

Workers' Compensation Advisory Committee (WCAC) Meeting

Labor and Industries, Tumwater, WA

Meeting Notes

December 10, 2019

Business Representatives:

Tom Kwieciak, Building Industry Association of Washington for Bob Battles, Association of Washington Business

Mike Roozen, Washington State Farm Bureau

Sheri Sundstrom, Washington Self-Insurers Associations

Tammie Hetrick, Washington Retail Association

Labor Representatives:

Sean Embly, UFCW Local 21

Labor and Industries:

Joel Sacks, Director

Vickie Kennedy, Assistant Director for Insurance Services

Randi Warick, Deputy Director

Board of Industrial Insurance Appeals (BIIA):

Linda Williams, Chair

Court Reporter:

Lori Stefano, Capitol Pacific Reporting

Recorder:

Ashley Oberst (*present*)

Welcome and General Updates: Vickie Kennedy and Joel Sacks

The meeting started with introductions of the committee members and the audience.

Mr. Roozen moved to approve the two sets of minutes that were sent to the committee members. Ms. Sundstrom seconded the motion. The minutes were approved.

Jeff Killip, Department of Safety and Health (DOSH) Education and Outreach Senior Manager presented the safety message.

Ms. Hetrick thanked Mr. Killip for the safety videos and flyers.

Mr. Sacks announced that the workers' compensation rates for 2020 were finalized with no changes from the proposed rates. He also thanked everyone who participated in the hearing process.

Mr. Sacks announced that the agency was not requesting any legislation in the 2020 session and the supplemental budget ask is very small. The agency is ready to provide technical assistance to anyone who is going to be running bills in the upcoming legislative session.

The department plans to announce the final rules for overtime on December 11, 2019, the day after this meeting. The proposed rule was issued six months ago and a number of hearings were held across the state, with 2,000 comments received and more than 200 people testifying.

Ms. Kennedy gave an update on implementing recommendations from the Joint Legislative Audit and Review Committee (JLARC). Their recommendations provided a great foundation for some of the improvements that have been made over the last few years. JLARC is planning to take a second look, over 2020, considering what the progress has been on improving claims management practices for any time loss cases, standardizing some of our approaches and claim file documentation, and integrating predictive analytics into our system.

Vocational Recovery Update: Vickie Kennedy

Ms. Kennedy talked through slides 11-19.

Ms. Hetrick asked if the Quality Assurance Plan needs to be in place by January 1. **Ms. Kennedy** responded that the plan does not have to be in place January 1 and the details of the plan are still being developed. What the firms are doing is committing to engaging with the agency on the plan, but it's going to take some work for us to work with the vocational firms on the plan elements and how they can use their software, for example, to identify whether their vocational rehabilitation counselors (VRCs) are taking certain actions. If a firm doesn't have software, showing them how they can review a random sample of claims to ensure that the elements are being adhered to. This work will be done over the course of 2020.

Mr. Kwieciak asked if we have shared information that shows workers are financially better off working than being on disability. **Ms. Kennedy** responded that we have and it is in the resource materials given to vocational firms. In addition to the financial impact, there is also significant evidence that not working increases mortality and mental health conditions.

Master's Level Therapist (MLT) Pilot: Zachary Gray

Ms. Kennedy introduced Zach Gray, Epidemiologist in the Office of the Medical Director, who talked through slides 21-26.

Mr. Embly asked how workers will be notified of this service and if it will be available to all workers, whether they are in the state fund or self-insurance. **Mr. Gray** responded that currently the state fund will only have this in a pilot format, so self-insured employers are not required to participate during the pilot process. For state fund injured workers, we have information on remittance advices to the attending providers that will notify them of the pilot starting on

January 1, 2020. We also have outreach staff who go to conferences and inform providers about subjects like this. Claim managers can also notify an attending provider that this is an available service. **Mr. Embly** followed up by asking how long the pilot program is going to be in effect. **Mr. Gray** responded that we currently have language in the rule package that the pilot can last up to four years, but that can be adjusted as we determine if enough data has been collected to end the pilot early. **Ms. Kennedy** added that we wanted to be careful not to propose a pilot period that is too short. Additionally, self-insured employers can choose to utilize one of the MLTs in the pilot and pay them accordingly, but they are not required to participate in the pilot.

Mr. Kwieciak asked if this is in place to solve an access issue. **Ms. Kennedy** responded that this is correct. Behavioral health interventions have been something psychologists have been able to provide for a number of years. One of the important distinctions for these services is that there is no diagnosed mental health condition. If that is the case, then the worker would move to different services.

A Study on Claim Resolution Structured Settlement Agreement: Kevin Hollenbeck

Ms. Kennedy introduced Mr. Hollenbeck, with Upjohn Institute and gave some background on the study. Part of the 2011 reforms allowed workers that are of a certain age to resolve their claims through a structured settlement agreement. That provision also required several studies and reports on how this was impacting our system, what the satisfaction was of those who are participating, and some other data and information. This is Upjohn's second of three reports, with the final report coming in 2023.

Mr. Hollenbeck talked through slides 28-54.

Ms. Sundstrom: I've spent a great deal of time reviewing your report. I'd like to comment first that I personally do work in multiple states that offer the settlement process. And I find it to be very successful in those states. It allows the injured worker to move on with their life and make some important decisions and, hopefully find a different career if they aren't interested in the vocational process. So there are several things that struck me and three comments that you made from the get-go concerned me. I'm going to quote just what I wrote down: "Reluctant to generalize from the survey data. Reluctant to draw broad conclusions. And very limited sample sizes." That set the tone for me that the information may not be as accurate as it can possibly be. On page 29, when you ended one of your paragraphs with "We close this discussion with a quote, from one worker attorney, that L&I does not try to take advantage of injured workers, that self-insurers have no such obligation." I found that concerning since it's one attorney's opinion, keeping in mind too, that self-insurance public sector employers.

I appreciated that workers, on the whole, indicate they had a positive experience. One question I have for you, outside of my comments, is whether there's some kind of standardized settlement amount. **Mr. Hollenbeck:** Thank you for the questions and for closely reading the report. The comment in the footnote that you mentioned about "no such obligation" – you're exactly right, that comment was made by a single attorney. We actually debated whether to put that in the report or not. So we certainly have no problem removing it. My only hesitation is that, when we do these focus groups and interviews, we ask for recommendations and we promise that we will

forward any recommendations or comments in an anonymous way, so that's why we left it. In terms of the sample size issue, you're exactly right that limited sample sizes reduce a person's ability to generalize. But it really reduces the certainty; in other words, statistically, we would think the means or the average responses that we're hearing probably reflect the average for the entire population that we're talking about, because we try to carefully make sure that our sample's not biased one way or the other. We can certainly go back to the report and try to clarify that language. In terms of the standardization and what goes on in other states, in our recommendation, at least, we try to say this will require quite a bit of work talking to stakeholders and talking to the legislature and so forth. It may or may not be a feasible thing to do. I know my colleague, Allan Hunt, has done studies in a lot of different states. He didn't mention to me that he was aware of any state that actually had achieved that sort of standardization.

Mr. Kendo: On that particular comment, I would advocate that you leave it in because it did come out of the focus group. Individual people and people acting in good faith aside, I think that is a fair reflection of the worker and claimant's perspective on self-insured workers' compensation. I have a question about the slide on the impact to state fund premiums (slide 50). The example uses garage door installation and the last line in the table for 50 FTEs as the number of employees with a settlement size of \$100,000. Is the \$110,000 in the next column an estimated lifetime claim savings for that employer that then resulted in a four percent reduction in premiums? **Mr. Hollenbeck:** Yes, the \$110,000 was the actuary's discussion if that the lifetime reduction would be in benefits. **Mr. Kendo:** So that worker settled for \$100,000 on a claim that may have been worth \$210,000? **Mr. Hollenbeck:** That is a correct interpretation. **Ms. Kennedy** added that evaluating the impact financially to employers is one of the requirements of the study, but in reality, most settlements happen after the claims is out of that employer's experience period. So it has no impact at all.

Mr. Kendo: From the last study, there was a takeaway that in general, injured workers that the research team had interviewed did not have a firm understanding of the loss of value of their claim over time versus what they would be settling for. Did you see any of that improve from the last study, three or four years ago? **Mr. Hollenbeck:** We did not see any improvement there. In our earlier study, there was a point made that there needed to be more information about the medical coverage, and there has been quite an effort to improve the amount of information given to workers who settle.

Ms. Kennedy added that perhaps Debra Hatzialexiou, Legal Services Program Manager, could take a moment to let the group know, at least for state fund, that we do communicate with the worker about their rights to reopen. **Ms. Hatzialexiou:** There are a couple of points I want to hit here. One is, when we're investigating whether a settlement would be in the best interest or a pro se worker, we do get a lot of their financial information to make the evaluation. For example, we know what their monthly income is outside of time loss, we know what their debts are, and oftentimes, there are medical debts that are included that are unrelated to the claim. They might not even be related to the worker, it could be their spouse. That answers part of what the medical costs workers pay for after settlement involve. We also meet individually with unrepresented workers to make sure that the worker understands that future medical can be

covered. I would say, more than 50 percent of that conversation is trying to drive home the point about future medical costs. I want to also stress that the BIIA hits hard on this point, because I've personally attended conferences with unrepresented workers. The Board judge, who is doing what is called the "best-interest conference," spends quite a bit of time making sure that the worker understands that if they have future claim-related medical treatments that they need to apply to reopen the claim to get that done. If the worker demonstrates even the slightest hint that they don't understand this, they will reject the agreement and tell us to try again. It's unclear what kind of information workers get when they have an attorney representing them because we aren't any part of that process. We receive an application from the attorney for a worker and as long as we can demonstrate that it saves money for the fund, then we don't have any access to financial information of the worker, and we don't have any access to what they know about future medical treatment. Part of what the law allowed us to do is, if the worker needs future medical treatment and it's certain they will need it, we can write it into the contract that the worker can come back when their doctor determines it's time for the medical care, without the need to show objective evidence of worsening.

Ms. Sundstrom asked if a worker goes back to the original treating provider, will they presume it's part of the original claim. **Ms. Kennedy** responded that she felt a bit uneasy answering on behalf of the providers, but there is already a process in place for reopening claims for additional medical and the process is the same, whether the worker has a structured settlement or not. If there is a settlement, the reopening would not include any indemnity benefits, but it would still cover medical. **Ms. Sundstrom** also commented on the fact that many workers may lose their paperwork or forget the information from their settlement and the department should possibly consider a system for workers to access their documents online or via an app.

Mr. Roozen asked for clarification on slide 50 and if the numbers are straight value dollars or is they are discounted back to the present. **Mr. Hollenbeck** responded that they are not discounted.

Ms. Hetrick asked if the 10 percent of application who did not know they had applied for a structured settlement were represented or if there was any identifier on how the applicants applicant and didn't know. **Mr. Hollenbeck** responded that unfortunately, due to the way to survey was structured, it was the first or second question asked. So if they didn't know anything about the process, they were asked about their demographics and their employment and exited from the survey. **Ms. Kennedy** added that possibly, the worker apply to learn more. A worker may do that and decide they aren't interested.

Mr. Kwieciak asked, in regards to the data about settlement amounts seeming to be lower over time, if that could be because people that have less serious injuries are more likely to participate in the settlement program and was that accounted for in the study. **Mr. Hollenbeck** responded that the study just looked at the mean amounts not statistical analysis of the settlement amounts was done. **Ms. Kennedy** added that there are several factors that are likely influencing state fund settlements to be greater than self-insured settlements, including the characteristics

and the age of the claim. There may be very good reasons why the amounts are what they are and it isn't necessarily a positive or negative.

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

Ms. Kennedy introduced Linda Williams, BIIA Chair, who talked through slides 57-62.

Ms. Sundstrom announced that the Board has a new Labor member, Isabel Cole. She also let the committee know that the Board is formulating a new position for an Executive Director.

Workers' Compensation System Modernization (WCSM): Randi Warick, Brian Colker, Manoj Verma

Mr. Sacks introduced Ms. Warick, who turned the presentation over to Brian Colker with Linea Solutions. Mr. Colker talked through slides 64-69.

Mr. Colker turned the presentation over to Manoj Verma, WCSM Project Technical Lead, who talked through slides 71-75.

Ms. Sundstrom asked what L&I is putting in place, as part of the contract procurement process, to ensure that, if the chosen vendor gets bought out by another larger company, to ensure continuity of the project. **Mr. Verma** responded that L&I has been very thoughtful about this process, because that situation can happen, and we have been working with an Assistant Attorney General to ensure that the contract accounts for that scenario, and others.

Mr. Kwieciek asked Mr. Sacks if there is a possibility, going forward, that an independent consultant, such as Mr. Colker, could report to the business and labor communities with updates about the status of the project. If something like that could be built into the budget, it would give the communities more confidence in the process. **Mr. Sacks** responded that that is already required on all large IT projects from the legislature and the oversight agency, so we actually have a quality assurance vendor, who is separate and distinct from the other vendors. Their responsibility is to provide ongoing reports, not just to the agency, but to the oversight community, about how projects are going. The next step is to identify who in the business community should sit down with that vendor to test how comfortable the community is with that they are doing. **Ms. Warick** added that the agency plans to keep the committee informed on what is happening with the project.

Insurance Services Dashboard: Vickie Kennedy

Ms. Kennedy talked through slides 76-89.

Industrial Insurance State Fund Financial Overview: Rob Cotton

Ms. Kennedy introduced Rob Cotton, Workers' Compensation Account Manager, who talked through slides 91-110.

Closing Comments and Adjourn: Vickie Kennedy and Joel Sacks

Meeting adjourned.