

Workers' Compensation Advisory Committee (WCAC) Meeting

Labor and Industries, Tumwater, WA

Meeting Notes

June 22, 2020

Videoconference

Business Representatives:

Bob Battles, Association of Washington Business

Tammie Hetrick, Washington Food Industry Association

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

Board of Industrial Insurance Appeals (BIIA):

Linda Williams, Chair

Court Reporter:

Connie Church, Capitol Pacific Reporting

Recorder:

Ashley Oberst (*present*)

Welcome and General Updates: Joel Sacks and Vickie Kennedy

The meeting started with a quick overview of the agenda and roll call for the committee members.

Mr. Sacks presented the safety message.

Ms. Kennedy went over Zoom etiquette for the meeting.

Ms. Kennedy gave an update on House Bill HB 2409 concerning industrial insurance employer penalties, duties, and the licensing of third-party administrators and Senate Bill ESSB 6440 concerning industrial insurance medical examinations. Internal workgroups have been started for implementation of both bills and both will have external workgroups as well. Both require technology changes, which will need to be managed along with any procedural or policy changes. ESSB 6440 will require changes to the existing Independent Medical Exam (IME) schedule system.

Ms. Kennedy also gave an update on the Office Careers investigation. Just before King5 released their investigation in February 2020, L&I had initiated an audit to look into Office Careers'

compliance with agency regulations and their billing practices and procedures. This audit stemmed from a report done in 2018 specifically focused on private re-training schools. L&I temporarily suspended any new training approvals at Office Careers pending the outcome of the audit. The audit report was issued in May, along with an order and notice to Office Careers, outlining that we were not able to find evidence that they were effective at preparing students for employment. Evidence was found that they don't follow their own policies for attendance and performance, resulting in some students remaining in a program or passing a program when they did not meet the standards. Evidence was also found of inappropriate billing. As a result of the audit finding, L&I made the determination that we would not be approving any new retraining plans at Office Careers, their provider number will be terminated, and we will be seeking \$36,000 in overpayments and penalties from the school. A second audit will also be initiated to specifically focus on billings based on the findings of the first audit. Office Careers does have the opportunity to protest and appeal the order, as well as present any additional evidence that addresses the findings, but at the time of the meeting, they had not done so. In the meantime, we have reached out to all 92 current Office Careers injured worker students. So far, 25 workers have chosen to stay in their current program, 65 workers have asked to change their retraining program, and two workers have not yet made a decision. We have also looked at the recent graduates of the program to ensure we are taking the right steps for them.

Question (via Zoom chat) about getting a copy of the audit report. **Ms. Kennedy** responded that she encourages anyone who would like to see the audit report to request a copy through the agency's Public Disclosure unit or reach out to her directly, via email, and she will forward the request to the Public Disclosure unit. This way, we have a record of who is requesting the report and ensuring that everyone is getting the appropriately redacted copy, if redaction is needed.

Ms. Weist asked (before the meeting, via email) what may be happening with workers in current retraining plans given the pause on retraining due to COVID-19. **Ms. Kennedy** responded that a message went out to the vocational community as soon as schools were temporarily shut down or closed because of COVID-19 and asked them to think of ways to engage their workers to keep them moving forward in some way with their retraining. This may be simply having a structure to follow day-to-day, or may be taking some free online classes to enhance their ability to participate academically. It is going to be unique to each individual, but we don't want people sitting at home pondering their next steps, creating unnecessary anxiety during a time that's already difficult for any injured worker. We understand that there are some workers who may struggle with shifting from a classroom to online training, and some workers who can handle the transition effectively, so we don't have a generic approach or recommendation. As things reopen and remote learning begins to become more common, we are going to need to think about this in terms of what we can do to best support our workers through that process.

Mr. Sacks gave an update on the Workers' Compensation System Modernization (WCSM) project. Before putting out the Request for Proposal, we are going to do another review and bring in some additional help, to have a fresh look. Once the review is done, we will give an update on the revised timeline.

COVID-19 Impacts: Joel Sacks and Vickie Kennedy

Mr. Sacks gave an overview of two emergency rules put in place in response to COVID-19. The first emergency rule has to do with farm worker housing to address social distancing, including how close together beds can be and the use of bunk beds. The second emergency rule was put out in consultation with the governor's office and enables the agency to take administrative action if there is a particular company not operating in accordance with the current phase their county is in. Mr. Sacks also shared that the state forecast council generated the latest revenue forecast in the week prior to the meeting. Because of the economic impacts of COVID, the projected revenues for the state over the next few years have dropped substantially and, as a result, the governor made a series of decisions to take initial steps to reduce expenditures. The first thing the governor did was cancel the cost-of-living increases for staff that report to him through his cabinet, and some of the most senior-level managers of their organizations, such as Joel and Vickie. Governor Inslee also required that most state employees take a total of eight furlough days, four in the month of July and one per month in August through November. The agency has been working with the governor's office to determine any exemptions for L&I staff as well as working internally to develop the best plan for implementing furlough days.

Mr. Sacks talked through slides 6-10.

Ms. Kennedy talked through slides 11-15.

Question (via Zoom chat) regarding the telehealth policies and the July end date for the policies. **Ms. Kennedy** responded that all of the policies have been extended to July 2021.

Mr. Sacks talked through slides 16-22.

Mr. Battles asked (via Zoom chat) how L&I is ensuring that the legislature will not raid the current 608 and 609 funds to address the overall state budget shortfalls. **Mr. Sacks** responded that we are doing our part to communicate the importance of not using the workers' compensation funds because those funds need to be used to pay benefits. There is an important role for both the business and labor communities to play, interacting with our legislative partners to help carry the message.

Mr. Kendo asked (via Zoom chat) if any COVID issues are covered by reinsurance. **Mr. Sacks** responded that reinsurance will not play a role with COVID-19 because reinsurance is designed for one specific event that is time-bound. So if there was an earthquake, or another scenario that occurs between date X and date Y, that's when reinsurance kicks in. **Mr. Riker** added that the catastrophic reinsurance we purchased has a one-week window to cover an event.

Ms. Hetrick asked (via Zoom chat) if there are concerns about collecting enough in premiums to pay current pension claims and if there is a separate account for savings to cover that. **Mr. Sacks** responded that for the state fund, we have the capacity to pay pensions because we will draw on the accident fund. For the self-insured community one assumption we make every year is based

on taking the money that's in the account and investing it, and if the investments are low, then the assumed rate of return, which is currently above six percent, becomes a one-time cost to various self-insured employers. The second challenge is going to be the supplemental pension fund, which is meant to pay the cost-of-living adjustments (COLAs)

Karen Forner asked (via Zoom chat) where can documentation be found that L&I won't charge claim costs for COVID-19 against employer accounts and Experience Modification Rates or Retro groups? **Ms. Kennedy** responded that in addition to the slide deck for today's meeting, the information is also on the L&I website under the Frequently Asked Questions (FAQs) related to COVID-19. That has been the primary means of communication and after the meeting; we will send it out to the group.

Kris Tefft asked (via Zoom chat) if there are any tentative numbers suggesting investments have recovered somewhat beyond the March 31 low. **Mr. Sacks** responded that Mr. Cotton would be giving the most up to date numbers when he gives the financial presentation, but without a doubt, things are looking much better today than they were on March 31.

Ms. Hetrick commented (via Zoom chat) that the information on slide 22 is very concerning for those in a low risk industry that has minimal pension claims and that she hopes to have additional discussions on how the Supplemental Pension Fund (SPF) and COLAs may be calculated and collected. **Ms. Kennedy** responded that the statute mandates where we take the loan from, so we don't have options under current law to take it from anything but the pension reserve fund, which is part of the accident fund. **Mr. Sacks** added that the SPF is not experience rated at all and it's premium rate is equal per hour worked, whether self-insured or state fund. This is an area where we are open to having a conversation with the committee. It would be incredibly important to have all of the different stakeholders at the table because any changes made to how the SPF is calculated would have wide-ranging impacts across the state.

Mr. Kendo asked (via Zoom chat) is there is an estimate as to what the actual dollar amount would be for such a loan from the accident fund. **Mr. Sacks** responded that there is not an estimate yet, but it will factor in to the decision made about rates for 2021.

Mr. Tefft asked (via Zoom chat) if a one-year COLA freeze is being contemplated, similar to the last time this happened. **Ms. Kennedy** responded that the previous freeze was one of the elements in the 2011 reform package and ultimately did not have the financial impact that was originally estimated because there was later an appeal. There was litigation because the language that was changed was specifically the COLA statutes. The statutory language around maximum benefits was not changed, so the COLA freeze ultimately only applied to people who were not at the maximum benefit level.

Industrial Insurance State Fund Financial Overview: Rob Cotton

Ms. Kennedy introduced Rob Cotton, Chief Accounting Officer, who talked through slides 25-38.

Insurance Services Dashboard: Vickie Kennedy

Ms. Kennedy talked through slides 47-59.

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

Ms. Williams talked through slides 61-66.

Closing Comments and Adjourn: Vickie Kennedy and Joel Sacks

Ms. Kennedy announced that we would be using a virtual format for at least the next meeting, if not the next several and if anyone has any questions to feel free to email her or Mr. Sacks.

Meeting adjourned.