

Workers' Compensation Advisory Committee (WCAC) Meeting

Labor and Industries, Tumwater, WA

Meeting Notes

December 16, 2020

Videoconference

Business Representatives:

Bob Battles, Association of Washington Business
Sheri Call, Washington Trucking Association
Jon DeVaney, Washington State Fruit Tree Association
Sheri Sundstrom, Washington Self-Insurers Associations

Labor Representatives:

Joe Kendo, Washington State Labor Council
Mark Riker, Washington State Labor Council
Brenda Wiest, Teamsters Local 117

Labor and Industries:

Joel Sacks, Director
Vickie Kennedy, Assistant Director for Insurance Services
Randi Warick, Deputy Director for Financial Management

Board of Industrial Insurance Appeals (BIIA):

Linda Williams, Chair (via phone)

Court Reporter:

Kathryn Wilson, Capitol Pacific Reporting

Recorder:

Ashley Oberst (*present*)

Guests:

Alex Woodward, Amanda Fisher, Bailey Ramsdell, Bambi Sotak, Bill Vasek, Carolyn Logue, Cherell Fisher, Cheri Ward, Chrissy Pierce, Christine Brewer, Debra Hatzialexiou, Diane Doherty, Donna Egeland, Erich Hahn, Herbert Atienza, Isabel Hernandez, Jacquie Goodwill, Jamie Graham, Jeff Killip, Jessica Nau, John Martinez, John Meier, Josh Ligosky, Julie Black, Kathy Wilson, Ken Smith, Kim Wallace, Kirsta Glenn, Kris Tefft, Kristine Ostler, Lara Drabek, Latausha Carlyle, LaTrisha Gallegos, Leigh Haley, Lisann Rolle, Lloyd Brooks, Maria McClain, Mark Matthies, Mark Phillips, Matt Doumit, Matt Perkins, Megan Soria, Melissa Sutherland, Mike Ratko, Patrice Pasqualone, Rachel Swanner, Rick Clyne, Rob Cotton, Rose Gundersen, Roseann Collins, Ryan Guppy, Ryan Rautio, Sarah Cliffthorne, Steven Edwards, Tammie Hetrick, Tammy Fellin, Taylor Ishikawa, Tiffany Loescher, Tom Feller, Tom Kwieciak, Trudes Tango, Tyler Langford, Veronica Shakoto, Viona Latschaw

Welcome and Safety Message: Vickie Kennedy, Joel Sacks, and Jeff Killip

The meeting started with a quick overview of the agenda. The committee members introduced themselves and then Ms. Kennedy introduced Jeff Killip, Senior Manager of the Department of Safety

and Health (DOSH) Education Outreach program, who presented the safety message. The safety topic showcased the new DOSH [eTool Selection Guide for Face Coverings, Masks, and Respirators \(Spanish version\)](#).

General Updates: Vickie Kennedy, Tammy Fellin, Randi Warick, and Mike Ratko

Ms. Kennedy gave an update on what the agency has been doing to implement 2020 legislation. SSB 2409 increased certain penalties that can be assessed primarily against employers and medical providers, and added penalties for self-insured third party administrators. Changes have been made to rules to reflect the new penalty amounts of \$500 or 200% of the quarterly tax for each offense, whichever is greater. Policy changes and processes have also been put in place for staff to process the penalties.

ESSB 6440 made some changes to independent medical exams (IMEs) and also created a workgroup of business, labor, IME panel representation, and legislators and the group has completed their work after four meetings. A draft report was shared with the workgroup members and their comments were gathered. Internally, the report is going through some final reviews before submitting it to the appropriate legislative committee.

Ms. Fellin gave an update on agency request legislation for 2021. Four (4) policy bills were submitted to the Governor's office for consideration. These are still awaiting approval. The one most relevant to the WCAC is the proposal to create a grant program for employers using accident fund premiums. The Department could expend funds up to 2% of the previous years' accident fund contributions to give grants to small employers, those with 25 or fewer employees, so they can comply with new safety and health standards in a public health emergency, such as COVID.

Mr. Battles commented that his concern with this proposal is the funding source; it's a program for which general funds should be considered, not a dedicated fund for workers' compensation.

Ms. Fellin provided that other concepts awaiting approval would increase protections for workers who suffer discrimination based on expressing concerns about safety and health at work by filing a complaint; for example, being put on the night shift, or are fired, including a civil penalty.. There is a third bill that's very similar to one we considered last year that extends protections for temporary workers. Based on Safety & Health Assessment & Research for Prevention (SHARP) research, we know that temporary workers are more than twice as likely to be injured on the job than their permanent counterparts, and so this bill creates some additional requirements for temporary agency and the host employer to communication, particularly around training, and it clarifies which of those entities are responsible for specific types of training. Finally, a bill would require property flippers who are doing electrical work on their property to use licensed electrical contractors and certified electrical workers. What we are trying to address is the situation where a property flipper tries to take advantage of the homeowner exemption for being able to do work on their own property.

Ms. Warick gave an update on the 2021-2023 biennial budget request and the Workers' Compensation Modernization (WCSM) Project. The overall biennial budget request focuses on pandemic response and continuing some of the agency's existing approved activities.

- \$4.5 million was requested for safety and health in the agriculture industry. This money would create a special DOSH compliance unit and additional bilingual outreach capacity.

- We requested a reauthorization of almost \$45 million for WCSM in the next biennium. We were authorized \$82 million this biennium and won't be spending all of that, leaving about \$64 million unspent.
- We are asking for a little under \$3 million that won't be spent this biennium on the Provider Credentialing project to be moved to next biennium, as well as an addition \$1.73 million to finish up the project.
- Finally, for our conveyance management system in our Elevator program, we are asking for a total of \$3 million. About \$982,000 of that is appropriated from the current biennium and we are requesting an additional \$2 million to finish gathering requirements and to meet some additional Office of the Chief Information Officer (OCIO) requirements.

The agency is currently working through the first gate of the WCSM project, having completed 40 different deliverables, and working to contract a firm to complete an independent review for the project.

Mr. Ratko gave an update on the final rate decision and the Interpreter Services project. The overall rate increase for 2021 is 0%. The rates were adopted November 30 and will take effect on January 1, 2021. The Interpreter Scheduling project was prompted by SSB 6245 from 2018, which mandated L&I to establish a system to directly pay interpreters, contract with at least one (1) scheduling system, or do both by September 1, 2020. L&I decided to contract with a scheduler through a competitive Request for Proposal (RFP) procurement process and we maintained the ability to directly pay interpreters in emergent and other unique situations. The September go-live date was unable to be met, but after submitting a report to the legislature regarding the project's status, we are working diligently to come up with a go-live date in spring 2021.

Insurance Services Dashboard: Vickie Kennedy

Ms. Kennedy talked through slides 14-21.

Vocational Recovery Project: Vickie Kennedy and Ryan Guppy

Ms. Kennedy gave a high-level overview of the Vocational Recovery Project, talked through slides 24 and 25 and then introduced Ryan Guppy, Chief of Return to Work Partnerships.

Mr. Guppy talked through slides 26-38.

Ms. Kennedy added clarification that, as Mr. Guppy referred to "bureaugenic disability"; this refers to everyone in the system, which includes employers and medical providers, and everyone else who is somehow involved in a claim. We all contribute or risk contributing in some way or another.

A question was asked from the audience about whether key changes in the vocational firm best-practice agreement are related to the former individual approach to a system approach. **Mr. Guppy** responded that the key changes in what's now the annual firm agreement and quality assurance plan outline what we are asking vocational firms and providers to do based upon evidence to address needless work disability and use the worker centric approach. There are some reporting requirements for firms. The firm agreement can be reviewed on-line.

Another question concerned situations where a Vocational Rehabilitation Counselor (VRC) is not providing quality work, and requests for a new VRC. **Mr. Guppy** responded that there is a new complaint process to Private Sector Rehab Services (PSRS), and they will investigate. If, through that complaint, we find there were rule violations and/or the VRC wasn't providing the services as designed, then we will work with the vocational firm to ensure the VRC has the education and awareness about expectations and the new service delivery model, or we will work with the firm to ensure that before they assign the VRC another referral that the VRC has done their due diligence to come up to speed with meeting expectations. Ms. Kennedy talked through slides 39-45

A question from the audience concerned whether early intervention is different from vocational recovery. **Ms. Kennedy** responded that there is no longer a referral type called "early intervention" which focused only on the employer of injury. When we consider the statutory return-to-work priorities and our mandate that our focus be in returning the worker to employment, leaving out other employment options was really a misstep.

Mr. DeVaney asked whether there is any change in the private sector vocational payments associated with the change in emphasis and how much of those costs are offset by the outcome improvement. **Mr. Guppy and Ms. Kennedy** responded that overall costs have increased based on the new service expectations and model as we've identified more cases earlier on that have a work disability problem that needs to be addressed. The changes, including earlier identification of workers at risk, has offset a significant number of long-term disability payments and liabilities. **Ms. Kennedy** referenced the Performance Dashboard slide that showed the downturn in number of total permanent disability pensions allowed. This change in the pension trend is a great example of work disability prevention. We've been undergoing the change to vocational recovery since about 2014 to 2016 and, because the average pension is determined about six (6) to seven (7) years after injury, we are right at that development point where we begin to see the results in the data.

Industrial Insurance State Fund Financial Overview: Rachel Swanner

Ms. Swanner talked through slides 47-60.

Board of Industrial Appeals (BIA) Update: Linda Williams

Ms. Williams talked through slides 69-74

Closing Comments & Adjourn: Vickie Kennedy and Joel Sacks

Ms. Kennedy: I just want to quickly say if you have any questions on any of the topics, feel free to send an email. I know it's been a while since we updated you on vocational recovery, and I appreciate the opportunity, because we are getting a lot of attention, interestingly, from other jurisdictions. They are really looking at this model and wanting to figure out how they might replicate it. Meeting adjourned.