

Workers' Compensation Advisory Committee (WCAC) Meeting

Labor and Industries, Tumwater, WA

Meeting Notes

September 30, 2021

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 (*not in attendance*)
Mark Riker, Washington State Labor Council
Brenda Wiest, Teamsters Local 117 (*not in attendance*)

Labor and Industries:

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

Board of Industrial Insurance Appeals (BIIA):

Linda Williams, Chair (*not in attendance*)

Court Reporter:

Mary Jo Fratella, Capitol Pacific Reporting

Recorder:

Ashley Oberst (*present*)

Guests:

Alex Woodward, Ali Ishaq, Amanda Fisher, Andreka Jasek, Andy Shelton, Anna Minor, Ashlee Day, Autumn Music-Schmitz, Bill Vasek, Bobbi Meins, Brenda Heilman, Bret Jensen, Brian Bishop, Brian Ducey, Carolyn Logue, Cherell Fisher, Cherie Wagaman, Chris Ristine, Craig Scukas, Dave Bonauto, David Kennerud, Debra Hatzialexiou, Diane Doherty, Herbert Atienza, James Bowman, Jennine Griffo, Jessica Gallardo, Jessica Nau, John Meier, Joshua Ligosky, Julie Black, Julie White, Karen Jost, Kathy Kimbel, Keith Bingham, Ken Nielsen, Ken Smith, Kirsta Glenn, Knowrasa Patrick, Kris Tefft, Kristin McCoy, Latausha Carlyle, Lee Glass, Leigh Haley, Lisann Rolle, Lloyd Brooks, Lynda Ducharme, Mackenzie Sanders, Mark Phillips, Marty Cohen, Maurice Perigo, Megan Soria, Michelle O'Brien, Mike Ratko, Pam Nathan, Rachel Swanner, Regine Neiders, Rob Cotton, Ryan Guppy, Samm Verd, Sarah Battin, Scott Dilley, Sheryl Divina, Steve Reinmuth, Susan Abolafya, Tammy Fellin, Tiffany Loescher, Tim Church, Tom Feller, Tom Kwieciak, Trudes Tango, Tyler Langford, Veronica Shakoto

Welcome and Safety Message: Vickie Kennedy, Joel Sacks, and Dave Bonauto

The meeting started with a quick overview of the agenda. Ms. Kennedy announced that the meeting was being livestreamed by TVW. The committee members in attendance introduced themselves.

One of the committee members (unidentified by the court reporter) moved to accept the minutes from the December 16, 2020 and March 30, 2021 meetings. Ms. Sundstrom seconded the motion. All committee members were in favor.

Ms. Kennedy introduced Safety and Health Assessment and Research for Prevention (SHARP) director Dr. Dave Bonauto, MD, MPH who presented the safety message.

Mr. Sacks added that if any committee members want to get additional data around the value of the COVID-19 vaccines to reach out to Dr. Bonauto.

Insurance Services Dashboard: Vickie Kennedy

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	-11.3%	✓	12.5%	⚠
Pensions granted	Down	✓		
Resolution rate - time-loss claims at 6 months	24.9%	✓	27.8%	✓
High risk claims – share return to work at 12 months	-2.2%	✓	-7.2%	⚠
Median time-loss days paid at first vocational service	-83.5%	✓	-43.5%	✓
% RTW outcomes - all first vocational service referrals	281.9%	✓	18.3%	✓
WSAW participation	Steady utilization			
COHE utilization	92.6%	✓	2.8%	✓

Ms. Kennedy talked through slides 10-23.

Slides 12 and 13 were added to the dashboard in response to the Joint Legislative Audit and Review Committee (JLARC) report from 2016. L&I completed the final report to JLARC in May 2021 and there are no follow up reports needed. The JLARC recommended worker and employer contact within 2-3 days of claim receipt is a measure L&I needed to monitor and begin reporting

out publicly. This measure concerns our outreach to employers and workers very early in the claims process.

Ms. Sundstrom commented that the numbers on slides 12 and 13 are low. Her expectation is that her adjuster contact the workers regardless of the type of injury because workers have questions and initial communication with the worker really sets the tone for the entire claim. **Ms. Kennedy** responded that the more we connect with workers generally, help them understand the process, and take some of the fear and worry away, the more successful the system is. Several years ago, L&I added staff to help claim managers with a lot of the administrative processes on a claim, and a large part of their role is helping return phone calls to try to take some of the load off claim managers. Ms. Kennedy also acknowledged that there remains significant room for improvement.

Mr. Kendo asked if the measure on slide 17 count injured workers who are on opioids immediately after an accident and at what point is opioid use considered chronic. **Ms. Kennedy** responded that opioid use typically moves out of the acute phase into chronic at six to twelve week post-injury or post-surgery.

Ms. Sundstrom asked if the data on slide 20 includes workers that may be kept on salary (KOS). **Ms. Kennedy** responded that the data does include workers that are KOS because the data is counting from the date of injury and that the workers are identified as lost time, but not just those receiving time-loss benefits.

Industrial Insurance State Fund Financial Overview: Rachel Swanner

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

Ms. Swanner talked through slides 24-37.

Mr. Kendo asked if the operating ratio (138.3%) is so high because the 2020 rates were set below the break-even point. **Ms. Swanner** responded that is correct and the ratio coupled with the slight increases in other expenses causes the ratio to go up. **Mr. Kendo** followed up by asking what the ratio has been in years past when the rates are set closer to break-even. **Ms. Swanner** responded that the ratio was 118% in FY2020 and 84.3% in FY2019.

2022 Rates: Joel Sacks

Ms. Kennedy introduced Joel Sacks, Agency Director.

Mr. Sacks talked through slides 47-57

Mr. Kendo asked if Mr. Sacks could explain how you can take half a break-even rate increase on a pay-as-you-go account. **Mr. Sacks** responded that when the break-even rate is set, L&I is attempting to estimate the amount of benefits that will be paid out and the amount that is

needed for three months of working capital. The 14% indicated on slide 50 represents the agency being able to pay what is predicted to come in. We currently don't have three months of working capital, so the rate allows us to put that off for another year. In the event that the estimates are wrong, the law allows us to take a short term loan from the pension reserve fund to pay benefits, meaning there is no risk of not being able to pay the cost of living adjustments (COLA) to injured workers.

Mr. Battles asked how we are mitigating what is actually generating the higher costs because other states like Oregon have seen rate decreases over the last nine years. Mr. Battles also commented that he is concerned about the supplemental pension fund (SPF) and the fact that it is artificially high because it is based on the state's average annual wage, which went up 10.1% in 2021. **Mr. Sacks** responded that Oregon's rates are based on the percentage of payroll and Washington's rates are based on hours worked, so you can't compare the two. The COLA being calculated based on the state's average wage is mandated in statute. Additionally, the SPF is the only fund that all employers and workers pay into, regardless of being in the state fund or self-insured.

Mr. Kendo asked if Mr. Sacks or Ms. Kennedy know what proportion is worker supported in Oregon versus the 25% in Washington. **Ms. Sundstrom** responded that in Oregon, it is just the workers' benefit fund that workers pay a percentage of. The percentage is just pennies per every \$100.00 of payroll. The fund in Oregon most closely compares to Washington's Stay-at-Work (SAW) program.

Ms. Sundstrom asked if the money for the catastrophic coverage that was negotiated comes from the Medical Aid or Accident Funds and, if it does, is there still enough money in those accounts to cover the huge costs that would be incurred if there was a catastrophe. **Mr. Sacks** responded that L&I purchased catastrophic coverage a number of years ago so that we would be able to be reimbursed for those extreme costs. The coverage only applies to the State Fund.

General Updates: Maurice Perigo, Joel Sacks, Vickie Kennedy

Ms. Kennedy introduced Maurice Perigo, Assistant Direct for Administrative Services.

Mr. Perigo talked through slide 62.

Mr. Kendo asked if there is a reporting schedule for the progress being made on the Protecting Customers' Personal Information Project and when the committee may receive another update.

Mr. Perigo responded that there are project status reports being given to agency leadership and that an update at a future WCAC meeting is planned.

Mr. Battles asked how L&I is going to protect data when it is being provided to a vendor. **Mr. Perigo** responded that we currently have strong contract parameters that require agency vendors to store our data on encrypted servers. We are also looking at enhancing issue clauses and other contract clauses to ensure data protection. **Mr. Battles** followed up by asking how vendors and contracts are audited. **Mr. Perigo** responded that contract managers are responsible

for auditing and ensuring that the contractor is complying with all parts of the contract, but that may change to a more formal process as a result of the project.

Mr. Feller (via Zoom chat) asked about data breaches regarding interpretingWorks, the new scheduling system for injured worker claims that need interpreting services. **Mr. Ratko** responded that there was a situation where there were around 8,790 possible exposures of information in regards to interpreting appointments. The agency offered credit monitoring to those affected and at last count, only a few people had chosen to use the monitoring. **Mr. Perigo** added that the interpretingWorks incident was limited to the subcontractors for the vendor that we already have controls for and the credit monitoring was offered as an extra measure the agency took.

Mr. Sacks talked through slide 63.

Ms. Kennedy talked through slides 64-66.

Mr. Battles asked why L&I is proposing a statute that penalizes retro groups on the appeal process. **Ms. Kennedy** responded that retro groups are now considered fourth party to the claim, based on past litigation, and they do protest and appeal independent of the employer. If the retro group is representing the employer, there would be a consideration about which party is appealing.

Mr. Ratko talked through slide 67.

Ms. Kennedy talked through slides 68-71.

Mr. Tefft (via Zoom chat) asked if the COVID-19 data can be broken down to separate the exposures to COVID from contraction of the disease. **Ms. Rolle (via Zoom chat)** responded that she may be able to pull this together.

Mr. Nielsen (via Zoom chat) asked if restaurants, taverns, and bars are included in the “miscellaneous services” risk class on slide 71. **Ms. Rolle** responded that they do fall under that risk class, but the largest portion of the claims in that risk class come from boarding homes, with around 500 claims. **Ms. Kennedy** added that the percentage of claims from restaurants and bars is fairly small.

Mr. Battles asked if we are not seeing accepted COVID cases in restaurants and bars. **Ms. Kennedy** responded that the chart reflects employee claims, no matter what category they are in and miscellaneous services has the second highest percentage of the overall total of accepted claims, with 17%. With 500 of those being in boarding homes and facilities, the roughly 250 claims left in that risk class only make up 6% of the overall total claims coming in. While we are not seeing anything substantial among employees, the data does not reflect exposure and possible cases of the customers. **Mr. Sacks** added that we don’t know whether the low number

of claims is connected to a lack of people getting sick or a lack of knowledge that they can file a workers' compensation claim, which is true across all industries.

Mr. Feller (via Zoom chat) asked about the Governor's vaccine requirement for state employees and if there is any preliminary information on how it will affect the department's work force. **Mr. Sacks** responded that at the time of the meeting, roughly 75% of agency staff have proven their vaccine status and there are a few hundred requests for religious or medical accommodations which are being evaluated on a case-by-case basis. **Mr. Feller** followed up by asking about the backlog of work requests in both the State Fund and self-insurance programs and if the department has a plan to mitigate the strain of potentially losing a portion of the agency's staff. **Ms. Kennedy** responded that there is a long training time for new claim managers and Claims Administration is short on level three claim managers, who handle some of the fairly complicated claims. Because of this, we are trying to accommodate as many staff as possible in their current positions and then looking to how we can appropriately backfill positions in order to minimize the impact on workers or employers.

Closing Comments & Adjourn: Vickie Kennedy and Joel Sacks

Mr. Sacks gave an update on the Workers' Compensation Modernization (WCSM) project. L&I commissioned an independent review of the project plan and received feedback from the reviewing contractor. One of the things we will focus on is recognizing that there is significant prep-work that needs to be done to ensure we are well organized and able to implement an IT project of this size.

Mr. Sacks announced to the committee that Ms. Kennedy would be retiring in March after 50 years of work at L&I. Mr. Sacks also thanked Ms. Kennedy for her vision and commitments to the workers' compensation system and her work at the national level advocating for a worker centric system.

Meeting adjourned.