

Workers' Compensation Advisory Committee (WCAC)
Labor & Industries Tumwater Building
Meeting Minutes
August 21, 2007

Introductions:

Present:

Committee Members:

Business Representatives: Kris Tefft, Association of Washington Business; Jon Warling, Mar-Jon Orchards; Rebecca Forrester, Group Health

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

Chair: Bob Malooly

Recorder: Kathy Chauvin

Guests: Nadya Peterson, Tammie Hetrick, Troy Nichols, Amy Brackenbury, Michael Temple, Larry Stevens, Beverly Simmons, Dave Kaplan, Jeannie Gorrell, Clif Finch, Janice Camp, Tom Kwieciak, Vicky Smith, Lucinda Young, Maria Hovde, Joan Elgee, Carolyn Logue, John Shepherd, Rick Slunaker, Becky Bogard, Tom Egan

L&I Staff: Judy Schurke, Bob Malooly, Kathy Chauvin, Sandy Dziedzic, Joshua Ligosky, Lisann Rolle, Cameron Craigie, Andrea Harker, Diane Doherty, Russell Frank, Wayne Shatto, Cheri Ward, Gary Walker, R.T. Nelson, Christopher Carlile, Mike Ratko, Vickie Kennedy, Nichole Runnels, Mark Mercier

Review/Approval of May 15, 2007 Meeting Minutes:

May 15, 2007 meeting minutes were approved with corrections.

Mr. Linch wanted it clarified that the question and answer reflected in the minutes of May 15 was not whether or not the words "affirmation rate" were appropriate. The question was whether or not the statements were consistent. One paragraph had a given rate and the following paragraph indicated a different rate.

Ms. Gude requested that local number 1439 be added to the name of the union she represents.

Question – under the Medical Advisory Committee report from Dr. Franklin in the last paragraph he indicated that notices would be given for the committee meetings - has this been done?

Mr. Malooly will check and distribute at the December 2007 meeting.

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

Mr. Egan reported that the graphs primarily depict the end of the fiscal year although they are quarterly or monthly graphs for the most part. Total appeals filed last year were just under 13,000, which is a few hundred more than the previous fiscal year. The Department Resumption Rate overall for the year was about 26.2%, and the Affirmance Rate ranged between 55% and 60%. The lag times remained fairly good. The final orders appealed to Superior Court was down about 10% from the previous fiscal year and in total amounts to about 3% of all appeals filed.

The Board has a new DVD that is designed to help workers and employers work their way through the Board processes and is available on the Board's Web site. Contact Mr. Egan's office if you would like to order copies.

Opening Comments – Bob Malooly:

There are three major issues for discussion today. First is regarding changes to the experience modification factor that was incorporated in last year's rate proposal. Second, review of the draft contingency reserve policy, with emphasis that it is, in fact, a draft. Discussions and review with the State Investment Board (SIB) and representatives of the Governor's office have yet to occur. And finally, there will be a discussion of the indicated rates of 2008. These rates are not necessarily those to be proposed for 2008. They are the rates actuarially indicated as break even for 2008.

A business representative asked to what extent, between now and the adoption of the contingency reserve policy, will the department actively be soliciting the comments of labor, business, and other representatives outside the Workers' Comp Finance Committee? Some of the proposals that are in the draft paper have been disseminated and interest and discussion has been generated. The business community would like to have an opportunity to have more of their representatives read the document and offer comments.

Mr. Malooly stated that the goal of sharing with the WCAC is to get feedback from the WCAC on the draft policy. There will not be a vote by the WCAC on the adoption of the policy, however, the department wants advice and comments on this draft from all the parties.

Experience Modification Factor Changes – Bill Vasek (handouts):

The goal of experience rating is equity and fairness. The department wants to charge firms premiums proportional to their future expected insurance costs; charging fair premiums provide proper incentives for safety and return to work. We also have a goal to have stable and predictable insurance rates.

Experience rating uses past experience to estimate future costs rather than to charge firms for past costs. If a firm has better than expected past experience, it will result in lower rates. The experience modification factor modifies the risk classification base rate to produce the firm's rate. The expected loss amount that is used for a firm is based on the hours reported by risk class for the last 3 years multiplied by the expected loss rates of each risk class of the firm. An example is shown in the handout on page 5.

The credibility of a firm's past experience depends on the amount of its past experience. More percentage weight is attached to the firm's actual past experience for firms with more past experience as measured by the amount of expected losses. The remainder of total weight is attached to the expected past experience of the firm's risk classification. Examples are shown in the handout on pages 6–7.

An analysis of historical experience rating plan performance shows that amongst the larger firms, we were charging too little for the low mod firms and too much for the high mod firms. After making the change in the experience formula, and then going back to see what would have happened had we been using this new experience rating plan all along, we would have had a loss ratio of about 1.6% average for the lowest mod firms and about a .03% below average for the high mod firms. Improvements were made by using the new experience rating plan. Examples are shown in the handout on pages 8–10.

For claim free firms, the claim free table was slightly readjusted. Examples are shown in the handout on pages 10–11. With the new system, the increase in experience factor due to just one dollar of time loss is moderated resulting in an improvement to the plan.

Possible options for 2008 rates are:

1. Go back to the old experience rating plan
2. Continue the transition from the old plan to the new plan
3. Fully adopting the 2007 changes or
4. Perform more research and adopt a different plan.

A labor representative stated that there are three primary concerns from labor's perspective – the decision should not have negative impact on safety and health or on incentives for employers to engage in safety and health practices; There should be no competitive advantage should be given to self-insured employers; and reducing shadow claims management should not discourage providers from treating injured workers. Labor would like the department to explain how the concerns are going to be dealt with.

Mr. Malooly stated that it is important to note that these three issues are interrelated. The decision that is made on the experience plan implementation effects the rates decision, as well as the contingency reserve policy.

Director Schurke replied that these concerns will be addressed. She would like to get advice from this committee during discussions between now and the December WCAC meeting so positions of the various parties and their advice to the department can be heard. She suggested that a special meeting may need to be held in order to further discuss these issues.

A labor representative indicated a concern that the changes that moderate the effects of losing the claims free discount may put pressure on employers not to keep people on salary, that it may also create more time loss and discourage kept-on-salary.

A business representative asked if there was any analysis whether or not the claims free economic incentive (to do kept-on-salary) would still exist under the new plan. The department should not incentivize the kept-on-salary program by overcharging those firms who experience their first claim.

Mr. Malooly replied that the first claim will continue to have a significant effect on the experience of those employers. There remains a significant incentive to keep people on salary under the new approach. Measuring the dollar effects of this incentive is very difficult to do. Our effort is focused on educating employers who are currently enjoying the claim free discount. We want to be sure these employers understand that they can take simple measures that may save them significant money going forward. We want them to contact their claims or account manager to talk about that. The department doesn't want them to make inappropriate decisions for their business that are also not the best decision for their injured worker. If they can keep someone on salary for a couple of weeks, which will save them money and it will also help to avoid creating an unemployed injured worker; that works out better for everyone.

A labor representative asked if there was a way to quantify or provide examples that help to quantify the savings to employers under the old system and what the savings would be under the new system. Can this be quantified?

Mr. Malooly replied that some examples of hypothetical firms can be created to show the consequences of the decision in both cases. There is still a very substantial financial incentive for the small employer to keep the injured worker on salary.

A business representative asked if there was a point (or two) at the stakeholder meeting that could characterize what was heard and what direction the department is taking now. It was thought the changes were fully adopted, that it was just the adverse consequences that were mitigated. Is it now correct to say that the dispute being heard from stakeholders is over the substance of the calculation itself and not the adverse consequence?

Mr. Malooly replied that the employers that were not adversely affected agreed and understood the financial stress that the large firms with favorable experience mods would incur due to the increase. They stated that they agreed to postpone the adverse effects for a year because they understood the circumstances. There is not much dispute among the parties over the substance of the proposed change to the calculation of the experience modification factors.

Director Schurke stated that one of the things she took away from the stakeholder meeting was that there were fewer questions about the actuarial soundness of what the department is doing than in the past. It seemed people were not questioning the methodology. It was about implementation and being concerned that the decision we choose to implement did not adversely affect any safety programs. There was still a concern about the claim-free discount rating system. For clarification, we still need to file the rule proposal and part of that rule proposal will be implementing the negative impacts for 2008 that were absorbed by the Accident and Medical Aid Funds for 2007.

Mr. Malooly stated that the new table would reflect the fact that the negative consequences will be allowed to take effect in 2008.

A labor representative asked if the subsidy is coming out of the Accident Fund and at what percentage.

Mr. Vasek replied that it comes out of both, and is approximately 2 ½% for both funds.

A labor representative asked if there had been any discussion about phasing this in. Maybe a two-step process. Workers are going to see an increase and maybe the rates could increase incrementally as opposed to all at one time.

Mr. Malooly stated that the purpose of this discussion is to look at all the options. The statute charges the department to follow recognized actuarial principals. We have studies done by internal and external actuaries that support the changes. Going back to the old experience rating plan is probably not a practical option, but we do want to hear from the WCAC on other options that we might explore.

A labor representative stated that their job was to look out for the interest of the people they represent but also to look out for the system as a whole. If this is what we have to do to make it fair, then it has to be done. The question becomes what is the best way to implement it. One possibility is to stage it so it is implemented over a 2-year period, rather than a 1-year period. The other issue is

the question of the competitive advantage for the self-insured, and, if there is one, how that is going to be dealt with. We will need to be provided with an understanding of how that's going to be handled.

A business representative asked if waiting until August 14 to follow through on a commitment made last fall to meet with stake holders fuels the argument that employers still do not know what the answer is for the contracts bid for 2008 – 2009. This speaks to the need to come up with something final.

Mr. Malooly replied that the modification factors were shown on the rate notice for 2007. It is hoped that those employers who received the benefit of our decision to delay the adverse effects would understand that it would not continue forever.

A labor representative expressed concern about awarding agencies and private firms that base the awarding of contracts, and whether or not you can even bid on a contract, on what your experience rating is.

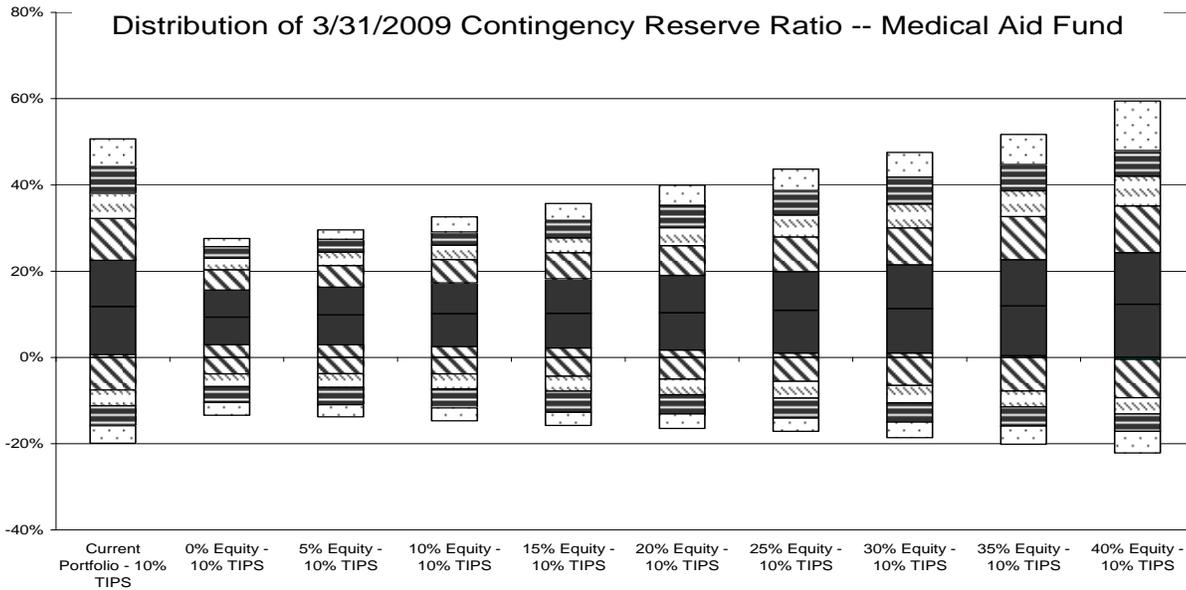
Mr. Malooly stated one of the suggestions that came out of the earlier meetings was for the department to provide a letter to those firms adversely affected that explains their change. The letter should say the actual loss experience of the firm has not changed. The letter should explain that the department made changes to the relative weights that are used for large firms versus small firms and that should be factored into decisions on bids. Once the decision has been made, the department is committed to provide a letter to contractors that they can use in their bid packages. Also, making sure the self-insured's calculate their experience factor for bid purposes using the new methodology is something we will certainly pursue.

A business representative commented for the record regarding self-insurance. He was not sure if shadow EMR factor is accurate. It has been asserted that this discussion may somehow give rise to the notion of a competitive advantage for self-insured employers in certain projects. It's important for the department to know that this idea is very controversial for the self-insured community and it is categorically denied that there is any sort of competitive advantage for self insured employers. Just because there is no real way to compare the state fund and the self-insured on the same projects does not mean self-insured bidders enjoy a competitive advantage.

Mr. Malooly mentioned that the purchasers of big construction projects are generally very sophisticated. They can match up state fund employers versus self-insured employers and compare safety records and workers' compensation experience of the firms before selecting winning bidders.

Contingency Reserve Policy Discussion – Bill Vasek:

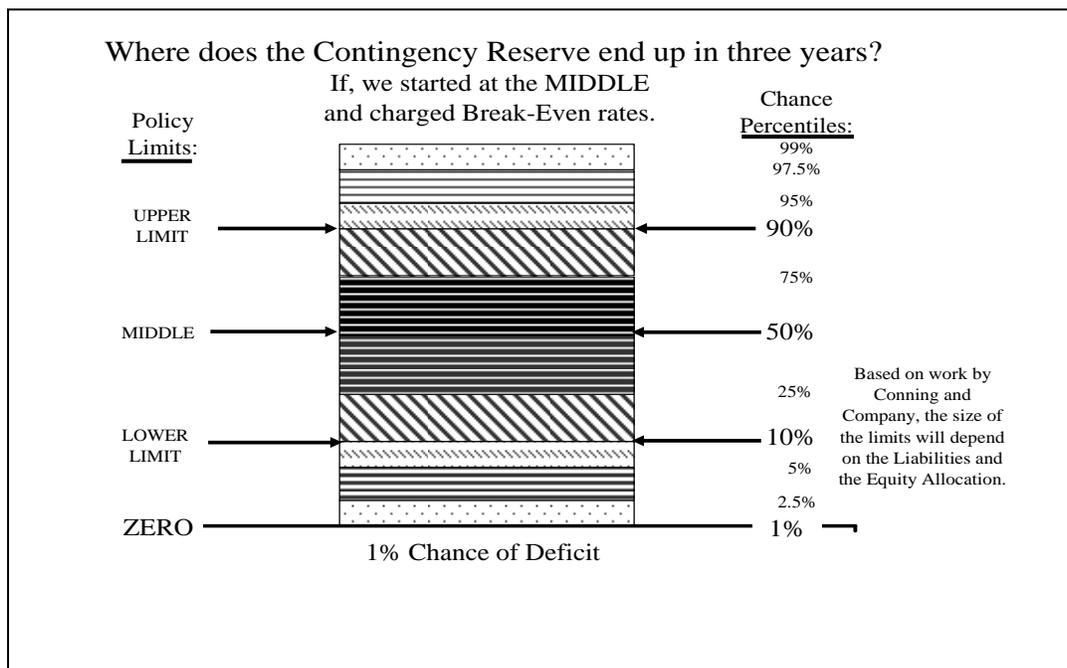
Mr. Vasek stated that the contingency reserve goes out of range too often with a 0 to 10% range. 0 to 10% of liabilities range; this happened frequently from 1995 to 2001. The problem is that the 0 to 10% of liabilities range is too narrow: The solution to this problem was to study the inherent volatility of the contingency reserve and adjust the policy range accordingly to have stable rates. The Conning study looked at the Medical Aid Fund and the Accident and Pension Funds combined, and looked at how much the Contingency Reserve would change from 3/31/06 to 3/31/09 using numerous Monte Carlo simulations. Conning was able to pick different hypothetical strategies as shown on the graph below in the Medical Aid Fund:



The bar on the left is the current portfolio composed of fixed income, equities, and treasury inflation, protected securities (tips) and the hypothetical strategies are shown on the bars moving to the right. The bars show the variability of the Contingency Reserve:

As the amounts of equities in the investment portfolio are increased, there is more volatility for the contingency reserve. The study shows how much can be expected.

Rates that maintain just \$1 of contingency reserve are not enough to maintain actuarial solvency. The problem with \$1 of contingency reserve is that the system will be insolvent 50% of the time. That is not really maintaining solvency. The solution would be to use a standard for the size of the contingency reserve with a smaller than 50% chance of insolvency. If we chose a 1% chance of insolvency in a three year period, it would be a more reasonable standard. The industry actually has a more severe standard using a lower likelihood of insolvency within a one year time period. The chart below shows the results if you put together, the Conning study and what the department actuaries did, using a 1% chance of insolvency, a 15% equity allocation for investments per fund, and then picking upper and lower bounds for the Contingency Reserve:



The middle of the pick is chosen so that we would have a 1% chance of deficit. Only if the contingency reserve went out of bounds would the department want to issue dividends, have a rate holiday, lower or increase rates. The lowering or raising of rates beyond the indicated rates leads to unstable rates but this change is limited to less than 20%. This is the basic construct for the contingency reserve policy that we came up with and it is the basis for the draft policy.

Mr. Malooly stated that the final decisions on the upper and lower limits, the middle of the ranges, and the equity allocations have not been made. The department still must review this proposal with the State Investment Board (SIB) because changing the equity allocation that this proposal requires must be approved by the SIB.

A business representative asked, from a historical perspective, even if it had not been formally adopted, how long has the 10% target range guided the department's thinking on this issue?

Mr. Malooly responded that it has been around 10 or 12 years.

The business representative asked if there was ever a period of insolvency during that timeframe.

Mr. Malooly replied that there were some challenges earlier with the financial stability of the fund, but there has never been an insolvent situation in recent memory.

Mr. Vasek stated that the Accident Fund would have been in negative territory if we had lowered the pension discount rate as was discussed in the past couple of years.

The business representative asked if the department was making an error by not addressing the pension discount rate as part of the contingency reserve policy discussion. Are these two discussions linked?

Mr. Malooly stated that the department can make decisions on the contingency reserve policy and then make decisions on the discount rate policy later. They both affect the financial conditions of the fund, but the decisions can be made on their own.

A labor representative asked where the 1% risk of insolvency came from.

Mr. Vasek responded that this was a judgment the department made. The industry does not use a 3-year period; they use a 1-year period. Instead of a 1% chance of insolvency it is close to a 1/100th of a percent chance of insolvency. They use a much more conservative standard than we do, but the department felt a 1% chance in 3 years was a reasonable choice to start discussions.

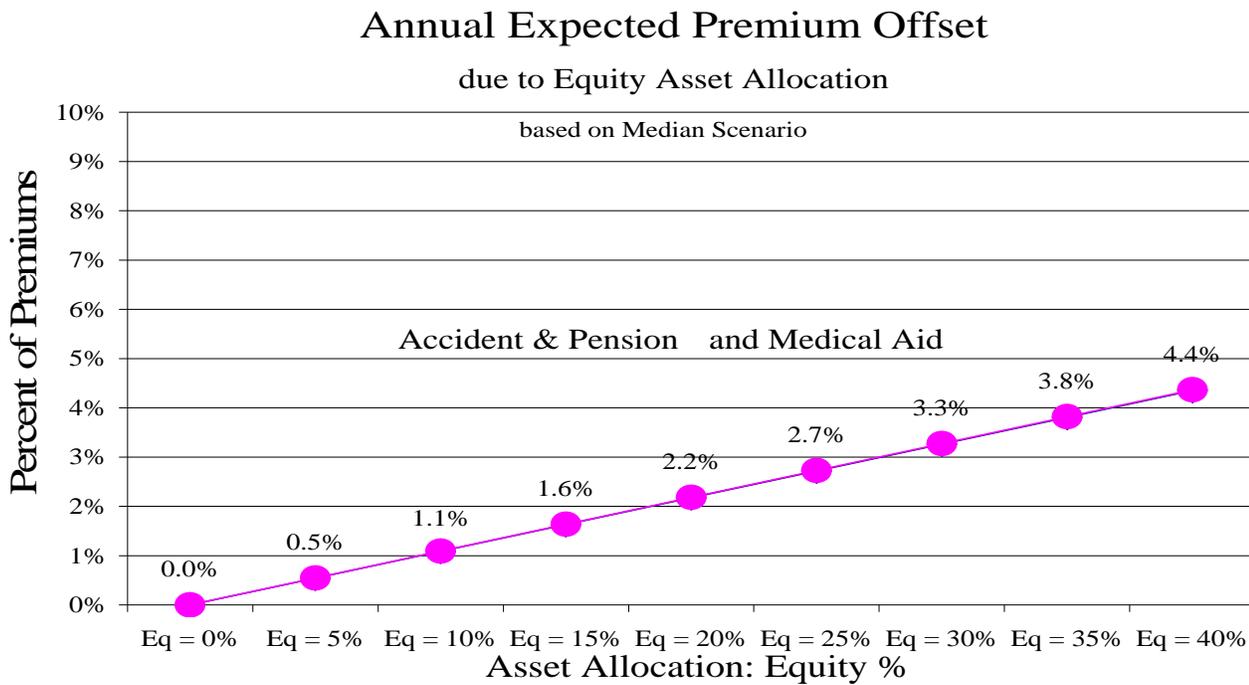
Mr. Malooly stated Labor and Industries is different than a competitive insurance company. We do not need to hold as many assets because of the exclusive nature of our insurance program- we still have to administer the funds in a responsible fashion. We are looking at this policy to help us do that.

A labor representative commented that this platform is similar to what the building trades had envisioned as the end product. There are still some questions as to what this proposed policy means to the workers. When you talk to the SIB ask what flexibility the department has in terms of changing the investment. What does implementing this policy mean to the worker's portion of the Medical Aid Fund? Producing a policy will be a blueprint for avoiding the volatility the system has experienced in the past. This is a first step. This policy is at least a starting point.

A business representative agreed on the nature of the document. We still need to disseminate this draft to the business community as a starting point for a lot more discussion. One of the challenges the department will be confronted with from the business communities' perspective is that there is an enormous amount of conservatism built into raising the upper bound of the policy range as much as being proposed.

A labor representative stated there is concern that changing the mix of the equity allocation is potentially going to reduce income to the fund. Labor would like some idea of what that reduced income to the fund is going to mean in increased premiums that impact workers contributions. Can some ballpark numbers be provided on what the potential impact on rates that are paid by both employers and their employees will be?

Mr. Malooly stated that the overall change in equity allocation is not that great. We are proposing reducing equities in the Medical Aid fund and increasing equities in the Accident Fund. The net change is only a couple of percentage points. The department will look at historical data to determine how much of a difference this change in equity allocation would make. The annual expected premium offset is shown in the graph below:



A business representative stated that the contingency reserve should be for the benefit of the people who paid into it, the employers and employees. Is there anyway a legislative raid on this account can be stopped during budget shortfalls?

Mr. Malooly stated that there are no guarantees, but the experience in Oregon where the state raided SAIF's assets, the general assembly basically appropriated the money from the fund. The state eventually lost that case in the State Supreme Court. It is a precedent that is pretty well established. These funds are not for the benefit of everyone in the state. The funds are only used for the employers and employees of the state fund. Self-insured's are different. To raid this fund and not also assess self-insurers for an equivalent amount would run into some very serious constitutional challenges.

A labor representative stated that in terms of the bands, the numbers that have been laid out put us at 80% of the time being within the bands and 20% of the time being outside the bands. If we are increasing the amount of investments, the equity allocation in the Accident Fund will show a greater amount of return. Reducing the equity allocation in the Medical Aid Fund for the workers portion of the premium they would see an increase. Potentially, for the employers, the offset between the increases in the equity allocation in the Accident Fund, could offset any increase they would see in their portion of their Medical Aid premiums. What would the percentage rate be if we're going to stay 80% in bounds and 20% out of bounds in terms of volatility under this proposal? Where would we need to be for the worker not to see any increase in their Medical Aid premium? What we do not want to see on either side is a rate increase to anybody just to get inside the bounds. If that is going to happen, then we have to change the equity allocation for the funds.

A labor representative responded that if we were going to see a decrease in the equities in the Medical Aid fund, then what that means is that the Medical Fund is going to earn less income. So if less income is earned then won't there be an increase in premiums in the Medical Aid Fund? It would be interesting to see what it would mean if we were at 75% / 15%, what that would mean in terms of the ranges, the percentages, and the equity allocation. Or hold the equity allocation at 30% in order not to have the hit on the Medical Aid Fund, and increase the equity allocation on the Accident Fund, what does that do?

Mr. Vasek responded that he would get those numbers together.

Mr. Malooly stated that there needs to be an understanding that being out of bounds could result in a rate holiday if you are above the upper limit or additional assessments if you are below the lower limit. The next steps will be to circulate the draft contingency reserve policy more broadly within the communities and we want input back from WCAC.

Rates Discussion – Bill Vasek (handouts):

The Actuarial Trends in Insurance Operations: The PowerPoint presentation was reviewed. The presentation was distributed and also emailed to the WCAC members and interested parties.

A labor representative asked what was meant by the term “net of Retro”.

Mr. Vasek responded saying there is funding that goes back to the Retro participants. So if you want to look at the actual funding of the program it is the net of Retro. You look at the premiums netting or subtracting away, the refunds that we give. This is the true funding of the program.

Mr. Slunaker asked why the department is choosing a different assumption for rating than reserving for time loss duration.

Mr. Vasek replied that the department has always done that. For rating the department does not want to use conservative assumptions. The reserving assumption is based on historical information throughout, so from a reserving standpoint it is felt that this assumption needed to be based on data. The long term concern is that if that continues on forever it will develop into a “turn out the lights” scenario. Financial implications have been shown that continuing on this trend forever is a very expensive trend.

The Overall 2008 Rate Level Analysis: The PowerPoint presentation was reviewed which indicated hourly rate changes of -4.5% in the Accident Fund, +18.8% in the Medical Aid Fund, and 17% in the Supplemental Pension Fund, which is an overall hourly rate increase of 6.0% from 2007 rate levels. The 2007 rates levels

in all the exhibits are tied to the January 1, 2007 rates. As a rate per \$100 of payroll, the indicated rate is \$2.14, which is less than 1990 rates.

During the presentation, there were questions concerning the percentages indicated on the slide showing the "Indicated 2008 Overall Rate Change".

Mr. Vasek explained that the percentages shown for last year's indicated 2007 change were in error. The 2008 percentages are correct. A corrected presentation was distributed and emailed to WCAC members and interested parties afterwards.

A labor representative asked if it was correct that because we have improperly funded Medical Aid by having lower than required rates we now require an 18% increase to come up to the expectation for the cost of rates?

Mr. Vasek replied yes, this was done by design in order to help reduce the Medical Aid contingency reserve, which was too high.

A labor representative asked how we ended up with a rate holiday and now we are looking at an 18.8% increase in the Medical Aid Fund.

Mr. Malooly responded that there was a decision not to take the indicated rate in the Medical Aid for a couple of years. Two years ago there was a 10% indication and we took zero. The cumulative effect of that is you wind up with an 18.8% indication. If you want to get away from using the rate mechanism to return dollars that's when you use a rate holiday to avoid the dramatic increases. The 18.8% is a reminder of the trouble that can be caused if you don't take the indicated rate. We haven't done that in the Medical Aid for the last couple of years, we started slipping back into the rate mechanism to deal with excess contingency reserves. And that would have gotten us right back into the situation where we would be facing the 40% rate indications. We decided we were not going to do that anymore, we were going to adopt a contingency reserve policy and when we are outside the upper bounds we would either have a rate holiday or a dividend mechanism that brings us back to the middle. We are not pushing the rates around artificially in order to return money.

A labor representative commented that right now we are in the second month of a rate holiday with the capacity to say that doing this calculation there is the ability to say 'wait a minute'; we are going to stop the rate holiday because what we are doing is creating a situation where we are going to have raise the rates.

Mr. Malooly stated that one of the problems when running a mutual insurance company is that you look back and say how much money did we collect to cover our obligations in the past? And, if you wind up with too much money you give a dividend to the owners of the company, which is exactly what is happening with the rate holiday. Giving a dividend to the people who contributed to the Medical Aid Fund, because our accumulated capital to cover the Medical Aid obligations was in excess of what the actual experience was. Going forward you have to price the insurance such that it pays for the cost going forward. Insurance companies do this all the time; here's a refund of prior premiums, but next year your rates will increase a little bit. This happens all the time. If you don't do that what happens is, there won't be a rate increase next year, we are going to draw down the contingency reserve. If you do that a couple years in a row, then five years later you are looking at a 30 to 40% increase, and that is what causes rate instability.

Director Schurke stated that last year one of the questions asked most frequently was, "Why don't you just reduce my rates- why are you giving me a rate holiday?" The answer was if we reduce your rates then they have to be jacked back up.

A labor representative stated that this was not happening with the Accident Fund. The department is not taking it away from them and then making them give it back.

Director Schurke stated that we do not have a large contingency reserve in the Accident Fund.

Mr. Malooly responded that if you look at the contingency reserve and the two funds as of June 30 the contingency reserve in the Medical Aid is \$1.2 billion dollars and the liabilities are on the order of \$2.9 billion dollars. When you look at the Accident Fund and Pension Funds combined there are only \$850 million dollars in the contingency reserve and the liabilities are \$6.2 billion dollars. There is less contingency reserve in the Accident Fund than in the Medical Aid Fund. That is the reason for the refund of the \$300 million dollars of the contingency reserve fund to bring things back into balance. There is no excess money in the Accident Fund so we are not giving a dividend to employers who paid into that.

Further, please remember that these are indications. These are not necessarily the rates that will be taken, judgment enters into this. Actuarial calculations produce these numbers, and then judgment is exercised to determine what we want to do? Do we want to build up the contingency reserve in the Accident Fund? Maybe we don't take the full 4.5% reduction. Maybe there is confidence that we are going to be able to control medical inflation better; maybe we don't take the whole 18%. We net out at 6% or maybe net out at something different. There are a lot of judgments that go into the actual final decisions that will be made. It's important for everyone to see what is indicated from an actuarial perspective before we exercise that judgment. We want to be careful not to get ourselves back into the trap of adjusting contingency reserves by taking the lower rates. We want to finesse this in a way that we're not seeing a big jump. One of our charges is rate stability, so we need to look at this, maybe take some informed gambles as to what the future will be, but it's a judgment call as to what will ultimately be put out as a proposal for rates. Late November Director Schurke will make a decision on what we are actually going to do.

A labor representative stated that if an indicated rate continually produces revenue in excess of what your costs are you need to look at the calculations you're using to arrive at that indicated rate. That is as much of a fix as the constant cycle of charging the indicated rate then giving back money through rate holidays or other mechanisms. Whenever your indicated rate produces revenue in excess of what the continuing costs are then you have to question whether the calculations of your indicated rate are appropriate for the program.

Mr. Vasek responded that what we have been unable to do is forecast what the equities market is going to do since we have 30% of our investments in equities in the Medical Aid fund. This makes the whole rating process very volatile and we can not predict the equities well. Looking at the equities market over the past four years, we have done very well. 2007 has turned out to be the best year ever for investment gains. We were unable to predict that, and we made too much money because of unexpected gains in the markets.

A labor representative asked what the percentage of the total premium workers will be paying if we go with the indicated rate.

Mr. Vasek replied 28.1%. And remember, historically the indicated numbers have been between 26 and 29%.

A labor representative stated that his assumption was that we were paying 25%. How did we go above that? When was it that we accepted that that was what it was going to be?

Mr. Vasek replied that we had a \$.18 Medical Aid rate in 1995 and it was lowered to \$.10 an hour and we held it down there for about six years. That was the time period when you had actual percentages less than 26 – 29%, because the department, on purpose, gave money back to rate payers. The 26 – 29% is what the indicated percentage was. If you were to charge rates up to the indicated rate level, then half of the Medical Aid and half of the Supplemental Pension Fund would have been 26 – 29% of the premiums.

Mr. Malooy stated that over time, all across the country, the benefit side versus the medical side of workers comp has changed. Medical is over half of the total outlay nationally. We are still down below half, but that pressure in Washington State has been moving up, not as fast as the national rate, but that trend is expected to continue. Procedures keep being developed medically to help injured workers, so this cost component is going to increase.

A labor representative asked what percentage of the 28% is the Supplemental Pension.

Mr. Vasek replied that he would have to calculate that and provide the answer at a later time.

A business representative stated that about a year ago during the 2007 discussion there was a slide that put the rate in context of the contingency reserve. Was that an effort to lower or manipulate the contingency reserve? That was a helpful bit of information to put the indicated rate in context, maybe there were several options laid out on the table.

Mr. Vasek wanted to remind people that in this concept providing premium rates that fund an accident year, the contingency reserve is the funding balance of all prior accident years. So, the contingency reserve on June 30, 2007 is not related to accidents in 2008. The contingency reserve is how well we did in the past.

Director Schurke stated that the department will look back at the 2007 presentation and replicate the information mentioned by Mr. Tefft provided the information can be found. We will also get the information for Mr. Stern.

A labor representative stated that one thing seems to be missing. Indicated rates have been discussed over the years, and typically the department has a proposed rate. The department has not presented a proposed rate.

Director Schurke replied that the proposed rate needs to be discussed with the Governor and she has been unavailable. The discussion needs to take place with the Governor before it is shared with the WCAC.

Reciprocal Agreement and Underground Economy – Carl Hammersburg (handout):

Underground Economy: We have found through our investigations that good companies who are trying to do everything appropriately are losing out on jobs. Trying to get information from the public when they are aware of someone who might be engaging in inappropriate activities is one reason why we have things like our toll free hotline and internet referral forms.

What the department is finding through some of the audits that have been performed, as well as a number of studies that have come from other states, is a growing problem of what is referred to as the “gray economy”. This is the misclassification of workers as independent contractors. It is starting to look like a larger issue

for workers' comp than companies that are completely running under the table. In FY2007 L&I found and audited 1,080 unregistered firms, 57% of which were in construction.

A business representative asked what methodology was used to derive a figure on the cost of firms not registered with anyone. How do you know?

Mr. Hammersburg replied that it is looking at macro-economic slices of the pie and trying to determine from the data available what may be happening in the industry, concerning various taxing issues.

A labor representative asked what the number was that are lost because of misclassification.

Mr. Hammersburg responded that grouped in under-reporting it is about 84 million.

Concerning contractors, there is a small team called FAIR, the Contractor Fraud Team, which has been going out nights and weekends to job sites and finding some very good referrals. In their first year of work, we have assessed over \$2.5 million dollars from audits based on their referrals, with a lot of referrals still pending. We have already collected over \$1 million dollars. The focus is to get to more of these places and increase our efficiencies. For the year ending June 30 we completed over 4700 audits compared to 3800 the year before, with no increase in staffing.

Reciprocity: The agency has made a decision to take a look at how we deal with extra-territorial coverage, reciprocity with other states. There are concerns about a level playing field, particularly around border areas of our state. We started with a group of business and labor stakeholders and talked through some of the issues. We then conducted some open meetings in Vancouver and Spokane to hear issues concerning the border states. We also contracted with a consultant who has done a lot of work with reciprocity issues in the past. We are planning to get the group of stakeholders together again and share the best information the agency has been able to gather and do another round of discussions. We will produce a final report to present to the WCAC before any final decisions are made.

A business representative commented that he was very impressed with the stakeholder group and the relationship between business and labor. It has been very productive. Also, from the employer standpoint a particular issue is the double payment of premiums, double coverage. A question however is, to the extent that the timeline has been pushed back, are you able to put a placeholder in the legislative discussions with the Governor's office to say there may be something coming on this issue?

Director Schurke stated the answer to that is yes.

Pension Study and Retro Proviso – Mr. Malooly (handout):

Pension Study: A copy of the draft RFP was distributed. The purple page indicates the contacts and dates. The department would like comments from the WCAC by COB on August 24. The department's proposed methodology has been laid out in the last part of the RFP and states how we think the issue should be approached. It then asks very specific questions of the respondents about their opinion concerning the methodology. We want them to think about this problem, we do not want any kind of standardized boilerplate responses.

Retro Proviso: Retro is on a slower track. We have a full biennium to address this issue. It is again an issue that requires some careful thought.

Director Schurke stated that a meeting has been scheduled for October 22, 2007 and will be open. By then, the Proviso Advisory Committee will be announced, which is separate from the Retro Advisory Committee. Mr. Bill White was the architect of the Retrospective Rating Program and he will be asked to present a Retro history summary at that meeting. Additionally, there will be a brainstorming session, and we will ask people to come forward with areas they think should be reviewed under the proviso. A set of principles will be presented that will be followed through the process, and we are working on getting a facilitator for those meetings. If anyone has any suggestions for membership for this committee please forward your suggestions.

Legislation Update – Vickie Kennedy (handout):

Voc Rehab:

- Subcommittee has been established.
- Preliminary draft rules for initial implementation provided to subcommittee for comment.
- New draft will be shared with subcommittee and stakeholders in September.
- Workflows, system changes, communications development in progress.
- Additional staff hired.

Mr. Swanson will forward the completed first draft rules to the WCAC and list of interested business and labor stakeholders. As soon as feedback is received regarding that package of rules the department will proceed to file the CR102 and hold public hearings.

Claim Suppression:

- Small stakeholder group to meet in mid-September to discuss draft rule language.
- Initial focus of the first meeting will be rules to define first aid and penalty structure.
- We may discuss with this group how can we best get input from employers and workers on elements of a bona fide safety and accident prevention program.

Family Leave:

- First taskforce meeting on August 22.
- Four key areas the committee initially intends to focus on:
 - Governmental efficiencies.
 - Effect on unemployment insurance.
 - Administering agency(ies).
 - Funding source.
- Expect to hold 4-5 meetings.

Defining Wage:

- Draft rules have been sent out to all WCAC members with the request that they be broadly circulated. Depending on the feedback received we may go to an expedited rule process, which means we do not have the need for a public hearing.
- Updates provided to staff pending final rule language.

Deduction of Partial Disability Awards and Social Security Offset Adjustments:

- Effects only pension cases and has been implemented and communicated to the staff.
- Elimination of the sunset provision for certain Social Security Offset adjustments has been implemented and staff notified.

Nurse Practitioners and Physicians Assistants:

- Both sunset provisions have been eliminated. Advanced registered nurse practitioners can now be attending providers and physician assistants have the ability to sign forms and declarations that their supervising physicians could sign.
- Emergency rules have been done so there is no break in services.
- Now looking at formal rule development and whether to include the other amendments.

Occupational Disease for Firefighters:

- A single level adjudicator has been assigned to handle all these claims for consistency.
- There is no rule development required, need to make sure staff is informed of the change and how to apply it.

First-fill Prescriptions:

- HSA in the process of looking at rules. This has an effective date of January 1, 2008.
- Looking at what process changes need to be in place so we can appropriately pay pharmacies for first-fill prescriptions when a claim has not yet been accepted.
- An increase in the dispensing fee has been implemented which also applies to first-fill prescriptions. The goal was to help pharmacies offset their cost of claims that are rejected.

Self-Insured Ombudsman:

- There is both a recruitment notice and an RFI released. Responses are requested by August 31.
- Responses will be reviewed with the Governor's office. The bill states that the Governor can appoint the ombudsman or the service can be contracted through the competitive process.

Increase in Minimum Benefits:

- Not effective until July 1, 2008 so we are in the process of making system changes.

Loss of Earning Power; Kept-on-Salary:

- Changes in LEP calculations only apply to re-opened claims. The kept-on-salary statute was amended so an employer cannot require the use of sick leave or annual leave in order to maintain kept-on-salary. Changes have been communicated to the staff. Reviewing policies now, but do not anticipate any need to promulgate rules.

A labor representative asked if any announcement has gone out to employers with regard to kept-on-salary.

Ms. Kennedy replied that all of the changes have been provided to self-insured in the form of an update. It is planned to be shared with the Retro organizations, and on September 5 the communication for the next employer newsletter will be finalized where we will advise employers about this and claims suppression as well. This goes out to all employers.

Mr. Kaplan stated that there are some policy implications from this legislation. A number of employers have collective bargaining agreements where the employee could buy back their sick leave. The law essentially undercuts the bargaining agreement so there is possibility for negative consequences.

Ms. Kennedy responded that we have frequently received this question regarding sick leave buyback programs. Sick leave buyback means that the worker gets their time loss and then they use that time loss to buyback their sick leave. If you are kept-on-salary the department does not pay time loss. From the information we have received this should have no impact on buyback policies.

Crane Safety:

- Stakeholder meetings across the state.
- Rules are being developed.
- Recruiting staff.

Safety and Health Investment (Grants) Projects – Beth Hoffman (handout):

The proposed timeline contains some critical dates. The original effective date proposed was April 2008. However, about two months have been cut from the timeline because the drafting process was completed more quickly than anticipated. The rule proposal will be filed October 23 and we intend on having the public hearing on November 28.

The intent of the budget proviso is that these funds only be available to employers and employees covered under the Medical Aid Fund. The funds are not intended to be used by self-insured. It is not only the employer or employee organizations that can apply for the funds. The proviso states that as long as the ultimate result of the project or the benefit of the project goes to a state fund work place, other individuals or organizations can apply for funding. The proposed rule will include an advisory committee. An advisory committee will be created with equal employer and employee representation. At this point the WISHA Advisory Committee will be asked to provide suggestions for membership. Membership has intentionally not been spelled out in the draft so there is the flexibility.

The purpose of the committee will be to provide DOSH with recommendation and feedback on applications for funding. Primarily they will review application packets, recommend those they believe warrant funding. Those recommendations will then be forwarded to the Assistant Director for DOSH and the final decision will reside with the Assistant Director. Should the Assistant of DOSH decide to approve funding for an application that the advisory committee recommended not be funded, or deny funding for a project that the committee recommended receive funding, then notification and rationale will be provided to the committee and by unanimous vote they can request that the Assistant Director reconsider that particular decision.

The application process will require the individual or organization to submit detailed information on what the intent of the project is, the intended steps to accomplish the project goals, and the timeline. The applications will contain a statement that there may be funding limitations imposed on individual projects. The monitoring program for each individual project will be determined by the intent, steps, goals, and timeline. The general concept for suspension or revocation is any misuse of project funds, fraudulent behavior, or similar activities. Some additional factors will be set out at a later date.

A labor representative asked why it was decided to use the process of a unanimous vote by the committee to get reconsideration rather than by saying a majority vote of the committee would ask the Director to look at the decision made by the Assistant Director.

Ms. Hoffman stated that is an option that was not considered. This option will be taken back for consideration. The intent in requiring a unanimous vote was to ensure that only those particular projects the committee as a whole felt warranted or not warrant funding would be the ones sent back for reconsideration.

The rule has been distributed to stakeholders with the request that comments are received from by September 4. The contact is Jill Saibel, (360) 902-4519, or saij235@LNI.wa.gov. The draft rule language is available on the Web site.

Chiropractic & Medical Advisory Committees – Dr. Gary Franklin (handout):

The draft CR102 for the rules related to Chiropractic and Medical Advisory Committees will be filed in early September. A copy of the draft rules were distributed for review. All the nominations for the chiropractic committee were provided by statewide chiropractic associations and for the medical committee by several specialty societies and statewide medical and healthcare organizations.

The nine members to the Chiropractic Advisory Committee and fourteen members to the Medical Advisory Committee will be appointed by the Director. By-laws will be drafted for the operation for each of the committees and will be presented at the first meetings for review and adoption.

A labor representative asked when communication regarding the committee meeting schedules would be sent out.

Dr. Franklin is hoping to have an orientation meeting in October, with the first quarterly meeting taking place in November or December. When the meeting dates have been set a notice will be sent out.

A labor representative asked if there was any interest from the eastern side of the state.

Dr. Franklin replied that there were actually two nominees from the eastside. One was un-scored because he did not have the appropriate experience, he only does Independent Medical Exams. The second was a reasonable candidate but was not as strong as the other candidates in the specialty.

Activity Prescription Form – Sandy Dziejdzic (handout):

The department has been trying to reduce administrative burden to the medical community and Health Services Analysis, the Office of the Medical Director, Policy & Quality, Claims, and Communications are looking at our major processes to identify barriers to retain and recruit providers. The number one complaint is the number and variety of forms that we send to doctors and the inconsistency in information requested.

The forms already in place were reviewed and it was discovered that the Activity Prescription answers many of the questions that are needed to manage claims and provides a lot of information in our system. Thanks to Dave Kaplan for getting his help in conversations going, and for the first time self-insurance and the state fund will be using the same form. The new form will roll out in November and will include communication to the providers.

The new form provides a lot of benefits – it will eliminate two forms in the self-insured community and four forms in the state fund. Doctors will be able to give instructions for light duty restrictions. Information concerning expected recovery time, maximum medical improvement, and other information needed to manage a claim will be provided. Workers' will see the form and know what their restrictions are. Employers will be able to do a quick and safe return to work.

A business representative asked if there would still be the job analysis that employers must do if they have return to work, light duty, etc.?

Ms. Dziejdzic replied, yes, that has not changed. What you will have are the restrictions for the worker. The key on the state fund side is that the information will be in the claim files to use when making referrals for return to work.

Mr. Kaplan stated that on behalf of the self-insured community he would like to personally thank Jean Vanek for putting the breaks on this being implemented and getting the self-insured involved in the revisions.

A labor representative asked how the worker was going to get access to this form.

Ms. Dziejdzic responded that there is a box on the bottom to be checked by the doctor indicating that the worker received a copy of the form, so the worker knows any restrictions that have been put in place.

A labor representative asked if this form was in a second language.

Ms. Dziejdzic stated not at this time. Interpreter and translation services are provided for workers who do not speak English.

A labor representative asked that their caucus be given a chance to review this document before it is finalized in order to have the opportunity to submit any suggestions.

Ms. Dziejdzic will provide 25 copies to the WCAC for review.

In closing Mr. Malooly stated that another meeting will be set-up prior to the actual rate filing to decide what gets filed and to receive any comments the WCAC has concerning the contingency reserve policy or the experience modification rating implementation. Comments on the Pension RFP are due by close of business on Friday, August 24.

The next regularly scheduled WCAC meeting will be held on December 4, 2007 at the L&I facility in Tukwila.