

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

March 17, 2023
10:00am-12:00pm

Committee Members Present via Zoom:

Scott Strickland, Sheet Metal Workers Local #16
Patrick Priest, Citycounty Insurance Services
Sara Duckwall, Duckwall Fruit
Jill Fullerton, Clackamas County Fire Department
Lynn McNamara, Paladin Consulting
Margaret Weddell, Labor Representative
Andrew Stolfi, DCBS Director, *ex officio*
Marcy Grail, IBEW Local 125
Tammy Bowers, May Trucking
Matt Calzia, Oregon Nurses Association
John McKenzie, JE Dunn Construction

Staff:

Cara Filsinger, MLAC Committee Administrator
Baaba Ampah, MLAC Assistant
Brittany Williams, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Scott Strickland called the meeting to order and shared a brief affirmation.
(0:00:43)	Cara Filsinger called the roll of members. Patrick Priest presented the minutes from the March 3, 2023, meeting. Cara Filsinger shared that an updated version was sent out with edits from Lynn McNamara. Lynn McNamara made a motion to approve the minutes as presented and Sara Duckwall seconded the motion. The motion passed with a voice vote of six in favor, none in the opposition, one abstention (Marcy Grail) and three members excused (Tammy Bowers, Matt Calzia and John McKenzie).
(0:04:36)	Department Update Sally Coen, Administrator, Workers' Compensation Division, provided an update for the Worker's Benefit Fund, she highlighted questions during the last meeting about factors considered when establishing the assessment rate. She noted that Senior Economist Kelly Borushko followed up with March 13th

[memo](#) and that she is also present to answer any questions. Sally Coen explains the law requires that the rate be determined in a manner that minimizes the volatility of the rates, and requires a minimum balance of twelve months of expenditures. More importantly, that is a minimum amount and not a target amount. Sally Coen continued to detail factors that are considered such as the current fund balance, projected expenditures, fund liabilities, and forecasting of the economic and employment conditions. She noted that there is also information regarding the investment of the funds and how the Oregon Department of Treasure manages the funds.

(0:07:30) Patrick Priest commented that it seems that fund is well capitalized and has a healthy balance used to benefit workers. He then asked if it is appropriate for MLAC's workplan to include how these funds are used, and how to better use them to benefit workers in the workers' compensation system. Sally Coen answered yes it can be discussed in MLAC's workplan; however, funds can only be used in programs outlined in statute.

Scott Strickland thanked Patrick Priest for the question and also thanked WCD for the inciteful follow up information.

SB 214

(0:08:53) Sally Coen announced the SB 214 will not be moving forward during this session. Additional information will be discussed in the future.

HB 3412

(0:10:00) Catie Theisen, AFL-CIO, thanked everyone for conversation about the problems surrounding this bill last meeting. She continued that it is an important problem, however, she did not have the time and capacity to come up with solutions due to deadlines. Catie will continue the conversation with MLAC and other stakeholders moving forward.

Scott Strickland highlighted that during the last meeting, Sara Duckwall recommended more engagement on the issue in the area of intimidation and retaliation against workers in MLAC's workplan. He continued that he had a conversation with Catie Theisen about continuing outreach to stakeholder's engagement with MLAC. Scott thanked Catie Theisen for being supportive and her outreach and also thanked Sarah Duckwall for the recommendation.

HB 3541

(0:12:19) Greg Peden, lobbyist for Avis Rental Car, brought the [HB 3541](#) to MLAC because it is in the House Business and Labor Committee and representatives wanted to know what is MLAC's opinion of the bill. Greg Peden said Avis has several subsidiary businesses, in particular, employees that move cars around for Avis. He shared that an employee of the subsidiary company, represented by the Teamsters Union, got in an accident while moving a car. The injured worker brought a lawsuit in Multnomah County Circuit Court against the

employer and it was ruled that workers' compensation under Avis's umbrella policy was not the exclusive remedy in this situation. He continued that they feel that it is a loophole in the Oregon law, and it goes against the policy under the workers' compensation system.

(0:15:43) Lynn McNamara noted the Workers' Compensation Division pointed out the bill does not define what a parent company is, the type of ownership it might require nor does it define what related entities are. She recommends that those things will need to be defined in the final amendment for it to move forward. Greg Peden agrees with those recommendations and will sharpen the bill.

(0:16:43) Scott Strickland noted that there are reasons to select an entity structure. He continues that an entity structure is selected for various reasons that include controlling certain risks, having a preferential tax treatment for certain purposes, enabling outside investment and many more. He then asks why it is critical that MLAC engage in this issue? Greg Peden answered that he does not have much knowledge over the depth of the issue. The main issue is these employees were intended to be covered under the umbrella structure of workers' compensation and the tax structure. He concludes that he does not know the specificity why the cooperation is structured the way it is.

(0:18:18) Scott Strickland responded that there are risks and benefits for selecting any entity or ownership structure. At first glance, it looks like the choice of entity structure was selected for a specific reason and there is a downside in the workers' compensation structure. He continues that MLAC has its values of balance, fairness, adequacy of benefits, affordability, efficiency, stability, and flexibility, so he is trying to fit the issue into those categories. Greg Peden responded that the law change will cover any subsidiary structure, not only Avis, but others with similar dynamics will be covered as well.

Lynn McNamara asks to see the judge's reasoning and decision in the [Fuhrer v Avis](#) case. Greg Peden responded that he will send the documents to Cara Filsinger.

HB 3467

(0:21:40) Taylor Sarman, representing the Oregon Society of Physician Assistants, referenced the -1 amendment to House Bill 3412, and noted the goal of the amendment with nurse practitioner authority with a couple of technical changes. Currently, MLAC's approval is wanted before the legislature gets too far. He concluded that if there are any problems, he will fix them with a -2 amendment.

(0:23:55) Tammy Bowers and Matt Calzia were noted as present at the meeting.

A brief break was taken so that MLAC members could meet in caucus rooms.

John McKenzie was noted as present.

(0:25:16) Matt Calzia moved for MLAC to support the concept of physician assistants having the same authority to treat workers' compensation patients as nurse practitioners, and that MLAC will review the final amendments when completed. Lynn McNamara seconded the motion. The motion passed with a voice vote of ten in favor, none in the opposition and no abstentions.

SB 418

(0:27:25) Dustin Karstetter, Washington County, highlighted questions from the last meeting regarding attestation forms. He shared that over the past three fiscal years in Washington County, there have been similar practices where there is no time frame and employees can request reimbursement to compensable medical appointment regardless of time. However, employees are required to submit a medical attestation form affirming their time at the appointment. This information is then verified against work release charts and notes to ensure that employees were at their appointments. He concluded that there have not been any issues with requiring attestation forms in Washington County.

Jovanna Patrick, OTLA, commented that she has nothing to add but is open to any questions.

(0:29:15) Rebecca Fey, Reinisch Wilson, stated some employers are concerned over the robust cost impact study and the broad language that can encompass medical appointment regardless if it is compensable. She recommended that before this bill is implemented, a more robust cost impact study be undertaken.

(0:32:15) Joe Baessler, AFSCME, met with people to discuss the bill and they agreed with sentiments which they move forward. He noted the [-1](#) and [-2 amendments](#) are limited in the actual effect and takes away the four hours of the employees' time/cost and puts it on the employers.

(0:33:21) David Barenberg, SAIF, shared [SAIF's revised cost estimate](#) based on the average weekly wage of Oregon employees who received disability payments. David compared it to numbers presented in the last meeting, which included all Oregon worker wages, and the cost estimate shrunk about 25%. This is caveated with the fact that some employers don't pay employee time loss and instead cover it with their full wages. This could also increase utilization which could drive up cost. He concluded that this brings up more complicated questions such as will more appointments help workers get better and if it could have an impact of reducing cost later in the system.

(0:35:13) Lynn McNamara referenced the [NCCI bill analysis](#) and asked for the clarification on language for the potential for an unfunded liability if the final language of the bill has some retroactivity to include claims that are already

going on or have already taken place. She also asked what happens after a settlement? David Barenberg answered that insurers would take responsibility for some of the costs for retroactivity, it takes a while for rate to catch up to what the practice will be. NCCI and rate making process will look at what the cost were and time loss as they are establishing rates looking forward. It will also take a while for the impact to get caught up with the process. To the second question, he answered that the rate agreement and time loss takes place after a settlement and is less of a concern.

- (0:37:08) Scott Strickland added that the topic was brought up to address the concerns over ongoing access and follow up with doctors. If time loss cost is the responsibility of workers, it will disincentivize them to attend appointments and continue treatments. He then asked if there is a way to estimate the cost savings of encouraging workers to continue with their care? David Barenberg replied that SAIF currently does not have the data to answer such questions. Cara Filsinger also added that WCD only receives data for medical appointments attended and not the ones that are not attended, so it is not possible to accumulate such information.
- (0:39:28) Sara Duckwall asked if there is data on the magnitude of the issue that SB 418 addresses? Joe Baessler answers that the magnitude of the bill is unknown, but there are anecdotal stories from workers' that support the issue. It is very significant for workers who are using paid time off to go to appointments.
- (0:41:14) Patrick Priest thanked Joe Baessler for meeting with him and a couple of MLAC member yesterday and agreeing to the discussion. Patrick Priest brought up recommendations from that discussion, he stated the bill should include language requiring only compensable appointments. It should include a method of documenting employees' reason for appointments based the statement Dustin Karstetter mentioned earlier. He concluded by asking Joe Baessler how he would address such recommendations and what is the expectations for MLAC? Joe Baessler noted that when he asked the legislative council to draft the bill, he asked that the bill included compensable visits. Legislative council advised that if 'four-hour requirement' was removed it will only be applied to compensable appointments. He continued that he will make sure that the language is clear to include compensable appointments. Joe Baessler also included that the time frame for employers asking for attestation forms could take a long-time causing an issue. Also, employers could use attestation forms as a method of harassment. He concluded that this bill is a good compromise where it protects both the workers and employers.
- (0:45:13) Tammy Bowers agreed that the -3 proposed amendment should include compensable medical services and also noted that sometimes employees attend appointments that are not compensable. She continued that the -3 amendment could also make sure that employers are not in charge of the attestation forms and workers could also include their miles to receive reimbursement.
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(00:46:27) Dustin Karstetter, shared that his understanding why the original bill did not include the language compensable medical services is because treatments that are over four hours eliminates a lot of appointments that are generally not prescribed by doctors. It is intended for longer appointments that are built in as not compensable. In past, compensable treatments eliminated shorter appointments. With regard to lag time, he shares that it might take employers a long time to confirm if a worker's treatment was compensable and they might have already paid the worker for their time loss. Joe Baessler agreed with the statement.

A brief break was taken so that MLAC members could meet in caucus rooms.

(00:49:20) Scott Strickland shared that there was great discussion had in caucus. He then moved that MLAC support SB 418 -2 with the caveats that it be further amended to clarify that it applies to compensable medical services and that the insurer may verify the appointments. Patrick Priest seconded the motion. There were ten votes in favor, no opposition or abstentions.

During the discussion, Scott Strickland indicated appreciation of management stakeholders for their engagement and work to make SB 418 a functional premise. He further recognized that management had made compromises, despite the fact that the Subcommittee on Time Loss has some outstanding proposals that have not yet been addressed. He said he commits to working with management on a solution to those issues and appreciates the teamwork and compromise.

Patrick Priest joined Scott Strickland in thanking everyone for their compromise.

Cara Filsinger announced that the next meeting is on March 31st.

Meeting

Adjourned Scott Strickland adjourned the meeting at 11:37 am.

*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>