

**Workers' Compensation Advisory Committee (WCAC) Meeting
Labor & Industries Tukwila, WA
Meeting minutes
December 8, 2008**

Attendees

Business Representatives

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

Labor Representatives

Karen Gude, United Food & Commercial Workers Union Local 1439; Dave Johnson, Washington State Building & Construction Trades Council; Owen Linch, Joint Council of Teamsters No. 28.

Ex Officio Member

Tom Egan, Board of Industrial Insurance Appeals.

Labor & Industries

Judy Schurke, Director; Bob Malooly, Assistant Director of Insurance Services.

Recorder

Sharon Avery.

Guests

Lauren Gubbe, Beverly Simmons, Vicky Smith, Larry Stevens, Venetia Runnion, Terry Tilton, Joan Elgee, Craig Scukas, Scott Darek, Holly Chisa, Ann Jarvis, Tammie Hetrick, Patty Nielsen, Dave Kaplan, Bill Johnson.

L&I Staff

Marty Sharf, Joshua Ligosky, Bill Vasek, Anita Austin, Diane Ottman, Roy Plaeger-Brockway, Gary Walker, Les Hargrave, Dick Bredeson, Marjorie Woodard, Cheri Ward, Brenda Heilman, Sharon Elias, Jason McGill, Mike Ratko, Ron Moore.

Opening Comments and Safety Message:

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

The meeting minutes for August 25, 2008 were approved after a correction on Page 6, "Mr. Johnson stated that an accounting of the differences in the workforce from "1996-2008"... who are working."

Pension Study Deliverable

The department has received the final version of the Pension Study deliverable. A letter accepting the study, which will also outline the department's issues and concerns, will be drafted by Ms. Schurke and Mr. Malooly. The draft letter will be shared with the committee.

Retro Studies Update

The issues with a vendor's work plans have been resolved. The retro studies are currently on track.

Financial Reports: Sharon Elias

This is the 3rd consecutive year the State Auditor's Office hired Peterson Sullivan to conduct the GAAP audit. The department has chosen to do a SAP audit and chose the Eide Bailly firm from Minnesota. The firms are conducting the audits simultaneously and will be completed by mid-December. The GAAP and SAP financial statements will be provided by the next WCAC meeting.

The GAAP auditor suggested changes to the 2007 financial statement, which will slightly change the ending fund balance as of June 30, 2007. This is a result of the distribution of self-insurance revenue for prior periods that was recorded in fiscal year 2008. The SAP financial statement will not be impacted.

Copies of the presentation, *Statutory Financial Information Industrial Insurance (State) Fund 1st Quarter Fiscal Year 2008 as of September 30, 2008*, and the *Industrial Insurance (State) Fund Interim Statutory Financial Information for the First Quarter of Fiscal Year 2009- September 30, 2008*, were distributed.

Financial highlights include:

- In September 2008, investments in the Lehman Brothers Holdings, Inc. were sold resulting in a loss of \$36 million. Sold investment in commingled index fund which held securities issued by American International Group, Inc., Washington Mutual, Inc. and Lehman Brothers Holdings, Inc. at a loss of \$3.2 million.
- In spite of market fluctuation and losses on investment holdings, the investment balance held steady. Investments have remained about \$11 billion.
- As of June 30, 2008, the benefit liabilities were about \$9.3 billion and as of September 30, 2008, they were about \$9.5 billion.
- The contingency reserve continues to decrease, but stays within the draft policy range. The contingency was \$1.6 billion as of June 30, 2008 and \$1.3 billion as of September 30, 2008.
- The Accident fund contingency as of September 30, 2008 are 8.8%, slightly above the lower level of the range.
- The contingency for the Medical Aid fund as of September 30, 2008 is 19.9%, between the mid- and lower-level.
- As of November 28, 2008, the contingency reserve balance is roughly at \$982 million based on equity market changes.
- Since June 30, 2008, \$329 million of the contingency reserve has decreased due to changes in investments and changes in benefit liabilities.

Conning Presentation: Scott Daniels

Copies of the presentation, *Insurers and the Financial Crisis*, were distributed.

Mr. Daniels began with an introduction of himself. Conning was hired by the State Investment Board and works with the department to refine the investment strategies. Conning primarily deals with the portfolio, the split between stocks and bonds, appropriate maturity for bonds and other high-level investment issues. Mr. Daniels' presentation focuses on the status of the insurance industry, property casualty industry, workers' compensation industry and the current financial markets.

Concerning slide 5, it was asked if the department and other state carriers are included in the statistics. It was answered that L&I would not be included because the department does not file insurance statements with the National Association of Insurance Commissioners.

On slide 6, a question was asked concerning what percentage of the commercial soft market chart is workers' compensation. Mr. Conning explained that workers' compensation is the largest of the commercial lines and graphs will be provided later in the presentation.

On slide 7, it was commented that in 2008 the combined ratio is 104.9% which indicates a loss of money which should stimulate a raise in premiums. Mr. Daniels confirmed this is correct per the combined ratio drop in 2009 and 2010.

For slide 12, Mr. Daniels indicated the drop in 2007 may include billions in savings from prescription drug reforms and a number of states passed reforms in 2006 and 2007 to cut costs.

On slide 13, it was asked if 2003 to present is sufficient time to know if data will show profits. Mr. Daniels responded these are good estimates and should not deteriorate.

Concerning slide 15, it was pointed out that Washington's medical inflation has been below the national medical inflation rate; however, the last few quarters have been at 7% primarily due to incentives for providers. For the Northwest, the inflation for workers' compensation in Washington was slightly below the average medical inflation. Washington handles more severe injuries, which incur expensive surgical procedures and rehabilitation, which may also account for some of the costs compared to national data. Mr. Malooly remarked that the department is reviewing current costs and containment opportunities without discouraging providers to treat injured workers. The department will continue to report on these efforts.

On slide 16, the data shows actual premiums being paid. Most states base premiums on salary while Washington is the only state that uses hours. It was commented that while Washington's rates are substantially lower than the national average, other states have made benefit cuts to compensate for the rising medical costs.

On slide 17, Mr. Malooly added that the department is conducting an industry sector study of new claims. Claims are going down and the department wants to learn which industries are accounting for this decline, perhaps specifically residential home construction. The study will divide the Washington economy into different sectors and then review the history of the claims from those sectors, both the number of claims and the frequency based on hours worked. This should show how the economic downturn is affecting workers' compensation. Ms. Schurke commented that the department will share the results with the committee in a future meeting.

On slide 29, Mr. Daniels clarified that the workers' portion was included in the premium rate ranking of each state.

On slide 30, Mr. Malooly remarked the state typically holds bonds to maturity, then reinvests. He asked what the outlook for reinvestment is. Mr. Daniels replied there will be higher yields but more risk. The difficulty will be deciding what to buy.

Board of Industrial Insurance Appeals: Tom Egan

Mr. Egan informed the committee that board member Cal Dickinson, who represented the business community, passed away in early October. AWB has submitted a list of candidates to the governor's office to fill Cal's position.

Copies of the presentation, *WCAC- December 8, 2008*, and *State of Washington BIIA Monthly Statistical Report for October 2008*, were distributed.

Mr. Egan reported on the following charts:

- **Total Appeals Filed and Granted** - Total Appeals filed are down about 10% thus far this fiscal year. The total appeals granted are down 25%.
- **Department Reassumption Rate by Quarter** - The reassumption rate remains at historical levels of 24.5% for the fiscal year.
- **Average PD&O Time-lag by Quarter for Hearing Judges** - The average PD&O lag-time for hearing judges is the time taken for a judge to issue a proposed decision and order. The time is up slightly to 26 calendar days from 22 days in June. It remains an average of 25 days. BIIA currently has three less judges as positions have not been filled due to the decrease in appeals.
- **D&O Time-Lag by Quarter** - The D&O time lag has remained steady—it will start increasing because of the board member vacancy. This is because, if there is a disagreement between the two current members, the decision will wait until a new member is appointed. There is one case that is almost 180 days since the petition for review was filed. This is the statutory limit and if there is not a board majority at the time, the law states the department order stands. The appealing party can appeal to superior court. In the absence of findings and conclusions from the board, the superior court may return it because, in a jury trial, findings and conclusions must be given to the jury.
- **Quarterly Average Weeks to Completion** - The average weeks to completion remains at 34 weeks for the fiscal year.
- **Caseload at End of Quarter** - Pending cases continue to go down since appeals are slightly down; judges have opportunity to catch up on their caseloads. The total 4,580 appeals is the lowest since the 1990s.
- **Percentage of Final Orders Appealed to Superior Court--Quarterly** - 3.3% of board final orders were appealed to superior court from June 2008 to September 2008.

Mr. Egan added that the board has had 23 stay motions from employers due to the “benefits pending appeal” legislation. The board was anticipating 800 motions for the fiscal year. It was asked what the status of the stay motions are and how many employer appeals have been filed. BIIA has issued all stay decisions within the statutory timeframe. There are three pending, 19 denied, and one granted. 596 employer appeals have been filed since the beginning of the fiscal year.

L&I’s Catastrophic Injury Outreach Plan Presentation: Deirdre Staudt and Diane Oltman

Copies of the handout, *Catastrophic Injury Coordination Project*, were distributed.

Ms. Staudt and Ms. Oltman are occupational nurse consultants (ONC) for the department and work from the Bellevue and Tacoma offices. The project began in August 2007 involving Harborview Medical Center and the department. The goal of the project is to ensure workers who are traumatically injured on-the-job and are hospitalized are provided information about workers’ compensation quickly. The project also expedites the claim manager’s access to information needed to process claims for catastrophic injuries. The project has been very successful in meeting these goals. The report of accident and medical information get to the department much faster, claim allowance decisions are made quicker and coordination of care is facilitated. The ONCs have reviewed all incidents of catastrophic injuries except psychiatric hospitalizations. Harborview provides a packet to all patients who go to the emergency room due to an on-the-job injury which includes the “Rights of Injured Workers” brochure, a worker verification form, and a transfer of care card. A feedback process has been developed for cases that are rejected. Harborview receives the feedback through Employer Services or Claims Administration and they provide alternative resources.

The ONCs make personal visits to the hospital rather than using the phone, based on their judgment of the needs of the case. The ONC will make every effort to communicate with family members or medical staff at the hospital. Ms. Staudt also remarked that she visits the hospital once or twice a month to check on L&I's patients.

The ONCs also communicate with the employers of the injured workers. Ms. Staudt confirmed that as of December, all four catastrophic patients' employers were contacted.

It was clarified that employers are required to report the hospitalization of a worker within eight hours under the requirements of a new DOSH rule. An ONC will coordinate with a DOSH inspector if they are notified of a catastrophic accident first.

It was asked if the ONCs provide follow-up contact with injured workers after they are released from the hospital's care. Ms. Staudt confirmed that the ONCs often stay in communication until treatment has stabilized and the worker understands their claim process. Ms. Schurke added the department is trying to surround these injured workers with resources and services available for them.

Ms. Oltman provided three examples of success stories:

1. A 30-year-old male crushed both feet in a forklift injury and his left foot was amputated. Ms. Oltman met with him and learned a friend would assist him with daily care at his home. The ONC coordinated an occupational therapist to visit the home and ensure safety of the worker. Within two months, the worker will return to the employer of injury (EOI) on light duty.
2. A 58-year-old male who was stoking a furnace and his shirt caught on fire. Five percent of his body surface was burned including facial and hand burns. Ms. Oltman met with him at the hospital and, after his release, worked with his burn clinic doctor and he was back to work within a month.
3. A 45-year-old Spanish-speaking male fell off a truck and hit his head on the cement, sustaining a head injury. Upon visiting him at the hospital, Ms. Oltman learned he had many complications that should have restricted his release from the hospital. Ms. Oltman worked with the social worker to prevent an early discharge. The ONC also assigned a nurse case manager to coordinate care upon release.

IME Presentation: Gary Walker, Anita Austin, and Janet Morris

Copies of the presentation, *IME Quality Improvement*, were distributed.

Mr. Walker provided a summary of slide 1:

- **Quality of Care:** HSA has a team of ONCs who review all issues regarding care, including issues of harm or potential harm to injured workers. A number of actions have been taken against medical providers. The department has revoked six provider account numbers of medical providers—three were attending physicians and three were medical examiners. These providers no longer can treat injured workers or bill the department. The department has inactivated three medical examiners' provider accounts on mutual consent; they will voluntarily step out of the system. The department has also taken informal actions requiring additional education and chart note reviews for seven other providers. The department has conducted unannounced site visits to four IME clinics—the department closed one of the IME clinics down due to unsanitary conditions. The provider cleaned the facility to department standard and was able to return to the active examiner list.
- **Medical Billing Audit:** The team consists of five auditors who review medical billings to ensure they are paid appropriately. Since January 2008, the department has assessed \$1.9 million in inappropriate payments. The department has recouped \$462,000 as of December 5, 2008.
- **Provider Education:** HSA trains over 500 providers per year on various topics.

- **Independent Medical Examinations:** HSA is responsible for the current IME process and ensuring providers are meeting standards. Research includes reviewing fee caps and following up with customer complaints. The team has found some IME providers who were examining more than 12 patients per day; three providers were seeing up to 29 patients per day. The department is considering a cap of 12 scheduled exams per day—this should alleviate some customer concerns on feeling rushed in their appointments. The department found 75% of providers were not exceeding 12 appointments per day. A letter was sent on November 17, 2008 to 93 providers who were exceeding the potential cap. The letter expressed concern of the quality of the exams and reports.

On November 20, 2008 a letter was sent to all state fund and self-insured providers with the new fee schedule.

HSA has received positive feedback on both letters; the providers are willing to cooperate with the department.

In response to a question about no shows for IME appointments, Mr. Walker explained that no shows account for 20% of the cases reviewed in a three-year period.

Ms. Austin continued the presentation with “Five Major Steps of the IME Project” and “What’s New in 2008-2009”. Ms. Morris concluded the presentation with slides titled “Central Scheduling Unit”.

On slide 7, it was asked if there were any efforts to reduce the no-show rate. Ms. Morris explained, on slide 10, that the department is working on a new initiative. The process required IME schedulers to call the injured workers prior to scheduling their appointments, involving the worker in the IME process and encouraging them to attend their appointments. Additionally, the IME schedulers are attempting to accommodate the worker’s schedule and travel issues. The number of reschedules has decreased since the initiative started.

On slide 9, Ms. Schurke asked if the IME schedulers are scheduling IMEs within five days for priority assignments. Ms. Morris answered that appointments vary between two and a half weeks and four months. It is difficult to schedule appointments for specialty doctors and this accounts for some taking up to four months.

On slide 11, it was clarified that electronic files are available for providers.

Other Business: Bob Malooly

A *Vocational Rehabilitation Pilot Program Evaluation* handout was distributed to the committee.

A copy of the new *Year In Review* was also distributed.

Discussion on Future Meetings: Bob Malooly

The committee reviewed date options for the next year’s meetings and decided on the following:

April 29, 2009 9:00-12:00 Tukwila WA.

June 22, 2009 9:00-12:00 Tumwater WA.

August 26, 2009 9:00-12:00 Tumwater WA.

December 9, 2009 9:00-12:00 Tukwila WA.

Meeting adjourned.