

## Workers' Compensation Advisory Committee (WCAC) Meeting

Labor and Industries, Tumwater, WA

Meeting Notes

December 15, 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

### **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, Andreka Jasek, Andy Shelton, Anna Minor, Autumn Music-Schmitz, Bill Vasek, Brenda Heilman, Bret Jensen, Carolyn Logue, Cherell Fisher, Cheri Ward, Cherie Wagaman, Chris Ristine, David Kennerud, Debra Hatzialexiou, Diane Doherty, Donna Egeland, Erin Frasier, Herbert Atienza, Jennifer Davis, Jessica Nau, John Meier, Joshua Ligosky, Karen Jost, Kathy Petruzelli, Keith Bingham, Ken Nielsen, Kim Wallace, Knowrasa Patrick, Kris Tefft, Latausha Carlyle, Leigh Haley, Lisann Rolle, Lloyd Brooks, Maria McClain, Mark Phillips, Marty Cohen, Megan Soria, Michael Harris, Michelle O'Brien, Mike Ratko, Mike Williams, Nicole Runnels, Rachel Swanner, Rebecca Llewellyn, Richard Clyne, Robert Mitchell, Rose Gundersen, Ryan Guppy, Sheila Parker, Sheryl Divina, Steve Reinmuth, Susan Abolafya, Tammy Fellin, Tasha Dragovich, Tiffany Loescher, Trudes Tango, Veronica Shakoto

### **Welcome and Safety Message: Vickie Kennedy, Joel Sacks, Jenifer Jellison**

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

then Ms. Kennedy introduced Jenifer Jellison, Safety and Health Investment Program (SHIP) Manager, who presented the safety topic.

**General Updates: Joel Sacks, Vickie Kennedy, Tammy Fellin**

Ms. Kennedy gave an update on the current rulemaking packages, including the 2022 workers' compensation rates and changes to Independent Medical Exams (IMEs) that stemmed from Senate Bill ESSB 6440 from the 2020 legislative session.

Mr. Sacks gave an update on OSHA's proposed vaccine rule for employers with more than 100 employees. The proposed rule is currently stayed by federal courts, but L&I is still working to be prepared to adopt the OSHA rule while closely monitoring the rule's status at the federal level.

**Mr. Kendo** asked about the agency's process for implementing OSHA's proposed rule, or something similar at the state level if the courts continue the stay. **Mr. Sacks** answered that L&I has the authority to put a vaccine mandate in place, separate from the federal government. It is not something that the agency is looking at currently, but it may be an important tool in slowing or preventing the spread of COVID-19, so the agency will continue to monitor what is going on around the state, including positive case rates and hospitalizations.

**Ms. Call** asked if there would be a test-out option for employees included in any vaccine rulemaking. **Mr. Sacks** responded that the agency intends to mirror what is in the proposed OSHA rule, which includes full vaccination or weekly testing.

**Mr. Battles** asked if the agency intends to move forward with putting a rule in place if lawsuits prevent one being put in place at the federal level and if there would be additional time for businesses and employees to comply with the rule. **Mr. Sacks** responded that the agency has the authority to put such a rule in place, either in accordance with OSHA or separately and only at the state level. If the agency does implement something at the state level, consideration would be given to the implementation dates to allow for compliance.

**Ms. Call** asked if a solo-driver exemption is being considered for any potential rules. **Mr. Sacks** responded that the OSHA rule does look at individuals working from home, not interacting with others, and those working exclusively outdoors. As it relates specifically to the trucking industry, the agency would have to analyze the OSHA rule and determine if the industry falls into an exempt job category.

Mr. Sacks provided an update on the reopening of L&I building to in-person customer service. At the time of the meeting, L&I is planning to transition towards in-person services in January 2022. With the reopening, the agency is going to be starting an appointment system for L&I offices to reduce wait times in offices.

Mr. Sacks and Ms. Kennedy updated the committee on the impacts of the governor’s vaccine mandate on the agency. Mr. Sacks began by giving an update on the impacts to the agency as a whole and then Ms. Kennedy gave an update specific to the Insurance Services division.

Ms. Kennedy gave an update on COVID-19 claim numbers.

## COVID Claims

	State Fund	Self-Insured	Total
<b>Allowed total</b>	<b>5,255</b>	<b>3,531</b>	<b>8,786</b>
<i>Open</i>	309	581	890
<i>Closed</i>	4,946	2,950	7,896
<b>Rejected</b>	<b>910</b>	<b>330</b>	<b>1,240</b>
<b>Pending</b>	<b>230</b>	<b>26</b>	<b>256</b>
Total	6,395	3,887	10,282

State Fund Accepted Claims	
Time-loss	3,860
Medical	747
KOS	648
Total	5,255

Industry Group	State Fund	Self-Insured	Total Claims	Share
Healthcare related	3,404	2,278	5,682	55%
First responders	756	517	1,273	12%
Miscellaneous Services	1,147	35	1,182	12%
All other	774	233	1,007	10%
Misc. Professional and Clerical	189	555	744	7%
Government	125	269	394	4%
Total	6,395	3,887	10,282	100%

Fatal Claims	
State Fund	30
Self-Insured	13
Total	43

**Mr. Kendo** asked about the implementation of the presumptive disease standard for workers covered under ESSB 5115, known as the Health Emergency Labor Standards act (HELSEA), and ESSB 5190. **Ms. Kennedy** responded that implementation is complete. Currently, the agency is working on behind-the-scenes processes, like being able to flag claims that would potentially fall under these bills. Communications have gone out to the self-insured community to make them aware of the presumptions and how it effects them. With the presumption rules, there will likely be a reduction in the percentage of COVID-19 claims rejected.

**Ms. Wiest** asked if data is available on the health care related claims that break out numbers for position, like nurses and doctors versus other hospital staff. **Ms. Kennedy** responded that L&I doesn’t track occupation specifically, which makes it difficult to narrow down the data in that way. **Ms. Wiest** followed up by asking if there is data on which agencies and employee classifications make up the “Government” industry group. **Ms. Kennedy** responded that the Research and Data team may be able to break the data down into claim numbers for state, county, and city governments.

**Mr. Battles** asked if there is a general reason for COVID-19 claims being rejected. **Ms. Kennedy** responded that the agency receives a lot of claims for COVID exposure only and if there are no benefits to be paid on a claim, it is rejected. For example, if the employer covered the quarantine period, the test was free, and the worker tested negative so there are no benefits to be paid and

there is nothing to allow. The agency also receives some claims at the employer's direction, but the employee knows they were exposed outside of work, and those claims are also rejected.

**Mr. DeVaney** asked if the agency is going to be able to identify results of additional outreach to industries based on the presumptive coverage rules. **Ms. Kennedy** responded that beyond manual surveys, there may not be an effective way to gather that data, but that the claim totals by industry have been reported out at most of the WCAC meetings since the pandemic began. Ms. Kennedy also suggested that a presentation be made at a future meeting to show patterns of how industry data has changed, which may lead to assumptions about how the presumption statutes have affected the industries individually. **Mr. Sacks** added that the agency's Safety and Health Assessment and Research for Prevention (SHARP) program has been analyzing COVID claims data as well as data from the Department of Health and has published a few reports that look at COVID exposure by occupation and industry. If the committee is interested, SHARP can be added to the agenda for the March 2022 meeting to discuss these reports and other work they have done.

Ms. Kennedy introduced Tammy Fellin, Legislative Director, who discussed two of the agency request bills for the 2022 legislative session, Z-0306/Z-0392 requiring an employer to reimburse employee fees when a paycheck is dishonored by non-acceptance or non-payment and Z-0321/Z-0390 restoring references to contractor licensing laws in workers' compensation, public works, and prevailing wage statutes.

**Ms. Wiest** asked if the dishonored paycheck bill would encompass insufficient fund fees that could be levied against an employee who deposited a check that was then dishonored, causing their account to become overdrawn. **Ms. Fellin** responded that it does not. The agency reviewed many different scenarios and in this specific scenario, there were issues around the complexity of an administrative investigation that would be needed to determine if paying the fees is appropriate, including agency staff having access to bank records and asking agency staff to make decisions about if there was causation between a check that the worker wrote bouncing and the fact that their paycheck wasn't in their account. In the bill, this is described as the ripple effect and we didn't know who to have adequate access to workers' accounts and being able to make decisions around causation.

Ms. Kennedy discussed the two workers' compensation related bills that are being requests, Z-0301/Z-0417 adding psychologists for mental health only claims to the list of those who can act as an attending provider and Z-0322/Z-0391 concerning attorney and witness fees in industrial insurance court appeals.

**Ms. McClain (via Zoom chat)** asked if Z-0322/Z-0391 apply only to Superior Court cases. **Ms. Hatzialexiou** responded that it applies to any court above the Board of Industrial Insurance Appeals.

Mr. Sacks outlined the agency's budget proposal, which includes requests for funding to fully stand up a quality assurance program for vocational rehabilitation, make changes to the agency's

apprenticeship technology systems, and meet federal expectations in our prevailing wage systems as well as adding additional enforcement resources for the prevailing wage program.

### **Vocational Quality Assurance Model and L&I WorkSource Partnership: Vickie Kennedy**

Ms. Kennedy discussed details of the budget request for quality assurance talked through slides 14-22.

The budget request would allow the agency to hire five permanent full time employees (FTEs) to support the quality assurance program as well as cover some of the costs of the agency's WorkSource locations.

**Ms. Gundersen (via Zoom chat)** asked if Ms. Kennedy can share the selection criteria for the worker survey mentioned on slide 19 and if the agency is tracking quantitative data around the worker-centric approach and an increase in days on paid time-loss. **Ms. Kennedy** responded that the selection criteria includes any worker who has received a vocational recovery referral and is at the 30-day mark after the referral. As for the time-loss days, the agency monitors time-loss duration generally and the agency is making vocational firms aware of cases that seem to be with their firm for an extended period of time. The agency has also done several things that are reducing some of the delays that may have been invisible in the past. For example, once a worker starts on vocational services, they are continued down that path, where in the old model with the Ability to Work Assessments, vocational services may have been stopped and started, making past data around how long someone was in vocational services seem fairly short compared to the current state, but in reality, it was harming the duration of the claim overall. An indirect benefit of the current model has been that vocational disputes and related costs have gone down by about 30 percent.

### **Industrial Insurance (State) Fund Financial Overview: Rachel Swanner**

Ms. Kennedy introduced Rachel Swanner, Workers' Compensation Accounting Manager, who talked through slides 25-36.

### **Insurance Services Dashboard: Vickie Kennedy**

# DASHBOARD SUMMARY

Measure	Change from 2012 (unless otherwise noted)	Y/Y Change	
<b>Long Term Disability</b> – share that received a TL payment in the 12 month post injury	-8.3%	✓ 13.0%	▲
<b>Pensions granted</b>	Down	✓	
<b>Resolution rate</b> - time-loss claims at 6 months	19.7%	✓ 15.5%	✓
<b>High risk claims</b> – share return to work at 12 months	1.0%	✓ -2.5%	▲
<b>Median time-loss days paid at first vocational service</b>	-79.7%	✓ -14.0%	✓
<b>% RTW outcomes</b> - all first vocational service referrals	294.8%	✓ 18.3%	✓
<b>WSAW participation</b>	Steady utilization		
<b>COHE utilization</b>	92.0%	✓ 0.4%	✓

Ms. Kennedy talked through slides 46-60.

**Ms. Wiest** asked if the decrease in medical claims on slide 47 is related to the pandemic and people having a hard time getting into hospitals or getting surgeries. **Ms. Kennedy** responded that the pandemic should not have contributed to this decrease because a medical only claim means a claims that has very minimal treatment needs and no lost time. For example, a medical only claim could be someone going to urgent care for a cut finger or foreign body in the eye who only misses a few hours at the end of their work day to get the immediate treatment, making the claims very simple. Does that mean that some workers who had what would have been very simple claims chose not to seek treatment because of their own concerns about COVID or maybe their doctor’s office was temporarily closed? Maybe. And that may be enough to shift what would have been a medical only claim into time-loss because the worker did not get prompt treatment.

**Mr. DeVaney** asked if the ratio of time-loss versus medical only is correlated with age. **Ms. Kennedy** responded that L&I has not necessarily done an analysis to look at factors like the age of a worker and whether there is a change in types of claims for those populations.

**Ms. Gundersen (via Zoom chat)** asked if there an uptick or downward trend in to total number of claims, or if the overall total is steady compared to past data. **Ms. Kennedy** responded that we are beginning to see a small uptick in claims overall when you combine medical only and time-loss claims, which correlates to an uptick in hours worked as people are going back to work.

Perspectives on National and International Workers’ Compensation Policy: Vickie Kennedy

Ms. Kennedy discussed the definition of work disability on slide 62 then discussed her experiences through her involvement in the national and international workers' compensation industries.

**Closing Comments and Adjourn: Vickie Kennedy and Joel Sacks**

Mr. Sacks thanked Ms. Kennedy for her 50 years of service to L&I and shared with the group that Ms. Kennedy recently received the 2021 Francis Perkins award from the International Association of Industrial Accident Boards and Commissions (IAIABC) and the Comp Laude Award from Workers' Comp Central.

Meeting adjourned.