

Workers' Compensation Advisory Committee (WCAC) Meeting
Labor and Industries, Tumwater, WA
Meeting Notes
June 19, 2013

Business Representatives: Dave Kaplan, Self-Insurers Association; Rick Anderson, Washington Farm Bureau-Sakuma Brothers; Nancy Dicus, Vigilant; and Kris Tefft, Association of Washington Business

Labor Representatives: Jeff Johnson, Washington State Labor Council; Dave Myers, Washington State Building Trades; Karen Gude, United Food and Commercial Workers 1439; and Sofia Aragon, Washington State Nurses Association

Labor and Industries: Joel Sacks, Director; and Vickie Kennedy, Assistant Director for Insurance Services

BIIA: Dave Threedy, Board of Industrial Insurance Appeals

Absent: Rebecca Forrester, Group Health

Court Reporter: Milton Vance

Recorder: Sharon Avery

Guests: Viona Latschaw, Trudes Tango, Peri Smith, Janice Camp, Joan Elgee, Nancy Barnes, Scott Dilley, Patrick Holden, Brian Bishop, Lauren Gubbe, Jim Newhall, Teresa Mosqueda, Jan Gee, Erik Smith, Melissa Taylor, Gregory Kabacy, Paul Chasco, Veronica Shakotko, Alan Paja, Tammy Fellin, John Stang, Jerry Bonagofsky, and Katie Garrow

L&I Staff: Mike Ratko, Rachel Aarts, Sharon Elias, Kirsta Glenn, Janet Peterson, Barbara Silverstein, Anne Soiza, Tracy Aga, Dan Johnston, Ron Burford, Brian Hornback, Joshua Ligosky, Tim Smolen, Brian Schmidkofer, Randi Warick, Bill Vasek, and Doug Stewart

Welcome: Joel Sacks and Vickie Kennedy

The meeting began with introductions of the committee members and audience. Director Sacks introduced Randi Warick, the agency's Deputy Director for Financial Management, and Tammy Fellin who will be the agency's Legislative Director as of July 16th, 2013.

A ladder safety video was shared as the safety message.

Ms. Contris presented a video that highlights the Washington Stay at Work Program (available to view on the department's website). The video highlights the benefits of the Stay at Work Program and is told from the perspective of a real employer and injured worker, emphasizing importance of maintaining the connection between the worker and employer.

Director Sacks added that the department will continue presenting forums updating the WCAC on the five goals discussed previously:

1. Make work places safe;
2. Help injured workers heal and return to work;
3. Make it easy to do business with L&I;
4. Help honest workers, businesses and providers by cracking down on the dishonest ones; and
5. Ensure L&I is an employer of choice

The emphasis will be to prevent accidents from occurring and, if a claim is filed, partner with the worker, provider and employer to focus on helping the worker heal and return to work.

Ms. Kennedy advised that the committee's binders included an update on the 2011 reforms; these include the most recent numbers on Stay at Work participation.

Ms. Kennedy explained that she had requested input from committee members for future agenda items. Several members were interested in learning more about injury prevention and how injury prevention has a link to the workers' compensation system, in the better customer experience work the department is engaged in, Claims Evolution efforts and performance agreements for the agency's goals, and additional data from the Board. Ms. Kennedy said that some of the suggestions they'll see today and other requests will be incorporated into future agendas.

Debrief from Conning Presentation- Workers' Compensation Industry Outlook: Joel Sacks and Vickie Kennedy:

On June 5, 2013, Conning presented their research to both internal staff and external stakeholders regarding the workers' compensation industry outlook. Director Sacks recapped that the Conning presentation recognized that Washington's system is different from others across the nation. A comment was made that the June presentation was informative.

Conning will present their annual peer analysis for L&I on August 29, 2013. WCAC members and other external stakeholders are invited to attend this session.

Board of Industrial Insurance Appeals (BIIA) Update: Dave Threedy

Dave Threedy provided an update from the Appeal Board.

- **Total Appeals Filed and Granted:**
 - Total Appeals Filed Quarterly - 3,404
 - Total Appeals Granted Quarterly-2,212
- **Department Resumption Rate by Quarter:** The Board tracks how many appeals the department is reassuming. This is fairly consistent at 24.4%.
- **Average Proposed Decision: Order Time-Lag by Quarter for Hearing Judges:** This is the time between hearings and when the judge issues the proposed decision and order. For last quarter, the average was 34 days. The Board tries to stay within 30 days but due to an increase of appeals received and an unprecedented turnover in judges, there has been an increase.
- **Decision & Order Time-Lag by Quarter:** This is how many days it takes the Board members to process a decision and order after a petition for review has been granted; this is at an average of 24 days.
- **Quarterly Average Weeks to Completion:** This was a measure reported by the Board in the performance agreement with the Governor. In the past quarters it has decreased; the Board hopes to see this trend continue because the goal is to keep it at 32 weeks; it is currently at 31.8 weeks.
- **Caseload at End of the Quarter:** There were 5,162 appeals at the end of the quarter.

- Structured Settlements of 6/13/13: The Boards numbers have been adjusted from prior versions to remove multiple filings of 70 agreements received:
 - 12 rejected
 - 50 approved
 - 8 pending

Mr. Threedy provided the breakdown of Self-Insured and State Fund:

Self-Insurance: 24 agreements received; 15 approved and 9 rejected

State Funded: 46 agreements; 43 approved; and 3 rejected

Mr. Threedy was asked if the Board is seeing a change in how structured settlements are being written. Mr. Threedy answered that there are less technical issues and there is better indication of whether or not an agreement is in the best interest of the worker. Mr. Threedy advised that, early on, rejections were based on technical issues, or lack of information that would allow the Board to determine whether or not the agreement was in the best interest of the worker. The Board is now receiving better information to make decisions.

Regarding decisions and orders, the Board often grants a petition for review to correct clerical errors. To avoid this, the Board will be denying petitions for review but will issue an errata sheet similar to what the Court of Appeals does. The process will allow them to respond to the petition when the issue is clerical without granting the petition.

Industrial Insurance (State) Fund Financial Overview: Sharon Elias:

Sharon Elias, Chief Accounting Officer, presented a financial update for fiscal year 2013- third quarter.

Director Sacks advised that the department's goal is to present this complex information in a manner that is as understandable as possible; therefore, the slides have been formatted differently to present information in a manner that is more transparent, helpful and objective. Committee members are encouraged to provide feedback and advise if more details are desired for future presentations.

Ms. Elias provided a nine month financial highlights overview:

- Overall, the state fund operating results are positive as of July 2012 through March 2013.
- The contingency reserve balance increased from \$580 million to \$693 million due to:
 - Higher than expected investment income; and
 - Decrease in benefit liabilities due to positive trends in pensions.
- The increases in the contingency reserve are offset by the one-time reduction in structured settlement savings that was recorded in the third quarter.

Ms. Elias was asked how much the one-time reduction in structured settlements savings was; Ms. Elias stated that it was \$242 million.

Director Sacks was asked a question regarding the upcoming rates decision. When the decision to have a zero percent rate increase for 2013 was made, the department thought they would add about \$82 million to the contingency reserve for this fiscal year; so far there is \$113 million attributed to these factors and if the department will take the \$113 million into consideration in the rate decision. Director Sacks answered that because the rate we are charging in 2013 is higher than the actuarially determined break-even rate, we are

able to increase the contingency reserve. If the positive trends continue, we should bring in more premium than new liabilities for claims for 2013; however, we will need to wait for end of the fiscal year numbers.

State Fund Results:

- Insurance Operations:
 - Premiums Earned (we took in): \$1,151 million
 - Total Expenses Incurred (we spent): \$1,730 million
- Premiums Earned:
 - Net premium earned increased by \$78 million mainly due to an increase in hours reported.
- Net Benefits Incurred:
 - Benefits incurred increased \$69 million compared to last year; this is about a five percent increase.

Director Sacks added that this increase was mainly due to a one-time adjustment in the structure settlement assumptions made in 2011.

- Investments Income:
 - Total investment income was \$427 million
 - Investments grew \$677 million in the past nine months and ended at \$12.6 billion as a result of bond investment income and a strong stock market.
 - The report shows \$6 million as new element: capital gain in stocks.

Director Sacks explained we have an investment strategy with the State Investment Board that includes a range for the proportion to be invested in equities. When the stock market does well and our equities reach the top of the limit, we sell equities to avoid being overly invested in the market and its potential volatility. This approach generally means we buy stocks low and sell high.

Mr. Vasek was asked what the range is on equity versus bonds. He responded that it is 15 percent equities in the Medical Aid Fund and 10 percent in the Accident and Pension Funds.

- Other Revenues and Expenses:
 - The net for other revenues and expenses was \$26 million.
- Results of Operations:
 - We have a net loss of \$126 million.
 - Net Income without the \$242 million reduction in the structured settlement savings estimate would be a \$116 million.

A discussion regarding the structured settlement projections ensued:

A comment was made that the net income is disappointing; though projections for savings are difficult, the projections made in 2011 were significantly off. Because the legislature relies on these numbers to make policy changes, these projections made on structured settlements raised the potential savings on the reform legislation significantly. If we had not booked such high numbers, we would not be writing off so much now. Unfortunately, this affects the contingency reserve negatively; it would have been much higher had the estimates been more accurate. Director Sacks indicated this is an important point. The department knows much more today than it did in 2011. The challenge the department faces with creating a new program is there is no history to help make estimates. Fortunately, the other reform results are closer to the estimates.

Director Sacks was asked to explain how the department arrived at the \$242 million figure. Director Sacks responded that the \$242 million represents 75 percent of the projections. This is a best estimate for the new program after its first 18 months.

Reference was made to a presentation from January 2013 regarding the savings for the 2011 reforms; the structured settlements savings estimate was updated to \$600 million. \$242 million doesn't represent 75 percent of this.

Ms. Kennedy advised that in a fiscal note the department does not include the supplemental pension reserve fund because it is a pay-as-you-go fund. The \$600 million recognized the change in the liabilities for this particular fund, which is not otherwise reported. Along with that, we were not changing the underlying assumptions for structured settlement participation, only overall incoming claim changes. In January, the actuaries were still relying on original assumptions; they only had financial information for three calendar quarters of the year. After additional quarters, the actuaries had enough evidence to bring down the original assumptions and to adjust the liabilities accordingly.

Director Sacks added there are two ways we make the decision to adjust assumptions and liabilities. The first is formulaic and is based on the number of claims received. The second is when the actuaries review the underlying assumptions associated with particular pieces of the workers' compensation program. With structured settlements the actuaries reviewed the underlying assumptions and came to the conclusion that adjustments should be made to more accurately reflect the ultimate savings.

- Contingency Reserve:
 - As of June 30, 2012, the contingency reserve balance was \$580 million. As of March 31, 2013, the contingency reserve balance was \$693 million, slightly below the bottom of the targeted range of 8.7 percent of the liabilities.
 - The contingency reserve balance would have been \$935 million on March 31, 2013, had it not been adjusted for structured settlement estimated savings.
 - The contingency reserve for the Accident and Pension Funds was \$127 million and is below the target which is \$595 million.
 - The contingency reserve for the Medical Aid Fund was \$566 million, above the lower target of \$454 million.
- Key Financial Ratios:
 - The operating ratio, excluding the change in structured settlement savings, is 98.9 percent.

Director Sacks commented on the data regarding the industry forecast for claim administration expense (CAE) ratio of 15.5 percent. Our administrative costs (9.3 percent) are significantly less than in the private sector. The department would like to discuss what liabilities could be if CAE was closer to 15.5 percent; we want to effectively address both the financials and supporting staff's efforts to return people to work. A comment was made that the department's loss ratio is twice the industry forecast and this should also be considered in the future conversation.

It was asked if there are financial trends since last fall that would cause the department to think differently about the pension discount rate. Director Sacks explained over the long term, the strategy is a gradual but deliberative effort to reduce the pension discount rate and is still the most appropriate direction. The department has not adjusted our pension discount rate since the 1980s.

Health Care Sub-Committee: Transition Plan: Janet Peterson

Janet Peterson, Program Manager for Health Services Analysis, began her presentation regarding the transition plan for the WCAC Health Care Subcommittee (WCAC-HC) and requested action from the WCAC in identifying additional business and labor members for the Provider Network Advisory Group (PNAG). Last year, the WCAC asked the department consolidate the functions of the PNAG and disband the WCAC-HC. Ms. Peterson reviewed the current committee structure and membership. The department is proposing to merge the functions of the two advisory groups and create a new committee; it is recommended to keep the current membership of the PNAG and add one business and one labor representative (these would be designated by the WCAC caucus chairs). The new committee is scheduled to meet on July 25, 2013. These meetings are scheduled every quarter from 8:00-12:00 in SeaTac.

A request was made to have nominations by June 21, 2013.

The department is in the process of expanding the number of Centers of Occupational Health & Education (COHEs). Currently, there are six contracts being negotiated. The department plans to establish two Regional Business and Labor Advisory Boards (BLABs), one in Eastern Washington and one in Western Washington be established, to ensure coordination with local communities as well as business and labor participation in COHE expansion. Each of these committees would include eight to twelve members, evenly distributed between business and labor. The department suggested getting nominations from the COHEs and then asking the WCAC caucus chairs to approve these recommendations.

WCAC members raised a concern that this approach seemed constraining and more flexibility was requested. Ms. Kennedy advised that the department did not mean to limit the appointments to nominations from the COHEs. However, the COHEs could be helpful in identifying potential candidates who would be interested. Ms. Peterson thanked the committee for this feedback.

The department would like WCAC to finalize the appointments to the new BLABs in August or September, so that we could move ahead on scheduling initial meetings.

Ms. Peterson was asked if the current four COHEs each have a BLAB. The answer is no; only the Renton and Eastern Washington COHEs currently have BLABs. The Everett Clinic and Harborview do not because they are institutional COHEs whereas the Renton and Eastern Washington COHEs are broader and enroll providers that do not work in those specific facilities.

Ms. Peterson was asked to provide a high level explanation of the ultimate design of the provider network with respect to the statewide COHE expansion. Ms. Peterson suggested that she present a graphic at a future meeting that explains these relationships. COHEs primarily serve providers who often treat injured workers and would like to develop expertise in occupational medicine. In order to provide good access to care and a full range of specialists, the network includes many medical providers who may only see one or two injured workers a year. All providers who want to be paid for ongoing treatment to injured workers must be in the network. If a provider only treats a few injured workers, COHE participation may not be appropriate. COHEs provide a system for accountability for providers that are more involved in occupational medicine and want to develop best practices.

Ms. Kennedy added the decisions on PNAG restructuring and appointment to the COHE BLABS are not dependent on each other. Mr. Sacks clarified that the intent is to disband the WCAC-HC. Ms. Kennedy asked WCAC members to get back to her in the next week or so if they have any concerns with adding the additional business and labor members to PNAG.

Prevention efforts can reduce injury, lost time and costs: Barbara Silverstein and Anne Soiza

Director Sacks began the presentation with recognition of Barbara Silverstein's years of service to the State of Washington; Ms. Silverstein plans to retire in August 2013.

Barbara Silverstein, Safety & Health Assessment & Research Prevention (SHARP) Research Director, shared the objectives of the presentation.

Research for Action: Ms. Silverstein reviewed the Pascale Carayon balance model: Individual, Technology, Organization, Task, and Environment.

- If one of these connections is broken in this balance model, the responses can include injuries, lost productivity or turnover in staff.
- The leading broken connection is communication; are complaints addressed before an injury occurs?
- One of SHARP's research studies tries to address communication concerns by asking several questions such as: Does DOSH enforcement and consultation visits improve workplace safety; why are our Bureau of Labor Statistics' rates higher compared to other states; and did legislation make a difference with safe patient handling?

Ms. Silverstein focused on the logging industry as this risk class has one of the highest serious injury rates. Injury rates in non-mechanized logging are ten times higher than all other state fund risk classes. There is clearly an issue that needs to be addressed for the industry and those who work in it; there is an increasing trend of acute inpatient hospitalizations for logging.

Musculoskeletal Disorder Study: 25 percent of all claims are for musculoskeletal disorders; including shoulders, elbows, wrists, backs and knees. These represent 40 percent of time-loss claims and are 45 percent of the cost of all compensable claims. There are currently no rules regarding musculoskeletal injury prevention and the problem remains. The department is interested in hearing the committee members' creative suggestions on how to address this problem in the absence of regulation.

- Washington Safe Patient Handling: Washington was the first state to legislate this for acute-care hospitals; Ms. Silverstein felt it would be beneficial to include nursing homes because the claims rates for nursing homes are higher than for hospitals.

Trucking Injury Reduction Emphasis for Safety (TIRES): This is a steering committee which includes trucking industry stakeholders and the department. The committee discusses safety needs of companies to include issues such as fatigue, sleep apnea, and obesity. Ms. Silverstein reviewed a demonstration on the impact of jumping from truck cabs that can be found on www.keeptruckingsafe.org.

Anne Soiza, Assistant Director for the Division of Occupational Safety & Health (DOSH) continued the presentation and discussed L&I DOSH workplace death, injury and illness prevention activities. The discussion included statewide prevention services in DOSH; DOSH's use of trends and data studies; and DOSH Effectiveness Study by SHARP.

In SHARP's study, it was determined there is a vast difference between transient work sites and fixed sites. Transient work sites tend to be more hazardous; these include construction, agriculture and trucking industries.

- DOSH enforcement and consultation activities make a significant contribution to reducing workers' compensation claims rates and costs in the year following the visit:

- Fixed site industries: With enforcement, there is \$2.1 million savings per year
- Non-fixed site industries: With enforcement, there is \$1.8 million savings per year and with consultation, there is \$0.3 million savings per year.
- Hazard-specific rules matter, and citations have a powerful effect on time-loss injuries.
- When musculoskeletal claims are not included, the injury rates fell for employers that had been cited fell by more than triple the amount for those having an enforcement visit without citation.

Ms. Soiza was asked what the ratio of consultants versus compliance officers is; she responded that it is two inspectors to one consultant.

Another question was asked if there were more compliance visits made, would this impact the outcome of cost savings. It was answered yes, although we were not able to demonstrate with statistical significance for the construction industry that this helps reduce injury rates.

DOSH Prevention Services: The program maximizes statewide resources by focusing on the top hazards which lead to worker deaths, injuries and illnesses. There are three outward facing services: education and outreach, consultation, and compliance.

- The top fatality causes for workers are motor vehicle incidents, falls from elevation, electrocution, commercial diving, trench collapse and being struck by large objects.
- The top serious injuries are musculoskeletal, material handling, falls from elevation, falls to same level, amputations, and struck by large objects.

A comment was made that the best claim is no claim and prevention is important. A concern was raised that there is a focus on companies with fewer than 25 employees for consultations and that they believed there would be a more significant impact if DOSH worked with larger companies rather than focus on smaller businesses. Ms. Soiza advised this was a goal set because small businesses have few resources as opposed to larger employers who have qualified safety and health staff. Ms. Soiza stated that she is open to discussing this further in the future.

Ms. Silverstein was asked if there has been a study to look at the effectiveness of the labor and management safety and health committees that employers of eleven or more must have. She responded that the department is in the process of a study with small employer (10 to 25) and then larger employers. Preliminary results are available, however only 76 sites have been visited.

Claims Evolution: Vickie Kennedy

Claims Evolution, formerly known as the Operational Health Plan, is a multi-year initiative designed to improve claims and medical management operations. Our goal is to meet or exceed industry standards and to improve overall service that we provide all the parties on a claim, including the employers, workers, and medical providers to reduce delay and return workers back to work. Claims Evolution consists of six projects: Medical Management; Return to Work Coordination; Claims Technology; Claims Leadership; Claims Handling; and Claims Training.

In 2011 and 2012, the department decided to thoroughly review its claims operation. The department has considered several inputs including: Building a Better Customer Experience; employee surveys; lean efforts; and best practices from other workers' compensation insurers.

- Claims Customer Experience: The department will continue semi-annual surveys of injured workers and employers with active time-loss claims.
 - We have learned from customers that initial contact matters. There is higher satisfaction for workers and employers who were contacted early in the course of the claim.
- Employee surveys: Some staff felt they are not equipped to handle complex claims. This is indicative of the turnover in experienced claims staff. We are working to fill this knowledge gap and set the new claim managers up for success.
- Lean efforts: We learned of a number of redundancies in the way claims are handled. For example, there could be greater consistency in coordinating RTW activities.
- National experts: The ratio of claim managers to nurse consultants is low for the department; currently it is 23:1, and should be 10:1. Claim managers are using nurse consultants on an urgent basis only and not involving them early in the claim. A decision package requesting additional nurse consultants is before the legislature.

Key focus areas for the department include:

- Use industry best practices to offer our customers proactive service from the beginning of the claim.
- Collaborate across programs and partner with employers and providers to get every worker possible back to work.
- Develop tools and streamline processes to eliminate waste, move claims forward, and ultimately reduce costs.

The initial activities underway are:

- Decision package for a knowledge management system. This will replace the on-line reference system and allow staff easier access to information to help manage claims better;
- One of the CE pilots is a partnership between the Employers Security Department's WorkSource program and Labor & Industries, to work with injured workers that are motivated to return to work but do not have opportunities with their employer of injury. This pilot will focus on ways to provide injured workers with services to find job opportunities and create a relationship with another employer.
- Another pilot in the works is to place Employment Security Department re-employment specialists on the claim floor; the intent is to help claim managers understand services that are available through WorkSource.
- As part of the return to work effort, the department is mapping the claim process for the first 100 days of a claim. The focus will be to identify where we can removed delays - this will impact an injured worker's ability to return to work and alleviate additional costs to an employer;
- Identify delays and redundancies in our processes; and
- Update technology to improve claims handling.

Training:

The department has hired a consultant to review how we train claim managers and advise us on possible changes such as e-learning, web-based learning and adult learning styles.

First Call Training: The department invited staff to hear from a consultant from British Columbia for first call training. "First Call" is the injured workers first interaction with the claim manager. The consultant provided staff with tools to help motivate a worker; how to build a relationship with them; and to identify their barriers to return to work.

Ron Langley will present an update on the customer survey and first call training at a future meeting.

Closing Comments:

The next WCAC meeting is scheduled for September 16, 2013 from 9:00-12:00 in Tumwater.

Meeting Adjourned.