

Workers' Compensation Focus

Division makes changes to claims processing performance requirements and related civil penalties

By Sally Coen

Ensuring that injured workers receive accurate and timely benefits is one of the key objectives of the workers' compensation law, the Workers' Compensation Division's statutory charge, and the division's strategic priorities. In supporting this objective, we also strive for effective regulatory approaches that reflect goals often expressed by insurers, self-insured employers, and policymakers. Reducing burdensome "upfront" reporting requirements, educating responsible parties, emphasizing industry accountability to support high performance levels, and strengthening "back-end" verification through audits and sanctions all contribute to this end. Therefore, the division's current and upcoming claims-processing related audit activities emphasize enhanced industry accountability and verification. Here are some recent changes.

Quarterly Claims Processing Performance (QCPP) Audit:

Insurers submit first claim reports to WCD and report their performance in making timely first payments and acceptance/denial decisions. Each quarter, the division issues penalties to each insurer that performs below the required threshold in any of the three categories where at least five applicable claims have been reported in the quarter. Effective Jan. 1, 2006, the required performance threshold for timely first payments and acceptance/denial decisions increased from 80 percent to 90 percent. The performance threshold for timely first claim reports remains at 80 percent. WCD has applied these thresholds to insurer performance reported to the division since

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The ABCs of WCD

Terms and abbreviations in this issue

Independent medical exam (IME)

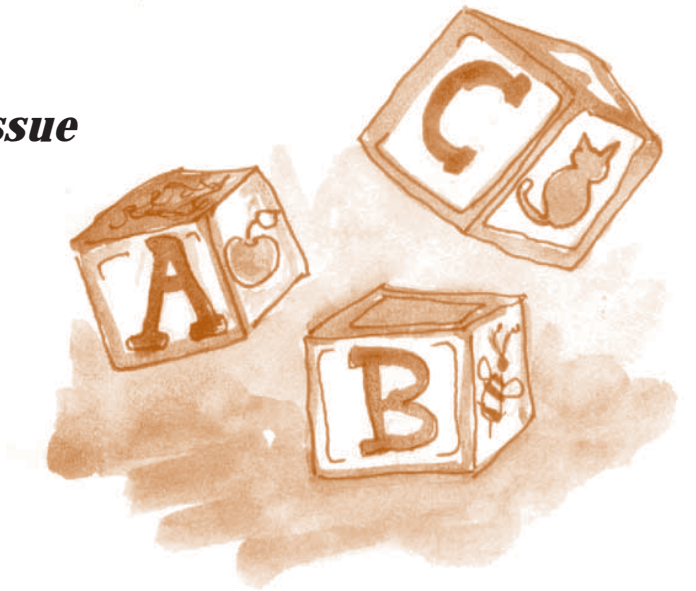
An examination of an injured worker by a physician other than the worker's attending physician upon the request of the insurer.

Ombudsman for Injured Workers

A state office that serves as an independent advocate for injured workers by helping them understand their rights and responsibilities, investigating complaints, and acting to resolve those complaints.

Insurer

An insurance company, self-insured employer, or self-insured employer group that provides workers' compensation coverage to employers and benefits to injured workers.



Bulletin

An official agency communication informing insurers or others regulated by the Department of Consumer & Business Services of new information, processes, or requirements.

Correction:

In the Fall 2005/Winter 2006 issue, the Administrator's notebook on page 3 should have said that Greg Miller is representing subject employers on the Workers' Compensation Management-Labor Advisory Council (MLAC). Miller is a manager of health services at Gunderson Inc. in Portland.

Key telephone numbers and Web address

WCD general information: (503) 947-7810

TTY: (503) 947-7993

Workers' Compensation
Infoline: (800) 452-0288

Fraud complaints: (800) 452-0288

Ombudsman for
Injured Workers: (503) 378-3351, (800) 927-1271

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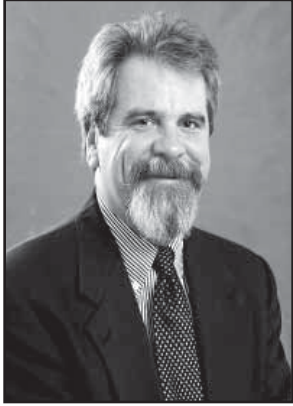
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Administrator's notebook

WCD interim work

By John L. Shilts



The Workers' Compensation Division, in support of the Management-Labor Advisory Committee (MLAC), is focusing on three main areas of study this interim: two areas of the law that are scheduled to sunset in 2008 and a study of care providers in the workers' compensation system. These areas of

study were identified by the governor as priorities for MLAC during this interim.

Nurse practitioners sunset

House Bill 3669 (2003) expanded the role of nurse practitioners in the workers' compensation system. The bill allows nurse practitioners to provide compensable medical services to injured workers for up to 90 days, authorize time loss for up to 60 days, and release the worker to return to work and manage the worker's return to work in that time period. In order to provide these expanded services, nurse practitioners are required to certify with the Workers' Compensation Division that they have reviewed education materials developed by the director of the Department of Consumer & Business Services. This law is scheduled to expire ("sunset") on Jan. 1, 2008, unless the 2007 Legislature takes action to extend, repeal, or modify the sunset.

MLAC designated a subcommittee to review the impact of the nurse practitioner laws and make a recommendation about how the legislature should address the sunset. The Workers' Compensation Division proposed a study design for the nurse practitioner project to the subcommittee, which was approved. The study will analyze available data and survey more than 1,400 nurse practitioners about their participation in the system. The subcommittee should complete this work by late summer.

Permanent partial disability sunset

Senate Bill 757 (2003) changed how permanent partial disability (PPD) benefits are calculated in workers' compensation claims with injuries occurring after Jan. 1, 2005. The bill eliminated the distinction between scheduled and unscheduled awards. Instead, all workers entitled to permanent partial disability receive an impairment benefit (based on the state average weekly wage). Workers unable to return to regular work receive an additional work disability benefit tied to the worker's wage at injury and based on the worker's social-vocational factors of age, education, and adaptability. The law will expire on Jan. 1, 2008, unless the 2007 Legislature takes action.

House Bill 2408 (2005) made additional changes to the work disability portion of PPD for injuries after Jan. 1, 2006, by excluding workers who are released to return to regular work, as well as workers who return to regular work. This law also sunsets Jan. 1, 2008. The bill directed MLAC to study the impact of Senate Bill 757 and House Bill 2408 and report to the 2007 Legislative Assembly. MLAC has designated a subcommittee to review the law and conduct the study to determine the impact of these law changes. The subcommittee approved a study to evaluate a sample of 400 claims and rate the permanent partial disability workers would receive based on the three compensation methods. The three methods under review will be the pre-Senate Bill 757 method, the Senate Bill 757 method, and the combined Senate Bill 757/House Bill 2408 method.

Care provider study

During the 2005 Legislative session, a number of bills were introduced to expand the types of providers allowed to have attending physician status under workers' compensation law (e.g., naturopaths, chiropractors, physician assistants, podiatrists). House Bill 2588 (2005) proposed a five-year study of the financial impact of allowing

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Administrator's notebook *continued from Page 3*

chiropractors to serve as attending physicians. The Management-Labor Advisory Committee (MLAC) did not support this bill, and Gov. Kulongoski vetoed it. As part of his veto letter, the governor asked DCBS, in conjunction with MLAC, to study the role of chiropractors and other care providers in the workers' compensation system and make recommendations to the next legislative assembly. In January, MLAC approved a DCBS-proposed plan to conduct a study on the roles of four types of care providers in the workers' compensation system: chiropractors, naturopaths, podiatrists, and physician assistants. The study will evaluate whether there are problems with the existing law, such as workers unable to access qualified health care providers or a lack of quality health care available to treat injured workers. The study also will provide information about whether the current restrictions on who may treat workers and authorize disability benefits facilitates accessible, timely, efficient, and

effective medical treatment, consistent with the statutory goals of the workers' compensation system (ORS 656.012). The MLAC Care Provider Subcommittee met on April 14, in Salem, to discuss the progress of the study.

MLAC will be reviewing other potential changes to the workers' compensation laws. These three areas have already received quite a bit of attention. Public testimony and input will be very important as MLAC proceeds with hearings to determine what recommendations to make in these areas of the law. Participation by stakeholders will be vital for MLAC to determine the best recommendations. ■

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Automated forms are ready to download

By Shelly Cochran

Do you need a Workers' Compensation Division form? Automated forms in either Microsoft Word or Excel are available for download from the division's Web site, www.wcd.oregon.gov. The forms are also available in Portable Document Format (PDF). You can access all division forms from the division's Forms page at www.wcd.oregon.gov/policy/bulletins/forms.html. For Forms relating to bulletins, go to the division's Bulletin's page at www.wcd.oregon.gov/policy/bulletins/ab_index.html.

If you need any assistance with the forms, please contact Shelly Cochran, forms and bulletins coordinator, at (503) 947-7623 or e-mail shelly.l.cochran@state.or.us. ■

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Sally Coen — new manager of the Field Audit Unit



The Workers' Compensation Division (WCD) selected Sally Coen as the new manager of the Field Audit Unit in the Compliance Section in December 2005. Coen replaces Jennifer Flood, who was appointed as the Ombudsman for Injured Workers. Coen has worked for WCD

since 1988. Prior to joining the Field Audit Unit, Coen worked for 15 years in what is now the division's Investigations and Sanctions Unit, spending the last seven years managing that program. Coen was born and raised in Central Oregon and received her bachelor's degree from Willamette University in Salem.

Through its different programs, the Field Audit Unit determines whether compensation benefits are paid and claim reports are submitted timely and accurately, assesses penalties when performance standards are not met, validates that expenditures from the Workers' Benefit Fund meet eligibility requirements, determines whether self-insured employers are maintaining adequate security deposits to meet liabilities, determines self-insured employer loss experience, ensures accurate payments of assessments, and coordinates the process by which insurers and third-party administrators are registered with the division. The staff members in the Field Audit Unit have direct, daily contact with parties in the Oregon

workers' compensation system, and Coen's goal is to ensure that the unit continues to provide customers and stakeholders with responsive service and expert technical assistance.

"I am proud to be working with the Field Audit team," Coen said. "We emphasize the importance of being a helpful and knowledgeable resource for our customers, and I look forward to leading the team as we continue to improve our service and education to the industry."

Coen is looking forward to upcoming projects in which the Field Audit Unit staff will be re-evaluating methodologies for conducting some of the unit's audit programs and closely reviewing the unit's functions.

"We will be looking for ways in which we can reduce the burdens our audit activities place on businesses, while still ensuring workers timely and accurately receive the benefits to which they are entitled and ensuring that monies from the public funds are appropriately expended," Coen said. "These upcoming reviews will allow us to critically review what we do and the impact our actions have on our customers."

Coen also is looking forward to getting to know more people in the industry.

"If you see me accompanying an audit team to your office, or if you are attending the Workers' Compensation Educational Conference in May, please introduce yourself," she said. "I am eager to put names and faces together."

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Division changes *continued from Page 1*

Jan. 1. Penalties issued since then, beginning with first quarter 2006 penalties issued in May, have reflected these thresholds.

If the insurer reports fewer than five claims in the quarter, no penalties are assessed in any of the three categories. When five or more applicable claims are reported, the division applies both the 90 percent and 80 percent standards by always allowing at least one violation without a penalty. This permits all insurers, even those that report fewer than 10 claims in a quarter, to have the 10 percent or 20 percent allowance before penalties are assessed. The division calculates the allowed violations by either rounding up or down as appropriate (0.5 or greater will be rounded up; less than 0.5 will be rounded down). For example, if an insurer has seven applicable claims in a quarter in the “timely first payment” category, WCD assesses penalties for each violation beyond the one violation allowed. Or, if an insurer has 11 applicable claims in a quarter in the “timely first claim report” category, WCD assesses penalties for each violation beyond the two violations allowed.

In addition to changing the performance thresholds, WCD has increased the QCPP penalty amounts in each category to reflect inflation. These penalty amounts, summarized in Appendix “C” in OAR 436-060, now range from \$100 to \$700 per violation. Penalties issued since Jan. 1, 2006, have also reflected the increased penalty amounts.

Compliance Performance Audit:

WCD performs on-site Compliance Performance Audits and has assessed civil penalties for performance falling below 80 percent in each performance category reviewed where there are at least five applicable claims. The division also reviews the accuracy of insurer reporting under the QCPP audit during these Compliance Performance Audits. In the “timely first payment” category, WCD allows one instance of inaccurate reporting but issues penalties for two or more reporting errors (even if performance is above 80 percent). The exception is when an insurer reports a late payment that WCD determines at audit is timely. The 80 percent threshold applies to the other two QCPP categories.

In early 2004, at the beginning of the most recently completed audit cycle, WCD increased the civil penalty amounts assessed for unsatisfactory audit results to reflect inflation. The new penalties are: up to \$625 for one to three violations; up to \$1,250 for four to five violations; up to \$1,875 for six to seven violations; and up to \$2,500 for eight or more violations. These penalty amounts will not be changed for the next cycle.

Beginning with the current audit cycle, scheduled to begin in mid-2006, WCD will increase the performance threshold from 80 percent to 90 percent in those performance categories directly affecting worker benefits (timely and accurate benefits, timely and accurate worker reimbursements, timely and accurate notice of closure, and accurate claim classification). The performance threshold will remain at 80 percent for accurate reporting of timely first claim reports, accurate reporting of timely acceptance/denial decisions, timely medical payments, and processing Form 1503. Accurate reporting of timely first payments will continue to be handled as it has been (see above).

In analyzing insurer and self-insured employer performance data, we have found that many claims processors are already demonstrating strong performance consistent with the new performance thresholds. Through continued monitoring, we will be able to evaluate the influence these new standards and penalty amounts have on both individual company and industry-wide performance and accountability. The division posts audit performance information on its Web site, www.wcd.oregon.gov. We may add more information in the coming months. ■

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Senate Bill 311 implementation

By Kathy Thomas

Senate Bill 311, unanimously passed by the 2005 Legislature, made some major changes to the independent medical exam (IME) process.

The bill resulted from a study of IMEs conducted by the Workers' Compensation Division (WCD) and recommendations from the Management-Labor Advisory Committee (MLAC). MLAC requested that WCD do the study in 2004. The study included surveys of injured workers, attending and IME physicians, claimant and defense attorneys, and IME facilities. WCD held focus groups to get input from insurers and third-party administrators. The study results can be found on WCD's Web site at <http://www.cbs.state.or.us/external/wcd/communications/imestudy.rpt.pdf>.

One of the biggest changes brought by Senate Bill 311 affects doctors who perform IMEs and Worker Requested Medical Exams (WRMEs). Beginning July 1, 2006, any medical provider who conducts, or wants to conduct, an IME or WRME must be on a list of authorized doctors maintained by WCD. To get on the list, a doctor must take training specific to IMEs, agree to abide by a code of conduct and Oregon workers' compensation laws and rules, and be licensed and in good standing with the applicable health licensing board.

The new law affects workers as well. It gives workers the opportunity to request that WCD review whether the selected location for the IME is reasonable. A worker who objects to the location must appeal to WCD within six business days of the postmarked date of the IME appointment notice. WCD will conduct an expedited review to resolve the matter.

In addition, a worker now can have an observer present during the exam (doctor approval is still required for psychological exams). In order for this to happen, the worker must complete and sign an "IME Observer Form" and give it to the doctor. The form is part of the new worker brochure.

The newly created brochure for workers provides important information to the worker about their

rights related to an IME, including reimbursement of some expenses, objecting to the location of the exam, invasive medical procedures, and having an observer at the exam. Effective Jan. 1, 2006, insurers are required to send this brochure to each worker scheduled for an IME. A copy of the brochure, "Important Information about Independent Medical Exams for Injured Workers," can be found online at <http://www.wcd.oregon.gov/communications/publications/3923.pdf>. Or you can call (503) 947-7627 to request copies.

Senate Bill 311 imposes a sanction against any medical provider who unreasonably fails to provide diagnostic records required for an IME in a timely manner. The law also allows for a monetary penalty of \$100 (to be taken from future benefits) against a worker who fails to attend an IME without prior notification or justification for not attending.

Both doctors and claims adjusters must take training related to IMEs. The new law requires that WCD approve all IME-related training, whether for doctors or claims examiners. WCD will conduct training for doctors and claims examiners in May, as part of the WCD Educational Conference.

Wendy Stone, of the WCD Compliance Section, is the IME program coordinator. In addition to overseeing the medical provider list, she also will coordinate complaints received about IMEs, approve all IME training curriculum for claims examiners and doctors, and conduct physician training. Stone can be reached at (503) 947-7583 or wendy.m.stone@state.or.us. For more information about the new IME program, please visit WCD's Web site at www.wcd.oregon.gov, and click on "Indep Med. exam" or go directly to: <http://www.cbs.state.or.us/external/wcd/administration/SB311/311index.html>.

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Join us in 2006!

Conference set for new Salem Conference Center

By Kara Olsen



Workers' Compensation Educational Conference

Mark your calendars! The Workers' Compensation Division is pleased to announce the dates for the 5th Workers' Compensation Educational Conference. The conference will be at the new Salem Conference Center in the historic downtown of Oregon's capital city on May 15 and 16, 2006. For more information about the conference center, visit www.salemconferencecenter.org.

The conference will offer great workshops, informational booths, exciting exhibits, and plenty of networking opportunities. We began program planning this summer based on evaluations from the last conference, frequently asked questions, and legislative changes from the 2005 session. If you have a topic or program you're interested in seeing at the 2008 conference, please contact Kara Olsen, (503) 947-7515, or send e-mail to kara.r.olsen@state.or.us.

To receive a registration packet for the conference, sign up through "Training and Events" on our Web site, www.wcd.oregon.gov, or contact Kara Olsen.

The Oregon Workers' Compensation Educational Conference is coordinated by the Workers' Compensation Division with generous sponsorship from the International Workers' Compensation Foundation. ■

Kara Olsen is the conference and training coordinator in the Communications and Training Section.

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Bob Hamre — new manager of the Investigations and Sanctions Unit



Bob Hamre began a job rotation as manager of the Workers' Compensation Division's Investigations and Sanctions Unit in August 2005. He was appointed to the position permanently effective February 2006, replacing Sally Coen, who is the new manager of the Field Audit Unit.

Hamre joined Investigations and Sanctions in 2001 as lead investigator in the unit. His background includes 19 years as a private investigator specializing in workers' compensation claims investigations. He grew up in North Dakota and attended the University of North Dakota in Grand Forks.

The Investigations and Sanctions Unit reviews complaints from injured workers, insurers, and providers regarding alleged noncompliance with laws covering benefit payments and claims processing. The unit assesses penalties, authorizes suspension of benefits, and investigates complaints of system abuse. Hamre's goal is to ensure that

the unit renders fair and uniform decisions, and he believes excellent customer service from unit staff is vital to obtain compliance and cooperation from participants in the Oregon workers' compensation system.

Hamre says the most notable recent activity in the Investigations and Sanctions Unit is the implementation of Senate Bill 311, passed by the 2005 Legislature. This bill changed several aspects of laws related to independent medical examinations and has created interesting challenges for both unit staff and claims processors. He looks forward to an upcoming initiative in which his staff will closely examine each of the unit's functions. The project is designed to streamline processes and provide regulatory oversight that is less intrusive, yet more effective. Hamre is also eager to meet more people in the Oregon workers' compensation industry at the Workers' Compensation Educational Conference at the Salem Conference Center on May 15 and 16. ■

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Visit us on the Web

You can find the Oregon Workers' Compensation Division on the Web at www.wcd.oregon.gov.

Jennifer Flood, Ombudsman for Injured Workers

By Karen Murray



The return to face-to-face, phone-to-phone interaction with injured workers was the biggest change for Jennifer Flood when she assumed the duties of the Ombudsman for Injured Workers (OIW) in August 2005. She spent seven years as a benefit consultant for the Workers' Compensation Division, but for the past nine years managed the division's field audit unit,

dealing with laws and rules. "Sure, you might penalize a company, but it's not personal," she explained.

In the OIW office, it is very personal. "Being in this office really opens your eyes to the impact that workers' compensation has on people," she said. Injured workers come to the OIW office when they have problems, and sometimes those problems can seem almost overwhelming to them when their incomes and livelihoods are at stake. "This affects not just the worker, but their entire family," she said.

The OIW is a frontline customer-service enterprise, and injured workers who are having problems with the workers' compensation system can be frustrated and upset. The OIW's staff of seven, including three bilingual staff members, must be able to listen and clearly communicate with people in distress.

"We had one customer call, he was angry because a medical bill had been turned over to collections. Well, the provider can't do that, they are not allowed to bill injured workers unless the claim has been denied. It was not reasonable to expect the worker to contact the medical provider and explain the workers' compensation law; instead, we called the provider." It turned out that there had been miscommunication between the insurer and the provider. The claim had moved from one service company to another and neither was responding to the provider's request for payment. "We verified who was handling the claim and provided them the correct insurer contact information. We also

provided them the resources within WCD that can help them with workers' compensation processing locations. We educated the provider on when they can and can't bill an injured worker — they immediately called off the collection agency."

Everyone involved in the case was frustrated and unhappy. With a series of phone calls, the OIW office got the medical provider on the right track to getting paid, got the collection agency off the worker's back, and taught the parties a bit more about worker's compensation system. "We provided a resource," Flood said. "We hope to make an impact that will not only help the specific worker who is calling, but all workers in the future."

In providing assistance for injured workers, the OIW must effectively communicate with insurers and service companies, attorneys, medical providers, employers, and the Workers' Compensation Division itself. Knowledge of how the state's workers' compensation laws affect each of them allows the ombudsman to serve as an intermediary, ensuring that injured workers are receiving their entitled benefits and opening up communication for all parties.

After starting work as the acting Ombudsman for Injured Workers in August, Flood was appointed permanently to the position Dec. 1. She has worked in the workers' compensation field for 27 years, starting as a 17-year-old clerical assistant working part-time for the then-Workers' Compensation Department while attending South Salem High School.

"Since I started working here I graduated from high school, got engaged, got married, and had two children." Now she's planning her daughter's wedding, and she's still at work in the Labor & Industries Building. Her longtime knowledge of workers' compensation law, from benefit delivery to regulation, gives her an extra edge in providing the education and help the stakeholders need.

Flood and her husband, Mike, live in South Salem. Their son, Michael, 17, is a senior at Sprague High School. Their daughter, Erin, 22, lives in Medford and plans to marry next fall. ■

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New PPD rating calculator available for testing

By Fred Bruyns

The Workers' Compensation Division has developed a new whole-person permanent partial disability (PPD) rating calculator — and we would like you to try it out. You may download a free copy from the division's Web site: <http://www.wcd.oregon.gov/policy/bulletins/hearloss.html>.

Because the calculator hasn't been thoroughly tested, please use it only to check the results of manual computations. The calculator includes worksheets for all body parts and systems described in OAR 436-035, the "Disability Rating Standards."

The calculator, a Microsoft Excel template, includes the following functions:

- Apportionment — for all findings other than "irreversible findings" under OAR 436-035-0005(9).
- Combining — including a stand-alone tool for combining impairment values.
- Contralateral comparison — of the injured and uninjured parts (e.g. range of motion in a left and right thumb joint) and the adjustment of impairment under OAR 436-035-0011.



- Conversion of distal to proximal (e.g. fingers to arm) values in the upper and lower extremities.
- Social vocational factors — age, education, and adaptability.
- Work disability — for injuries occurring on or after Jan. 1, 2005.
- "Help" features, including error messages, data-entry field descriptions, and selected text from OAR 436-035.

Please help us evaluate this product. We want it to be accurate and user-friendly. Please report input and output problems to Fred Bruyns at (503) 947-7717, or e-mail fred.h.bruyns@state.or.us. ■

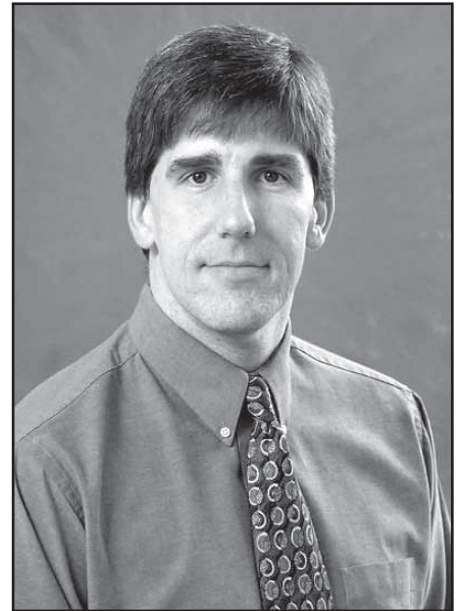
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Who's Who in WCD

Dan McNally, Manager & Budget Coordinator



By Ana Contreras

Dan McNally is the budget and legislative coordinator for the Workers' Compensation Division (WCD). He also has been the acting manager for the Communications & Training Section since October. Besides supervising more than 10 employees and dealing with sensitive budget and legislative issues, McNally is overseeing the implementation of Senate Bill 311. This bill modifies the process for independent medical examinations (IMEs) and requires the director of the Department of Consumer & Business Services to develop a list of physicians authorized to perform IMEs, a process for responding to complaints about IMEs, and a process to quickly resolve disputes by workers about the reasonableness of the exam location. You can definitely say that McNally has his hands full!

However, McNally is no stranger to hard work. While studying at Willamette University he was able to "double major."

"I started out majoring in business economics and decided to minor in psychology," he said. "As it turned out, I was able to squeeze in enough classes to major in that as well."

McNally's senior internship at Willamette was in the Director's Office (of what had just become the Department of Insurance and Finance and is now the Department of Consumer & Business Services). After graduation, he took a temporary job in the Insurance Division, which turned into a permanent position. Three years later, McNally took a job with WCD in the Employer Compliance Unit. After that, he moved to the Field Audit Unit before taking his current position in Administration.

McNally and his wife, Marianne, have two children, Kyle, who is 13 years old, and Erin, who is 8 years old. They enjoy spending time with their children and supporting them in their various hobbies and sports. McNally even coaches several of their youth teams including basketball, baseball, and softball. However, his coaching expertise doesn't include cheerleading; Erin participates in competitive cheerleading (where teams do routines that include dance, cheer, and tumbling). The family has two greyhounds, Rocket and Houston, and a cat named McGrady. ■

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Return to Work

Worksite modification

Farm equipment

By Bob Williams



Antonio is a 52-year-old man employed as an agricultural and ranch laborer in Eastern Oregon for the past 15 years. He fell from a large piece of farm harvesting equipment, permanently disabling his left knee and back. His permanent limitations include the inability to walk on uneven

ground or walk long distances, and an inability to bend or crouch. Antonio is also limited to lifting and carrying no more than 25 pounds.

Antonio's regular job involves operating and repairing pivot irrigation systems. These irrigation systems are connected to a high-volume underground well with long, above-ground irrigation pipe booms that pivot in a circle around the central well on large tractor tires and are powered by motors. As the booms travel, the wheels often get bogged down in mud or strike field ruts, and the tires can go flat and stop the rotation movement of the boom.

The job obstacles include miles of walking per day on large tracts of uneven field surfaces covered with ruts and tire tracks, as well as lifting tires and wheels weighing more than 100 pounds each. This job is made more difficult by the additional weight of mud sticking to the tires. The wet, saturated ground prevents Antonio from being able to drive his service truck close to the irrigation-boom wheels, so he has to walk over the uneven muddy area to manually change the tires and repair the drive motors. Tire changing involves unbolting the large wheels from the motors and lifting or levering the tires out of the mud. They are manually rolled to the service truck and lifted into the back of the pickup truck for a trip into town for flat repair or replacement. The new tires are then brought back to the boom and lifted back onto the wheel drums and bolted into place.

The Preferred Worker Program developed several solutions to overcome each of Antonio's job obstacles. A six-wheel ATV equipped with a winch, a compact gasoline-powered air compressor, a lightweight air lift jack, and a jib crane fitted with special lifting tongs, help Antonio perform his job. Driving the ATV eliminated walking the long distances on uneven surfaces. The heavy lifting was overcome by the crane and

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The View from RRU

The Client-Customer Balancing Act

By Andre Allen

The primary obligation of rehabilitation counselors is to their clients, defined as individuals with disabilities who are receiving services from rehabilitation counselors.

Commission on Rehabilitation Counselor Certification (CRCC) Code of Professional Ethics for Rehabilitation Counselors

Webster's Dictionary defines *client* as "one who accepts the professional services of another," and *customer* as "one who purchases a commodity or service." Oregon vocational rehabilitation counselors have both clients (injured workers) and customers (insurers) and are obligated to both. Therefore, although a rehabilitation counselor's obligation to the client is *primary*, it is not *exclusive*. This article will explain how rehabilitation counselors perform the "client-customer balancing act."

The CRCC Code of Professional Ethics states that rehabilitation counselors are obligated to provide appropriate services to clients, including assistance with vocational goal selection, return-to-work plan development, and job placement; to respect workers' autonomy and cultural backgrounds; not to condone or engage in discrimination; and to disclose all pertinent information regarding the rehabilitation process and the counselor-client relationship. Although the CRCC Code provides detailed guidelines regarding the counselor's obligations to the *client*, the injured worker, it does not address the counselor's obligations to the *customer*, the insurer. Therefore, we contacted several insurers and rehabilitation counselors and asked for their views on this subject.

SAIF Corp., Oregon's largest workers' compensation insurer, asks rehabilitation counselors to sign a contract that spells out their obligations to the insurer in detail. Mark Powell, vocational program manager, said SAIF expects rehabilitation counselors to work as a team with SAIF's vocational coordinators, who are themselves

certified vocational rehabilitation counselors, and to provide services in a timely, cost-effective, and ethical manner. The rehabilitation counselors who work with SAIF must be certified by the Workers' Compensation Division to provide vocational assistance; committed to ongoing professional development; have a thorough knowledge of Oregon workers' compensation statutes, administrative rules, bulletins, handbooks, and the Preferred Worker Program; and agree to involve workers in all aspects of the vocational rehabilitation process.

Bob Malone, the Vocational Unit supervisor for Liberty Northwest, believes that "What's best for the worker is best for everyone." Malone said Liberty wants counselors to keep the insurer's rehabilitation consultants (similar to SAIF's vocational coordinators) informed; however, Liberty wants the rehabilitation counselor to be in charge of the vocational assistance process. Liberty expects counselors to "get things moving and keep them moving." For example, counselors should identify vocational goals and develop return-to-work plans as soon as possible, motivate noncompliant workers, and follow up with medical providers who are slow to provide needed information. Malone said workers may fail to participate for a variety of reasons, and he would rather see a counselor use support and encouragement to motivate a noncompliant worker than send a warning letter, although he acknowledged that warning letters are sometimes necessary. Liberty also expects counselors to limit

“cost and duration” to what is necessary for effective rehabilitation. Malone said we are fortunate in Oregon to have administrative rules that provide clear guidelines and time frames for providing vocational assistance, and he expects vocational counselors to understand and follow the rules.

Shirley Butcher, senior rehabilitation coordinator for Safeco Insurance, said Safeco refers work to counselors not only because of their expertise, but also because of their high ethical standards. Butcher coined the term “customer-customer” relationship because she considers injured workers, as well as their employers, to be Safeco’s “customers,” and she wants them to receive the best services possible at a reasonable cost. Butcher said she expects rehabilitation counselors to maintain high ethical standards, to follow the administrative rules, and to involve the worker in each step of the rehabilitation process. Finally, Butcher said she wants counselors to “Tell me what is needed, not what they think I want to hear.”

Grace Smith, former president of the Oregon Association of Rehabilitation Professionals, said a counselor must work to earn the insurer’s trust and then must provide excellent, ethical service to remain worthy of that trust. That includes communicating honestly, involving the insurer in all critical decisions, and keeping up with changes in the administrative rules, statutes, and case law. Like the insurers we contacted, Smith also stressed the importance of timelines and cost-effectiveness.

Larry Malmgren, president of Verk Consultants and a rehabilitation counselor with 32 years of experience in Oregon, believes his obligation to the insurer is to apply the administrative rules in an ethical, professional manner. For Malmgren, that means using his best judgment regarding what is needed to return injured workers to suitable employment in a cost-effective manner. Malmgren feels that is the best way to serve the interests of the insurer while meeting his obligations to the injured worker, and he doesn’t find conflict between the two.

Rob Crymes, vocational rehabilitation consultant with Sturges Vocational Consulting, sees his role as “administrator of the rules” and an advocate for the “best rehabilitation outcome.” Crymes said he lets workers know at the first meeting what they are eligible for and what their rights are. He does not hide anything from the worker, but he does not offer anything the worker does not need. Crymes said he believes his obligations to insurers include being timely and cost-effective, following the rules, and getting the worker back to work as soon as possible.

The rehabilitation professionals we contacted agree that the counselor’s obligation to the insurer is to produce the best rehabilitation outcome at a reasonable cost. The recipe for a positive rehabilitation outcome, according to the “chefs” we contacted, includes the following seven ingredients:

- Involve the worker in the rehabilitation process.
- Follow the administrative rules.
- Eliminate obstacles quickly.
- Keep the insurer informed.
- Keep things moving.
- Be timely.
- Be cost-effective.

Anyone who has attempted to cross a stream on a fallen log knows the best way to keep your balance is to focus on your destination. Likewise, the key to balancing the interests of the client and the customer is to stay focused on the goal of returning the injured worker to suitable employment as soon as possible. ■

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Preferred Worker Program Q&As

By Jerry Rutherford

Q I'm an employer at injury, and my injured worker's claim just closed. I'm considering offering the worker modified work that will require modification equipment. If the Preferred Worker Program provides modifications, who owns the equipment in the event the worker terminates employment?

A The Preferred Worker Program consultant assigned to develop the modification decides who will own the equipment purchased under a worksite modification agreement. The consultant is required to consider several factors outlined in OAR 436-110-0350(2)(o), including the following:

- Is the equipment unique to the worker or employer?
- Is the equipment mobile, portable, and easily transferable?
- Is the equipment integral to the employer's business operation?
- Is the equipment attached to the employer's property, premise, or equipment?
- Is the equipment installed in or on the worker's personal property or premises?

Other factors include the cost of maintaining the equipment and liability issues in operating the equipment at the employer's worksite or in public spaces. In each case, the consultant discusses the assignment of property before an employer or worker signs the agreement.

Q I have been receiving Preferred Worker Program benefits under the Employer-at-Injury Premium Exemption and Wage Subsidy Agreement. We're thinking about transferring our worker to another job she is interested in. Do the benefits stop if her job changes?

A Yes. The Preferred Worker Program staff approved the benefits for the specific job listed on the agreement. The listed job is the one the worker accepted in writing, and the Preferred Worker Program staff determined that the job could be performed within the worker's permanent injury-caused restrictions. If the worker's job ends or changes for any reason (with your company), all employer-at-injury benefits end.

If the Preferred Worker Program finds the worker eligible and issues the worker a Preferred Worker Card, the worker may offer you worker-activated benefits, including Premium Exemption, Wage Subsidy, and Worksite Modification, if needed, for the new job.

Q I completed and signed the Employer-at-Injury Premium Exemption and Wage Subsidy Agreement, and I am sending it to the Preferred Worker Program. I noticed that I am very close to the 180 days from the worker's claim closure. Can I have extra time to complete and send in the job offer signed by the worker?

A No. Both the agreement and the worker-signed job offer must be sent to the Preferred Worker Program within 180 days of the worker's claim closure in order for the request to be accepted. See OAR 436-110-0326(1). The only exception is when worksite modifications are provided to make the proposed job physically appropriate. When the modifications are completed and verified by the Workers' Compensation Division, the employer at injury will have 30 calendar days from the verification date to request other assistance, even if that goes beyond the 180 days from claim closure. See OAR 436-110-0290(1). ■

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Employer-at-Injury Program (EAIP) Q&As

By Jerry Rutherford

Q A worker with a date of injury of May 6, 2005, was in transitional work for a few days in May. This was a medical-only claim, and we requested Employer-at-Injury Program (EAIP) reimbursement on Aug. 29, 2005. The worker's attending physician declared the worker medically stationary in October 2005.

The worker has seen the doctor again, and the doctor is requesting surgery. The claims adjuster has agreed, after writing to the doctor that the need for surgery is related to the work incident of May 6, 2005. The claimant is on full regular work at this time but the doctor says he will need to do desk work for six weeks after surgery.

The claims adjuster changed the claim status with the state from nondisabling to disabling on March 14, 2006. Even though we have not filed an official aggravation form, can we request EAIP after the worker goes back to desk work following surgery?

A The EAIP may be used only once per worker claim opening, either for a nondisabling claim or a disabling claim, according to OAR 436-105-0520. If a nondisabling claim becomes a disabling claim after one year from the date of acceptance, the disabling claim is considered a new opening and EAIP may be used again.

EAIP eligibility ends when reimbursement is requested, according to OAR 436-105-0510(3)(c). Since the worker's date of injury is May 6, 2005, claim acceptance has to be subsequent to that date. You requested EAIP reimbursement on Aug. 29, 2005. The nondisabling claim was changed to disabling on March 14, 2006, which is less than one year after the claim acceptance date. Therefore, based on the rules cited above, the claim, as it stands now, is not eligible for another EAIP.

Q A worker had an auto accident on May 11, 2005 and suffered a C-5 vertebral fracture and a small laceration on the forehead. He was treated at the emergency room and discharged with instructions to wear an Aspen collar for six to eight weeks. Between the accident

date and Aug. 17, 2005, the worker saw his physician three times. The June 16, 2005 chart note stated the worker was doing his regular work, but avoiding certain aspects of the job. In late December, the employer discovered there were no documented specific work restrictions for the worker while the claim was open. The employer wrote to the worker's physician and asked him to provide what he felt would have been appropriate restrictions between the accident date and Aug. 17, 2005. The physician confirmed he had not given the worker specific work restrictions during that time. He then gave the employer what he would have considered reasonable restrictions if he had done so at the time.

Is this considered clarifying a medical release and allowable under OAR 436-105-0500(6)(g)?

A No. The rule allows an employer or insurer to get clarification about a medical release from the medical service provider who issued the release any time prior to submitting the reimbursement request. In this case there was no medical release to clarify, so this rule does not apply. Modified work that may have been provided between the accident and Aug. 17, 2005 is not eligible for EAIP reimbursement.

Q OAR 436-105-0500(6)(f) deals with referrals of workers to another medical service provider and the insurer having the option of accepting updated restrictions and releases from the medical service provider to whom the worker is referred. Does this include occupational therapists and physical therapists?

A Yes. This rule does include occupational therapists and physical therapists.

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Dear BCU

Frequently asked questions for the Benefit Consultation Unit

By Ada Waymire

Worker

Dear BCU: I recently received a Notice of Acceptance for my claim in the mail. I injured my shoulder and back in a fall at work, but the insurer only accepted my back injury. Is the insurer going to cover my shoulder injury too?

Answer: The Notice of Acceptance indicates what conditions the insurer has deemed compensable. If you believe a condition has been incorrectly omitted from the Notice of Acceptance, you must notify the insurer in writing that you believe a condition was incorrectly omitted. The insurer has 60 days from the receipt of your written request to provide written notice of acceptance or denial of the omitted condition.

Dear BCU: My back and shoulder are getting better, but now my elbow hurts. I think I hurt my elbow during physical therapy. Is the insurer going to cover my elbow injury too?

Answer: You must send a letter to the insurer identifying the elbow injury as a new medical condition and request written acceptance of this new medical condition. The insurer has 60 days from the receipt of your written request to provide a written notice of acceptance or denial of the new medical condition.

Medical Provider

Dear BCU: Are medical providers allowed to bill the Workers' Compensation Division for completing forms required by statute or law?

Answer: No. Pursuant to ORS 656.248 (10), a medical service provider is not authorized to charge a fee for preparing or submitting a medical form required by the director of the Department of Consumer & Business Services. ■

The Benefit Consultation Unit responds to inquiries from injured workers, insurers, employers, medical providers, and attorneys.

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Phone: (800) 452-0288

Modification *continued from Page 13*

lifting tongs that were designed to fit over a tire and allow the crane to do all the wheel lifting and loading into the main service truck. The special tongs also allow Antonio to rotate the new tire with little push-pull or lifting effort to align it with the lug bolts. The air compressor inflates tires and operates the lightweight air jack. This special jack eliminated the heavy lifting that was involved previously using heavy plywood and lumber cribbing that was needed to keep a regular tire jack from sinking into the muddy ground.

The worksite modifications costs were as follows: \$14,000 for the ATV; \$1,000 for the air jack; \$1,500 for the crane; \$1,000 for the air compressor; and

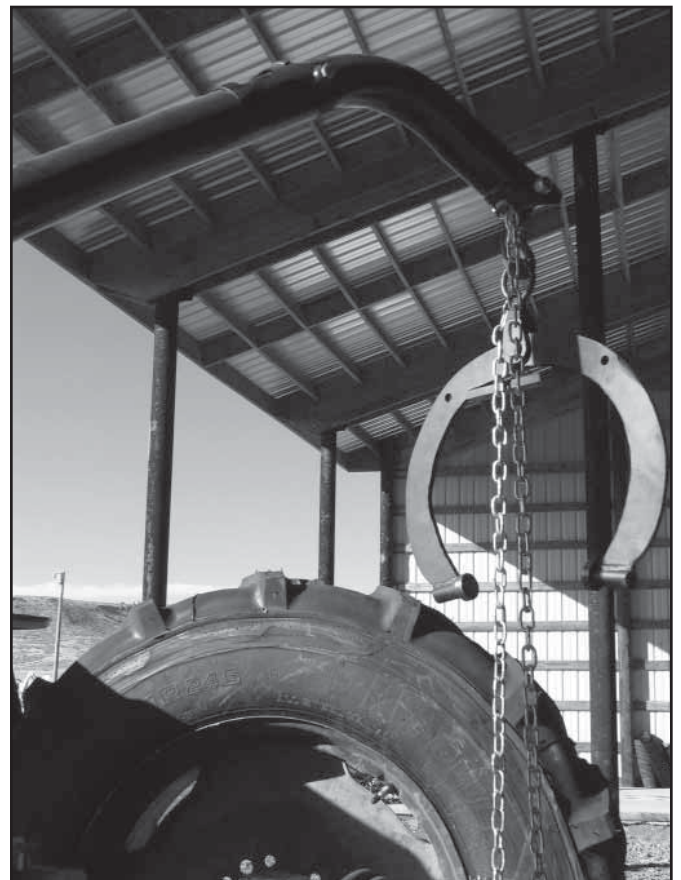
\$500 for custom fabrication and installation labor for the lifting tongs. These worksite modifications have eliminated all obstacles that were caused by Antonio's injury and have made him more productive and efficient in field repair operations than he was prior to his injury.

(Editor's note: Bob Williams actually designed the wheel lifting tongs to complete this modification.) ■

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What's up on the Web?

By Amy Wadsworth

The Workers' Compensation Division has launched a new Web site providing information on independent medical examinations (IMEs).

Wendy Stone, IME training/certification specialist, is developing the site with others in the division. Many of the links and resources are still under construction as Senate Bill 311 continues to develop. The bill contains many changes to the IME process, such as requiring insurers to use physicians on the director of the Department of Consumer & Business Services' list of authorized physicians. To get to the site, go to the WCD Web site, www.wcd.oregon.gov, and click on "Indep Med. exam" or go directly to: <http://www.wcd.oregon.gov/administration/SB311/311index.html>.

Be sure to check the site often, as we will be adding more information. Right now, the site includes the IME rules: OAR Chapter 436, Divisions 010, 055, and 060. There are customized sections for workers, insurers, physicians and

claims examiners. And there is a resources section that includes links to Senate Bill 311 as well as history of the bill, information on training, the 2004 IME survey analyses, among others.

The section of the site for insurers and physicians includes an Invasive Medical Procedure Authorization form, with instructions in English and Spanish. The site also includes a link to the Important Information about Independent Medical Exams brochure/observer form, which allows users to detach the form from the brochure and submit it to the IME physicians.

The IME rules and regulations are detailed and specific, but the Web site is designed to help each customer group find what they need quickly. The Workers' Compensation Division is always looking for ways to improve customer service, processes, and products. We would love to have your feedback and ideas. ■

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