

**WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Subcommittee on Counseling Services for Injured Workers**

January 8, 2016
1:00 p.m. – 3:00 p.m.

Clackamas Community College Training Center, Wilsonville

Committee Members Present:

Guy Boileau, Louisiana-Pacific Corporation, Portland
Tammy Bowers, May Trucking
Jim Denham, ATI, Albany
John Mohlis, Oregon Building Trades Council, Portland
Lynn McNamara, CityCounty Insurance, Salem
Ben Stange, Polk County Fire District No.1, Independence
Theresa Van Winkle, MLAC Committee Administrator

Meeting Participants:

Lou Savage, Acting Administrator, Workers' Compensation Division
Sheri Sundstrom, Hoffman Construction
Lori Graham, Workers' Compensation Division
Jennifer Flood, Ombudsman for Injured Workers
Mike Leland, Psychologist
Sue Quinones, City of Portland
Cara Filsinger, Workers' Compensation Division
Dr. Ron Bowman, Medical Advisory Committee
Dr. Tim Keenen, Medical Advisory Committee
Dan Schmelling, SAIF Corporation
Jaye Fraser, SAIF Corporation
Nan Heim, Oregon Association of Orthopedic Surgeons

Agenda Item	Discussion
Opening (0:00:00)	John Mohlis opened the meeting at 1:00 p.m.
Introductions (0:00:10)	Meeting attendees introduced themselves
Open Discussion (0:02:41)	Dr. Tim Keenen provided background on the issue that lead to HB 3026 being introduced in 2015 session.
(0:07:06)	Guy Boileau asked what share of his patients might seek this type of service
(0:07:20)	Dr. Keenen said he rarely sees someone within 2-3 months of injury, only sees patients that are far into a claim. Of his current patient load, it's about half.
	Dr. Bowman said in his knee and shoulder surgery practice, 2/3 of his practice is workers' compensation. The number of patients that might be

	in this situation is roughly 5%, but it is very obvious some workers have depression.
	Dr. Leland said it is a relatively small number; but it's the long term claims (1-2 years) that have big problems. Duration is an important factor. He described his pain management program; usually 2+ years after the injury, the services are provided in a 4 week program that allows them to work without the diagnosis of a psychological condition. If it's an outpatient situation, they do need a diagnosis.
	Sheri Sundstrom asked what is the profile of the workers? Are employers helping them? Are they released to regular work?
	Dr. Bowman responded they are not getting back to job at injury and there is no light duty. Usually a worker is uncertain – post op, not clear where they're headed next. Multiple injury patients have more issues. Not really release issue; it's more about physical restoration.
	Lou Savage asked about light duty work.
(0:13:14)	Dr. Bowman said if not immediately post-op, he tries to release the worker to something. For example, some employers have limits on light duty for 60-90 days, so sometimes the worker doesn't have a place to go. In those situations, go to a work hardening program like that provided by Dr. Leland.
	Dr. Keenen said the issue is the injured worker that doesn't feel like anyone cares and they're out in the wilderness. Those are the people most at risk. Some had bad interactions with claims examiners or have bad relationships elsewhere. Hard to say it's a specific type of injury.
	Dr. Leland said workers have many losses and other outside issues. Educating the patient early on to help them understand what role they have in the process and how they can impact it.
	Dr. Keenen noted not every psychologist knows how to interact with work-related issues.
	Dr. Leland agreed some psychologists are more helpful than others. Want to make sure they don't make it worse.
	Lynn McNamara asked about the time frame for Dr. Leland's work.
	Dr. Leland responded it is 10-12 sessions. Depends on the person and situation and how deep the trench is. Earlier the better.
	Tammy Bowers asked about mental health diagnosis not being an accepted condition in the claim and whether it is a policy for the company? What if employer volunteers to pay for it?
	Dr. Leland responded if referred by a physician or insurer, his office will still call to preauthorize it. It is rare for an insurer or employer to say yes early on; may say yes later.
	Dr. Keenen replied that is the issue that started this conversation.
(0:19:16)	Sue Quinones described a program used by Safeway and City of Portland called the "Cope" program. Refer workers out for specific, limited duration program using a private vendor. Why not allow employers and insurers use the vendors that are available?
	Dr. Keenen said he does not want to reinvent the wheel.

	Jennifer Flood said this works for large employers, but not everyone works for a big employer. Not all workers know there is a resource. She opined that this should be kept separate from the claim – good for both insurer and worker. For example, the State of Oregon has an Employee Assistance Program (EAP). She said a worker is not used to being off work and not used to being home and it would be good to have someone to talk to.
	Guy Boileau said the concept created an entitlement with contrast to a voluntary program. His biggest concern is to keep it out of the compensable claim.
	Sheri Sundstrom said EAP programs apply to more than just work issues (e.g. family issues).
	Guy Boileau asked what if there is no EAP program?
	Sheri Sundstrom discussed EAP programs and her experience with psychological claims in Washington State. In Washington, most claims with surgery end up with a psych claim. When that happens, the claim goes bad and they rarely go back to work.
	Sue Quinones asked where to draw the line?
	Tammy Bowers asked SAIF what the current law is regarding the doctor's examples.
	Dan Schmelling said they would need to have the condition presented (by the worker or their attorney). He said it opens a pandora's box if there is a claim including standards of proof (major contributing cause) and the court cases that impact what is in a claim (e.g. <i>Brown</i> case).
	Tammy Bowers clarified they have 60 days to accept/deny a claim.
	Dan Schmelling said one question is whether the worker has enough to perfect a claim for that condition. If the claim is denied, then the worker cannot ever get treated. SAIF sometimes does look at ways to help the worker get better and will pay for treatment voluntarily but it is not part of the claim.
(0:30:00)	Jaye Fraser said they are already doing this voluntarily. The issue is driven by the attending physician. Many other services are available intended to get the worker back to work. She is hearing the concern that it is a very long term claim or the employer has cut off the worker from returning to work.
	Dr. Bowman noted they can ask for a new/omitted claim for psych issues, but he doesn't like doing it. He said the spirit of the concept is to provide a "safety box" to allow help without making it part of the claim.
	Jennifer Flood noted she would love for a worker to get services, but they don't want their workers' compensation insurer or employer to know about or get involved in their mental health issues.
	Jaye Fraser asked if this program could be run through the Worker Benefit Fund if it is kept separate? If it needs to be part of the claim, then it should be.
	Jennifer Flood asked if it would be a voucher or reimbursement?
	Dr. Bowman noted that the OMA has professional counseling for

	providers going through stress related issues. It creates no record or ICD10 diagnosis and is separate system.
	Tammy Bowers said the problem is that the workers' compensation insurer couldn't see the records.
	Jaye Fraser noted if it was completely separate, workers might be more willing to use it.
	Sheri Sundstrom said for employers that do not have an EAP, that might be an idea.
	Guy Boileau asked for clarification about the Workers' Benefit Fund (WBF).
	Jennifer Flood responded the WBF is a bucket of funds, collected from employers and workers. Pays for Preferred Worker Program and retroactive reimbursements, among others
	Lou Savage reminded the committee it is not free money.
	Sheri Sundstrom clarified the EAP is an employer sponsored/paid program.
	Theresa Van Winkle clarified EAP programs provide wellness, counseling services.
	Tammy Bowers discussed the Employer at Injury Program (EAIP) and Preferred Worker Program.
	Dr. Leland noted an EAP is not part of workers' compensation.
(0:40:00)	Ben Stange asked what happens if an employer does not have an EAP program or not all provide the same programs? One idea would be after a specific period of time to give a worker a card to access this program whenever you need it.
	Tammy Bowers said she would keep it out of the EAP realm, and put it into the WBF fund programs.
	Lori Graham noted the WBF has multiple programs that are statutorily authorized. The fund may be a way to do that, but it would require a statute to authorize the expense. The staff can send the list of things that the WBF pays for.
	John Mohlis asked how much EAP programs cost?
	Jim Denham said it depends on what you "buy".
	Theresa Van Winkle responded it depends on the EAP program and what the contract says.
	Lynn McNamara asked whether it is provided by all employers.
	John Mohlis said they would want an EAP tailored to workers' compensation programs, not general health issues (like stop smoking programs).
	Sheri Sundstrom commented that EAP could this trigger other issues not related to work e.g. drug/alcohol or other issues
	Jennifer Flood said that is why the idea is for a trained person to help identify their issues, no matter what else is going on.
	Sheri Sundstrom said in her company's EAP they have six visits for each issue.
	Jennifer Flood said the State of Oregon's EAP does not require a

	referral.
	Guy Boileau said there should be a cap of a certain number of visits.
	Dr. Leland gave example of a worker with a six session limit but they identify a bunch of other issues. They will find the worker a way to address the rest of the problems within the limitations of the visits.
	Jaye Fraser commented that when you tell someone they need to go deal with mental health issues, they're reluctant to do it.
	Dr. Keenen agreed there may be a reluctance to go, and concern that what is said will become public. The concept should include some reassurance that it will not be shared with their employer.
	Dr. Leland agreed there should be reassurance that there is some confidentiality. He gave example of services provided to police officers under a type of EAP. The employer only knows that there was a patient for a certain number of visits but the worker is not identified to the employer.
(0:50:00)	Jennifer Flood said a program administrated by the workers' compensation insurer means they might not be confidential.
	Sue Quinones asked what if the employer gets a new omitted condition request for a psych claim? You couldn't tell the worker that their information will never get released because they would need to sign a release to give the information to the employer to support the new claim.
	Jaye Fraser commented many programs exist to get workers back to work. Preferred Worker Program is not always used or understood by the workers and what benefits there are.
	Sheri Sundstrom asked to clarify what PWP means.
	Tammy Bowers said it is for a limited duration.
	Jennifer Flood said those programs are not really addressing what we're talking about here. In that program permanent restrictions make a worker unable to return to work. If you tie this idea to PWP it is in the workers' compensation claim.
	Guy Boileau clarified that there seem to be two options - either administered through the claim or through WBF. He asked what are the impediments to having it through the fund?
	Dan Schmelling said an entitlement program creates a dispute process and there would be litigation.
	Dr. Leland said that is why the bill asked a task force to study the issue.
	Theresa Van Winkle said it depends on how complicated the program is. The department would have to look at the recommendation and evaluate the cost impact.
	Jim Denham is intrigued by providing the services within the claim. Gave example of physician managing an injury decides you need physical therapy, you don't have to accept a new condition to do that. He asked if there is there a way to treat a mental health aspect as part of the injury instead of the claim?
	Jaye Fraser said we already do that, but not all claims.
(1:00:00)	Jennifer Flood commented it has to be very closely related to the injury.

	Jim Denham said he doesn't want to treat big unrelated problems just because there is an injury.
	Tammy Bowers said many times they will pay for services hoping they don't get a psych claim, but not everyone does that.
	Jim Denham commented then maybe that's the time you need to have another option.
	Tammy Bowers said workers' compensation claims always have a release of records.
	Jim Denham asked what happens if a person has more issues than just their work related injury.
	Sue Quinones discussed the pilot program that City of Portland is using. It uses a questionnaire that is scored and if a worker rates a certain level they are referred to a psychologist. The attending physician is contacted by the psychologist and then the attending decides if they should be referred. The worker has up to 12 visits and it is part of the claim processing. It works very well.
	Lynn McNamara said it seems that if it will go through the claim there would have to be a box around it and who does it is just as important as how it is done.
	Dr. Bowman said it is not targeted at acute claims but longer term claims.
	Sheri Sundstrom asked how long is pilot program?
	Sue Quinones said the pilot is six months. They look at front end of claim, rather than back end. City of Portland has a 90 day return to work policy in some places. She said you can see red flags within the first 30-45 days.
	Tammy Bowers asked if we could do a questionnaire through the IME process?
(1:10:00)	Jennifer Flood asked whether they are talking about related to the claim or not?
	Theresa Van Winkle said that we can use the bill as the framework for the discussion.
	Dr. Bowman said it should address situational depression that is related to the injury but not to the claim.
	Dr. Leland gave an example of how issues arise out of an injury.
	Dr. Keenen said instead of linking to an injury, should be when the claim is open.
	Jaye Fraser cautioned that will keep the claim open. The current return to work programs are already available.
	Guy Boileau asked whether you can segregate all kinds of problems from the work related? The issue is how it is structured and what the boundaries or constraints. Even if paid out of the claim, there is a limit on what counts toward the claim (or not).
	Tammy Bowers wants to know how many workers are impacted? A poll would help identify scope of program.
	Guy Boileau said he thinks the first question is whether to provide the

	benefit. Then figure out parameters.
	Lou Savage asked if there is enough information to estimate the population of workers and the cost for counseling?
	Dr. Bowman said physicians' offices probably have an idea of how many and the cost.
	Ben Stange asked if there are other programs nationwide? We also have data about how long claims last.
	Sheri Sundstrom said there should be early identification of workers before putting through the program.
	Sue Quinones said the counseling they provide is up front for pretty much every claim after two weeks light duty or two weeks of time loss.
(1:20:00)	Jaye Fraser said those programs work better for large self insured employers. Small employers are not easy to handle that way.
	Dr. Keenen commented that he thought this idea would be involved, but he didn't realize how complex. He personally knows a person from Safeway person that he can ask about their program.
	Dr. Leland commented he sees a very skewed population. By the time he sees them, they're at the end of their rope. They feel helpless, but are better once they have some control and decision making capability.
	Sue Quinones said they use the same vendor as Safeway - Dr. Michael Coupland and the "COPE" program.
	Tammy Bowers asked for data about how many people work for self insured employers, big employers, small employers, etc.?
	Dr. Keenen said if they identify a small enough group, could make it affordable for WBF to pay for it. If it goes to the workers' compensation insurer there is less incentive to use and possible litigation. To him it sounds like the outside the workers' compensation industry is better.
	Sheri Sundstrom said in Washington, it becomes part of the claim, the worker is "mentally disabled" that is the brick wall that prevents workers from getting back in the workforce.
	Dr. Keenen said he sees the difference between Dr. Leland seeing a worker or a counselor seeing them.
	Lou Savage commented that some psychological conditions really are related to the claim. Dr. Keenen is talking about issues related to the workers' compensation system/process.
	Tammy Bowers asked if this could be added to the diagnostic rules, and allow four or five visits.
	Dr. Keenen responded that would open up the records to the insurer.
	John Mohlis commented the likely reluctance of building trades workers to use a program through the employer.
(1:30:00)	Jennifer Flood gave an example of a worker with many issues and how he found a separate resource to pay for some counseling.
	Jaye Fraser said there are some conditions that should be treated under a health insurance plan. There is always the Oregon Health Plan as an option.
	Jennifer Flood commented not all workers have health insurance, even

	though it is required.
	John Mohlis said if you're off work in building trades, you don't have insurance.
	Dr. Keenen commented on difficulties in getting the Health Plan to pay for things.
	Guy Boileau said the next step is to decide whether to go forward. If yes, then we move on. It sounds like we can get more information from Dr. Keenen and Sue Quinones.
	Lou Savage said the department can provide more information about the WBF and do analysis on any proposals from the group.
	Sheri Sundstrom wants to know how many employers have EAP programs.
	Jaye Fraser said she thinks probably larger employers but among their 40,000 employers probably very few.
	Dr. Keenen asked for clarification of EAP and WBF.
	Jaye Fraser clarified EAP is employer specific benefit.
	Sheri Sundstrom says her company has a separate EAP for critical claims. They pay a fee per year plus cost of counseling.
	Tammy Bowers said those employees can file a claim for PTSD.
	Jaye Fraser said the WBF is a statutory fund that is administered by the division with specified allowed uses.
	Dr. Keenen said the WBF could pay for the program. An EAP would only be available through an employer who offered it.
	Tammy Bowers said her employer does not offer an EAP program because their workforce has huge turnover.
	Theresa Van Winkle clarified there are two models under discussion today 1) EAP model or 2) an integrated program.
	Jaye Fraser said there is potential for failure to adjust the workers' compensation claim. The doctors should include issues in their chart notes to insurer.
	Dr. Bowman said when there are red flags, he or staff calls the adjustor to talk about ways to help the claim move along.
(1:40:00)	Dr. Keenen said he also calls adjustors and usually they're willing to talk about moving the claim along. He sees consensus that the proposal should not make it part of an insurance process.
	Lou Savage commented the WBF has been guarded over the years.
	John Mohlis asked what else the group needs for future conversations.
	Dr. Bowman asked if there is any literature.
	Lori Graham said she did a limited search for other states or programs that are doing this and could find no programs.
	Jaye Fraser said this is not a data element that insurers collect or report to the division.
	Dr. Leland said he found very little literature and shared what he had in the letter he provided the legislative committee .
	Jennifer Flood said asked if we could compare the State's EAP to SAIF claims to see if they used the program.

	Dr. Keenen asked for more information about City of Portland program.
	Sue Quinones said their questionnaire helps identify someone who needs more help. They have psychologists on a managed care panels that are trained to provide work related services.
	Guy Boileau asked if all employees get the questionnaire.
	Sue Quinones said they are developing a protocol. It is going to be a very small number, but they don't have data yet. There are likely other vendors that provide similar services.
(1:50:00)	Cara Filsinger and Theresa Van Winkle summarized the data and information the department will attempt to collect before the next meeting, sometime after February Session.
	John Mohlis adjourned the meeting at 2:55 p.m.

*These minutes include time stamps from the meeting audio found here:
<http://www.oregon.gov/DCBS/mlac/Pages/counseling-subcommittee.aspx>

**Referenced documents can be found on the MLAC Meeting Information page here:
<http://www.oregon.gov/DCBS/mlac/Pages/2016.aspx>