

Workers' Compensation Advisory Committee (WCAC) Meeting

Labor and Industries, Tumwater, WA

Meeting Notes

June 15, 2021

Videoconference

Business Representatives:

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

Labor Representatives:

Joe Kendo, Washington State Labor Council
Sean Embly, UFCW Local 21
Mark Riker, Washington State Labor Council
Brenda Wiest, Teamsters Local 117

Labor and Industries:

Joel Sacks, Director
Vickie Kennedy, Assistant Director for Insurance Services

Board of Industrial Insurance Appeals (BIIA):

Linda Williams, Chair

Court Reporter:

Lori Stefano, Capitol Pacific Reporting

Recorder:

Ashley Oberst (*present*)

Guests:

Alex Woodward, Ali Ishaq, Alicia Milani, Andy Shelton, Autumn Music-Schmitz, Bill Vasek, Brenda Heilman, Bret Jensen, Candice Bock, Cheri Ward, Cherie Wagaman, Chris Ristine, Christine Brewer, Collin Head, Dan Plunkett, Debra Hatzialexiou, Ernesto Carcamo, Herbert Atienza, Jeff Killip, Jessica Gallardo, Jessica Nau, John Geppert, John Meier, Josh Ligosky, Karen Jost, Keith Bingham, Ken Nielsen, Kirsta Glenn, Knowrasa Patrick, Kris Tefft, Lily Smith, Lisann Rolle, Lloyd Brooks, Maria McClain, Mark Matthies, Marty Cohen, Matt Doumit, Matt Ross, Maurice Perigo, Michael Harris, Mike Ratko, Pam Nathan, Patrice Pasqualone, Rachel Swanner, Regine Neiders, Rob Cotton, Roseann Collins, Ryan Guppy, Sarah Battin, Sarah Clifthorne, Sharon Avery, Sheryl Divina, Tammy Fellin, Tiffany Loescher, Tom Feller, Tom Kwiecieciak, Trudes Tango, Tyler Langford, Veronica Bronkema, Veronica Shakotko, Wes Carter

Welcome, Legislative Updates, and General Updates: Vickie Kennedy and Joel Sacks

The meeting started with a quick overview of the agenda and what would be covered in the meeting. Joel welcomed everyone and thanked them for attending virtually. The committee

members then introduced themselves. Ernesto Carcamo, Ergonomist for the Division of Occupational Safety and Health (DOSH) presented the safety message.

Ms. Kennedy gave an overview of the presumptive coverage bills that passed in the 2021 legislative session, ESSB 5190, ESSB 5115, and an overview of SB 5046, which changed the claim resolution structured settlement language.

Mr. Sacks gave an update on bills that were passed that affect the agency, but not the workers' compensation system directly, and the budget that was passed, which included the creation of a new Agricultural Safety unit, continued funding for the Workers' Compensation System Modernization Project, and the creation of a domestic worker work group.

Mr. DeVaney asked if there is a directory of staff in the new Agricultural Safety unit because his association would like to reach out to find out what issues the unit will be prioritizing and to coordinate training on what issues the unit is seeing. **Mr. Sacks** responded that only the head of the unit has been hired and that Mr. Sacks would have him reach out to Mr. DeVaney. The unit head was in the process of hiring supervisors and unit staff.

Ms. Call added that her association would be interested in a staff list for the Logging Safety unit. **Mr. Sacks** responded that that unit has been in place for years and that he would put Ms. Call in contact with supervisors of that group.

Mr. Kendo asked if there has been any progress on identifying a new DOSH Assistant Director. **Mr. Sacks** responded that Craig Blackwood has been acting in the roll since Anne Soiza retired at the beginning of the year and that he has been doing a fantastic job. As we get back to normal, Mr. Sacks is beginning to think through what the next steps are for filling the role permanently, but there are no specific updates at this time. **Mr. Battles** echoed that Mr. Blackwood has done a very good job and added that if there is anything the Committee can do to help move the process a long, to let them know.

Ms. Kennedy introduced Knowrasa Patrick, the new program manager for the Self-Insurance Program, replacing Jim Nylander who retired at the end of February. Ms. Patrick introduced herself and gave an overview of her background in the workers' compensation industry.

Ms. Kennedy gave an update on some of the CR 101s that have been filed recently and their status, including one for independent medical examinations (IME) and defining criteria for case progress exams and one for potential COVID-19 relief for retrospective rating groups. In the near future, a CR 101 will be filed for the annual workers' compensation premium rates, which would be effective January 1, 2022.

Ms. Kennedy gave an update of the current COVID-19 claims experience, including claim totals and statuses as of May 21, 2021.

COVID Claims

	State Fund	Self-Insured	Total
Allowed total	4,255	2,610	6,865
<i>Open</i>	169	491	660
<i>Closed</i>	4,086	2,119	6,205
Rejected	604	229	833
Pending	292	10	302
Total	5,151	2,849	8,000

Industry Group	Claims	Share
Healthcare Related	4,526	57%
Miscellaneous Services	963	12%
First Responders	866	11%
Misc. Professional and Clerical	662	8%
Government	256	3%
All Other	727	9%
Total	8,000	100%

State Fund Accepted Claims

Time-loss	71%
Medical	16%
KOS	13%
Total	100%

Fatal Claims

State Fund	17
Self-Insured	9
Total	26

Mr. Battles asked if the department anticipates, or has seen, the COVID-19 claim numbers changing with the new laws that were passed or if most of the cases are already being captured.

Ms. Kennedy responded that the claims experience doesn't reflect other data such as the number of people exposed or who contracted COVID-19 in different industries and didn't file claims. There was some concern that workers may have assumed, even incorrectly, that their claim would be rejected, didn't file and now would file due to the presumptive coverage laws, causing L&I to see an increase in claims. So far, this hasn't happened.

Mr. Kendo asked if the Department had given thought to developing a framework for thinking about the impact of long-haul COVID-19 cases and whether or not there needs to be any planning for those cases. **Ms. Kennedy** responded that no specific planning has been done, but that it is fair to say L&I anticipates some claims will be closed and later reopened for conditions attributable to COVID-19. Medical information on the long-term impacts of COVID-19 continues to evolve as we learn more about the virus. Ms. Kennedy also added that once a claim is allowed, even if it is closed, if there is objective medical information that the injured worker's health has worsened since closure, related to the accepted condition, there is an excellent chance that the claim would be reopened.

Insurance Services Dashboard: Vickie Kennedy

Ms. Kennedy talked through slides 15-27

DASHBOARD SUMMARY

Measure	Change from 2012 (unless otherwise noted)	Y/Y Change		
Long Term Disability – share that received a TL payment in the 12 month post injury	-12.6%	✓	14.8%	△
Pensions granted	Down	✓		
Resolution rate - time-loss claims at 6 months	12.0%	✓	14.1%	✓
Auto adjudication of claims	69.1% from 2014	✓	-6.3%	△
High risk claims – share return to work at 12 months	-0.6%	✓	-5.2%	△
Median time-loss days paid at first vocational service	-77.8%	✓	-2.1%	✓
% RTW outcomes - all first vocational service referrals	257.8%	✓	7.8%	✓
WSAW participation	Steady utilization			
COHE utilization	92.6%	✓	2.8%	✓

Mr. Sacks added that in the graph on slide 17, the other two places with significant upticks in the data for long-term disability percentages were connected to recessions. The current pandemic impacted the economy and access to medical care. Ms. Kennedy added that while L&I put several temporary policies in place related to telehealth, telemedicine, and to try to improve workers’ access to care, it is not an approach that all providers are familiar with, nor do we know what kind of interventions are most effective in a telehealth environment. L&I will know more about this as we engage with the University of Washington in looking at some of the data and outcomes.

Slide 19 shows that despite working from home, claim managers continue to meet several performance measures, including claim resolution.

Slide 20 reflects the new opioid measure, which was discussed at the March 2021 meeting. The graph is based on statewide prescription data, not just workers’ compensation. Ms. Kennedy added that even though L&I may have been successful in reducing opioid use in the system, workers may have entered the system already on opioids or may be getting it from other sources once denied by the department, so this graph shows all workers who have an opioid prescription that L&I would define as moving from the acute stage into chronic opioid therapy. Though this is a new measure, we are already below the benchmark we are striving for.

Following this meeting, slide 21 will be removed from the dashboard and won’t be discussed at future meetings. The chart continues to show good progress and we may have reached the new normal for the auto-adjudication of claims.

The Expansion of Telework and Workers’ Compensation: Kirsta Glenn, John Geppert, and Maurice Perigo

Mr. Sacks introduced the next portion of the agenda and added that this presentation will allow the group to have a conversation about telework and workers' compensation from a variety of different perspectives.

Mr. Sacks introduced Kirsta Glenn, Line of Business Manager.

Ms. Glenn talked through slides 30-37.

Mr. Kendo asked if there is a notion that some portion of the percentage change for the Administrative risk class, reflected on slide 36, is a function of not knowing about filing claims or not having the kind of environment of professionals who are cognizant of what is involved in a workplace injury and how that would need to be handled administratively. **Ms. Glenn** responded that the actuaries brought this up as well and there may be a couple scenarios because we don't know what we don't know. There may be a delay in reporting, but there may be a shift toward occupational disease claims, which take longer to come in, so we may not know about those for some time.

Ms. Glenn introduced John Geppert, DOSH Education and Outreach Acting Program Manager.

Mr. Geppert talked through slides 38-42.

Mr. Battles asked how employers can ensure there's a safe work environment in employees' homes without going into every home to do an assessment? And what kind of liability are employers going to have now? Does an employer's failure to go in and check the whole workplace become a willful violation in the sense of a DOSH citation? **Mr. Geppert** responded that he can only speak on the safety and health portion of the question, not the workers' compensation reporting. In November 1999, the Occupational Safety and Health Administration (OSHA) said that employers are responsible for the safety of their employees at their home operations, which caused a bit of backlash because of a potential lack of stakeholdering, but they were focused more on home-based operations, like production or light manufacturing. Then OSHA reversed their position and are no longer holding employers accountable and are not requiring states to do so. But L&I should take prudent action and not start looking to push this to employer responsibility. **Mr. Battles** added that the reality is whether there is an idea that the federal government is going to do something or not, we are in a different situation now with a large percentage of employees teleworking. How are employers supposed to address the liability in the DOSH setting, not thinking about workers' compensation? It's okay if there isn't an answer right now, but it is a big concern for employers. **Mr. Geppert** responded that he can only speak to the education and outreach side of DOSH, not the compliance or enforcement portion. In his role, he will take an inventory of the education and outreach tools and information currently available, ask the DOSH Consultation Program if they are seeing an uptick in employer's requests for teleworking assistance, and check with DOSH Compliance to see if they have a measureable amount of inspections related to telework. Before policies and procedures can be made, the agency should have data to support it. **Mr. Sacks** added that for this presentation, Mr. Geppert

was asked to present the picture of what kind of things may be a good idea for the employer to do and what resources are available through L&I. At this point there have not been conversations about any shifts in the way we would approach any of the compliance work. When and if this comes up, L&I would engage the business community, in conversations about what that could or should look like in the years ahead, but it's not on the radar right now.

Mr. Sacks introduced Maurice Perigo, Assistant Director for Administrative Services.

Mr. Perigo talked through slides 43-46

Question from Zoom chat: Is it possible to obtain a copy of the assessment tool the Department uses for at-home ergonomics? **Mr. Perigo** answered yes and that he would have the agency's ergonomist share what has been put together.

Ms. Glenn talked through slide 47.

Ms. Williams added that there is only one case the Board of Industrial Insurance Appeals (BIIA) has had on the home work environment and when someone is covered or not covered. In the case, Docket Number 16-19483, Ms. Starovasnik worked from home, used her fifteen-minute break to take her dog for a walk around the block, and was injured during the walk. Because she was on her break and left the house, she was not covered. (*Update: the Superior Court overruled the Board and an allowance order was sent dated 04/22/2019*) **Mr. Battles** added that we need to keep this, and the potential for other similar situations, on our radar as we shift toward reopening so we can be prepared to start fielding questions from employers. **Mr. Sacks** added that this is the forum to be able to identify issues, whether they're safety related, compensation related, or even something else, and then look at what we need to do to effectively address it.

Mr. Meier asked, in the Zoom chat, if there is a telework template for an employer who wants to add it to an Accident Prevention Plan (APP). **Mr. Geppert** replied that there is not one at this moment, but it is a good idea, so he will take it back to his group.

Industrial Insurance State Fund Financial Overview: Rachel Swanner

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

Ms. Swanner talked through slides 48-61, which cover the preliminary financial results through the third quarter of Fiscal Year '21, which is the period of July 1, 2020 through March 31, 2021.

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

Ms. Kennedy introduced Linda Williams, Chair for the Board of Industrial Insurance Appeals (BIIA).

Ms. Williams talked through slides 69-75.

Closing Comments and Adjourn: Vickie Kennedy and Joel Sacks

Ms. Kennedy announced that the Employment Security Department (ESD) put out a press release on the change in the state's average wage from 2019 to 2020, which is what determined the cost-of-living adjustment (COLA) for workers who are on long-term time loss or pension benefits. According to ESD, the increase is 10.1 percent. **Mr. Battles** added that this is a concern and has been talked about with regard to some legislation that may be proposed. This is a record high jump to 10.1 percent and is going to be a huge problem because it will cost employers, and employees, a huge amount of money in a year that we are coming off a pandemic. **Ms. Kennedy** responded by clarifying whether Mr. Battles would like to see the conversation take place at a future WCAC meeting, a WCAC Finance Committee meeting, or both. **Mr. Battles** responded that he thinks the topic should be discussed at both meetings. **Mr. Sacks** added that, as we progress to talking about rates for 2022, this is something that we will factor in. One of the important distinctions between workers' compensation and unemployment, is that tax increases are driven by statute for unemployment. As it relates to the supplemental pension fund (SPF) and how we set rates, there is more discretion for L&I to thoughtfully and strategically build out a plan for the next couple of years and determine the best way to approach this.

Mr. Sacks shared that the State Investment Board is meeting this week and they will be getting a report on L&I's asset allocation, which is how much we invest in stocks, bonds, and real estate. A study was commissioned to say, "Here's what we currently do. Does it make sense to make any changes?" The study came back to say that with some minor changes to some of the specifics around our fixed income or bonds, the current state makes sense.

Mr. Sacks asked that if there are any topics the committee would like to see covered or discuss for the September meeting, other than rates, to send an email to himself or Vickie.

Meeting adjourned.