Workers' Compensation Advisory Committee (WCAC)
Labor & Industries Tukwila Service Location
Meeting Minutes
March 31, 2008

Business Representatives: Kris Tefft, Association of Washington Business; Jon Warling, Mar-Jon Orchards; Rebecca Forrestor, Group Health; Nancy Dicus, TOC Management Services.

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

Ex Officio Member: Tom Egan, Board of Industrial Insurance Appeals.

Labor & Industries Director: Judy Schurke.

Labor & Industries: Mike Ratko, Deputy Assistant Director of Insurance Services.

Recorder: Sharon Avery.

Guests: Dave Kaplan, Vicky Smith, Donna Egeland, Janice Camp, Beverly Simmons, Tammie Hetrick, Jan Gee, Ann Jarvis, Becky Bogard.

L&I Staff: Diane Doherty, Ron Moore, Cheri Ward, Karen Peterson, Sharon Elias, Jean Vanek, Carl Hammersburg, Bill Vasek, Joshua Ligosky, Roy Plaeger-Brockway, Lee Glass, Vickie Kennedy, Gary Franklin.

Absent Committee Member: Bob Malooly.

Presenters: Judy Schurke, Tom Egan, Mike Ratko, Bill Vasek, Vickie Kennedy, Sharon Elias, Roy Plaeger-Brockway, Gary Franklin.

<u>Opening Comments and Review/Approval of December 4, 2007 Meeting Minutes--Judy Schurke</u>

Mr. Ratko presented a safety message to the committee. The meeting continued with an introduction of the attendees.

The meeting minutes from December 4, 2007 were approved.

<u>Board of Industrial Insurance Appeals--Tom Egan</u>

Mr. Egan noted the BIIA is working on implementation of the legislative changes concerning the payment of benefits pending appeal. The BIIA is in the process of hiring its first new hearing judge as a result of the legislation.

Mr. Egan stated the quarterly graphs have a time lag. He will be working on getting these graphs in a monthly format in the future. He reported on the following charts:

- <u>'Appeals Filed and Granted per Month'</u> - Last meeting, Mr. Egan indicated some concern about increased appeals filed (10% increase from last fiscal year). BIIA members followed up with the department to determine what the causes might be. The numbers have gone down and the total is now at a 5% increase compared to last fiscal year. A spike in appeals granted occurred in August-October 2007 due to difficulties with ORION access which has been resolved. Although there had been a 20% increase in appeals granted, the numbers are at normal levels now.

- <u>'Department Reassumption Rate by Quarter'</u> - This is at about 25-26%.
- <u>'Average PD&O Lag-Time by Quarter for Hearing Judges'</u> - This is at 28 days for December, 2007. In February/March, average lag time was 24-25 days.
- <u>'D&O Time Lag'</u> - October-December 2007 was up to 75 days—for last two months, it is back down to 65 days (which is historical average).
- <u>'Average Weeks to Completion'</u> - All orders issued by quarter from date filed to date of final order--33.9 weeks.
- <u>'Pending Appeal Caseload by Quarter'</u> - 5,430 active cases at the BIIA based on the chart. The total is down to 5,157 based on the February report.
- <u>'Final Orders Appealed to Superior Court/ Quarterly'</u> - This is at typical 3-4%.

Mr. Egan was asked how many FTEs are anticipated for the benefits pending appeal legislation. He responded the fiscal note requested four new judges and 1.3 support staff based on 850 stay motions/year. The legislation is effective June 12, 2008.

Chief of Claims Recruitment--Judy Schurke

After many years of superb leadership with the department, Sandy Dziedzic has retired. We have appointed Cheri Ward as Acting Chief of Claims in the interim. Cheri has been with the department for 24 years, her most recent experience as the Program Manager for Policy and Quality. If you have claims related questions, please feel free to contact Ms. Ward at 360-902-4300.

We have received eight applications for the Chief of Claims position. If you have suggestions for people who may be interested in applying for this position, please have them contact Catthi Olson, Labor and Industries Human Resource Office, at 360-902-9152.

Follow-Up/Updates--Judy Schurke

Ms. Schurke answered a question from the last meeting regarding when the last salary survey was completed. The last salary survey for claim managers was completed in 2004, resulting in a 12.5 % increase for the 2005-2007 biennium.

At the December meeting, the committee received a presentation from Gary Bodeutsch, Employment Security Department (ESD), and had several questions that required follow-up. The questions and answers were distributed to the members of the committee. The questions are listed below:

- What would the average median wage look like?
- What are the average annual wages distributed by industry sectors?
- Is the average covered employment count by workers or by jobs?
- Are stock options included in the average wage calculation?
- Do Oregon and California use similar formulas to ours to calculate the average annual wage?

Ms. Schurke indicated further discussion may be appropriate in June, after the committee has reviewed the documents.

Ms. Schurke mentioned that Bob Malooly and Insurance Services staff developed a L&I Workers' Compensation "Fun Run"—a tour of Insurance Services operations from beginning to end. Mr. Malooly would like to extend an invitation to the WCAC to attend the tour. Sharon Avery will be scheduling a 4-5 hour session (lunch included) in the future.

New Rate Notices--Mike Ratko and Bill Vasek

Copies of the new and old rate notices were distributed to the members of the committee. Some changes in the revised rate notice include:

- The new version is in color.
- In the middle of the revised document, the claim-free discount is highlighted. If an employer has a claim-free discount, they know what the percentage is. If they do not, the website for further information is noted.
- A table was added that reflects employee and employer contributions and totals.
- On the back, definitions have been updated with clearer language.

These new rate notices will be mailed out in December for the 2009 rates.

It was noted that the sample shows a clerical office risk class. The hourly employer contribution is .07095, and the employee contribution is .04395, a much higher employee portion than the general average of about 25%.

Bill Vasek indicated the supplemental pension fund is a significant portion of the low-risk, clerical office class rate. The supplemental pension fund rate is the same for every class, from logging to clerical offices and is split evenly between employers and employees. As a result, at .0668, it is more than half the total premium of 11 cents of the low-risk class.

There was interest among the committee to better understand the various employee contributions for different classes. Mr. Vasek will present this at the next meeting.

Mr. Vasek provided a handout to the committee members as a follow-up to last meeting's questions:

> **Question:** What has historically been the employee portion of premiums, net of Retro?

This portion has typically been 24-29%, averaging 26.2% based on the rates that were actually charged. The numbers were lower when rates were held down in the medical aid fund to give money back to employers and employees.

> **Question:** What would the employee portion, net of Retro, have been if the department had always taken the indicated rate?

Typically, the employee portion has been 26-29%, averaging 27.5%. For 2008, the actual percentage is close to 27.5%. These figures include the supplemental pension fund contribution.

It was asked what the difference would be between the median rate and average. Ms. Schurke asked that Mr. Vasek show the information by risk class codes and where the median is for the employee. He indicated this could be done using a median firm for each class. The information will be provided to the WCAC.

2007 Rate Holiday Dividend & Plan--Mike Ratko and Bill Vasek

Copies of a fact sheet were distributed to the members of the committee.

Mr. Ratko reminded the committee that the department will provide a dividend to employers who did not participate in retro during the third and fourth quarters of 2008 as part of the 2007 rate holiday. We anticipate paying the dividends in July 2008, as we will have the premium data to calculate the appropriate dividend amount on June 1, 2008.

Mr. Vasek explained the rule adopted as part of the 2007 rates included the dividend calculation. The department currently estimates the dividend at 15.4% of accident fund premiums, totaling $38 million dollars.

Mr. Ratko added that if the amount due the employer is less than ten dollars, a check will not be issued. Instead, if the employer has an existing account, the amount will be credited to the account. If an employer has a pending audit or legal proceeding, the department will notify the employer and will not issue the dividend until the actions are completed. Finally, we will be in contact with the Internal Revenue Service (IRS), and other agencies regarding any other debt to ensure all outstanding debts are paid appropriately. There will be communication from the department on the dividend process.

<u>Legislative Update--Vickie Kennedy and Mike Ratko</u>

Copies of the "2008 L&I Legislative Summary" were distributed to the members of the committee.

Ms. Kennedy reviewed several major bills on the handouts including:

- **<u>HB 2955:</u> Ensuring access to criminal justice information (multi-agency)**
  This continued access is important for the safety of investigative staff assigned cases of alleged willful misrepresentation and employer or provider fraud. Several agencies were involved in this bill that continues access to data the department is able to use today.
- **<u>EHB 3381:</u> Relating to fees to implement programs that protect and improve Washington's health, safety, education, employees and consumers.**
  The bill included the agency's three fee-related proposals: Prevailing wage, Factory Assembled Structures/Mobile/Manufactured Homes, and Explosives.

Mr. Ratko reviewed the following bill:

- **<u>SB 6839:</u> Regarding workers' compensation coverage for work performed outside Washington**
  The department requested legislation concerning extraterritorial coverage/reciprocal agreements that was passed by the Legislature. The bill provides a definition of temporary and incidental work by Washington employers who work out-of-state as consecutive or non-consecutive work of no more than 30 days. The department will draft rules and will involve the WCAC in the review before the formal hearing process.

In general, our reciprocal states are receptive of the change and its intent.

Ms. Kennedy commented that the bill requires significant implementation work—not only with rule development, but also data gathering for the report. It was noted the department received funding for two FTEs; one FTE will manage the accounts for employers who work out of state, and the other FTE will manage the department's outreach efforts, reciprocal agreement negotiations, and drafting of the legislative report.

The department has not implemented process changes, but anticipates employers will designate if they will be working out of state, and these accounts could be assigned to one account manager to assist them.

Ms. Kennedy also reviewed the following bills:

- **<u>ESHB 3122:</u> Relating to consolidating, aligning and clarifying exception tests for determination of independent contractor status under unemployment compensation and workers' compensation laws and**
- **<u>2SSB 6732:</u> Implementing the recommendations of the joint legislative task force on the underground economy in the construction industry**
  The sections of 2SSB 6732 requiring FTEs were vetoed, but the staff was included in the budget. The underground economy task force has been continued for the next year.

- **<u>E2SHB 3139:</u> Providing for stays of industrial insurance orders on appeal.**
  The department's Legal Services program has been assigned to oversee implementation and will work very closely with Ms. Kennedy, Ms. Ward, and Ms. Vanek.

A workgroup will begin developing technical requirements concerning the overpayment recoupment process. The process will allow the department to track self-insured overpayments in addition to those for state fund and will include procedures for self-insured employers to request that the department collect from other state fund or self-insured claims effective January, 2009.

Further questions about implementation should be provided to Ms. Kennedy, and she will bring concerns to Annalisa Gellermann, Legal Services Program Manager.

Budget language stated the appropriated funds and FTEs were available solely for the purpose of paying benefits pending appeal.

Ms. Schurke remarked that the department will implement the bill by using existing resources until the situation is corrected.

- **<u>SSB 6246:</u> Authorizing travel expenses for closed industrial claims**
  This bill allows payment of travel expenses after a claim is closed if travel is required for repair or replacement of prosthetics, orthotics, or other permanent mechanical appliances (excluding hearing aids).

Ms. Kennedy provided an update for Family Medical Leave funding. The original legislation included a loan from the supplemental pension fund for implementation. Once ESD was recommended by the legislative task force to administer the benefit provisions, the loan was addressed through an interagency agreement to ESD. The total amount loaned through the interagency agreement is $29,000 L&I will receive payment of the $29,000 loan, plus interest, approximately the end of April.

<u>Rating: 2009 Experience Rating Plan--Judy Schurke and Bill Vasek</u>

Ms. Schurke introduced the discussion regarding experience modification changes being considered by the department. One of the department's goals is to make the rate setting process as transparent as possible and to help stakeholders understand all the moving parts of setting the rates. While the department has had internal discussions concerning possible changes recommended in this presentation, no decisions have been made. Another more detailed conversation with the WCAC will be scheduled in June.

Mr. Vasek provided a presentation entitled "Proposed Changes to 2009 Experience Rating Plan: Increasing Rate Stability".

Mr. Vasek explained that rate stability was added to the rate setting section of the law in 2005. Rate setting systems have two important goals: 1) the charged rate is intended to equal the indicated expected future cost rate; and 2) rate stability. These two goals conflict when the indicated current year rate for any employer is significantly different than the prior year's rate.

Mr. Vasek provided an example for the committee:

> Suppose that last year a medium-size employer was claim-free with an experience factor of .60. This year, in addition to ten medical only claims, the employer has a pension claim valued at $1 million. This firm has expected losses of $200,000. The costs reflected in the presentation total $1,016,000. The credibility weighting gives an average loss of $290,010. If this is divided by the expected loss, it equals a computed experience factor of 1.45, or a 142% increase from the prior year's claim-free factor.

This example shows how the goal of rate stability can conflict with the goal of charging the employer the indicated rate. The mechanisms in place to deal with these situations the maximum claim value limit of $502,800 (WAC 296-17-860). For example, if we limited the $1 million dollar claim to $502,800 the indicated experience factor is reduced to 1.1236, significantly smaller than 1.45. This mechanism helps with rate stability.

Other rate stability rules include the 25% rule and the "rule of 1.0". In this case, the new indicated experience factor is more than 25% different than the prior year's factor and the new factor is on the other side of 1.0. The rule limits the factor to 1.0. This provides the employer with a 67% increase, much lower than the other possible increases discussed above.

Washington's $502,800 single claim limit is the highest in the nation (CA: $180,000, DE: varies by size, IN: just over $100,000, OR: $130,000). Other states maximum claim values are close to the average death value for Washington, which is $222,141.

If we used a maximum claim value equal to the average death value ($221,141) in the example above, the indicated experience factor would be .9338 (a lower factor than the others calculated, and a 56% increase – providing greater rate stability). The 25% rule would next take effect and the reduction in the maximum claim value together with the existing 25% rule would reduce the experience factor increase to 25%.

In response to questions, Mr. Vasek explained the rule of 1.0 applies if the indicated factor is on the other side of 1.0 from the prior year's factor. When this happens, the factor is limited to 1.0. The 25% rule does not apply in these cases.

- Referring to slide 9, Mr. Vasek indicated that lowering the maximum claim value primarily affects the few claims valued as pension cases within the three-year experience period.

In the summer, we will study the impact of the "rule of 1.0" and how we can provide rate stability for these small firms.

Mr. Vasek was asked whether lowering the maximum claim value means the amount over $222,141 is absorbed by the fund—is there an adverse impact causing insufficient money to be collected.

Mr. Vasek responded that the overall rate level remains the same; however, those not benefiting from this change would be charged more to make up the difference. This increase is very small and is accomplished by decreasing the expected loss rates by 1.73%.

A discussion ensued concerning how changes to the experience factor calculations may mean employers with severe claims or that may have unsafe workplaces would have less consequence reflected in their premiums.

In addition, small-to-medium-sized firms with historically good experience are now negatively impacted by a pension claim. In these cases, the firm's factor would first get limited by the 25% rule or "rule of 1.0". Subsequent years would be partially determined by subsequent experience. The pension claim would remain in the experience period for a total of three years. In this case, the rate would most likely keep increasing because of the limitations (25% rule, "rule of 1.0") until the three-year period ends.

When asked whether it is an accepted insurance principle that a company with a high claim frequency is a higher risk than a company with one pension claim, Mr. Vasek indicated that the industry considers the higher risk firm to be the one with much higher than normal compensable claim frequency. He added that Washington caps only the medical aid portion of a costly claim for purposes of classification rating. The maximum claim value is only used for experience rating.

Mr. Vasek also stated the excess costs beyond the maximum claim value are pooled, and the classes pay a similar portion within the system for these excess costs.

Mr. Vasek noted that the claim-free discount program satisfies both of the two rating goals for: 1) rate stability; and 2) charging rates that equal the expected future indicated cost rates.

Financial Statement Update--Sharon Elias

Ms. Schurke provided an update from the February State Investment Board meeting presentation and discussions on Conning's recommendations to make changes to our allocations. The board adopted the proposed changes in February which include:

- Accident/Pension Reserve Funds:
  - TIPS target increased to 10%.
  - Equity allocation between 5%-15%; 10% equity maintained based on Conning recommendation.
  - Increase in non-US equities from 15% to 40%.
- Medical Aid Fund:
  - TIPS target increased to 20%.
  - Equity allocation reduced from 30% to 15% to reduce volatility.
  - Increase in non-US equities from 15% to 40%.

Ms. Elias provided copies of the "Comprehensive Annual Financial Report Workers' Compensation Program", "Statutory Financial Information Industrial Insurance Fund", and "Statutory Financial Information Industrial Insurance Fund" were distributed to the members of the committee.

For the second year in a row, L&I received a clean opinion on the GAAP report.

The SAAP financial report audit is not a statutory requirement. However, the department elected to contract for an independent review of the SAAP financial report. A clean opinion was received on this as well.

- Lastly, the quarterly financial statement as of December 2007 was reviewed. As suggested from the last WCAC meeting, percentages have been included in the cash flow statement on page five.

Overall, the contingency reserve decreased by $338 million dollars due to the decline in US equity market, rate holiday, and dividend declared.

Mr. Ratko publicly thanked Ms. Elias and her staff for their on-going efforts—to receive clean opinions year after year is impressive and appreciated.

Health Care Update--Roy Plaeger-Brockway

Mr. Plaeger-Brockway explained the presentation was to answer questions from the last WCAC meeting:

1. What do we do with problematic providers and what we are doing to try to improve providers' understanding of return-to-work issues?
2. How many providers licensed in the state are signed up and working with the department?

Copies of the presentation were distributed to the members of the committee.

Physician Review: The department implemented a program in 2003, to review physicians' practice patterns. Health Services Analysis (HSA) receives referrals about physicians from people outside of the department, occupational nurse consultants, and claim managers. HSA looks at things like number of injured worker cases a physicians has and contracts for a peer review with a physician of the same specialty. The department has removed three physicians. Two more physicians are currently under review, and the department has taken corrective action on 13 other physicians.

Mr. Plaeger-Brockway was asked whether the department runs into barriers removing physicians. He indicated there is an appeal process and it can take years for resolution. It also is time-consuming to initially gather the information and conduct the peer review.

He also indicated there is a national clearing house (HIPBD) that collects information from all states regarding physicians with quality of care problems. The department also reports our findings to the database.

Registered Providers: 20%-21% of licensed medical doctors are registered to provide services to injured workers. To improve access to providers, the department is attempting to reduce administrative burden and paperwork, provide outreach to physicians, clinics and hospitals, provide incentive payments, make faster payments and provide "go to" staff for clinics that are having issues with the billing system. This is helping make physicians willing to treat injured workers.

Committee members expressed concern for employers who are bringing in H2A/H2B workers and the lack of available doctors in Mexico. There are additional, significant issues specific to this population of workers.

Ms. Schurke confirmed there is a workgroup designated to address these issues and suggested that an update be added to the next WCAC meeting agenda.

Chiropractic and Medical Advisory Committees Update--Gary Franklin

Health Technology Clinical Committee decisions regarding lumbar fusion and discography: Copies of both decisions were distributed to the members of the committee.

The statewide committee made a decision that a patient participate in pain services before a lumbar fusion is considered.

The second decision refers to discography. This test was reviewed by the committee and determined that it was not effective or accurate and is not covered for patients with chronic low back pain and lumbar degenerative disc disease.

The state has a lot of work ahead regarding how to improve quality of pain services to patients. There will be future meetings with other state agencies and pain clinics to discuss how to utilize pain clinics more effectively.

The WCAC members were encouraged to attend a Health Technology Clinical committee meeting by Robby Stern. He indicated it is a model of how health care decisions should be made.

The Workers' Compensation Medical Advisory Committee has had two meetings, with the next scheduled for April 10, 2008. The bylaws have been approved and the committee will be choosing the chair and vice chair at the next meeting. A nerve conduction policy was reviewed and the committee hopes to finalize the policy at the April 10 meeting. The committee was authorized to host quarterly meetings, but will also have ad hoc subcommittees to work on specific guidelines, including carpal tunnel, ulnar neuropathy, and radial neuropathy treatment guidelines.

<u>Opioid Issue--Dr. Gary Franklin</u>

The opioid-dosing guideline was developed to address the significant increase in opioid associated prescription drug deaths in the state.

A two-hour free training on the guidelines is available online. There is also an opioid calculator function. All prescriptions and doses can be input and the calculator will determine the morphine equivalent. If the committee is interested, the website address can be provided to them.

<u>State Auditor's Report--Judy Schurke</u>

Ms. Schurke remarked that this committee has not discussed the State Auditor's findings in the past. An annual report is generated with any audit findings; most findings that relate to workers' compensation concern internal controls. These findings may be important for the committee to be aware of as key advisors for the department.

Examples of the most recent findings include:

- Pension Payment System:
  - No automated calculation for pension payment system.
  - This is being addressed through programming work done with existing resources—no decision package requested.
- Opioid Finding:
  - Claims with opioid prescriptions not adequately monitored.
  - Reports from providers not requested routinely to justify ongoing payment of prescriptions.
  - A plan is currently in place to address this finding.

It was asked whether a law passed last year that guarantees payment for first-fill prescriptions has shown any trends. Mr. Plaeger-Brockway answered that the department's pharmacy consultant is monitoring this and no problems have developed so far. A report on the first-fill data could be generated for discussion at the August WCAC meeting.

Dr. Franklin remarked that emergency rooms nationwide have developed their own quality indicator related to patients with acute pain; they generally receive opioids. It may be useful to see what patients are receiving for back pain on their initial visit.

<u>Interim Discussions, Strategic Planning--Judy Schurke</u>

Ms. Schurke noted that both Business and Labor quarterly meetings were scheduled next week. Ms. Schurke expressed interest in discussing with each group, and then jointly at the next WCAC meeting the following topics:

- Legislative items.

- 608-609 fund use during interim.
- Strategic plan/budget request for 09-11 biennium.

A special WCAC meeting will be scheduled on June 17, 9:00-12:00, in the Tumwater auditorium.

Farewell to Robby Stern

This was Robby Stern's last WCAC meeting. Ms. Schurke thanked Mr. Stern for his years of participation on the WCAC and his dedication to Washington workers.

Jeff Johnson will be Mr. Stern's replacement. Mr. Stern thanked his colleagues and all the staff from the department.

Meeting was adjourned.