

Workers' Compensation Advisory Committee (WCAC) Meeting

Labor and Industries, Tumwater, WA

Meeting Notes

September 30, 2020

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
Sean Embly, UFCW Local 21
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:

Jami Hetzel, Capitol Pacific Reporting

Recorder:

Ashley Oberst (*present*)

Guests:

Alex Woodward, Amanda Fisher, Andrea Wallace, April Ebeling, Bill Vasek, Brenda Heilman, Casey Tozzi, Cherell Fisher, Chris Bowe, Chris Ristine, Christina Summers, Christine Brewer, Dave Bonauto, Debra Hatzialexiou, Eddie Macsalka, Erich Hahn, Herbert Atienza, James Bowman, Jaymie Mai, Jeff Killip, Jennifer Davis, Jim Nylander, John Meier, Josh Ligosky, Julie White, Karen Galipeau Forner, Karen Jost, Kim Wallace, Kirsta Glenn, Kris Tefft, Kristi Richardson, Lily Smith, Lloyd Brooks, Maria McClain, Mark Matthies, Mark Phillips, Marty Cohen, Megan Soria, Mike Ratko, Mike Williams, Nancy Lach, Nichole Runnels, Patrice Pasqualone, Patrick Connor, Rachel Swanner, Randi Warick, Richard Clyne, Rob Cotton, Ron Burford, Rose Gunderson, Roseann Collins, Ryan Guppy, Sarah Fishback-Duran, Scott Dilley, Sheri Oakes, Sheryl Divina, Steve Reinmuth, Tiffany Loescher, Tom Feller, Tom Kwieciak, Tyler Langford, Veronica Bronkema, Veronica Shakotko, Viona Latschaw

Welcome and General Updates: Vickie Kennedy, Joel Sacks, and Randi Warick

The meeting started with a quick overview of the agenda. Joel thanked everyone for attending and added that the meeting was being livestreamed by TVW.

Dr. Dave Bonauto, SHARP Program Manager, presented the safety message.

Mr. Sacks gave a brief update on bills being considered by the agency for the 2021 legislative session. There are seven items for potential agency request legislation, including creating a grant program, connected to the workers' compensation system, for small businesses to purchase safety items, such as personal protective equipment (PPE) so they can safely remain open in the event of a future state of emergency or PPE mandate. Other bills being considered include one that would provide clarity around expectations for safety protections for temporary workers, one that would develop a penalty structure for discriminating against workers for raising safety concerns, administrative changes to the Employment Standards Program to unify the appeals process, changes to define training for people who do asbestos work, and a bill that would require people flipping properties to have an electrical inspection completed. A proposal was also made to the governor for the 2021-2023 biannual budget. The budget proposal includes a continuation of some of the technology projects happening in the agency and an increase in the overall budget for the Agriculture Safety Program.

Mr. Kendo asked how many FTEs are being requested for the Agriculture Safety Program. **Mr. Sacks** responded that the number is low, but that he would have to double check and circle back on the specific number. **Mr. Battles** added that the number would be helpful and that he would like to see what the legislative requests are. **Mr. Sacks** commented that one of the challenges of a virtual meeting is distributing materials that would normally be printed and provided at the meeting, but that he would work to get the materials out to the committee.

Ms. Kennedy gave an update on where the agency is at with implementing the 2020 legislation, specifically House Bill HB2409, which addressed the licensing of third-party administrators for self-insured cases and increased some penalties not limited to self-insurance, and Senate Bill ESSB 6440, which addressed changes to Independent Medical Exams (IME).

Mr. Sacks gave an update on the WCAC Finance Committee, which has met twice since the last WCAC meeting. The Finance Committee had discussions about the supplemental pension fund as it relates to rate setting and the estimated amount that would need to be collected in 2021, as calculated by our actuaries.

Mr. Sacks announced that claims directly connected to COVID-19 would not be counted as part of a business's individual experience factor and would not impact their future rates.

Mr. Connor asked (via Zoom chat) if there have been any COVID related workers' comp claims resulting in a fatality. **Ms. Kennedy** responded that there have been several, but an adequate count was not available at the time of the meeting. **Mr. Connor** followed up by asking if the COVID-related fatalities will result in pensions for the family members or survivors. **Ms. Kennedy** responded that as long as the claim was otherwise allowable then benefits would go to the survivors.

Ms. Kennedy gave an update of COVID-19 claims as of September 16, 2020.

Mr. Feller asked (via Zoom chat) if COVID claims are allowed or rejected like exposure claims. **Ms. Kennedy** responded that there is criteria for COVID-19 claims to determine if the worker's job put them at greater risk of exposure to the virus or whether they can identify a specific exposure that occurred. The criteria was developed based on a number of past court cases.

Mr. Embly asked what classification retail or grocery workers would fit into (based on the chart on slide 8). **Ms. Kennedy** responded that there are a small number of industry groups, but over 300 risk classes, around 1,000 if you count sub-accounts, so retail falls under Miscellaneous Services and that she would follow up on grocery workers. **Mr. Embly** followed up by asking about the classification of food processing workers. **Ms. Kennedy** responded that grocery workers are in a separate risk category, called "stores," so they are not in the top six classifications for COVID-19 claims, and food processing falls under "manufacturing."

Mr. Tefft asked, with a notable claim count for government workers, and with a lot of government employees teleworking, if there is a telecommute angle to claims like this. **Ms. Kennedy** responded that she has not yet seen a government claim that was due to COVID while teleworking, but that the category encompasses county, city, and state-level governments, so, for example, transit drivers may be in the government category.

Ms. McClain commented that she had a claim manager respond that they are not rejecting any COVID claims at this time. **Ms. Kennedy** responded that we are rejecting claims, but we are taking a critical look at the criteria and also looking at whether or not the worker actually contracted the virus. For example, there were two different claims in the airline industry with nearly identical exposure, but one of them contracted COVID and one did not. For the worker that did not contract the virus, there are no benefits to pay and the employer covered the period of quarantine. The worker did not have to pay for their test and there was no healthcare, so the claim was ultimately denied because there were no benefits to provide to the worker. In contrast, the claim for the worker that did contract COVID-19 was allowed, even though the costs to date had been covered, because the worker is at risk of contracting some additional future complications because of their positive COVID result.

Ms. Warick gave an update on the Workers' Compensation System Modernization (WCSM) project and talked through slides 9-12.

Rates: Joel Sacks and Mike Ratko

Ms. Kennedy turned the presentation over to Mr. Sacks, who talked through slides 13-28.

Mr. Battles asked, looking further into the future, are we looking at a rate increase that is going to be much higher because we had no rate increase this year. Are we looking at a bubble down the road that will need to be dealt with, or is the plan to be able to keep that steady rate going

forward as much as possible? **Mr. Sacks** responded that to the extent possible, our goal is to keep the rates steady, but he can't commit that we will see zero increase for the next number of years. But the intent is, depending on what happens to the economy, what happens to our investments, and our capacity to work with stakeholders to help workers heal and return to work, we think this is potentially absorbable over the long term. He does not see a significant increase for the next few years. We may see small increases, but the goal is that, because of the reserves that have been built up, we can afford to sustain some losses for a few years, let the economy improve, and then be able to slowly build back up our reserves without radical increases.

Mr. Battles asked if the department has considered the concerns about using the average wage that's set by the Employment Security Department (ESD), because the average daily wage is an "arbitrary number" that "isn't based on what might be happening with the economy." There are concerns that the average daily wage artificially increases the requirement for the Supplemental Pension Fund, and with the economic impacts of COVID-19, we may see lower wage jobs dropping off, so the average wage is going to artificially go up again for the next year, which will cause an increase for both employers and employees because it is a 50/50 fund. **Mr. Sacks** responded that over the years, there have been a lot of conversations about what's the right indicator to use to calculate a cost-of-living increase. Historically, as this group has looked at that, there hasn't been one that stood out better than the state's average wage, but that he would be happy to engage in conversations with our labor partners to determine if there may be some other way of measuring cost-of-living that may be more appropriate. **Mr. Battles** responded that conversations need to be had because this year, the average wage increased by 6.7 percent, and ESD is anticipating next year's increase to be 7.3 or 7.5 percent, which is going to cause a big hit on business and labor during some of the hardest economic times seen in decades. **Mr. Sacks** responded that because the use of the average annual wage is statutory, any changes require legislative action. **Ms. Kennedy** added that in the past we have looked at the indexes used in other states and the state's average wage was the most common. Ms. Kennedy introduced Mike Ratko, Deputy Assistant Director for Insurance Services, who talked through slides 29-31.

Industrial Insurance State Fund Financial Overview: Rob Cotton

Ms. Kennedy introduced Rob Cotton, Chief Accounting Officer, who talked through slides 32-46.

Ms. Kennedy asked Mr. Cotton for clarification on slide 43 and if the deficit to the pension fund at the end of fiscal year '19 was due to the normal expiring process. **Mr. Cotton** responded that is correct. Often a deficit is caused by having a discount rate that is higher than what our return on investments is, and development and the expiring process play in to that as well. When there is a deficit in the pension reserve fund, by law, we need to transfer the assets from the accident fund, which is what was done last year and what created the realized gain on our bonds. **Mr. Vasek** added that two different discount rates are at play. 4.5% for state fund and 6% for self-insured and then the actual rate of investment fell between the state fund discount rate

and the self-insured discount rate. What that means is that the investment income did better than expected for the state fund and worse for the self-insured.

L&I New Opioid Performance Metric: Jaymie Mai

Ms. Kennedy gave background on the new performance metric and introduced Jaymie Mai, Pharmacy Director, who talked through slides 54-55.

Insurance Services Dashboard: Vickie Kennedy

Ms. Kennedy talked through slides 56-69.

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

Ms. Kennedy introduced Linda Williams, BIIA Chair, who talked through slides 70-76.

Closing Comments and Adjourn: Vickie Kennedy and Joel Sacks

Mr. Sacks thanked everyone for their patience and attention during the meeting because topics were covered that are typically covered in-person and these meetings are a little more challenging over Zoom. He added that input and perspectives are welcomed on the best way to conduct these meetings and provide the information needed.

Mr. Battles responded that he would be interested in exploring the issue of using the state's average wage to set rates and he would like to see data on what other states use.

Meeting adjourned.