

**Workers' Compensation Advisory Committee (WCAC) Meeting
Labor & Industries Tukwila, WA
Meeting Minutes
December 9, 2009**

Business Representatives: Rick Anderson, Sakuma Bros; Nancy Dicus, TOC Management Services; Kris Tefft, Association of Washington Business; Rebecca Forrester, Group Health

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

Labor & Industries: Judy Schurke, Director; Bob Malooly, Assistant Director of Insurance Services

Board of Industrial Appeals: Tom Egan

Recorder: Sharon Avery

Guests: Dave Kaplan, Dennis Kelley-Jones, Terry Tilton, Vicky Smith, Steve Jalins, Joan Elgee, Jan Gee, Janice Camp, Scott Dilley, Dave O'Meara, Lauren Gubbe, Brad Reckord, Art D'Alessandro, Kim Hoff, Tammie Hetrick, Katrina Zitnik, Naomi Goodman, John Meier, Christine Swanson, and Scott Daniels

L&I Staff: Bill Vasek, Mark Mercier, Sharon Elias, Janet Morris, Mike Ratko, Janet Peterson, Jason McGill, Kim Contris, Dave Overby, Diane Doherty, and Vickie Kennedy

Opening Comments and Safety Message

The safety message was presented by Mr. Malooly.

The April 29, 2009, June 1, 2009 and September 21, 2009 minutes were approved.

The Workers' Compensation Research Institute (WCRI) is hosting an interactive, multi-site video conference on January 14, 2010 in Seattle. A number of issues will be addressed including the effects of the economic downturn on workers' compensation and health care issues. Director Schurke has agreed to sponsor four seats for WCAC members to attend this conference.

A copy of the 2009 Year In Review was distributed.

Economic Update: Judy Schurke

The presentation *The 2009-11 Budget Story* was reviewed.

On November 19, 2009, the state's economic forecast identified an additional \$2.6 billion deficit for a total of \$11.6 billion deficit in this two-year budget period. The majority of the expenditures in the \$31 billion state budget are protected: 70% is protected by federal requirements or the state constitution to not reduce funding. 30% (\$9 billion) is considered non-protected budget, most of which is in human services. The governor's supplemental budget was released on December 8, 2009. This was an "all cuts budget" that balances the budget

to the revenue that is expected to come in. In January, the governor will announce the second budget to address some of the items she believes should be restored.

Board of Industrial Insurance Appeals (BIIA) Update: Tom Egan

Benefits pending appeal update: the 2008 legislature passed a law that continues benefits during an employer appeal of a department order granting benefits. Since implementation of the legislation, the Board has had 196 motions, and has granted a stay in 12 cases.

The presentation and *Monthly Statistical Report for November 2009 Report* were reviewed.

- Appeals Filed and Granted per Month: There were 3,373 appeals filed last quarter and 2,139 appeals granted. In the last three quarters, the number of appeals filed has been higher than all quarters in 2008. Appeals are up 10% so far this fiscal year. The appeals granted have also been up 15% this fiscal year.
- Department Reassumption Rate by Quarter: The reassumption rate remains around 24%, down 2% overall compared to fiscal year 2008.
- Average PD&O Time Lag by Quarter for Hearing Judges: This represents the amount of time it takes for a hearing judge to issue a proposed decision on an order in a litigated case after the record is complete. This is at 27 days, within the Board guidelines.
- D&O Lag Time by Quarter: This suffered between March and June 2009 due to missing a Board member. It was taking a total of 70 days for the Board to issue a decision and order after a petition for review was filed. It is now down to 58 days.
- Quarterly Average Weeks to Completion: The quarterly average weeks to completion continues to go down. As of September 2009, it was an average of 32.1 weeks. Report 411 reflects it is at 30.3 weeks so far for the current fiscal year.
- Caseload at End of Quarter: The active appeals have slightly increased from last quarter. The Board has hired three new hearing judges which should bring this number down.

It was asked if this was Mr. Egan's last WCAC meeting—Mr. Egan announced that he chose not to be reappointed, his second six-year term was over in June and the process of finding a replacement has begun.

First Quarter Financials: Sharon Elias

The presentation, *Statutory Financial Information Industrial Insurance Fund First Quarter Fiscal Year 2010 As of September 30, 2009*, was reviewed and copies of the preliminary statutory financial information was distributed.

Ms. Elias provided several updates to the committee.

- The actuarial review and audit of financial statements are completed for fiscal year 2009—both the independent actuarial firm and auditors that performed GAAP/SAP audits have given the department unqualified opinions.
- The department is on target to issue the financial statement at the end of December.
- At the September WCAC meeting, the department issued a preliminary June 30 financial statement which indicated \$545 million in the contingency reserve balance. The final audited number is \$550 million, a slight increase.

- At the September WCAC meeting, the department was asked to clarify administrative expense as part of the financial presentation. A handout is included in today’s packet to address this question.

Financial highlights:

- The contingency reserve balance as of June 30 was \$550 million; it increased to \$613 million as of September 30. This was due to changes in the market conditions; total realized loss and unrealized gains on investments were \$218 million. Also, benefit liabilities increased by \$201 million. This is a net increase of \$62.5 million in the contingency reserve balance.
- The total in the investment portfolio also increased \$276 million from \$10.809 billion to \$11.085 billion. Realized loss for the first quarter was \$1.7 million compared to \$41.5 million loss in fiscal year 2009. Total unrealized *gain* for the first quarter was \$219.6 million compared to \$326 million in fiscal year 2009.
- The benefit liabilities increased \$201 million to \$10.357 billion as of September 30, 2009.
- The accident fund and pension fund combined has a contingency reserve of \$63 million. This is below the bottom of the targeted range. Mr. Malooly added that the department expects that the accident fund may go negative over the next year.
- The medical aid fund is at \$550 million as of September 30, 2009—this is an increase of \$69 million from previous quarter. This is above the bottom of the targeted range.

It was asked if the department will remain ‘in the black’ for the third and fourth quarters of 2010. Mr. Malooly answered that the projection has not changed, however, with the economic conditions, it remains to be seen.

It was asked if Ms. Elias could provide an explanation for the changes in the Accident Fund Contingency Reserve. The Accident Fund Contingency Reserve balance decreased from a 6/30/09 preliminary balance of \$155 million to a 6/30/09 final balance of \$70 million to a 9/30/09 balance of \$26 million. The attached table (which was not provided at the meeting) provides an explanation for the changes in the Accident Fund Contingency Reserve balance. The change in the Contingency Reserve balance is a result in the changes in actuarial estimates, changes in investments, and complying with new GASB requirements on other post employment benefits.

Schedule of Changes to the Accident Fund's Contingency Reserve		
June 30, 2009 Preliminary Contingency Reserve		\$ 155,082,000
Changes to Contingency Reserve between Preliminary & Final FY 2009 Balance		
Benefit Liabilities Increase (Actuarial Estimate)		\$ (1,605,000)
Transfer to Pension Reserve Fund for Experting		\$ (76,525,000)
New liability per GASB on Other Post Employment Benefit (OPEB) (note 1)		\$ (5,662,647)
Miscellaneous End of Year Adjustments (Cash, Land, Buildings, Receivables, Claims Admin)		\$ (1,551,000)
Total Net Change		\$ (85,343,647)

June 30, 2009 Final Contingency Reserve		\$ 69,738,353
Changes to Contingency Reserve during First Quarter FY 2010		
Investments Increase		\$ 44,802,000
Premiums Receivable Increase (Actuarial Estimate)		\$ 11,037,000
Benefit Liabilities Increase (Actuarial Estimate)		\$ (66,836,000)
Retrospective Rating Adj Increase (Actuarial Estimate)		\$ (32,795,000)
Miscellaneous End of Year Adjustments (Cash, Receivables, Claims Admin and Accrued Liabilities)		\$ 48,000
Total Net Change		\$ (43,744,000)
September 30, 2009 Contingency Reserve		\$ 25,994,353
Note 1 -The State of Washington through the HCA administers an agent multiple-employer other post employment benefit plan per RCW 41.05.065. New Government Accounting Standard requires that we book a liability for net OPEB obligation effective fiscal year 2008.		

Conning Peer Comparison: Scott Daniels

Copies of the presentation were distributed.

Mr. Daniels began with an introduction. Conning was hired by the State Investment Board and works with the department to refine investment strategies. Conning primarily deals with high-level investment issues such as the appropriate maturity structure for bonds and the equity allocation. Mr. Daniels' presentation focuses on the peer analysis that compares Labor and Industries, as an insurance company, to other state funds and private sector insurance companies. Conning conducts a peer analysis every year for the department. This year there were two peer groups: one with eighteen state funds, and one with fifteen private insurers. There are a total of 25 state funds—Conning could not obtain data for six of them.

Slide 3, "*Measuring Insurers' Results*", provided key measures that are used for the peer analysis. These are income focused since the success of the insurance operation is critical for the insurance companies.

- The loss ratio (claims per premium dollar) was 68% for the property-casualty industry in 2008.
- The expense ratio (general and administrative expenses) was 27%.
- The dividend ratio (policyholder dividends) was 1%.
- The combined ratio (sum of losses, expenses and dividends to premiums) was 96%.
- The investment income ratio was 13%.
- The operating ratio (combined ratio less investment income ratio) is the overall profitability of the company. If the organization is operating under 100%, the company is earning profits and growing

surplus. If it is above 100%, the organization is losing money. This is usually not sustainable for the long term.

It was asked whether the investment income ratio of 13% is an overall average for all of the states. Mr. Daniels answered that the 13% is the average for the property casualty industry for the United States. The percentage reflects a much larger group than just the peer groups that were analyzed. It reflects a few of the state funds, but also includes larger companies such as State Farm and Hartford. It was asked if the overall industry received a 13% return on investment income. Mr. Daniels answered for every dollar of premiums, there was 13 cents of investment income. Mr. Malooly added that 13% of the costs are covered by investment returns. The return on the entire portfolio would be a lower number.

Slide 5, “2008 Results- Ratios to Premiums”, reflected key income statement results.

2008 Insurance Ratios							
	Loss	LAE	Expense	Dividend	Combined	Investment Income Ratio	Operating
L&I	161%	11%	10%	0%	181%	-45%	136%
State funds	82%	20%	20%	5%	126%	-35%	91%
Private Insurers	59%	13%	27%	0%	100%	-17%	83%
All Peers	61%	14%	27%	1%	103%	-19%	84%

L&I's 2008 Ratios vs. Peer Averages							
	Loss	LAE	Expense	Dividend	Combined	Investment Income Ratio	Operating
State funds	79 W	9 B	10 B	5 W	55 W	10 B	45 W
Private Insurers	101W	2 B	18 B	0 W	81 W	28 B	53 W
All Peers	99 W	3 B	17 B	1 W	78 W	26 B	52 W

In the lower table, a “W” indicates L&I’s ratio was worse than the peer averages, while a “B” shows that L&I’s ratio was better than the peer averages.

For 2008, L&I had:

- Significantly higher loss ratio (161%). Mr. Daniels indicated this raises questions concerning whether L&I’s rates are adequate.
- Relatively low LAE and expense ratios (11%). This could indicate L&I is spending too little on staff and systems.
- Lower dividend ratio.
- Highest combined ratio (181%). For each dollar of premium, L&I lost 81 cents on its insurance operations. However, the department has a very large portfolio and made back 45 cents on its investment portfolio for each dollar of premium. Overall, for every dollar of premium, L&I lost 36 cents in 2008. Based on the financial update presented, the value of the contingency reserve has been trending down for the past few years partly due to the market, and partly due to

operations not making enough money to cover benefits and expenses. For a private company, these numbers would be disastrous.

- Higher investment income ratio (45%). L&I's large investment portfolio can support higher combined ratios.
- Highest operating ratio (136%).

Mr. Malooly commented that the department can sustain a much higher loss ratio because of the department's high investment yields; the department can operate in conditions that private companies would not be able to. Mr. Daniels confirmed that the expected combined ratio should be higher because of the size of the investment portfolio. Mr. Malooly added that currently premiums are inadequate, which is pushing the operating ratio (136%) too far into the loss column.

A question was asked regarding the adequacy of the rates and the loss ratio. Mr. Daniels answered there are a few options for the department. The department could:

1. Accept the losses and accept that the contingency reserve could go negative.
2. Raise revenues by increasing the premium rates or taking more risks in the investment portfolio.
3. Cut down on benefits that are being paid.
4. Cut down on costs of operating the department. Currently as a percent of premiums, L&I's operating costs are already extremely low.

A question was asked if the biggest operating expense for private insurance companies is underwriting, which is not done at L&I. Mr. Daniels confirmed that underwriting is an operating expense for private companies to be discussed in a later chart. Mr. Malooly commented that underwriting expenses are not the biggest expense. This is claims administration and taxes.

It was asked if the status of AIG skews the numbers for the private companies. Mr. Daniels answered it does not as the analysis was done through 2008 and takes into account the insurance of AIG. It was not affected by the problems AIG was experiencing in the non-insurance subsidiary in the 4th quarter of 2008.

Slide 6, *2008 Results-Ratios to Losses (Benefits)*, explained that L&I's expense ratios are much lower than other state funds, and extraordinarily low compared to private insurers. L&I's expenses are 35 points lower compared to other state funds, and 54 points lower compared to private insurers. Whether expenses are measured relative to premiums or relative to losses being paid, L&I is a lean operation.

Slide 7, *5 Year Results-Ratios to Premiums*, explained that over the last 5 years, L&I and state fund peer groups lost money on insurance operations while private insurers, on average, made 3 cents of profit per premium dollar. L&I's average combined ratio for the last 5 years was 146%, state funds averaged 106% and private insurers averaged 97%. The state fund and private insurer peer groups made money on total operations, while L&I lost an average of 6 cents for every dollar of premium. L&I has a big portfolio and generates a relatively large amount of investment income, but its 5 year operating rate shows slightly worse than break-even (106%).

Regarding slide 8, *Capital Adequacy*, Mr. Daniels explained that L&I and Ohio numbers are not comparable to the peer groups because of the way reserves are treated. For statutory accounting, insurance companies report the full value of their reserve on the balance sheet (the total amount of claims that will be paid out over decades). L&I discounts claim reserves—the department estimates \$16 billion of claims will be paid out over the next 80+ years. With interest, only \$10 billion is needed today to fund \$16 billion of future claims. This \$10 billion is what L&I reports on its financial statements. Insurance companies are not allowed to do this on their statutory financial statements. Mr. Malooly added that the department has problems with the adequacy of the

premiums but we do not have to do pay taxes and can operate with a higher loss ratio, to the benefit of the rate payers.

Slide 9, *Asset Allocation*, explained that L&I has 87% of the asset allocation is in bonds and 12% in stock. The typical workers' compensation portfolio is 85% bonds, 5% to 10% stock, and small amounts of cash, preferred stock and high yield bonds.

2008 Asset Allocation						
	Cash	Bonds	High Yield	Pref. Stock	Stock	Other
L&I	1%	87%	0%	0%	12%	0%
State funds	2%	86%	1%	0%	9%	2%
Private insurers	2%	83%	3%	2%	2%	8%
Total	2%	84%	2%	2%	4%	7%

Slide 10, *Expense Analysis*, provided detailed tables for L&I, state fund and private insurer expenses and profitability as a percentage of benefits incurred. L&I is a very lean organization and expenses are quite a bit lower than the average state fund and private insurers. L&I's total expenses as a percentage of benefits incurred were 12.7% compared to state fund's 49.4% and private insurers' 68.1%. L&I does not pay agents to sell insurance and does not incur advertising costs. L&I's primary expenses are claims and other administrative expenses such as salaries for a total of 12.7% of benefits incurred.

Slide 11, *State Fund Study*, a question was asked regarding the concern raised by Property Casualty Insurers Association of America about state funds receiving benefits such as rent free use of public buildings. Do other state funds have these benefits? It was answered that the department has purchased the building and is retiring the bonds. The department incurs expenses for the property that is occupied. Mr. Daniels answered there are some state funds that have use of public buildings and they pay a nominal amount. The concerns expressed by the advocacy group may have been reaching.

Slide 12, *Workers' Compensation Update*, provided Conning's quarterly forecast of where the market may be going. The 3rd quarter workers' compensation forecast for the key measures Premium Growth, Combined Ratio, and GAAP Return on Equity is significantly more negative than the 2nd quarter forecast. Conning believes premiums will continue to decline next year and will not begin to increase until 2011 as a result of the poor economy. Unemployment is up and payroll is down. This has a big impact on workers' compensation. Conning also believes the combined ratio will get worse, insurance losses will grow, and return on capital will drop to around 7.5%. Mr. Malooly added that the decline in economic activity and in the department's premiums go hand-in-hand, although it is not a major financial problem for us. The bigger problem for the department is the supplemental pension fund which is a cash fund; when the tax base for this fund declines, the rates must go up because there are no reserves to draw on.

It was asked to clarify underwriting as an expense for state fund and private insurers. Mr. Daniels answered that the underwriting expense is usually the second largest expense after claims. Claims are usually 60-70% of premiums and underwriting is about 20-30% of premiums. The underwriting expense consists of items such as paying the claims administration and lawyers' salaries, rent, commissions, and taxes. L&I's numbers are unusually low compared to private insurers. It is questionable whether the department has sufficient spending authority to perform at its best.

It was asked if there was consideration of how Washington's rate holiday impacted the overall numbers. It was also asked if any other state funds had a rate holiday. Mr. Daniels answered that the rate holiday was reflected in the data. He added he was not aware of any other state that has done a rate holiday. Typically companies would provide a dividend after the fact. Private insurers tend to provide a refund if premiums are good. Mr. Malooly remarked that Bill Vasek suggested the department run the comparisons based on benefits rather than premiums because we charge less. Washington's premium amount does not include underwriting expenses and taxes that are built into the private sector premium levels so there is a distortion. If you look at data for benefits paid, it provides a common denominator with private sector companies. Mr. Daniels added that in 2008, the department experienced premium inadequacy, but the average for the last five years was fairly close to break even. Mr. Malooly commented that the problems in recent years have been driven by increases in time-loss duration and in pension frequency.

It was asked if there is a date forecast for the accident fund contingency reserve going negative. Mr. Malooly responded that it is approximately summer of 2010, and will follow up with the committee.

In closing, Director Schurke remarked that these comparisons are reviewed with Conning on a quarterly basis. Mark Jabonoski, author of the state fund report for Conning, will be presenting to the department in February. If WCAC members express an interest in attending, this can be arranged.

Gilmore Study Results: Kim Contris & Kathy Peda

Copies of the presentation were distributed.

Cathy Peda, Executive Vice President for Gilmore Research Group, began with an introduction of herself. Over the years, customer satisfaction research studies have been conducted for the department. The last one was in 2003 regarding the workers' compensation system. In the summer of 2009, the department contracted with Gilmore Research to conduct a follow-up survey with employers and injured workers to find out how they felt about services provided by the department.

The population for the survey was employers and workers in Washington with activity on a claim between July and November 2008. Gilmore interviewed 300 employers (42% response rate), 300 workers with medical only claims (36% response rate) of which 20 were Spanish-speaking workers, and 314 workers with time-loss claims (44% response rate) of which 32 were Spanish-speaking workers. The survey was translated into Spanish and Spanish-speaking interviewers were available to conduct the survey over the phone.

Ms. Peda was asked to clarify "activity on a claim." She answered it was based on any activity on a claim during the designated time frame which may include older claims. Ms. Peda also explained that the response rate is the percentage of response received for the overall attempts.

The purpose of the survey was to measure current satisfaction with the department's services, to compare 2003 results and to assess new areas of interest. Surveys have been conducted in 1998, 2000, 2003, and 2009 and most of the topics on the survey have remained the same. The length of the survey was about 9 minutes for employers and 11 minutes for workers. It was asked if the response rate drops once time passes during a phone interview. Ms. Peda answered that the department was diligent in keeping their survey as concise as possible, however, in some cases the response rate does fall if the interviewer does not sound professional, if the employer does not have enough time, or if the survey is uninteresting.

Ms. Peda reviewed the results of the survey which included satisfaction with overall claims experience, key drivers of the satisfaction result for overall claims experience, rating for overall claims services, and areas of

opportunity identified through surveys of employers, workers with medical only claims, and workers with time-loss claims.

It was asked what the demographics of the employers were and who the researchers contacted for each business. Ms. Peda answered it was a wide variety of small, medium, and large businesses, including state fund retro participants. Employers were randomly drawn from a pool of qualified employers. The employer representative interviewed was the person who had the most knowledge and information with claims at L&I.

Regarding slide 9, *Employers: Key Drivers to Satisfaction Claims Services*, Ms. Peda indicated that responses were based on the perceptions the department is “protecting interest of employers.”

It was asked if Gilmore had the other rankings, in addition to “strong agreement,” that could be provided. Ms. Peda confirmed she has all information for each statement in a full report and will send it to Mr. Malooly for distribution.

It was asked if the phrases on slide 10, *Areas of Opportunity with Employers*, were terms the surveyors used: “L&I ‘sides with employees’” and “L&I seems ‘too liberal’ with payments.” Ms. Peda confirmed these were terms surveyors use. In 1998, Gilmore met with the department to determine the exact wording of the questions to ensure the terminology used is correct. A question was asked regarding the phrase “L&I seems ‘too liberal’ with payments,” was there a distinction between the level of benefits and allowance of claim. Ms. Peda answered there was not a distinction.

Director Schurke commented on the medical only workers summary. Most of the department’s medical only claims go through an automated adjudication process. This may be a reason the satisfied results did not change. Secondly, the dissatisfaction of medical only workers is often because they are unaware that they are not entitled to time-loss for the first three days following an injury and believe they are going to be compensated.

It was asked how medical only workers were selected to participate in the survey. Ms. Peda answered it was based on any activity on a claim during the designated time period. Information on medical only and time-loss workers was based on a list provided by the department.

A question was asked if workers were surveyed specifically about their use of the Claims and Account Center (CAC) or online reporting. Ms. Peda answered they did not specifically ask about CAC or online reporting in regards to the department’s website usage. With those workers who did use the website, satisfaction was very high. Mr. Malooly added that the use of the website has grown dramatically but it is still a relatively low percentage.

In conclusion, Mr. Malooly added that over the time period between the last survey and the current survey, the department invested a tremendous amount of effort to provide better service over the phones. Examples include: staff were selected differently for customer service positions than in the past, supervisors are more customer focused, CAC was implemented, the department “plain-talked” communications to make them easier to understand, the department increased training for claim managers on the importance of including the employer in the claim process, and the department worked with providers to get them to treat injured workers. The department’s future includes Early Claims Solutions, which will allow the department to take claims over the phone and refer the caller to the website.

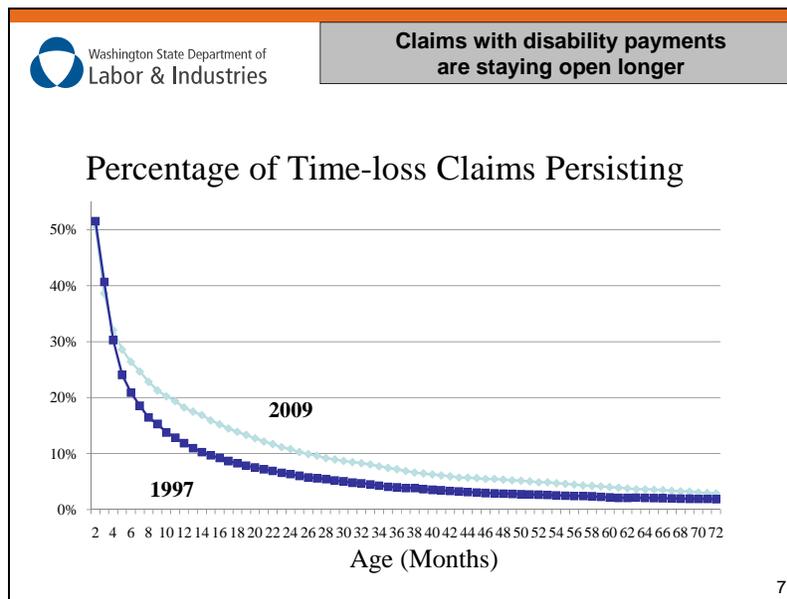
Kim Contris added that the department will have a new website at the beginning of the year. It has refreshed the navigation so it is easier for people to find information they are looking for.

Cost Drivers Results: Judy Schurke, Bob Malooly, Janet Peterson, Jason McGill, and Janet Morris

Copies of the presentation were distributed.

Mr. Malooly provided an overview of the topics covered in the presentation. The presentation will focus on the sources of extended time-loss and high-cost claims. Sources include complex claims (such as carpal tunnel), time-loss claims that are four years or more, and opioid prescription use. The presentation also provides the department's next steps with an update on current strategies and engaging the WCAC and Industrial Insurance Medical and Chiropractic Advisory Committees to assist with further problem analysis and solution development.

Jason McGill, Medical Administrator for the Office of the Medical Director, began the presentation.



On slide 7, Mr. McGill explained that the chart is a comparison of time-loss claims from 1997 and today. It shows claims with time-loss payments are staying open longer. This is due to confounding factors such as the economy, opioid use, and multiple diagnoses. There is a shift of about a month very early in the life of the claim (four to eight months). For example, in 1997 if it took three months to resolve a claim, now it is taking four to five months. Thus, the department's efforts are focused very early in the claim.

On slides 9 through 11, Mr. McGill explained that the department is seeing a greater number of claims with multiple diagnoses. Claims with multiple diagnoses are making up a greater percent of all time-loss claims. The department is considering discussions with the Industrial Insurance Medical Advisory Committee (IIMAC) to help understand evidence-based practice for when a diagnosis should be received to be an appropriately accepted condition.

On slides 12 through 15, he discussed carpal tunnel syndrome (CTS) as an example of possible increasing complexity. When CTS is diagnosed months or years after the claim occurs, recovery is severely prolonged. These same patterns of prolonged recovery can be seen with other multiple diagnoses, such as thoracic outlet, cervical sprain, and ulnar neuropathy. Imprecision of diagnoses extends worker recovery and claim duration. With support and involvement of WCAC, the department proposed working with the IIMAC to develop new guidelines to help improve diagnosis timeliness and accuracy.

Disability predictors- next steps for COHEs

- Test in progress for brief physician-patient risk factor questionnaire that assesses predictors of long-term disability within first two weeks of injury
- Evaluating scalability and timing
- Six questions given at 2-4 weeks after injury:
 - radicular pain
 - working in past week
 - pain interferes with work on a ten-point scale
 - work fear-avoidance
 - work expectations
 - offer of accommodation

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Mr. McGill continued with slide 16, which shows a possible complex claim solution as a best practice for the Centers of Occupational Health and Educations (COHE).

Mr. Malooly added how important getting the diagnosis right in the beginning of the claim is for the department to produce better outcomes at lower costs.

Janet Peterson, Program Manager for Health Services Analysis, continued the presentation with a high-level analysis about medical providers.

On slides 17 through 19, she explained the analysis explored patterns among medical providers who are attending providers (APs) on long-duration time-loss claims (claims with at least four years of time-loss paid to date). A minority of providers treat long-duration claims. The analysis found that approximately 150 providers are treating nearly half of the long-duration cases. Only 6% of time-loss claims for an accident year will ultimately have over four years of time-loss paid, however these long-term claims represent 55% of the total time-loss the department pays.

On slides 20 through 22, Ms. Peterson explained there are currently 5,500 APs who work with injured workers with active time-loss or medical only claims. 1,499 (27%) of APs have at least one claim with over four years of time-loss paid; only a small number of APs have five to 12 time-loss claims with over four years of time-loss paid. There is a high concentration of long-term time-loss claims with a small number of attending providers.

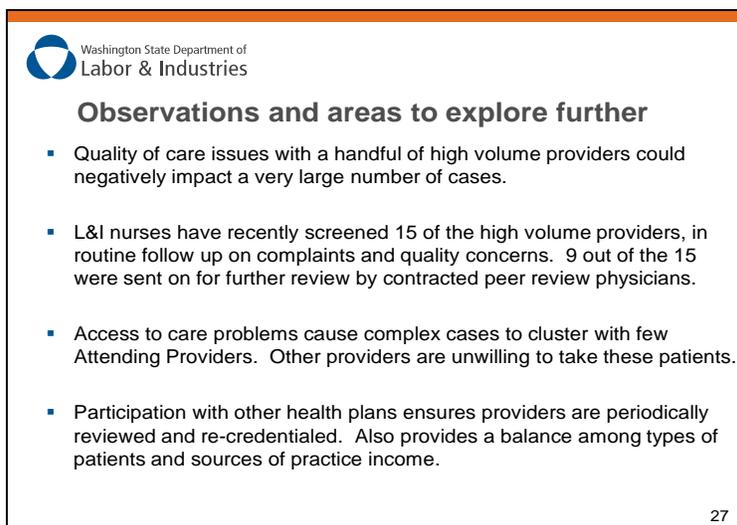
It was asked if the APs are Harborview physicians who treat workers with more critical injuries. Ms. Peterson answered no; these APs are from all over the state and are not specifically assigned to a particular clinic or hospital.

On slide 23, she explained the analysis by physician specialty. Most high volume providers are specialists in orthopedic surgery, physical medicine/rehabilitation, or occupational medicine. Few non-MD/DO provider types (naturopathic physicians, podiatrists, physician assistants, and ARNPs) and no chiropractors have claims that are over four years of time-loss paid. Mr. Malooly noted that in Texas chiropractors are major drivers of costs in the system, while in Washington that is not the case.

Ms. Peterson explained that slides 24 and 25 look at potential quality issues. Most APs with many long duration time-loss claims are among the top prescribers of opioids. High dosage prescriptions are a significant concern. The analysis looked at all of the long-acting opioid prescriptions written for L&I claimants by the high-volume providers (providers who have 12 or more claims with over four years of time-loss). 5.6% of their prescriptions exceed 120 milligrams per day of morphine equivalent. For other APs, 3.5% of long-acting opioid prescriptions exceeded 120 milligrams per day morphine equivalent.

Most high-volume APs are contracted with at least three major health plans. However, around 10% are not contracted with Aetna, Premera, Regence, or Uniform Medical Plan. All of these plans meet the NCQA criteria for checking quality of care and provider credentials on a regular basis.

On slide 25, Ms. Peterson explained about two-thirds of claims with over four years of time-loss have attorneys. Most high volume providers have patients represented by several law firms. Only a very small number work primarily with clients of a single attorney or firm.

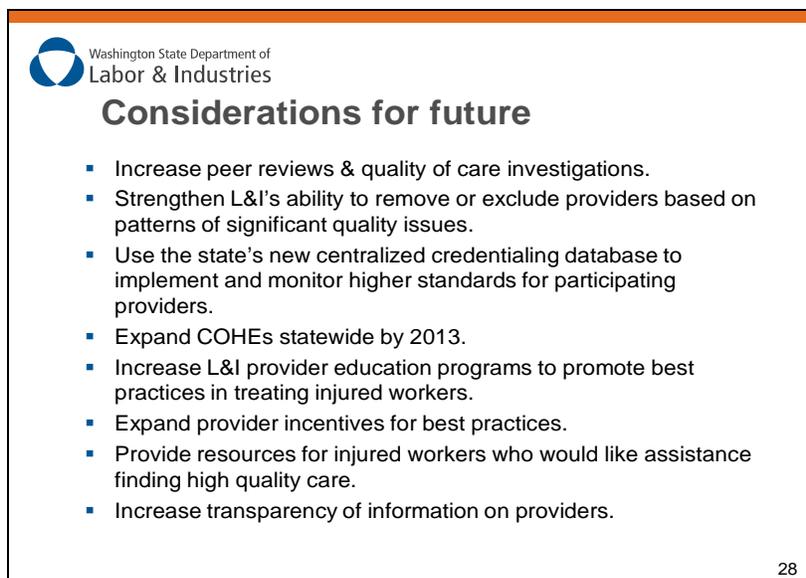


Washington State Department of Labor & Industries

Observations and areas to explore further

- Quality of care issues with a handful of high volume providers could negatively impact a very large number of cases.
- L&I nurses have recently screened 15 of the high volume providers, in routine follow up on complaints and quality concerns. 9 out of the 15 were sent on for further review by contracted peer review physicians.
- Access to care problems cause complex cases to cluster with few Attending Providers. Other providers are unwilling to take these patients.
- Participation with other health plans ensures providers are periodically reviewed and re-credentialed. Also provides a balance among types of patients and sources of practice income.

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Considerations for future

- Increase peer reviews & quality of care investigations.
- Strengthen L&I's ability to remove or exclude providers based on patterns of significant quality issues.
- Use the state's new centralized credentialing database to implement and monitor higher standards for participating providers.
- Expand COHEs statewide by 2013.
- Increase L&I provider education programs to promote best practices in treating injured workers.
- Expand provider incentives for best practices.
- Provide resources for injured workers who would like assistance finding high quality care.
- Increase transparency of information on providers.

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Following Ms. Peterson's presentation of slides 26 and 27, it was asked if any of the 170 doctors who have five or more or twelve or more long-duration claims were COHE doctors. Ms. Peterson responded yes for the

category of five or more long-duration claims and will follow up with the committee regarding the twelve or more group. Some of these are occupational health experts who see these difficult cases because of their specialty. Mr. McGill added that for the COHE doctors, the department found good practice habits for opioid therapy; they are following the opioid guidelines.

Mr. Malooly added that we should be careful about our conclusions for this analysis. Some doctors who have high volumes of complex claims are doctors who excel at treating injured workers. They often have a specialty in occupational medicine. Also in the population may be some doctors who have practice patterns that are concerning.

A question was asked about the effectiveness of the department's peer review process to investigate quality of care complaints. Does the department see improvements in providers' practice patterns or are they removed from the system? Mr. Malooly answered that the department has investigated several providers and in a very small number of cases worked with the Department of Health to remove the physician's license to practice. In other less serious cases, Dr. Lee Glass speaks with physicians about treatment issues and encourages them to adopt appropriate practices.

Jason McGill continued the presentation with a review of slides 29 and 30.

Washington State Department of Labor & Industries

Developing body of evidence

Claims with opioid use

- Early receipt of opioids increases risk of long term disability
 - 1/3 of all workers with compensable low back pain receive an opiate Rx in the first 6 weeks (Stover et al, J Pain 2006; 7: 718-25)
 - Most get opioids at 1st visit (injury severity, smoking are predictors)
 - Risk of **disability at one year doubles** when worker receives opiates for **more than 7 days** post injury
 - Risk of **disability at one year doubles** when worker receives at **least 2 opioid prescriptions** (N-1843) in multivariate analysis (Franklin et al, Spine, 1/15/2008)
- Six percent of compensable back patients use opioids for 1 year with **no improvement in pain and function**
- **Increased deaths from opioids** following lumbar fusion

30

Regarding slide 30, Mr. McGill explained the department is learning that the assessment of pain and function is very difficult for providers; many do not understand it and are not doing it. It is difficult for claim managers to assess the information, manage the claim, or request the assessment. There are a number of challenges that are not clinical in nature.

On slides 31 and 32, he explained that there is an epidemic of unintentional drug overdose deaths due to legal substances in the United States. There has been a consistent increase in overdose deaths in Washington. Opioid-related deaths in Washington workers' compensation are tracked yearly. The department is analyzing data for 2008. There's a two-year lag for development of the data.

It was when asked if the department considers possible malpractice when a worker's death is due to opioid usage, treating it as a possible third party recovery. Mr. McGill answered that the department does, however, most medical examiners find the cause as unintentional overdose. There have been only a few instances where

a pattern of care was so egregious that the department took action to prevent the physician from treating workers.

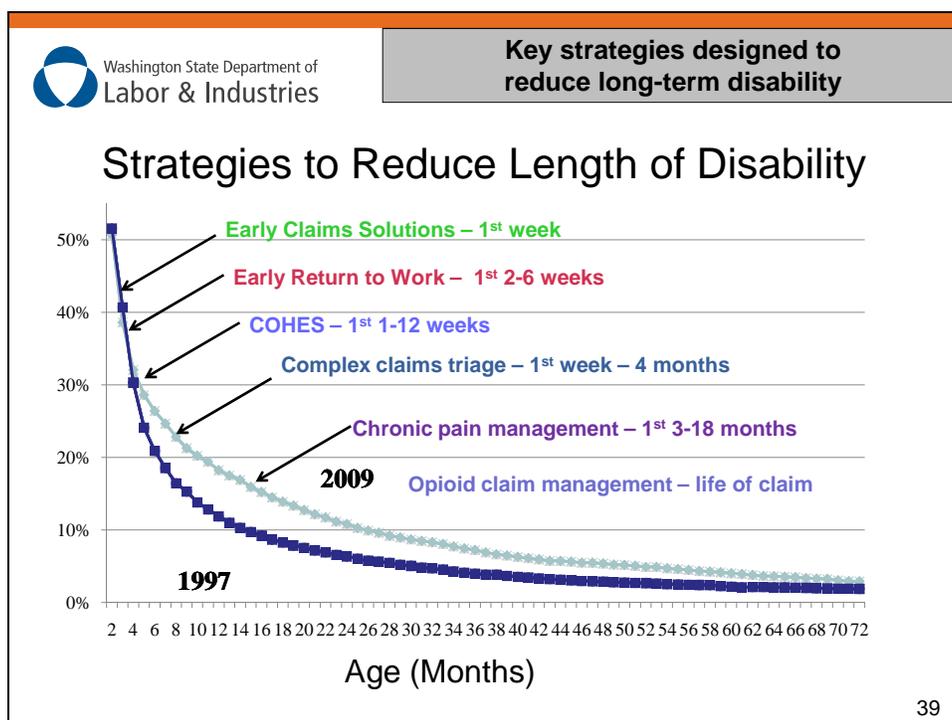
A question was asked if there is a comparison of doctors who are treating the high percentage of the long-term claims and opioid deaths; has a pattern formed in regard to these physicians? Mr. McGill answered that every doctor is reviewed carefully and action has been taken on a very few instances.

Mr. Malooly added that when the basic philosophy changed regarding pain treatment, it was thought the long-acting opioids were safe for long-term use. Workers were going to the emergency room with a back sprain and receiving opioids because the quality standards considered whether the physician adequately treated for pain. It was thought this was a safe, good quality practice. However, many patients became dependent. The department is trying to get physicians and injured workers to understand they need to be careful, opioid treatment at certain levels is not as safe as previously thought.

A question was asked if the department requests a contract or agreement between the worker and the AP regarding the worker's use of opioids. The answer is yes, and it is one of the tools that has achieved wide-spread use and has been effective.

On slides 35 and 36, Mr. McGill provided a high-level overview of the Agency Medical Director's Group (AMDG) interagency educational guideline. This was an education pilot developed during 2006 by 15 renowned Washington clinical pain specialists in collaboration with the AMDG. He explained that the AMDG has reconvened, now with more pain specialists and in coordination with the IIMAC subcommittee on chronic pain, to review the original AMDG guidelines, update it, and add tools for providers.

On slides 37 and 38, he discussed whether there is an association between complex claims and opioids. There appears to be was a long-term trend and Mr. McGill provided the department's next steps. There have been two AMDG meetings with 40 providers. They have broken into sub-groups to analyze tools and update the guidelines.



On slide 39, Mr. McGill explained various strategies used in claims management to reduce length of disability. They include:

- Early Claims Solutions: 1st week
- Early Return to Work: 1st 2-6 weeks
- COHEs: 1st 1-12 weeks
- Complex claims triage: 1st week-4 months
- Chronic pain management: 1st 3-18 months
- Opioid claim management: Life of a claim

Mr. Malooly concluded the presentation with slide 40 regarding the WCAC Health Care Subcommittee's involvement. He asked if the WCAC wants the existing subcommittee to work with the department on further analysis and development of solutions to address complex claims, medical providers, and opioid use, or if other WCAC members are interested in joining this effort. The department wants to ensure the WCAC is involved in this work.

A comment was made that it is appropriate to give this work to the Health Care Subcommittee with an invitation to any WCAC members to participate. The WCAC asked who the members of the Health Care Subcommittee are, and indicated that others may wish to join or participate.

Mr. Malooly stated that if the time-loss curve returned to the 1997 results, the contingency reserve would increase and rates could decline. When the underlying claim experience is reviewed, there are fewer claims, work places are getting safer, there are fewer catastrophic claims, and yet there is an increasing duration which has raised concern. The department is looking at more effective ways to help injured workers earlier in the process. It is particularly challenging in this economy.

The presenters were complimented and members expressed interest in revisiting the issues next year for results. Also, members would like to see reports for additional drivers that were on the list provided at the June and September WCAC meetings.

The *Summary of Costs L&I Drivers Analyzed* list included:

- Economic conditions
- Delays in receipt of medical information needed to make AWA referrals
- Vocational services taking longer
- Independent Medical Exams
- Claims with psychiatric conditions
- Complex claims
- Occupational disease
- Carpal tunnel claims
- Variations in growth of TL by industry
- Employer use of Kept on Salary
- Medical providers
- Re-openings
- Low-back claims
- Claims with opioid use
- Litigation/Court Decisions
- Soft-tissue disorders

- Implementation of new claims system interface
- Multiple diagnosis
- Demographics

A comment was made that this presentation was focused predominantly on medical issues. A question was asked if the other non-medical factors were considered and rejected as cost drivers or is there still research occurring on them. Mr. Malooly answered that the department is continuing to look at the other cost driver issues.

Discussion of future meeting agendas and scheduling 2010 WCAC meetings: Bob Malooly

Director Schurke asked the committee if there are any specific topics they would like to discuss at the next WCAC meetings.

A comment was made regarding employer outreach efforts and best practices that are occurring in Region 1. An innovative program that has produced results has been developed and interest was expressed in having this be presented at a future WCAC meeting.

A list of potential dates for 2010 meetings was distributed. Meetings will be scheduled based on input provided.

Meeting Adjourned.