

Workers' Compensation Advisory Committee (WCAC)
Labor & Industries Tumwater Building
Meeting Minutes
May 15, 2007

Business Representatives: Kris Teft, Association of Washington Business; Jon Warling, Mar-Jon Orchards; Rebecca Forrester, Association of Washington Business, Self-Insured Employer's Representative.

Labor Representatives: Owen Linch, Joint Council of Teamsters No. 28; Dave Johnson, Washington Building & Construction Trades Council; Robby Stern, Washington State Labor Council, AFL-CIO; Karen Gude, United Food & Commercial Workers Local 1439.

Chair: Bob Malooly

Recorder: Kathy Chauvin

Guests: Rick Slunaker, Lauren Gubbe, Carolyn Logue, Steven Hecker, Tammie Hetrick, Nancy Dicus, Vicky Smith, Dave Kaplan, Ann Jarvis, Kathy Kimbel, Michael Temple, Amy Brackenberry, Jeannie Gorrell, Dan Fasio.

L&I Staff: Judy Schurke, Bob Malooly, Kathy Chauvin, Cheri Ward, Russ Redding, R.T. Nelson, Ron Moore, Vickie Kennedy, Sandy Dziedzic, Neal Schanbeck, Wayne Shatto, Melissa Ford Shah, Bill Vasek, Cameron Craigie, Priti Gairola, Lisann Rolle, Christopher Carlile, Linda Tilson, Diane Doherty, Chris Freed, Mike Ratko, Josh Swanson, Steve Cant, Dr. Gary Franklin, Catherine McDonald, Sara Spiering, Roy Plaeger-Brockway.

Meeting Minutes:

December 4, 2006 meeting minutes were approved with question noted.

Question – Was the term “affirmation rate” in Tom Egan’s presentation correct in the minutes of December 4, 2007.

Answer – The BIIA was contacted and yes, the term “affirmation rate” is the correct verbiage.

Director's Comments – Judy Schurke:

Director Schurke stated that her focus over the coming months will be in the following areas:

Worker Safety - the new safety and health investment project funding creates real opportunities for creative approaches improving workplace safety. We are seeking input from all of our stakeholders on how best to use these new resources.

Claims Management - We will be renewing our focus on customer service and pro-active claims management. Avoidable delays adversely affect both injured workers and increase costs to employers.

Underground Economy - This is a serious problem that leaves workers without safety protections and puts legitimate employers at a substantial disadvantage. While we have already made significant improvements in our ability to identify and prosecute underground employers, we will be working to find more effective ways to address this problem.

Apprenticeship Programs - This is a key tool for addressing both the need to create employment opportunities for workers in Washington and to help solve the critical shortage of workers in key areas of the State's economy.

Internal Controls - We have already begun a major review of all of our internal controls and have hired additional staff in our internal audit office. We want to be sure that the public can have confidence that all of our resources are used effectively to achieve our important mission.

Performance Improvement - Governor Gregoire has initiated a Government Management and Accountability Program (GMAP) throughout state government. We would like to invite members of the WCAC to attend our internal GMAP presentations so that committee members can help us improve performance through out this department.

A business representative asked if Director Schurke had been contacted by staff from commerce and labor committee regarding the taskforce on the underground economy.

Director Schurke stated she didn't believe so, however, Carl Hammersburg plans to participate and assist with the work of this taskforce.

A question was raised, a business representative asked if the WCAC could receive regular reports on the work of the Underground Economy Taskforce and the Health and Safety Investment Projects.

Director Schurke stated that she would like to see the safety and health projects as a composite of both groups, the WCAC and WISHA Advisory. Reports on the progress of the underground economy taskforce will be included in the WCAC agendas.

Mr. Malooly stated that GMAP (Government Management and Accountability Program) is identifying important agency measurements and reporting results to the Governor. We are looking for way to design our normal operations so that high level measures come out of our processes and systems automatically. We can then look at the sources of a problem and identify opportunities for improving the quality of our results. The Governor is very focused on having government be accountable to its citizens.

Board of Industrial Insurance Appeals – Tom Egan (handout):

Mr. Egan was unable to attend, however did provide a handout.

Experience Modification Factor Changes – Bob Malooly:

Mr. Malooly reported that last year the department changed the relative weighting – the amount of credibility that large firms receive in the determination of their Experience Modification Factor (EMF) vs. the credibility assigned to small firms. We've know for some time that the larger firms were receiving too much weight or credibility and that small firms

weren't receiving enough. The National Council on Compensation Insurance (NCCI), which does experience modification ratings for about half of the workers' compensation premiums in the United States, made these weighting changes a few years ago. As part of our efforts to continually tune our experience and rate making system we decided to adopt those changes. The consequences were that some employers were helped and some were hurt. Large construction firms that had favorable EMFs were most unfavorably affected by this change. Because the large firms were getting less weight in the new calculation of the EMF, some of those firms with favorable EMFs found their EMFs started to deteriorate. On the small end, after giving more credibility to the small firms with bad EMFs, they saw their mod factors were worse than they had been previously. Because this was perceived by the employer community as a surprise it became clear that L&I could have done a better job of explaining this change.

In response to employer concerns, the department decided to allow the favorable results to take effect for rates in 2007 and defer any negative effects. We committed to convene a group of employers and interested parties to review the underlying principles that we were following and look at the consequences of the change. Basically the change was intended to make things fairer for everyone. Our goal is to have rates as fair and equitable as we can.

We committed to convene a group and resolve the issue before the beginning of the rate making process for 2008. The first meeting was a small meeting of interested parties to lay out the issues so we thoroughly understand the perspectives of the parties. This small meeting would be followed by a larger meeting where everyone who has an interest would be invited, and we would lay out the issues as clearly as possible and seek input as to how we should proceed. In the hearings conducted last year, the number one suggestion was "give us time to adjust".

We have committed that if there is any significant future changes we will have informal hearings in advance of the normal rate making process so that any issues can be understood. Because of the timing of events for the rules process, and the fact that we want to use the latest available financial information, timing in the rate making process is very compressed. The first meeting is set for June 4, 2007, and the date for the following meeting will be established later to share information with all interested parties before any decision is made on a course of action for the implementation of these changes.

Rick Slunaker, Philo Hall, and Van Hardy are included in the June 4 meeting. The meeting is from 10:00 a.m. to 11:15 in the boardroom at the Tumwater L&I building. Anyone interested in this planning session is welcome to attend. The purpose of this session is to make sure we have a clear definition of the problem and that we understand the kinds of information the interested parties are likely to want to see at the larger meeting.

A labor representative asked if there was a relationship between this group and the Workers' Comp Finance Committee.

Mr. Malooly replied that there is a connection. Van Hardy has been involved with the Finance Committee, and this is a financial issue that affects our rate setting decisions.

A labor representative asked who was asked to the planning committee from labor.

Mr. Malooly did not have the complete list of those who had been invited.

A labor representative stated that he understood the problem that the changes L&I wanted to implement rewarded some groups and penalized other groups. That was based on the idea that some were inappropriately charged too much and some too little. Unfortunately, the department's decision was to give the benefit to those being undercharged, and not take the benefit from those being overcharged by lowering their rates. What has happened is that half the incentive has been taken away to make a change. The effect of that decision has cost the fund \$25 million dollars. There is concern that in the minutes from the last meeting Mr. Malooly indicated that the department is also looking at other financial incentives to improve safety. There is some concern about the way the department went about implementing the EMF piece.

Mr. Malooly responded that the \$25 million dollar cost is certainly there. We felt we couldn't take away the benefit that was already announced to those employers who would have seen lower workers' comp premiums as a consequence of the weighting change. But, given the lack of an understanding of the consequences for the firms that would be adversely affected, they simply didn't have time to build the additional costs into their bids for future construction contracts. Absent a delay in the effective date, this change would have taken money off the bottom line for some of these firms. These firms told us that if they would have had advance warning, they could have built the higher cost into their pricing structures. Because of the magnitude of the affect on some of these large firms we did not feel it was appropriate to surprise them with these additional costs. Eventually the changes will be implemented so that we have an EMF system that is as fair and balanced as we can make it.

A labor representative stated that it's important that the mathematics and the actuarial principles behind these changes to the system be presented to stakeholders. The main issue is that the employers just didn't understand what was going on.

Mr. Malooly stated that the August 21, 2007 WCAC meeting will include the special rate making meeting and the regular meeting in one meeting.

Budget – Chris Freed (handout):

Ms. Freed reviewed the handout showing the 2007-2009 budget requests for the 609-609 funds.

A business representative stated, for the record, the ongoing concern relating to the funding splits between the 608-609 funds. Of particular concern are expenses for farm labor contractors and crane safety, which are licensing and inspect costs. The business side continues to be amazed that the split of those within the Accident and Medical Aid Funds has the employers paying in effect 92% of the costs for things that have nothing to do with workers' compensation. Business continues to ask the department, in light of last year's work on that budget proviso, to make a decision about the fairness and equity of these sorts of budgeting decisions. The department received input from both sides during last year's exercise, and the status quo was not necessarily something the department viewed as working, yet that is what we get budget after budget.

A labor representative asked which of the programs are paid for exclusively by self-insurance and which are paid for by state fund.

Ms. Freed responded that you won't see that in this report at all. She can provide that information if you would like it.

A labor representative mentioned that looking on page two at CL + ML + PL subtotal. The total dollar all funds is \$596 million; the total 608-609 is \$468 million, with a difference of about \$130 million. Labor would like to point out that the employees of the state are paying 25.5% of all costs. It should be noted for the record that the worker contribution is there, and that any changes will increase that amount. That's in the face of the fact that in no other state in the country are workers paying premiums to fund workers' compensation insurance.

A business representative stated that because of the payment by workers into the system, it seems that both employers and workers have a mutual vested interest in the fiduciary nature of the trust funds. They are both paying into the fund. And funds should be used only for the purposes that the trust is established. It is important that the funds not be raided for purposes that have nothing to do with the trust. The business community would like to see that workers do not pay more than they ought to, for programs that have nothing to do with workers' comp.

Ms. Freed responded that the \$130 million is all other funds, which includes the general fund; public safety and education account for our Crime Victims program; the plumbers and electricians; public works account; boilers; and dedicated funds which are mostly in our Specialty Compliance programs. The carryover is a way of adding or subtracting to make full biennium costs for any of the decision packages. Some of the \$130 million is positive carryover. Included in the non-608-609 amounts are federal grant money, DOSH, Crime Victims, and money granted to SHARP for research purposes.

A labor representative asked what the timeline was for the drafting of the next supplemental budget. When will that be done, and what opportunities will be available for input? Mr. Linch and Mr. Kaplan would like to talk with the department about a couple of matters related to the supplemental budget requests.

Mr. Malooly responded that the request is sent to the Governor's office about the first week of October. Internal department discussions begin early in August. Mr. Malooly suggested that discussion happen soon.

Safety & Health Investments – Steve Cant:

The Safety & Health Investment Projects proviso is directed at work places because both employers and employees pay into the Medical Aid fund. It's not intended for self-insured's. It is intended to promote employer/employee partnership focused on safety programs, and has \$8 million dollars for the biennium. We are currently in the process now developing an implementation plan so there's not a lot of detail to share at this time.

We are currently looking at examples of granting programs in British Columbia, Alberta, the federal department of labor OSHA, and other states around the country. We'll get welcome input from the WCAC and the WISHA Advisory group as well. We anticipate

doing some rules and may want to use some of the money to promote initiatives in construction, manufacturing, and the agriculture sector in addition to simply taking in proposals of a general nature. That way some areas that are in need of attention can be identified with respect to where the injuries and problems are occurring. We'll also have to identify a mechanism for proposal review. The language of the proviso is such that the money is directed at state fund employers, but there could be an organization that might make a proposal to provide some type of service to small employers in the state fund. The grants aren't restrictive to an employer for their place of employment, but that it has to be investment projects that are directed at those state fund employers. Its intent is employer/employee involvement. One of the challenges is that we have been given the money for the program however we were not given any more people to administer it. Efforts are ongoing to utilize current staff.

A labor representative stated that there needs to be an opportunity for thorough review of what's being proposed before it goes into the rule making process. It would be good if the WCAC could get a view of proposals prior to the rule making process. Also, it would be very good to take a look at the previous grant program to see if those grants made a difference. There needs to be some accountability in terms of results and what was what realized.

A business representative underscored the need to put in place a real rigorous set of principles for the use of the grants, as well as being able to have some metric by which we can determine how we added to the over knowledge of the world in preventing accidents and ensuring safety. Need accountability.

Mr. Malooly stated that the language of the proviso is contained in the handout that Chris Freed provided. It's located on page 7, under S09 Safety & Health Investments.

A business representative stated that some kind of limitation to the grants be considered so the dollars can be spread around, and that the grants should be awarded to organizations here in Washington.

Legislation Update – Vickie Kennedy (handout):

Ms. Kennedy extended the agency's appreciation to everyone who worked with the department on legislation this session. There were 16 bills passed that amended Title 51. To mention a few:

- The Voc Rehab bill puts in place changes we anticipate will result in improved outcomes for workers at a reasonable cost to employers and to the system. The changes include increased time and money for retraining plans and an option for workers who do not wish to participate in voc services once they have a plan developed. The department will also work closely with Work Source to set up pilots in some geographic areas. The goal will be to determine if the provision of local services has an impact on the outcome for workers. We'll also work with other industry and union organizations to create alternative retraining options. Elements for accountability are included for the various parties and we'll be doing a significant amount of rule development to implement the changes. There will be an external workgroup to ensure the intent of the legislation is maintained. This external group will be actively involved in the rule process.

- Claims suppression bill requires rule development and the WCAC will be asked to provide individuals who can help with initial rule language. We will then stakeholder the rules with the broader community. We need to have names identified by the end of June from both labor and business.
- Family Medical Leave Insurance (FMLI) – Funding has been appropriated to begin initial implementation work. It is difficult to know what work should be done without the additional decisions by the legislative taskforce. For example, the legislative taskforce is expected to recommend how the program will be funded permanently and what agency will administer the program.

A business representative asked about the initial funding from the supplemental pension fund. It seems unusual to use the fund for initial implementation if the administration of the program goes to another agency. The bill authorizes L&I to use that appropriation. The business representative questioned, how funds would be used and if there is sufficient cash flow in the supplemental pension fund. If there's going to be a loan, what is the interest rate on that loan?

Ms. Kennedy stated that we don't have enough information to determine what we can do and what it will cost. For example, it's very difficult and not cost effective to develop system changes that may move from one agency to another. We can't identify the business rules or what the impacts will be for a different agency. We assume the fund could sustain the loans if the money is loaned over time. But, it would have an impact if we suddenly transferred \$18 million from one account to another. It is assumed the interest on the loan would be about 4.1% based on the performance of our investments of that fund.

A business representative asked if it is possible that the pension fund might be used to fund this in the future, or is it just this one time.

Director Schurke said it is possible, but we don't know how funding will actually be done by the legislature.

A business representative asked about rule making plans regarding SHB1244.

Ms. Kennedy stated there will be rules to change the existing WACs, specifically to address the Supreme Court's *Granger* decision and HB 1244. Cheri Ward and Ms. Kennedy will involve members of the business and labor community in the process.

Mr. Ratko stated that in regard to the Pension Study, we have an RFI set to go and we're in the process of hiring a Project Manager. We haven't really talked about how we are going to proceed with the Retro proviso. We hope to have all our plans ready to move forward by early to mid-June. The Pension Study includes language about the engagement of the WCAC in the selection of that expert.

Mr. Ratko also mentioned challenges that we continue to have concerning our reciprocity agreements for workers' comp. The department continues to see challenges concerning reciprocity with Oregon and Idaho in regards to coverage. Employers aren't sure if they are supposed to have coverage in both states or just one. The department plans to bring together business and labor to share the history and capture their concerns. A draft

summary report will be prepared for the legislature and workgroups when they convene in September.

A business representative stated that we need to have a way to track injuries in other states.

Self-Insurance Cross-Functional Teams – Jean Vanek (handout):

Mrs. Vanek presented the structural changes that will be implemented within Self-Insurance.

A business representative asked if groupings were by industry category or size of the employer and what key indicators will be looked at to monitor and measure the success of these changes. Consistency among the units is also a concern.

Mrs. Vanek stated that after some analysis, it is actually less industry based than type of payroll. The monitoring and measurements have not been determined at this time. At the team meetings the internal training will be enhanced and discussions will take place on claim handling.

Rate Holiday – Mike Ratko (handout):

Mr. Ratko reported that the quarterly report will be mailed the week of June 4 with a flyer notifying the employer to watch for the new rate holiday rate notice. The week of June 11 a new rate holiday rate notice will be mailed along with a letter from the Governor.

A labor representative asked how the department would handle cases where the employer continued to withhold medical aid premiums from workers' pay checks.

Mr. Malooly has asked to be informed if this is happening. We are still working on procedures for handling these calls. Project Help will also be helping with this. Currently it is thought that the Employer Account staff will field these calls.

A labor representative asked if the notices are being sent in different languages. It was also asked if L&I would make flyers available to the labor reps for distribution to their union members, and to include in union mailings. Provide flyers to the convention to distribute to members.

Mr. Malooly stated that we are working on putting this information together and the information will be on the Web in different languages. We will take advantage of all channels of communication.

Director Schurke suggested that the labor and business representative email Mr. Ratko with lists of places where flyers could be placed for distribution to workers.

Medical Advisory Committee – Dr. Gary Franklin (handout):

Dr. Franklin stated that the State Health Technology Assessment Program is underway. The clinical meetings will initially address UPRIGHT MRI. Two other technology assessments will follow this year including bariatric surgery for adolescent, lumbar fusion,

and discography. The next list will likely include intrathecal pumps. However the rest of the list has not been completed.

Agency Medical Directors group has just completed and posted online the Opioid Dosing Guideline. This is a one year educational pilot. A free online Web based CME has been developed for any doctor or nurse who wants to learn about this guideline and receive CME credit. Any health care practitioner can go online and take the test, get their credit, and print out their certificate.

The Medical Advisory Committee will consist up to 14 members. The department would like your input on the draft letter which is included in your packet. The goal is to complete committee appointments by early fall.

A business representative suggested that the statement in the letter, "The legislature has granted immunity for the members of the committee" be changed to read "immunity from any civil suit arising out of the committees work".

A labor representative asked if there would be communication regarding the committee meeting schedule, and would a labor representative able to attend the orientation?

Dr. Franklin stated that the intent is to send the meeting agenda's ahead of time. Meetings will only be about three hours long. He doesn't see any reason why a person couldn't attend the orientation. Notice will be given.

NPI & Additional Healthcare Topics – Roy Plaeger-Brockway (handout):

- National Provider Identifier – Federal law requiring health care providers to begin billing with a new number.
- 3rd Party Pharmacy – System changes made to accept 3rd party electronic bills.

A labor representative asked if the additional dispensing fee would go away when there is a guaranteed fill.

Mr. Plaeger-Brockway stated there may be cases where on the second fill we may still want to have a higher dispensing fee, however there has been no decision made yet.

A business representative gave Roy a complement on reaching a solution on this issue. This has worked out really well for both groups.

- Hearing Aids – Workers with very old linear signal processing devices will be eligible for replacements. Rules will be issued so that this is very clear to everyone.

Employer Reporting – Sandy Dziejic (handout):

Ms. Dziejic reported that the department is about four months into the Employer Reporting legislative pilot and asked members to refer to the handout for statistical information concerning the project.

A business representative stated that employers went away from the training sessions indicating that they weren't going to participate, because it was heard that the employee does not have to report the claim to their employer. The WAC says that every industrial injury or occupational illness must be reported promptly to the worker's supervisor. He heard that during the training it was stated that employees didn't have to report to their employers. This turned some employers off.

Mrs. Dzedzic stated that during the training the employers were told that the worker has the right to choose where they file their claim.

A labor representative wanted to be absolutely sure that workers understand that they do not have to file the claim through their employer. How are we doing that?

Mrs. Dzedzic responded that employers who have signed up with us have posters and information that they are required to share with all employees about their right to file claims through their employer or a physician of their choice. We haven't had any complaints about this matter.

Orion Update – Catherine McDonald & Kris Masten:

Mr. Malooly stated that the Orion Project is going to make changes in how we do business that are far greater than most of the changes that we've made in the past five to ten years. We have great hopes that it will reduce cycle time, cut out the delays and errors in the system, and make life easier for the Claim Managers.

Mrs. McDonald gave an update for those that aren't familiar with the projects. These are major projects – Business Process Management and Integrated Document Management or Imaging. The business process management piece is software that we are developing that will vastly improve the way Claims Managers can manage their claims. It simplifies the things they have to do to get to information, it routes the work, and it prompts staff to take action on priorities instead of an artificial calendar. The document management piece includes five new imaging systems for Employer Services, Self-Insured, Provider Accounts, Provider Billing, and the Retro group. Of those, Employer Services, Retro, and Self-Insured customers will be able to use the CAC system to view their documents online.

Ms. Masten stated that the staff has been working on implementation during the past weekend. One of the challenges is that this is one of the largest technology efforts that L&I has undertaken in about 20 years. Over the last three to four weeks staff has trained over 900 people. All of the old system information had to be migrated into the new system. One of the challenges has been the need to migrate 14.1 million records. This took longer than anticipated, and they are working through major issues with the performance of the system. Progress has been made and the system seems to be performing quite well. Additional fine tuning is required and the implementation team hopes to have everyone up and running by the end of the week.

Draft Contingency Reserve Policy – Bill Vasek (handout):

A draft of the contingency reserve policy was distributed. Mr. Vasek asked committee members to please remember that this policy is just guide for use when setting the overall rate level. The framework is embodied in the chart, and there would be a separate policy

recommendation for the Accident Fund and for the Medical Aid Fund. In the current draft, the actuaries are recommending a 1% chance for deficit assuming the balance is at the middle of the contingency reserve range, and within a three year period there is a 10% chance of going below the lower limits. The percentiles were determined based on studies done by Conning & Company.

The Contingency Policy report will contain the Appendix's shown in the handout. Many individuals contributed in creating this important policy. Those individuals are mentioned in the acknowledgements on the back page of the handout.

Mr. Malooly reported that the next WCFC meeting will be held June 22, 2007, 9:00 a.m. to 1:00 p.m., at the Tumwater Building in room S216.

A CR101 has been filed for Retrospective Rating Rules. This rule making is to address the potential changes in the loss development factor in order to make them consistent with the loss development factors that were used in the classification rating. The department is planning to have a formal meeting before the 102 is filed. We are also going to be working on the IME issue during the interim.

The next WCAC meeting will be held on August 21, 2007 at the Tumwater L&I building.