

## **Workers' Compensation Advisory Committee (WCAC) Meeting**

Labor and Industries, Tumwater, WA

Meeting Notes

March 30, 2021

Videoconference

### **Business Representatives:**

Bob Battles, Association of Washington Business

Sheri Call, Washington Trucking Association

Jon DeVaney, Washington State Tree Fruit Association

Sheri Sundstrom, Washington Self-Insurers Associations

### **Labor Representatives:**

Joe Kendo, Washington State Labor Council

### **Labor and Industries:**

Joel Sacks, Director

Vickie Kennedy, Assistant Director for Insurance Services

### **Board of Industrial Insurance Appeals (BIIA):**

Linda Williams, Chair

### **Court Reporter:**

Connie Church, Capitol Pacific Reporting

### **Recorder:**

Ashley Oberst (*present*)

### **Guests:**

Alex Woodward, Ali Ishaq, Andrea Jasek, Bill Vasek, Brenda Heilman, Celia Nightingale, Cheri Ward, Chris Bowe, Chris Ristine, Dan Beaty, Debra Hatzialexiou, Debra Moder, Diane Doherty, Donna Egeland, Herbert Atienza, Jeff Killip, Jerry Bonagofsky, Jessica Gallardo, John Meier, Josh Ligosky, Karen Jost, Keith Bingham, Kim Wallace, Kirsta Glenn, Kris Tefft, Latausha Carlyle, Lisann Rolle, Lloyd Brooks, Lynda Ducharme, Maria McClain, Mark Phillips, Marty Cohen, Matt Doumit, Megan Soria, Michael Harris, Mike Ratko, Rachel Swanner, Richard Clyne, Rob Cotton, Rose Gunderson, Roseann Collins, Ryan Guppy, Sarah Battin, Steve Reinmuth, Taylor Ishikawa, Tiffany Loescher, Tom Feller, Trudes Tango, Tyler Langford, Veronica Shakotko, Viona Latschaw

### **Welcome and General Updates: Vickie Kennedy and Joel Sacks**

Meeting started with a quick overview of the agenda and what would be covered in the meeting. Joel thanked everyone in attendance, acknowledging that the meeting was taking place during the legislative session. The committee members then introduced themselves. Jeff Killip, Acting Deputy Assistant Director for the Division of Occupational Safety & Health (DOSH) (L&I) presented the safety message.

Ms. Kennedy gave an update on the current legislative activity, including Senate Bill 5046 and the COVID-19 presumptive coverage bills, ESSB 5190 and ESSB 5115.

**Mr. Battles added** that ESSB 5190 was scheduled for hearing the same day as the meeting and that his group would be in opposition to the bill. **Ms. Kennedy** responded that their opposition was anticipated.

**Question: in Zoom chat** - Do either of these bills end when the Governor's proclamation ends? Ms. Kennedy provided that, while the legislation (if adopted) would be permanent, the presumption applies only during a public health emergency.

It was asked whether the department would have internal policies related to rebutting the presumption prior to a case going to the Board of Industrial Insurance Appeals (BIIA) to present evidence? **Ms. Kennedy** responded that the typical process would apply: the first opportunity for any of the parties is to submit evidence and request reconsideration of the department. The laws as currently drafted are pretty clear on what the rebuttal evidence needs to consider. Also keep in mind that there are two (2) different standards of evidence in the current bills, depending on whether the case involves a frontline worker or healthcare worker. The department would likely engage with our legal counsel before deciding whether to reverse our decision or affirm it, given that these levels of evidence are really legal terms. **Ms. Williams added** that the burden of proof is very high. "Clear, cogent and convincing" is very close to "beyond a reasonable doubt". The preponderance of evidence standard, as in the presumptive coverage bill for frontline workers would be a lower burden. The next question concerned whether an accepted claim would be charged to the retrospective rating adjustment calculations when it's not being considered in the employer's experience? **Ms. Kennedy** responded that, while there haven't been internal conversations specifically about this, from the actuaries, there needs to be alignment of the calculations for the employer's experience factor, Retro, and the rating system generally. In essence then, the costs of the COVID claims comes out of the contingency reserve.

Mr. Sacks gave an update on the safety grant bill and an agency request bill having to do with temporary workers. Mr. Sacks also gave an update on the House and Senate budget proposals. The budgets give L&I funding to create a specialized group in the safety program to focus on agriculture. L&I was also given funding to continue the provider-credentialing project and continue the Workers' Comp System Modernization (WCSM) project.

Mr. Sacks: Concerning WCSM, at the last meeting, I mentioned that we were bringing in an independent reviewer to make sure that, with everything that has changed in the world in the last couple of years and with the size and scope of this project, that the strategy and approach for implementing the system still makes sense. We're beginning to get feedback from them. There is a decent possibility that the strategies we had in mind for how we would implement a new system may need to be adjusted. We won't know the final recommendations until the end of June. In the meantime, we're slowing down some of the WCSM-related activities because we standing up some elements too soon if we have to revise our strategy. We asked for \$44 million for the 21-23 biennium, which is included in the House budget. There is \$17 million in the Senate budget. Mr. Sacks went on to comment that, in all likelihood, the spend would be closer to the

\$17 million. And, although it's going to take us a little longer to make sure we are doing it right, the extra time in planning stage is worth the spend.

**Joe Kendo** asked what the \$25 million gap in appropriation would mean if the legislature adopts the \$17 million figure? **Mr. Sacks** responded that, because it's over the course of a biennium, he's not concerned with the gap and \$17 million may be more realistic for the next two (2) years. If it turns out that the need will be more, we would work with stakeholders and with the members of the legislature for a supplemental budget. At this point, I don't want to put an RFP on the street until we have an agreement from everybody that this is the right approach.

A question was asked about HB 1097, the small business grant bill and its funding source of workers' compensation money. Knowing that there's a very good projection of revenue and also federal money coming in, could it be amended so that, if there's federal money available, this could be used instead of workers' compensation funds? **Mr. Sacks** answered that this bill is designed to address COVID, but also to address the next catastrophe that hopefully will never happen. The strategy behind tapping the workers' compensation funds is that we know this money will exist when the next crisis hits. L&I would not have the authority to tap into any other fund source, including federal money in the same way, the legislature could give us authority to use workers' compensation funds. So, in terms of being able to quickly stand up a grant program in a crisis, we weren't able to identify another fund source.

Ms. Kennedy gave an update on COVID claims data. As of March 26<sup>th</sup>, the State Fund had received 4,991 COVID-19 claims and self-insurance had received 2,477. Of the State Fund claims, there were 305 currently pending, 35 pending in self-insurance. State Fund had closed just over 3,900 claims and self-insurance just over 1,700 claims. Most of the closed claims were less serious, often only for a quarantine period. State Fund had rejected 578 claims, so about 11.5% of the claims received, which is very similar to typical rejection rates for all claims. The self-insurance rejection rate is a bit higher, with 172 rejected claims, or 14%. The typical rejection rate for self-insurance is not known. For State Fund, 68% of the claims are lost time, which is much higher than typical claims, but that may be because so many claims are filed to cover the quarantine period. So there's a vast difference in the typical ratio of lost time and medical only claims in this group. As of February, 57% of the State Fund claims were from healthcare, 11% were first responders, and 32% were all others. And sadly, there had been 16 fatalities in the State Fund, with four current fatality claims still pending, and there have been nine (9) self-insured fatalities, for a total of 25 total allowed fatalities.

**Bob Battles** asked, knowing that the two presumptive coverage bills are likely coming soon, do you anticipate these would change what you just reported for the number of cases and applications you've had? **Ms. Kennedy** responded that we don't know whether they would change things in a substantial way, noting that the rejection rates are relatively low. The major unknown is how many claims have not been filed because the workers believe their claim would not likely be allowed.

**Insurance Services Dashboard: Vickie Kennedy**

Ms. Kennedy talked through slides 14-26

## DASHBOARD SUMMARY

Measure	Change from 2012 (unless otherwise noted)	Y/Y Change		
<b>Long Term Disability</b> – share that received a TL payment in the 12 month post injury	-16.3%	✓	11%	⚠
<b>Pensions granted</b>	Down	✓		
<b>Resolution rate</b> - time-loss claims at 6 months	6.5%	✓	8%	✓
<b>Auto adjudication of claims</b>	72% from 2014	✓	-5.2%	⚠
<b>High risk claims</b> – share return to work at 12 months	1.4%	✓	-4.9%	⚠
<b>Median time-loss days paid at first vocational service</b>	-77.8%	✓	-11.5%	✓
<b>% RTW outcomes</b> - all first vocational service referrals	241.5%	✓	5.5%	✓
<b>WSAW participation</b>	Steady utilization			
<b>COHE utilization</b>	91%	✓	3.6%	✓

Some of the patterns in the dashboard data are changing, likely due to the COVID-19 pandemic. Because these are quarterly data points, we are now seeing the impact of a full year of COVID reflected in the data.

### ESSB 6440 Legislative Report: Brenda Heilman

Ms. Kennedy introduced Brenda Heilman, Claims Administration Program Manager, who stepped in as facilitator during the second half of last year’s independent medical examination work group that was required under ESSB 6440, passed by the legislature in 2020. Brenda is an expert in workers’ compensation claims, working hand-in-hand with Cheri Ward, Chief of Claims, and also plays an important role in the WCSM Project as the business lead for Insurance Services.

Ms. Heilman talked through slides 28-36.

### Interpreter Services Project: Karen Jost

Ms. Kennedy introduced Karen Jost, Health Services Analysis Program Manager.

Ms. Jost talked through slides 37-46.

On March 12, we announced our plan to go live with interpretingWorks on April 12 and we are continuing to encourage and support the vendor in promoting and registering providers and

interpreters in the scheduling system. For a short time after the April 12 go live date, we will continue to cover interpreter services scheduled outside the platform to allow for some transition time. Once this grace period is expired, interpreters must be requested via the platform for all scheduled appointments (urgent appointments can be scheduled with an individual provider). As of March 23, we had 467 interpreters and 244 provider groups registered with the vendor, with the numbers increasing daily. The provider group number may seem low, but keep in mind that groups are being scheduled rather than individual medical providers because this is done by the support services in a clinic who may register a group, rather each provider.

Slide 46 contains active links to additional information.

### **Industrial Insurance State Fund Financial Overview: Rachel Swanner**

Ms. Kennedy introduced Rachel Swanner, Workers' Compensation Accounting Manager.

Ms. Swanner talked through slides 51-63, which cover the preliminary financial results for the second quarter of fiscal year '21, which is the period of July 1<sup>st</sup> through December 31<sup>st</sup>, 2020.

Mr. Sacks asked, for the accident fund, what percent of liabilities is the contingency reserve at? Ms. Swanner answered that it's at 18.7%, accident fund combined with the pension reserve fund.

### **Board of Industrial Insurance Appeals (BIIA) Update: Linda Williams**

Ms. Kennedy introduced Linda Williams, Board of Industrial Insurance Appeals Chair.

Ms. Williams talked through slides 72-77.

Ms. Williams commented that there isn't much difference in how long appeals are taking because the BIIA staff and judges may actually be getting some things done more quickly, working at home. The changes we're seeing relate to appeals received which are down significantly, most likely a temporary situation. The BIIA is focused right now on stakeholder input through regular meetings, especially during the pandemic. This has allowed them to do great things in terms of customer service. Now that everything is beginning to open up, and return to some live hearings, the BIIA is looking at access to justice and what Zoom did for that. It's possible to study as judges and the courts figure out how we can revolutionize the way we've done business.

We also know that our stakeholders value the live hearing and the opportunity to have the judge listen to live evidence. So, the BIIA has assembled a team doing a mock courtroom with different types of personal protective equipment (PPE); some people on staff who are Community Emergency Response Team (CERT) trained and emergency management training and to handle all COVID-related issues. So they're all working together with those who are in charge of safety

to figure out how we can safely bring back live hearings, because we now recognize that we have to stay ahead of the curve.

### Closing Comments and Adjourn: Vickie Kennedy and Joel Sacks

**Mr. Sacks:** This may be our third Zoom WCAC meeting and we want to know if we are covering the right topics. As we plan out the next meetings, are there particular things you want us to focus on as we go forward? What would be of most use to you in terms of how we spend our time together? **Mr. Kendo** responded that he appreciated all the work the department is doing. As we're moving out of the pandemic and assessing our systems and how we responded, I'm interested in noting places where you're seeing potentially COVID-driven changes in the Insurance Services Dashboard. And any other lessons learned.

**Mr. Battles** echoed Joe's comments, and agreed that the sooner we can open up and start having some live meetings, it will be helpful. **Ms. Kennedy** commented that, because it's easier to log into a Zoom meeting than travel to a location, we're getting greater participation than we've had in the past. **Ms. Sundstrom** commented about the medical care issues nationwide and the utilization of telemedicine as well as tele-physical therapy. I actually have more people attending physical therapy on a regular basis than ever before. We don't get the missed appointments. And it's because of the virtual abilities that the medical providers stepped up to do. I'd be curious as to how that will fit into the future as well. It's a huge opportunity, when people get injured to keep them on the job site, keep them working, and able to attend their visits. It's a model that could be replicated in other areas. **Ms. Kennedy** responded that telemedicine may be a great topic for the June meeting because our current telehealth policies expire June 30<sup>th</sup> unless we take action to extend them. As I've mentioned to this group before, we're engaging the University of Washington to learn more about the impact that telemedicine has had on quality, effectiveness, access, to help us decide which of our temporary policies should be made as permanent improvements in our system. **Mr. Sacks** added that we would be interested in the WCAC's perspective as we think about the new normal and the way we operate internally, we'll be in a hybrid mode, not all telework. What are some of the key things we would need potentially for future conversation? What would be high on a list of when actual physical contact with the workers' compensation system is important or needed. There may not be a lot. Data suggests the primary way people want to interact with us is through the web and on the phone. Understanding this would be helpful for us as we continue to define how so we approach work in 2022 and 2023. **Mr. Battles** added that we all need to understand what and how are we going to deal with a workforce that is not sitting in an office but in people's homes? As more and more large operations decide to move that way, we're going to be tasked with how we handle that from a business perspective? How is safety of a workforce regulated? **Mr. Sacks** responded that both from the worker safety perspective as well as workers' compensation, these are important topics that. We can make an agenda item. **Ms. Kennedy** added that for workers' compensation coverage, recall that we are a "course of employment" state, not a "due to employment" state, meaning that an injury or exposure that happens in the course of employment is covered. So as long as a worker is doing tasks or activities at the direction or the furtherance of their employer's business, they're basically covered. Of course, this doesn't address the dilemma Bob's pointed out of how the employer ensures there is a safe workplace for the worker.

**Ms. Sundstrom** commented that it would be interesting to get some feedback from very large employers where everyone has been working from home. Are there any statistics injury trends, ergonomic injuries specifically from home? **Ms. Kennedy** responded that we haven't done a deep dive into the data but, so far, we're not seeing anything. This might be an interesting topic, to take a deeper dive into the data and are there some lessons that can help employers as we think about what the workforce may look like going forward. **Ms. Sundstrom** added that it would be helpful to have Linda's perspective as some appeal cases come in to see what may be out of the ordinary from a workers' compensation or from the safety perspective.

**Ms. Kennedy** commented that this seems to be the forming of an interesting agenda for the June meeting.

Meeting adjourned.