, and received considerable comment from group self-insurers in 2012. The program is supposed to guarantee that reserves are in place. OSIA would like to formulate a surety program for self-insured employers that would not impact public entities. The concept would provide an aggregate surety program: rather than each individual employer purchasing a bond all would be aggregated together for any defaulting self-insured employer. Self-insured employers would all pay an assessment, but would pay it to a fund rather than to a bank. This would help in situations where a homogeneous group of businesses are all impacted at the same time. He stated that ultimately this approach would save self-insured employers some money, which will make Oregon a more attractive place to do business.

(1:15:13)

Bob Radler, attorney, represents the Oregon Insurer Guaranty Association, which is a safety net fund for insolvent employers. Mr. Radler drafted much of the language for the concept. Currently, self-insured employers process claims through a third party administrator (TPA). The employer obtains a letter of credit from a bank to secure its claims if it becomes insolvent. If the employer becomes insolvent, the DCBS director goes to the bank and asks that the claims be paid from the letter of credit. He also goes to the TPA and requests to contract with them in place of the employer. The director also sets up an account in order to take money from the bank and funnel it to the TPA, who then forwards the money to the injured worker and pays the processing. Occasionally there will be a delay in getting the money from the letter of credit. Now the director has two additional sources resulting from SB 1558 (2014): SIEAR fund and WBF.

Under the proposed LC there would be an alternative security fund (ASF). The director could issue an order stating that the ASF starts paying. It should have available cash and other assets to make payment immediately. The ASF would contract with a TPA, however it will be already processing claims for previously defaulted self insured employers, improving transparency.

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Guy Boileau asked for some clarification regarding groups. Mr. Davison stated his concept does not currently include them but may down the road. Theresa Van Winkle, Committee Administrator, stated that DCBS would be neutral on the bill because agencies cannot take a position on a concept without approval from the office of the Governor.

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**Public Testimony**

(1:24:07)

[Dolores Russell](#), President, Managed Health Care Northwest (Caremark), spoke regarding LC 270. Caremark believes that with one exception the changes proposed would not be good law. First, for workers enrolled in a managed care organization (MCO), a chiropractor or naturopath could be the attending physician for the life of the claim. Caremark feels that if the committee believes that it is in the best interest of workers to do this, it should apply to all workers rather than only those participating in an MCO. Also, the LC does not seem to propose lengthening the time during which these physicians may provide treatment to an injured worker. Currently chiropractors and naturopaths are limited to 60 days or 18 visits, whichever comes first, so there is a fundamental conflict in granting attending status to these physicians without addressing the time issue. There was one additional change proposed in the LC regarding the MCO law dealing with the come-along provider section, and Ms. Russell feels that the language in the LC is not pertinent to the corresponding section of the law. Caremark does not object to the portion regarding injured workers to be able to ask that their naturopath who is not a member of the MCO to treat them if they meet the legal requirements.

(1:34:07)

Hasina Squires, Majoris Health Systems stated that while there will be additional conversations, right now her organization is not in support of LC 270.

(1:35:13)

Keith Semple, attorney for injured workers and representing the Oregon Trial Lawyers Association, supports LC 270. There is a shortage of doctors in the system, so anything that can be done to expand access to physicians should be done as soon as possible. Many physicians are enrolled in MCOs but will not see injured workers at all, or only if they have an existing relationship with the individual. OTLA also supports LC 519. He stated that 20-30% of clients are not being made aware they have a choice in physicians, and the information needs to come from the employer. Sometimes recommendations are made by employers due to drug testing, but that is not being made clear to workers. OTLA opposes LC 675, which essentially gives state workers a worse deal than other workers are entitled to under the Americans with Disabilities Act (ADA). They also oppose LC 677, stating that the situation it covers is very rarely a problem. In most situations where a worker gives up their right to retraining, there is a separation agreement. He is concerned that unrepresented workers would not understand that this is a lifetime decision about returning to that prior employment. Ben Stange asked if clients are getting the form at all. Mr. Semple indicated that he does not ask if they get it, but that the problem is that injured workers receive a large stack of papers with many instructions and the worker is overwhelmed with information.

(1:41:37)

Deb Bogart, Department of Administrative Services (DAS), stated that her agency was surprised by the DCBS bill analysis on LC 675, stating that it does not reflect its intent. DAS intended to expand reinstatement reemployment when workers are

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medically stationary and can be permanently placed in a position bearing in mind the worker's permanent restrictions, and was not intended to impact early return to work prior to becoming medically stationary. John Mohlis asked if DAS will be going back to Legislative Counsel to clarify the draft. Ms. Bogart stated that they would.

(1:44:27)

Betsy Earls, Associated Oregon Industries (AOI), opposes LC 519. AOI feels that it would create added burden and cost to employers. Employers are already required to provide this form, so to require a signature, file maintenance for the specified time, and providing the form as required for Workers' Compensation Division enforcement puts undue burden on businesses.

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**Next steps**

(1:46:03)

Theresa Van Winkle, Committee Administrator, stated that the committee will not meet again until December in order to allow for more time for legislative concepts to be available. She also informed the committee that they were all given envelopes containing Workers' Compensation Division annual educational conference invitations.

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**Meeting Adjourned**

(1:47:00)

John Mohlis adjourned the meeting at 11:48.

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

<http://www.oregon.gov/DCBS/MLAC/audio.shtml> .

\*\*Referenced documents can be found on the MLAC Supporting Documents page here:

<http://www.oregon.gov/DCBS/MLAC/pages/support.aspx>