

**WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE  
Full MLAC Meeting**

March 20, 2015  
9:30 a.m. – Noon

***Committee Members Present:***

Aida Aranda, Oregon & Southern Idaho Laborers-Employers Training Trust, Corvallis  
 Guy Boileau, Louisiana-Pacific Corporation, Portland  
 Jim Denham, ATI, Albany  
 Carol Duncan, General Sheet Metal, Clackamas  
 Paul Goldberg, Oregon Nurses Association, Tualatin  
 John Mohlis, Oregon Building Trades Council, Portland  
 Ben Stange, Polk County Fire District No.1, Independence  
 Patrick Allen, DCBS Director, *ex-officio*  
 Theresa Van Winkle, MLAC Committee Administrator

***Committee Members Absent:***

Patrick Allen, DCBS Director, *ex-officio*

<b>Agenda Item</b>	<b>Discussion</b>
<b>Opening</b> (0:00:00)	Guy Boileau opened the meeting at 9:33 am.
<b>Review of March 6, 2015 Minutes</b> (0:00:18)	The minutes from March 6 are still being compiled. The committee will review them at their meeting on April 3, 2015.
<b>Medical Advisory Committee (MAC) Presentation</b> (0:00:27)	<p>Dr. Ron Bowman, chair of the Medical Advisory Committee (MAC), and Lon Holston, MAC member, spoke about the work done on their committee. Dr. Bowman stated that in the past there had been communication between MAC and MLAC. He proposed reestablishing this communication and that the two committees serve as resources for each other.</p> <p>MAC's task is to advise the director of the Department of Consumer and Business Services (DCBS) on matters of provision of medical care. Insurers, employers, medical providers, and a worker representative are all on the committee. The bar they use to evaluate medical treatments to determine whether they are inappropriate for workers is if the treatments are unproven, unscientific, or outmoded. They search the literature and compile data to make determinations. Recent issues undertaken by the committee include the AMA 6<sup>th</sup> edition guides, opioid guidelines, and revisions on the return to work form. Dr. Bowman offered an open door for feedback and resources from a medical standpoint. Lon Holston, a previous MLAC member, has found that medical issues and procedures were challenging for him when he was with MLAC, even with his extensive workers' compensation experience. He stated that during his time with MLAC the committee relied heavily on MAC for study and</p>

	<p>information, both formal and informal. MAC has just started discussing <a href="#">HB 3026</a>. If MLAC wants medical advice or expertise from MAC, the committee would be happy to provide it. Guy Boileau expressed interest in coordinating efforts regarding HB 3026. Dr. Bowman reiterated that the committee would be happy to help.</p>
<p><b>2015 Legislation Review</b> HB 3026 (0:08:26)</p>	<p>Nan Heim, Oregon Association of Orthopedic Surgeons, spoke regarding <a href="#">HB 3026</a>. The bill was initiated at the request of members who treat injured workers. Even though surgeries were successful, for some workers there is depression and anxiety that impedes recovery and return to work. Mike Sullivan, political director for the Association of Western Pulp and Paper Workers stated that he spoke with Dr. Keenan (a MAC member) about how he would like to see the workers' compensation system improved and this is what he said would help. Mr. Sullivan spoke with Rep. Paul Holvey to sponsor the bill.</p> <p>Theresa Van Winkle, Committee Administrator, stated that there had been a public hearing on the bill, and that they had talked a little about whether there was a preference for a formal task force or an MLAC subcommittee during the interim. Ms. Heim stated that she did not have a preference. Mr. Sullivan agreed.</p> <p>John Shilts, Administrator, Workers' Compensation Division (WCD), added that staff support to a task force may incur a fiscal to the DCBS, as no funding is provided in the bill. Injured workers currently have the ability to request counseling services as part of their claim, but often there is hesitancy to make this claim. An increase in these requests could increase claims costs but could also reduce them if the counseling helps the worker. Jim Denham asked about what the regulations currently provide in terms of counseling services. Mr. Shilts stated that today injured workers can file a claim for counseling services or other health care provisions related to their injuries. The way the law is supposed to work is that if the worker is diagnosed with situational anxiety or depression there would be an expectation that the worker would file a claim for it and have the treatment paid by the insurer. Across the country, there is a fear on the part of workers' compensation insurers of getting into mental health claims. It is a difficult compensability process, so while the system should allow workers to access these types of treatments it is not an easy area to access. That could be an issue for task force to investigate. Mr. Denham asked if the treating physician would have to diagnose or refer the injured workers for situational anxiety or depression. Mr. Shilts indicated that the treating physician would.</p> <p>John Mohlis moved that the committee support HB 3026, either as a task force or as an interim MLAC subcommittee. Carol Duncan seconded the motion, which passed on a unanimous vote.</p>

HB 2211  
(0:20:12)

Theresa Van Winkle, Committee Administrator, stated that the HB 2211 [-2 amendments](#) are ready to go. Larry Bishop, Sedgewick, stated that they are happy with the -2 amendments.

Guy Boileau moved that the committee vote to support [HB 2211](#) with the -2 amendments. John Mohlis seconded the motion, which passed on a unanimous vote.

SB 701  
HB 2581  
(0:21:19)

Theresa Van Winkle, Committee Administrator, introduced [SB 701](#) and [HB 2581](#). Both bills focus on independent medical examinations (IMEs). John Shilts, Administrator, WCD, discussed both bills. The purpose of an IME is to assist insurers in processing workers' compensation claims. Usually an insurer requests an IME when there are issues in the claims process and where there are questions on how to proceed. It is a forensic examination, not a traditional physician/patient exam. [Information](#) is provided to the worker regarding the process. The insurer, who chooses provider and pays for the exam, schedules the IME. An IME physician needs to meet certain standards to be on the director's certified list. An insurer may request up to three IMEs and may make a request of the director approve additional exams. Some exams are not considered IMEs; in particular, usually treatment disputes are not classified as IMEs. Worker-requested medical examinations are requested when there is a denial based on the IME. Mr. Shilts met with Senator Beyer and Rep. Barnhart to discuss the bills and indicated to them that as currently drafted DCBS anticipates a fiscal impact. Both legislators are looking to create a more fair process. The division provided both legislators with follow up information and they are likely working on amendments. The division does not have a position on the bills.

SB 701 provides for the random selection of an IME physician from a specific list and gives WCD rulemaking authority. HB 2581 reduces the number of IMEs an insurer can request from three to one, allows workers to select physicians from IME list, and provides for a single random external file review when exams do not agree. Mr. Shilts noted that laws concerning IMEs have changed significantly two times over the past 15 years. Paul Goldberg asked how extensive the list of providers is. Mr. Shilts indicated that he believes that there are over 700 providers on the list at this time. Mr. Goldberg asked how often a worker requests a WRME examination. Mr. Shilts said that it was less frequent than IMEs. Ben Stange asked if getting WCD involved would change the timelines. Mr. Shilts stated that timelines were a concern, and that the fiscal was related to the division's need to hire additional staff to accommodate the increased workload. Jim Dunham asked what problem the proponents were trying to solve. Mr. Shilts said that the best answer he could give is that they are looking for selection that is more random and a more fair process.

Hasina Squires and Dan Farrington, Independent Medical Examination Association (IMEA), submitted written testimony on both [SB 701](#) and [HB 2581](#). Ms. Squires stated that the IMEA feels that under these bills there is a negative impact on their organization. Ms. Squires detailed the IME scheduling process, stating that the current system is set up to be fair and balanced. Their organization is vigilant in recruiting and retaining physicians so there is an appropriate pool from which to draw. Physicians must be trained and certified before they are placed on the list. The goal is to get the injured worker back to work. SB 311 (2005) instituted many procedures to support both workers and insurers, and this bill could reduce some of those carefully constructed guarantees. A random selection process would lead to those with specific specialties treating patients with injuries in areas outside those specialties. Limiting IMEs to one is not good for injured workers or the workers' compensation system. She is also concerned that the 60-day timeframe is too short and will lead to increased litigation.

Jaye Fraser and Julie Masters, SAIF Corporation, spoke in opposition to both bills. In 2013-2014, only 1% of their claims required more than one IME. Sometimes an attending physician asks for an IME, other times the IME is used for claim closure. They agreed with the testimony from the IMEA and the concerns raised in the WCD bill analysis. An IME does not equate a denial. Paul Goldberg asked about the percentage of closure exams by completed by an IME. Ms. Masters indicated that she would research the question. Closure exams are not counted in their IME count, but are subject to 10-day notice and director's process of objecting similar to other IMEs. The law allowing a worker to choose a worker requested medical exam (WRME) essentially shifts the cost of claim defense to the carrier. There is already a provision for workers to recover costs if they prevail in litigation. This bill would require carriers to pay in advance regardless of litigation outcome. SB 701 would remove the ability to select a physician for IME and move that function to the director of DCBS. SAIF has contracts to mitigate exam costs, but this bill would eliminate that possibility.

Betsy Earls, Associated Oregon Industries (AOI) spoke in opposition to SB 701. She stated that while the current system is not perfect, it is not materially broken. The changes proposed in SB 701 would disrupt balance in the IME system. It also undermines ability of treating physicians to best treat injured workers and lowers the quality and availability of treatment.

SB 291  
(0:56:11)

Theresa Van Winkle, Committee Administrator, introduced [SB 291](#), which the committee heard on February 20, 2015. Guy Boileau stated that the [-1 amendments](#) were ready. Mr. Boileau moved that the

HB 3114  
(0:57:10)

committee support the bill with the -1 amendments. John Mohlis seconded the motion, which passed on a unanimous vote.

Theresa Van Winkle introduced [HB 3114](#). This bill was heard at the last MLAC meeting, and is brought forward by Rep. Paul Holvey. At the last MLAC meeting, the committee discussed changing the one-year period to 90 days. The [-1 amendments](#) address this. John Shilts, Administrator, WCD spoke on bill, discussing the current process when a worker must notify the employer of a workplace injury and what happens when instead the workers goes through a health benefit plan (HBP) for treatment. The bill addresses situations where the HBP has rejected the claim based it being a work injury. Under the bill, an injured worker would have 90 days from the date of the HBP rejection to file the claim under the workers' compensation system. If the workers' compensation insurer then denies the claim, the insurer must notify the HBP, who must then pay the claim. Guy Boileau asked about the time frame for non-occupational insurers to make a decision on a claim. Mr. Shilts agreed that the timeframes are tight, but he is unsure of how to answer the question. He will do some research and come back with an answer.

Jaye Fraser, SAIF Corporation, said they felt much more comfortable with the 90-day timeframe. Their concern is the potential for a claim to come in significantly after the fact and the difficulty in determining the cause of injury at that point. They are also concerned about the use of the word "claim", because the workers' compensation industry uses the term differently than the health insurance industry does. Guy Boileau asked if SAIF would like a specific definition of "claim". Ms. Fraser indicated that they would. Ms. Van Winkle asked if the definition could be established through administrative rule. Mr. Shilts stated that between WCD and the Insurance Division, probably yes.

HB 2523  
(1:03:48)

Theresa Van Winkle, Committee Administrator, discussed [HB 2523](#). The bill mandates managed care organizations (MCOs) provide naturopaths and chiropractors a come-along provision making them attending physicians for the life of a claim. Dr. Vern Saboe, Oregon Chiropractic Association (OCA), stated that more than 18 visits would still need to be approved. Dr. Saboe disagreed with comments from Majoris, stating that in having attending status for the life of a claim, both chiropractors and naturopaths would be able to provide the closing exam and finding of impairment if such exists.

Scott Winkels, League of Oregon Cities (LOC) stated that HB 2523 negatively affects his organization's members. In their view, this is an expansion of attending physician status for chiropractors and naturopaths.

Ramona St. George, President and CEO, Majoris Health Systems, reviewed her [written testimony](#). She stated that the Oregon Self-Insurers Association (OSIA) authorized her to submit her comments as consistent with theirs. Currently Majoris allows chiropractors and naturopaths to be attending physicians within their MCO. The change proposed in the bill adds nothing to the system, because the ability to close claims is already there within the 18-visit limitation. In their view, this is a solution looking for a problem. Last session gave chiropractors a come-along provision, but the number of injured workers choosing chiropractors as their attending actually dropped when they increased the access. MCOs are required to provide an appropriate level of care. There is no lifetime provision given to any type of provider, and should not be given to chiropractors and naturopaths. Mandating a number of visits eliminates evidence-based care.

Laurel Gunderson, Providence MCO, testified in opposition to the bill. She stated that MCOs have research facilities and research doctors, and that treatment protocols are evaluated every two years at a minimum. They are concerned about court decisions resulting in “life of claim”, meaning no prior authorizations and a lack of care evaluation. No physician has attending status for the life of a claim. In addition, chiropractors can only authorize time loss for 30 days and could not refer for treatment elsewhere because only an attending can authorize for this. MCOs would have to spend time watching these cases to ensure that specialist referrals were made as needed. They feel chiropractors would be less likely to refer for specialty care if they would lose their attending status. The workers’ compensation system should focus on workers and employers, rather than lobbying providers. There is no access issue for workers; there is an access issue for providers who want unlimited access to injured workers.

SB 649 and HB  
2764  
(1:26:11)

Betsy Earls, Association of Oregon Industries (AOI) discussed [SB 649](#) and [HB 2764](#). Ms. Earls stated that the two sides have had some productive meetings regarding HB 2764, and while they have not yet reached a consensus, they have had some productive conversations. AOI still has significant policy concerns. Arthur Towers, Oregon Trial Lawyers Association (OTLA) agreed with Ms. Earls’ assessment. Mr. Towers stated that the Legislature has postponed action on the bill twice already, his organization appreciates the participation from MLAC members, reminds committee that this is significant legislation, and stated his concern that issues remain that are greater than this one in terms of controversy. Ms. Earls added that the two sides have not made progress on SB 649. Guy Boileau asked about the legislative time constraints and what the next steps are. Mr. Towers stated that they were open to more conversation. Ms. Earls agreed that her organization was open to meeting again. John Mohlis said that he was there for the second

<p>HB 2032 (1:38:40)</p>	<p>meeting and part of the third, and that in his opinion both sides have given the committee accurate reflections of the situation. Mr. Boileau asked if they needed anything, both agreed that support for the process is helpful.</p> <p>Dr. Vern Saboe and Dr. Bryce Milam, Oregon Chiropractic Association, discussed <a href="#">HB 2032</a>. The rationale for the bill is that some employers continue to force injured workers to see particular providers or visit specific clinics. Oregon law mandates that injured workers get to choose their providers. Their concept uses the existing <a href="#">form</a>, but adds signatures for the injured worker and the employer to indicate that the injured worker understands that they can choose their provider. As an example, they provided a <a href="#">letter</a> from an injured worker in Portland. Dr. Milam stated that he sees injured workers in his practice regularly who have not been told about the form. In his experience, many are directed to a large national occupational clinic in Portland. The majority of injured workers he sees come from this clinic.</p>
<p><b>Status Report</b> HB 2523 (1:46:50)</p> <p>SB 143 (1:47:34)</p>	<p>John Mohlis moved that MLAC not support HB 2523. Ben Stange seconded the motion, which was approved on a unanimous vote.</p> <p>Bill Cross, Oregon Self Insurers Association (OSIA) stated that they were redrafting SB 143 and had met with the Workers' Compensation Division. They hope to have a redraft available in early April.</p>
<p><b>Next steps</b> (1:49:00)</p>	<p>Next meeting will be held on April 3, time to be determined. Bills not acted upon today are likely to be on the next agenda.</p>
<p><b>Meeting Adjourned</b> (1:49:31)</p>	<p>Guy Boileau adjourned the meeting at 11:23 am.</p>

\*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>