Workers' Compensation Advisory Committee (WCAC) Special Meeting
Labor & Industries Tumwater, WA
Meeting Minutes
June 17, 2008

Business Representatives: Kris Tefft, Association of Washington Business; Jon Warling, Mar-Jon Orchards; Rebecca Forrestor, Group Health; Nancy Dicus, TOC Management Services.

Labor Representatives: Karen Gude, United Food & Commercial Workers Union Local 1439; Dave Johnson, Washington State Building & Construction Trades Council; Jeff Johnson, Washington State Labor Council, AFL-CIO; Owen Linch, Joint Council of Teamsters No. 28.

Ex Officio Member: Tom Egan, Board of Industrial Insurance Appeals.

Labor & Industries Director: Judy Schurke.

Labor & Industries: Bob Malooly, Assistant Director of Insurance Services.

Recorder: Sharon Avery.

Guests: John Meier, Frank Romero, Lori Hanson, Janice Camp, Ann Jarvis, Lauren Gubbe, Kathryn Hedrick, Mike Woods, Tammie Hetrick, Vicky Smith, Rebecca Johnson, Michaeli Settles, Dave Kaplan, Carolyn Logue, Joan Elgee.

L&I Staff: Wayne Shatto, Diane Doherty, Mike Ratko, Ron Moore, Jean Vanek, Cara Hsieh, Carole Washburn, Joe Jauquet, Karen Peterson, Cassandra Smith, Christopher Carlile, Les Hargrave, Cheri Ward, Chris Freed, Kate Cashman, Russ Redding, Lisann Rolle, Julie Black, Brenda Heilman, Vickie Kennedy, Christine Swanson, Roy Plaeger-Brockway, Gary Franklin, Ernie LaPalm, Josh Swanson, Carl Hammersburg, Jeff Miller, Gene Kirk.

Presenters: Judy Schurke, Bob Malooly, Mike Ratko, Bill Vasek, Vickie Kennedy.

Opening Comments and Review/Approval of March 31, 2008 Meeting Minutes--Judy Schurke

Mr. Malooly presented a safety message to the committee. The meeting continued with an introduction of the attendees.

The meeting minutes from March 31, 2008 will be reviewed at the next WCAC meeting.

Progress Reports—Judy Schurke, Bob Malooly, Mike Ratko, Christopher Carlyle and Vickie Kennedy

Pension Study: The Pension Study is being conducted by the UpJohn Institute. A special WCAC meeting has been scheduled for July 23, 2008 for UpJohn to present their findings to the committee members.

Retro RFP: The RFP was issued on June 10, 2008 and the deadline for bids is July 9, 2008. The department plans to announce the apparent successful bidder or bidders on July 22, 2008 and execute contracts by August

11, 2008. The RFP is divided into three studies (actuarial, underwriting, risk management/claims). This approach allows consideration of various potential contractors based on their skills specific to the study for which they bid. As a result, there could be up to three successful bidders.

Physical and Occupational Therapy (PT/OT) Utilization Review (UR): Copies of a fact sheet were distributed. Money was allocated by the Legislature to fund utilization reviews for PT/OT. The department contracted for the UR services and PT/OT requests are reviewed when providers request treatment beyond 24 visits. This review assists claim managers when the worker is not improving and PT/OT treatment should end. The appropriation will be expended by the end of June and the department plans to include PT/OT utilization review as claim costs effective August, 2008. As a result, PT/OT reviews will be funded in the same way as surgical procedures and certain other medical services. If you have questions, please contact Nikki D'Urso, RN, Utilization Review Contract Manager at (360) 902-5034.

Extraterritorial Legislation and Rules: A fact sheet was distributed. The legislature passed SSB 6839 in 2008 to define temporary and incidental work outside of Washington as that totaling 30 days or less a year. The external workgroup involved in developing the legislation included Frank Romero, Barbara Jones, Sydney Perrizo, Kris Tefft, Randy Loomans, Mel Fitzpatrick. Some members of the group met again to review draft rules to implement the legislation. A final draft is under development and the public hearing is planned for August, 2008 with a target effective date in October, 2008. If you have further questions, please contact Ron Moore, Employer Services Program Manager at (360) 902-4748 or Mike Ratko, Deputy Assistant Director of Insurance Services at (360) 902-6369.

2007 Rate Holiday Dividend: Copies of a fact sheet were distributed. To complete the last phase of the rate holiday, non-retro employers will receive a one-time dividend from the accident fund. The total of dividends is $37 million dollars and approximately 139,000 non-retro employers are eligible. Checks will be mailed starting on June 30, 2008. If the amount of the dividend is less than $10.00, a check will not be issued and the employer's account will receive a credit. These employers will be notified by mail. The checks will vary from $10.00 to $400,000; the average dividend (including checks and credits) is $266.00. A formula was established in rule that resulted in a dividend percentage of 14.49%. This percentage was applied to the accident fund premium paid by the employer during the rate holiday period of July 1 through December 31, 2007. The department will send a press release and post information on the website for employers. Ms. Schurke reminded the committee that during the rate holiday, the department paid the Medical Aid Fund portion of rates for both employers and workers. This resulted in employers and their employees avoiding a total of more than $300 million in premiums. The dividend is required to make sure non-retro employers pay only their fair share of workers' compensation insurance and will be the final phase of the holiday. If you have further questions, please contact Ron Moore, Employer Services Program Manager at (360) 902-4748 or Mike Ratko, Deputy Assistant Director of Insurance Services at (360) 902-6369.

1st Quarter Financial: Copies of the PowerPoint presentation Statutory Financial Information Industrial Insurance (State) Fund Fiscal Year 2008 through March 31, 2008 and the Statutory Financial Information Industrial Insurance Fund report dated March 31, 2008 were distributed to the committee. The highlights include:

- Rate holiday: Estimate as of March 31, 2008 is $310 million.
- Dividend declared: As of March 31, 2008, $38.4 million. Current estimate is $37 million.
- Implementation of new asset allocation which increases international equities and Treasury Inflation Protected Securities (TIPs). TIPs were purchased in place of stock market investments to provide protection for medical inflation. The new allocations contribute to a more stable investment portfolio.
- Financial statement reflects net investment loss of $181M due to downturn in stock market. This is both realized and unrealized gains and losses before the allocation changes.

In spite of market fluctuation, investment returns have remained steady. Fixed income earnings and dividends received for the last nine months ending March 31, 2008, were $405 million. Benefit liabilities continue to experience a normal increase and began the fiscal year at $8.8 billion. This has increased over the nine months by $367 million, primarily due to $1.1 billion in new benefit liabilities reduced by about a billion in claim payments. Also the discount rate accretion has increased the liability by $228 million. As a result, the benefits liability as of March 31, 2008 is $9.1 billion. The contingency reserve continues to decrease slightly—as of March 31, 2008, it is $1.5 billion. If you have further questions, please contact Sharon Elias, Chief Accounting Officer at (360) 902-5743 or Christopher Carlyle, Worker Compensation Accounting Manager, at (360) 902-6263.

Legislative Update: Copies of the 2008 L&I Legislative Summary, Interim Legislation issues, Pay During Appeal fact sheet, H2A Guest Worker Update and IME Improvement Project Update were distributed to the members of the committee.

Pay During Appeal: House Bill 3139, providing for stays of industrial insurance orders on appeal, applies to orders issued on or after June 12, 2008.

- *Provides that industrial insurance benefits are paid pending an appeal by an employer unless the Board of Industrial Insurance Appeals (BIIA) orders a stay or the worker requests that benefits cease.*
- *Requires L&I to establish procedures to recoup self-insured overpayments from state fund claims, and vice versa.*
- *Establishes a self-insured employer overpayment reimbursement fund, financed by amounts retained from employee earnings, to reimburse self-insured employers for overpayments under certain circumstances.*
- *Prohibits the assessment of overpayments against health care providers and provides for collecting these overpayments from health insurance entities.*
- *Requires L&I to measure the impacts of the legislation and report to the Legislature and the Workers' Compensation Advisory Committee by July 1 and December 1, 2009, 2010 and 2011.*

Internal training has been provided to the claims and Legal Services staff. L&I and BIIA have worked together identifying data elements and information to be exchanged for the reports to the Legislature and the WCAC. A frequently asked question (FAQ) is being developed for self-insured employers to explain the various new processes. A website is also being developed to communicate to injured workers and state fund employers.

Ms. Forrestor suggested that a paycheck insert be created for self-insured employers to communicate details of the new payroll deduction needed to fund the overpayment reimbursement fund. This suggestion will be taken back to the internal staff for implementation.

The actuaries are currently estimating what the premium rate should be to fund the self-insurance overpayment reimbursement fund. This premium rate, which applies only to self-insured workers and employers, will be part of the January 1, 2009 rate package and will be part of the August 2008 WCAC presentation on rates. The deduction will be an hourly rate, similar to the supplemental pension rate.

Ms. Gude asked how the department prioritizes legislative implementation work -- for example, the first ombudsman report is due in October. Ms. Kennedy answered that the department must consider the mandates included in the language of various bills passed, the overall impact of the legislation, and the resources required for implementation. The department is constantly analyzing what activities need to be completed for all legislation; there is no list for ranking priorities. Ms. Schurke added that staff are assigned to each project and working towards the deadline. Part of the challenge is the lack of time to regroup after session and required resources are not always addressed in the budget.

Ms. Schurke provided an update on the Cost of Living Adjustment (COLA). On July 1, 2008, benefit rates will increase by 5% based on the change in the state average wage for the 2007 calendar year. The new maximum benefit level is $4472 per month.

Ms. Kennedy noted that the vocational benefits available for retraining are now indexed to changes in the costs for Washington community colleges (this indexing was part of 2007 legislation). The legislation first increased available funds from $4,000 to $12,000. Community colleges have adopted a 2% increase this fall which will increase the amount to $12,240 for plans approved on or after July 1, 2008. Data shows the actual average us at about two-thirds of the available funds.

Mr. Tefft asked for an update on the claim suppression rules, last discussed with the small stakeholder group in December 2007. He expressed concern that rules are not completed, and whether enforcement is occurring without rules. Ms. Kennedy answered that the department has received several comments on the rule and these have been forwarded to staff who are drafting the potential changes. These same staff are also assigned to work on vocational rules. An internal meeting has been scheduled to help move the process along.
The statute clearly states that if an employer intentionally induces a worker not to file a claim, they are in violation. This provides sufficient basis for the department to proceed with investigations.

Lastly, the Board of Industrial Insurance Appeals (BIIA) provided handouts for the committee. If you have questions, feel free to contact Tom Egan at (360) 753-6824.

<u>Interim Discussions—Judy Schurke and Bob Malooly:</u>

<u>*Ex Parte:*</u> Ms. Schurke has recently met with the trial lawyers to follow up on earlier discussions regarding legislation to address ex parte contact of potential medical provider witnesses in an appeal. The trial lawyers have brought up issues from their perspective that need to be addressed when workers are in litigation.

The discussions concerned an approach similar to that of the tort system. The department's two primary concerns are not building delays into the system, and not eliminating informal dispute resolution. The trial lawyers have brought up legitimate concerns regarding some employers' attorneys and TPAs calling workers' attending physicians and encouraging them to make statements they may not be willing to make if the worker's representative was involved in the conversation. Mr. Malooly added that workers' compensation was created as an alternative to the tort system which has very strict rules on who can speak to whom, is very labor intensive, and slow. We do not want to inadvertently revert to a tort system.

Ms. Forrestor asked how many issues are resolved through initial conversations between the parties because there is a better understanding on the case and the issues are clarified—some appeals may be dismissed or resolved. Another concern is how any changes regarding ex parte contact may work in combination with the pay during appeal legislation and the employers' continued responsibility to manage a claim.

Ms. Schurke remarked that a number of staff work to inform unrepresented workers of their rights, including claim managers and board judges and AAGs in mediations. The trial lawyers are mindful of unrepresented workers, and their issues are to protect their case and their representation of the worker.

The issue of ex parte contact has been with us for many years, but there have been changes in behaviors and these changes validate the need for further discussion.

Concerns were expressed that, according to information from the last meeting, only 20-21% of licensed physicians participate in our system. It is a disservice to the worker and employer when a doctor is aggressively pursued to modify or change their views of a claim, and this can add to the reluctance of providers to participate. We need to minimize the adverse impact ex parte contact has on the medical community while maintaining a balance between workers and employers in the claim process.

Ms. Schurke clarified that 20-21% of physicians is based on all specialties, some of which do not treat injured workers. Ms. Schurke indicated the department wants to limit the need for litigation as much as possible. Mutual conversations with all parties are necessary, with a goal of maximum medical improvement, not premature closure of the claim.

Independent Medical Exams (IMEs): Copies of the IME Improvement Project Update were referenced. Health Services Analysis (HSA) has been meeting with worker and business representatives and IME providers regarding the current process. Discussions have included areas targeted for improvement such as insufficient quality assurance, inconsistent measurement of patient satisfaction, reliance on limited numbers of examiners, infrequent use of alternatives to IMEs, attracting the best doctors to be examiners and limited IME provider training. The first issue for rule making is provider credentialing. A meeting with external representatives is scheduled next week. HSA is also hiring a staff member at the end of July to oversee the IME project efforts and plans to conduct satisfaction surveys with workers.

Ms. Dicus noted they have seen errors in the calculation of PPD awards in IME reports and the claim manager's translation of the reports. She has forwarded examples to Mr. Malooly to conduct further research.

Use of Workers Compensation Fund/608-609: Ms. Schurke expressed the need to engage in discussions about the use of workers' compensation funds, and has concerns about legislatively mandated responsibilities to administer programs without adequate resources, such as the Wage Payment Act and the Apprenticeship program. Ms. Schurke suggested key members meet for further discussion. Stakeholders have a legitimate concern that, as stewards of the system, we make sure the workers' compensation funds are available for workers.

Ms. Schurke also expressed her awareness of the differences and complexities in the state fund and self-insured programs' wage calculation processes. Self-insured staff request records for up to one year, sometimes including daily time records, to calculate wages and patterns in employment. The state fund does not require this level of detail. WCAC members expressed their interest in the department's efforts to address this, and asked for continued updates.

Mr. Tefft asked if a placeholder could be made for interim discussions after the UpJohn presentation on the Pension Study report—Ms. Schurke agreed.

Strategic Plan Discussion—Judy Schurke:

Every two years, the department submits a Strategic Plan to the Office of Financial Management (OFM) which is loosely connected to the budget requests. Ms. Schurke and Mr. Malooly wanted to have a conversation with the committee for their thoughts and get the committee's input on the workers' compensation portion. There are three primary considerations to keep in mind:

1. The department is the administrator/steward of the state workers' compensation system.
2. The state fund program is operated like an insurance company.
3. The department oversees self-insured programs/claims.

The strategic plan consists of five goals which include Safety and Health, Specialty Compliance, Fraud Prevention and Compliance, Internal Goals/Performance Management Efficiency and Workers' Compensation.

Our goal is to administer one of the premier workers' compensation systems in the country, in terms of benefits, the value it provides to employers, and the quality of service. To accomplish this, the state fund program must be able to provide high quality insurance and claim services.

One of our strategies is to eliminate delays in the claim process. Steps have been taken through implementation in the past years of ORION, Claimant Account Center (CAC) and other process improvement initiatives. The department must actively manage claims, but not take premature actions. When the department does not take necessary steps on claim information when it comes in, any additional time-loss associated with that delay will increase the employer's cost of workers' compensation.

Electronic Claim Filing: When compared to other states, Washington is behind in the way claims are filed. The current process is paper filing only and, from the date of the accident to the department receiving the claim there is an average of 25 days. The first time-loss payment is issued 60 days after the date of injury, although 92% of time-loss checks are issued within 14 days of the department's receipt of the claim. Strategically, one of the goals is to have claims filed electronically—through the internet and/or by telephone. A feasibility study would be needed to review all available technology approaches. Electronic claim filing will assist physicians in filing claims for workers and it will allow the department to act more quickly on cases, including better early return to work efforts. The COHE pilot has shown that 80% of claims filed by participating providers are received in the department within two days of the date of first treatment. Committee members expressed support for department efforts to develop electronic reporting methods which will be especially efficient for the physicians who already use internal electronic filing forms. However, from past experience in the ORCA stakeholder meetings, physicians were the last to utilize the system. Department Health Services Analysis and OMD representatives are working with providers on training that will create an easy transition for electronic claim filing. New HIPAA laws include a mandate for all providers to bill electronically which will help with the overall transition process.

Mr. Tefft remarked that he recalled 80% of claims are resolved within 12 weeks of claim receipt. If this is the case, yet it takes an average of 60 days to process a first time loss payment, is the statistic correct? Ms. Schurke clarified the breakdown of claims as the following:

- 75% of state fund claims are medical-only and no time loss is paid.
- Of the 25% of claims that are time loss, about 12-13% of these claims are paid time loss for less than 14 days (the worker has returned to work but still may be receiving treatment for their injury).
- The remaining 12-13% of the time loss claims are longer term cases.

Small businesses: Ms. Schurke discussed the need to educate employers to help them understand how they can reduce costs which affect their premium rates. Small business owners have infrequent claims, but when they do have an employee who files a claim, the department should communicate with them early to explain the process. As an example, Ms. Schurke talked with a small business owner who lost their claim-free discount. No one explained to him that if he had offered modified work and kept the worker on salary he would not have lost the claim-free status. Additionally, the department is reviewing internal resources to consider how they can be used more efficiently, particularly the early return to work staff.

LINIIS system: The department is considering replacement of the LINIIS mainframe system. Contractors are recommending a phased transition over several biennia. The review includes replacement of the MIPS system for medical bill payments. Mr. Malooly noted the department is looking at a system utilizing service-oriented architecture, or modules that can be easily and quickly replaced or updated. It may also be possible to purchase components ‘off the shelf’, opening up more possibilities than exist in traditional mainframe systems. He also indicated the department is talking with British Columbia and Ontario workers’ compensation programs regarding replacement of their systems-- BC is converting over a weekend this fall while Ontario is using a phased approach which will extend over several years.

Claims managers: The department is working to improve the recruitment and retention of quality claim managers (CMs), an issue all jurisdictions are struggling with nationwide. To address CM workload issues, Claims Administration is piloting an approach of workers’ compensation adjudicator 1 positions to handle simple claims, freeing the more experienced staff to devote their attention to more complex claims. John Meier suggested that the program not put the most experienced CMs on complex claims late in the management process, but to have them assigned to cases early to reduce the amount of complex claims in the long run.

Classification System: Washington has our own system that consists of over 300 classifications. The department is responsible for maintaining and updating this system. As an example, the orchard classification was reviewed to determine whether lower rates should be assigned to trellised orchards since they have smaller trees so workers do not utilize ladders as frequently as in non-trellised orchards. It was difficult to identify a trellised orchard versus a non-trellised orchard and a decision was made not to separate the classification. On the other hand, mechanized logging was created as a new classification because it is dramatically safer than non-mechanized logging and is easily identifiable. Employers who invest in technology that lowers safety hazards are rewarded through the workers’ compensation system.

Underground Economy: The department is continuing its efforts to ensure Washington businesses are paying their fair share, are not under-reporting and not misclassifying jobs. The department is responsible for helping employers comply with the rules; there is a difference between employers who are intentionally choosing to take inappropriate actions and employers who do not understand the state system.

Industry Analysis: The department plans to conduct industry analysis to determine which employers need assistance in safety and risk management to help lower the base rates for the industry. Ms. Schurke has talked with the WISHA Advisory Committee about identifying the most hazardous and injury-prone employers and targeting our resources to offer them safety consultation services. There is currently a targeting system in DOSH for inspections and offering consultations to employers. If they do not take advantage of the consultation services and continue to be high risk, it has been proposed that the work sites be published to inform workers, similar to what is done in other states.

Access to Medical Care: The department is actively working on transferring COHE elements to the greater medical community. One of our goals is to reduce administrative burdens for physicians. The department will be requesting a legislative change to allow physicians to ‘opt out’ of receiving notices of ongoing time-loss payments.

Mr. Plaeger-Brockway added that utilizing best practices and incentives from the COHE project can benefit the medical community. For example, the department pays incentives to providers for submitting reports of accident (ROA) within two days. Training for physicians and their staff may pose challenges; Mr. Malooly indicated the department is looking at e-learning opportunities.

Ms. Schurke stated another focus for the department is providing the highest quality care for injured workers to help avoid disability and, at the same time, to avoid paying for unnecessary care. The department has been conducting peer reviews of specific providers to address quality of care issues. We are focusing on those whose treatments do not provide good results or who may have injurious practices. The department is working towards attracting and retaining the best physicians in the system, and keeping the process as non-litigious as possible so they are willing to continue to treat injured workers.

The department needs to continue to control the growth rate of medical costs. Efforts have kept our rates down through cost control practices such as utilization review that avoids excessive treatments for injured workers who are at maximum medical improvement and to avoid paying for treatments that are for non-work related conditions.

2005 Actuarial training on rates: The department continues its efforts to have open communication regarding rate discussions. We are striving to be as clear as possible when explaining how rates are determined. Consistent with the Governor's mandate, our goal is to provide fair, low and stable rates. The department is also reviewing rules concerning experience modification factors such as those that set the maximum claim value and the 'Rule of 1'. Additionally, the Finance Committee, composed of members of the WCAC and others, has worked to help the department establish guidelines for managing the contingency reserve. The department would like to apply these new guidelines as we go through the rate making process. Mr. Malooly mentioned that Mr. Vasek will present a brief overview of the rates process at the August WCAC meeting. If anyone would like a refresher of the past rate-making training or more details on the process, they should contact Mr. Vasek or Mr. Malooly.

Questions were asked about the solvency issues for other state funds. New York's trust fund is going insolvent and workers are concerned about their benefits; West Virginia had extremely high total disability rates (primarily due to black lung disease from the deep coal mining operations) and premiums were not increased to match benefits. The state is now changing to a competitive insurance environment. Ohio has experienced issues regarding investments, losing over $300 million. For Washington, the State Investment Board (SIB) does an excellent job with the state's investments. They are extraordinarily prudent. The remaining exclusive state funds are Washington, Ohio, Wyoming, Virgin Islands, North Dakota and Puerto Rico.

Self Insurance: The goal for the self-insurance program is also to eliminate delays in the claim process. Self-insurance has gradually worked toward conducting more frequent audits of self-insured businesses using current resources. Audits currently average once every 3.9 years, and the goal is three years. The department wants to increase the effectiveness of the audits and is reviewing the audit process. There will be an opportunity for labor and business to provide input into the audit process design.

Another issue for the self-insurance program concerns affirmative decisions on claims. Self-insured employers are not currently able to make some claim decisions such as allowance. SIEs should be able to make these affirmative determinations, rather than depending on the department, and must take other actions already allowed by law. This would allow the department to better utilize staff.

Mr. Jeff Johnson expressed concern about the difficulties of gathering self-insured data. Ms. Vanek provided that the new SIEDERS program which goes into effect July 1, 2008 will be a monthly direct download of data from self-insured employer databases. For policy discussions, available self-insured claims data can be considered along with state fund. Ms. Vanek will schedule a meeting with Mr. Jeff Johnson to review the program.

Business Intelligence: The department wants to better understand demographic and injury trends in workers' compensation. We also want to analyze medical treatment choices for certain common injuries and diseases and the outcomes for injured workers. Reviews of our internal operations will allow us to compare our practices with other jurisdictions and help guide business process improvements.

Other business:

The actuarial presentations will be rescheduled for a future WCAC meeting.

Mr. Malooly reminded the committee of the “Fun Run” of Insurance Services—this is a walk through of all the programs within the Workers’ Compensation system.

Ms. Schurke thanked the committee members for their participation in the meeting. Meeting adjourned.