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Meeting Transcript

**Workers' Compensation Division Rules
OAR chapter 436, Division 105, Employer-at-Injury Program Division 110,
Preferred Worker Program
July 19, 2016, 9 a.m. to 4 p.m.
Room 260, Labor and Industries Building, Salem, Oregon**

Attendees:

Betsy Earls, Associated Oregon Industries
Carmen Jones, Legacy Health Systems
Dean Spradley, Farmers Insurance
Jaye Fraser, SAIF Corporation
Jeff Schiminsky , Mason & Weeks Vocational
Jenny Bates, SAIF Corporation
Joe Crelier, Portland Public Schools
Karlene Westerlund, SAIF Corporation
Katy McDowell, Tonkon Torp LLP
Kimberly Wood, Perlo Construction
Kristen Weiler, Portland Public Schools
Mary MacDuffy, Integrity Medical Evaluations
Melissa Schnell, City of Portland
Moirra Przybylowski, C I S
Paul See, Liberty Mutual Insurance
Rob Wallace, SAIF Corporation
Ryan Weeks, Mason & Weeks Vocational
Sheri Sundstrom, Hoffman Construction
Susan Montgomery, SAIF Corporation
William Smith, WA State Department of Labor &
Industries

WCD attendees:

Barbara Belcher
Barbara Hall
Brian Nease
Cathy Ostrand-Ponsioen
Colette Hittner
Danae Hammitt
Daneka Karma
Darlene Rick
Donita White
Fred Bruyns
Jay Dotter
Kathleen Bruns
Matt West

BEFORE THE WORKERS' COMPENSATION BOARD OF

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THE STATE OF OREGON

RULEMAKING ADVISORY COMMITTEE

WORKERS' COMPENSATION DIVISION RULES
OAR 436-105, EMPLOYER-AT-INJURY PROGRAM
OAR 436-110, PREFERRED WORKER PROGRAM

The proceedings in the above-entitled matter were held in Salem, Oregon, on the 19th day of July, 2016, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

1 TRANSCRIPT OF PROCEEDINGS

2
3 00:05: Thank you very much for joining us this morning, and possibly
4 this afternoon as well. We do have the meeting scheduled through 4:00 p.m. The
5 agenda that I originally posted says 4:30, which is incorrect. And there's corrected
6 copies at the back of the room, but that's a simple change. And so we do expect to
7 be done no later than 4:00 p.m. today, although if we finish early that's okay, too,
8 so...

9 My name is Fred Bruyns. I coordinate the rulemaking process for the
10 Workers' Compensation Division and-- That's kind of my role. But there's other
11 folks from the Workers' Comp Division around the table here who have expertise on
12 these programs, and we're here mostly to listen and answer your questions. We'll
13 participate in some of the conversation, but this is mostly our chance to hear from
14 you, our stakeholders, to find out what works, what doesn't, what you think would
15 work better, that kind of thing. So we do appreciate your time, and we know it's not
16 easy to give up this much time for the process, but it is deeply appreciated.

17 Just a few housekeeping items. There's extra copies of the agenda at
18 the back of the room. Also, some rules. They are not draft rules. They're actually
19 just the current rules. But they'll be very helpful in going through our agenda today,
20 so you may want to pick up a copy of those. If you're on the telephone with us
21 today, the agenda is online, and so are the draft--not the draft rules, but the current
22 rules, which would be Divisions 105 and 110 of Chapter 436. So we'll be talking
23 about the Employer-at-Injury Program and the Preferred Worker Program.

24 This is an informal process. This is an advisory committee. It's not like
25 a public hearing. It's a conversation. So I would urge you to be frank and just let us

1 know your thoughts on any of these subjects. Don't--please don't hesitate to speak
2 up at any time, especially if you're on the telephone with us today. You won't have
3 the advantage of seeing whose hand might be up here or kind of, you know, seeing
4 who may be planning to ask a question next. So please speak up. We want you to
5 be full participants in the conversation.

6 As we go along today, there could be fiscal impact for some of the
7 potential rule changes we're talking about. And we ask for your advice on what
8 those fiscal impacts might be, positive or negative, because when we file proposed
9 rules with the Secretary of State we have to estimate those impacts, and we rely on
10 information from folks like you. So please keep that in mind.

11 If you're on the telephone with us, we will pick up background noises in
12 your office. So you may need to mute your phone on occasion, although you can
13 unmute it at any time and then join the conversation. Please don't put us on hold,
14 however, unless you're absolutely certain you don't have any background music or
15 messages that play for the customers while they're on hold, because we have no
16 way of turning those off. So with that, I have introduced myself, so let's begin with
17 the folks on the telephone. And please introduce yourselves for the Committee.

18 03:06: Carmen Jones, Legacy Health.

19 03:09: Good morning, Carmen.

20 03:12: Betsy Earls from AOI.

21 03:14: Good morning, Betsy.

22 03:19: Paul See with Liberty Mutual Insurance.

23 03:21: Welcome Paul. Anyone else?

24 03:26: Katy McDowell with Tonkon Torp.

25 03:30: Welcome, Katy. Anyone else?

1 03:40: My name is Danae Hammitt. I'm the employment services
2 team manager for Preferred Worker, EAIP and Voc.

3 03:46: I'm Katie Bruns. I'm a vocational reviewer.

4 03:50: Barbara Hall, interim SIR manager.

5 03:52: Karlene Westerlund. I'm with SAIF Corporation.

6 03:54: Rob Wallace, Employer-at-Injury Program supervisor.

7 03:58: I'm Susan Montgomery, SAIF Corporation, return-to-work and
8 EAIP manager.

9 04:02: I'm Janet Schmidt, SAIF Corporation claims director.

10 04:05: Jaye Fraser, SAIF Corporation.

11 04:07: Joe Crelier, Portland Public Schools, Risk Management.

12 04:10: Bill Smith, Washington State Labor and Industries. And I
13 manage both of our programs, which are similar to your programs here.

14 04:16: I'm Kristen Weiler. I'm the Work Comp coordinator at Portland
15 Public Schools.

16 04:20: Moira Przybylowski, return-to-work specialist with CIS.

17 04:24: Kimberly Wood, director of corporate risk management for
18 Perlo Construction.

19 04:28: Donita White, auditor for the Workers' Comp Division.

20 04:32: I'm Cathy Ostrand-Ponsioen, policy analyst with the Workers'
21 Compensation Division.

22 04:36: I'm Matt West. I'm a worksite modification consultant with the
23 Preferred Worker Program.

24 04:40: Brian Nease. Worksite modification consultant, Preferred
25 Worker Program.

1 04:44: Okay. And I'll let the folks in the back either remain
2 anonymous, or introduce yourselves here. There's also extra spaces at the table.
3 So I would encourage anyone who would like to actually join us at the table, but
4 that's strictly your option. But do you want to introduce yourselves, if you'd like?

5 04:58: Sure. I'm Barb Belcher. I'm the audit manager for the
6 Workers' Compensation Division.

7 05:04: Darlene Rick, sanctions rep.

8 05:07: Colette Hittner, sanctions rep.

9 05:08: Daneka Karma, policy manager for the Workers' Compensation
10 Division.

11 05:13: Sheri Sundstrom, Hoffman Construction.

12 05:16: Jay Dotter, research analyst, DCBS.

13 05:21: Dean Spradley, Farmers Insurance.

14 05:24: Okay. Welcome to you all. So again, there are some extra
15 spaces, including one right next to me up here. So we have a pretty lengthy
16 agenda, although we have time to cover it. So do you have any questions before we
17 begin, either about the process or the agenda? Just anything on your mind?

18 Okay. Then with that, we'll just begin at the beginning. We'll start with
19 the Employer-at-Injury Program and Issue No. 1, having to do with the definition of
20 consumables. The Division gets questions about what is and is not reimbursable as
21 a consumable. Including some examples may help to clarify it.

22 Some background. Consumables are reimbursable if they support the
23 functioning of tools or equipment utilized during transitional work. This definition is
24 open to interpretation, and has raised some questions. Examples of reimbursable
25 consumables might include gas for a vehicle, ink for a printer, or nails for a nail gun.

1 Items that are not considered consumable include extended warranties and auto
2 insurance. So the alternatives are listed there. One would be to include examples,
3 possibly to clarify that warranties are not consumables or, as is often the case, to
4 leave the rule as is. Sometimes we actually--based on advice from committees like
5 this, we actually decide to make no change. Your thoughts?

6 07:03: Jaye Fraser, SAIF Corporation. I think that what we would
7 suggest is, rather than making a rule, go back to using FAQs so that users of the
8 system can go in and have examples in the form of, like, an FAQ because it's
9 really--or a bulletin, so it's instructive, as opposed to putting-- It's always dangerous,
10 I think, putting specifics in the rules, which is why they're not there now. But I think
11 with a bulletin there's a really good opportunity for the Department to give advice.

12 07:42: Okay. Thanks, Jaye.

13 07:44: That leads me to a question. We--Karlene with SAIF
14 Corporation. DCBS used to post Q&As for the Employer-at-Injury Program. And I
15 know you guys changed your website, but are those removed or still somewhere to
16 be located? Because Matt West and I worked on a lot of them around this rule.

17 08:03: I don't know.

18 08:04: I don't.

19 08:05: I have not had a chance to look at the new website. I don't...

20 08:08: Yeah.

21 08:08: I don't remember those.

22 08:09: Okay. Well, we're look for those. And if they're--somehow, if
23 they fell through the cracks, then we can maybe retrieve them somehow. That's a
24 good question. We do have a brand new website and, believe it or not, we're still
25 familiarizing ourselves with it. And if you have any feedback on it, please get in

1 touch with me. We've had some so far, so--and it hasn't all been positive, so-- Any
2 other thoughts on consumables? Maybe the advantages of putting it in a bulletin are
3 frequently asked questions online, versus the rule. Okay. If I move along at any
4 point and you have additional thoughts on an issue, we can always go back to it. No
5 problem.

6 Issue Number Two, again involving definitions. This time, of employer-
7 at-injury. A stakeholder has proposed changing the definition of employer-at-injury
8 to 'the organization that employed the worker at the time of injury or occupational
9 disease. The suggested change would remove from the definition the employer at
10 aggravation or reopening, which may or may not be the original employer at injury.
11 If an aggravation occurs while the worker is working for a different employer, that
12 employer is not the responsible employer for the claim, nor is that employer entitled
13 to information about the aggravation.

14 Employer-at-Injury Program benefits are currently available to a
15 different employer at aggravation or reopening. If this change is made, that
16 employer would no longer qualify for benefits. The Division would like the
17 Committee's input on this proposal, including how often this situation comes up.
18 Also, see the next two issues regarding the definition of regular employment. It's
19 kind of a similar--fairly similar issues. So your thoughts on that kind of change,
20 potential change, including how often it happens?

21 10:09: I don't see it coming-- This is Moira from CIS. I don't see this
22 coming up with, you know, cities and counties all that much, but it is nice to have
23 that. If the injured worker is wanting to, you know, reveal to the employer that they--
24 he works for, that the money is available, that would just be an extra tool, but I
25 haven't been able to use it in seven years.

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10:40: Oh.

10:41: Jaye Fraser again with SAIF. And I think this was an issue that we maybe brought to the Department. And after additional conversation internally, we moved by and would just suggest no change. Just--

10:55: Okay.

10:55: --for some of the reasons, I think, that require suggestions.

10:59: Okay.

11:01: Melissa Schneil from City of Portland. Same--

11:03: Okay.

11:04: --issue as where we-- I've never run into it, so...

11:08: Okay. Issue No. 3, again in the definitions, regular employment. And maybe...this might be a ditto. I don't know. Jaye, had you...

11:20: Right, it's a ditto for us.

11:21: Okay. But for the rest of the Committee...

11:24: Unless somebody else has a-- I mean...

11:25: That's right. We'll go through the issue, just in case anybody feels as though it should be done. A stakeholder has proposed changing the definition of regular employment to the employment the worker held at the time of injury or a request for reopening. The suggested change would remove the definition employment at the time of aggravation. So any interest in making that kind of change? Okay. Hearing none, I will move on. And I don't know if the next issue is similar or not. It said the next two issues would be.

11:55: I think it is. I think it's...

11:57: Assistance avail-- A stakeholder has proposed that the introductory sentence to this rule be amended as follows, to add or request for

1 reopening.

2 12:07: This one looks like it's just to add the request for reopening.

3 That's just more of a clarificational thing for a deferred period--

4 12:14: Okay.

5 12:14: --than an aggravation.

6 12:15: So this is really a different issue, isn't it?

7 12:17: Yeah.

8 12:17: I believe it is.

9 12:18: Yeah.

10 12:19: Okay. So let me do it justice, then. So the statement would be
11 modified as you see there. There would be an insertion of, or request for reopening.
12 Or if--where it had said, The Employer-at-Injury Program may only be used once per
13 worker per claim opening," now it would say, Once per worker per claim opening or
14 request for reopening for a non-disabling claim or a disabling claim.

15 Some background. Stakeholder reasoning is that when the employer-
16 at-injury provides transitional work while a request for claim reopening is under
17 review, the Division allows EAIP benefits to be accessed even when the insurer later
18 denies the request for reopening. The Division does allow benefits before a denial.
19 We would like the Committee's feedback on the impact of this proposed change.

20 13:07: Is this saying if an employee--or the thought process, if an
21 employee has an aggravation claim with the same employer, we would no longer
22 have opportunities for Employer-at-Injury Program?

23 13:22: No.

24 13:23: I think it's saying that they want to add the word request for
25 reopening.

1 13:27: So if an 827 is filed with a doctor--

2 13:29: Yeah.

3 13:29: --on a claim and the adjuster is trying to determine if it's eligible
4 or not, there's not really a deferred period the way the rules are, as if it's an accept--
5 it's an aggravation. So it's just basically that period of time while they're determining
6 whether it's an agg or not.

7 13:43: Yeah. Because I still read the rules when I interpret it, if I had a
8 defer appeal--deferred period on an aggravation claim, I would look at that as a new
9 claim. Is there a Notice of Closure or--beyond the time, so I don't know if you need a
10 rule to clarify that.

11 14:01: So does this clarify it? Is that...

12 14:04: Because if it's not a perfected agg or if it's not an aggravation,
13 then it looks like in the claim--when you're recording it and filing it, it looks like-- It's
14 just the same claim opening, according to the paperwork.

15 14:14: Claim opening.

16 14:15: Yeah.

17 14:15: Which would mean when we audit, we would most likely try to
18 deny it.

19 14:20: Except I would always double-check to see if it qualifies
20 beforehand. That's what my process is.

21 14:27: So it just would be cleaner?

22 14:29: Yes.

23 14:29: Yeah. It's just a request. So if the request was denied and it's
24 considered the same claim or a new claim, that period of time could still be a
25 deferred period.

1 14:40: It's a clarifying--I think it clarifies it. The other thing that I would
2 suggest is deleting the remainder, that kind of following clause for a non-disabling
3 claim or disabling claim. It's like kind of--it's either disabling or it's not, I mean--
4 And--

5 14:55: Right.

6 14:55: --and it doesn't matter, so...

7 15:01: Okay. Any other thoughts? Issue No, 5, definition of skills
8 building. The Division has identified two issues with the definition of skills building.
9 The second sentence is beyond the scope of a definition, and the term course of
10 instruction has raised questions. Some background. Skills building was added to
11 the rules in 2005 as a type of transitional work. Transitional work must be within the
12 employer's course and scope of trade or profession, unless the work is skills
13 building.

14 The second sentence of the definition of skills building, which is, when
15 skills building is the transitional work, the worker must agree in writing to take the
16 class or course of instruction, may be more appropriately stated in Rule 0520, which
17 describes the purchases that are reimbursable for skills building. In addition, the
18 term 'course of instruction' is a vague term open to interpretation, such as whether it
19 must be formal classroom training or can be more informal training.

20 And you can see the alternatives laid out there. I'd just
21 appreciate your thoughts on this particular-- Actually, these--there's a couple of
22 bullet points in there. We'd appreciate your thoughts, in terms of moving the one
23 sentence out. It's a substantive rule. It doesn't really belong in the definitions.
24 Typically, a definition just simply defines something. It doesn't tell people what they
25 have to do, what actions they have to take. Any concerns about moving it?

1 16:40: Moving skills building to the definition?

2 16:43: No. The second sentence, which is, when skills building is
3 transitional work, the worker must agree in writing, et cetera.

4 16:59: I guess I--my curiosity is, what are the issues around this? I
5 mean, skills building is by far underused according to the industry when you look at
6 it, but who--our customers that use it, it's huge.

7 17:11: Uh-huh.

8 17:12: I know in prior years when we had more rule written around this
9 it was impossible to use for the Employer-at-Injury Program, because on short
10 periods of times where, you know, to get a class, course of study that's an
11 accredited course or-it was really hard to get all the information in the short time that
12 we were trying to get workers back to work. So this--we haven't had a problem with
13 the skills building, other than sometimes when it was getting the injured worker to
14 agree in writing. Not necessarily agree, but the employer would forget to get some
15 type of a signature, that the worker worked, everything was great. It was a success
16 story. It was almost like that need for the--everybody did the right thing, but we're
17 missing one signature, and then the worker is moved on or something. So that
18 tends to be our only problem. But skills building has been--it's been improved
19 since--for us and our customers.

20 18:02: Have there been any problems with the term course of
21 instruction in terms of understanding what that means?

22 18:11: Not at all for us.

23 18:13: Have you had problems with it?

24 18:14: That's more-- Yeah.

25 18:16: Yeah. I'll have to turn to my coworkers.

1 18:19: This is more about--we're trying to be consistent in the Division,
2 I believe, about changing the definitions, only listing the definition, and anything
3 clarifying it and how to administer the rule will be put in the rule. So it's breaking that
4 up in what we're trying to do within all of the rules.

5 18:36: Well, that makes sense.

6 18:37: That does.

7 18:38: We'll just kind of get rid of that course of instruction?

8 18:40: No. Not get rid of it, but move it, like...

9 18:41: Move it.

10 18:41: Move it into--

11 18:44: Move it into the--

12 18:45: --105.

13 18:45: --actual rule part, versus just the definition.

14 18:48: Yeah. There's no intent to actually change it substantially,
15 just...

16 18:50: Right.

17 18:51: No. So that makes sense.

18 18:52: Okay.

19 18:54: I'd be moving the second sentence. It's not a definition. And I
20 wouldn't necessarily go to a definition on 520. And if it's not in there, I might not
21 realize that I can't use it in that way, but I have to use it exactly like that. So I think it
22 is--it should be moved down, put into the--

23 19:12: Yeah.

24 19:13: --appropriate section.

25 19:14: Okay.

1 19:15: And typically, definitions, if they're only used once, shouldn't be
2 in the definition, but should be in the rule that...

3 19:25: And we're making those consistent changes where we--

4 19:27: Yeah.

5 19:27: Yeah.

6 19:27: --see them, as well.

7 19:29: And that's...

8 19:30: Yeah. We agree with that, definitely. Issue No. 6.

9 19:37: Before you go on to that...

10 19:40: Sorry.

11 19:42: Just--I think that Karlene sort of mentioned the concern, a little
12 bit of an issue that we have sometimes with an employer who will have done some
13 skills building, but something has happened, we haven't actually gotten the
14 signature. And I guess what we'd like to suggest is that perhaps there would be
15 some other way to demonstrate-- Give us the opportunity to have another way to
16 demonstrate that the worker actually agreed, besides having a signature. I mean, a
17 signature should be the end (unintelligible).

18 20:15: What do you suggest?

19 20:18: Just otherwise demonstrated other evidence of worker's
20 willingness to participate in a skills building program.

21 20:24: Could you just take our word for it that we would-- I mean, that
22 would be the simpler, you know, we were able to say that in the justification.

23 20:35: And they participated in the course.

24 20:35: Right. Payroll records, everything showing they went to class.

25 20:38: It shows that they attended--they went to class. Because a lot

1 of times, it is instantaneous; a course is identified, an opportunity for them to learn.
2 So we can get them to do that as part of their transition to light-duty work. They
3 don't have, actually, anything but a skills...

4 20:55: And if there's resistance, that's going to be documented in a
5 claim file through conversations, and I think preponderance of evidence throughout
6 the whole file would prove whether it was--

7 21:05: Was...

8 21:06: --at will or any...

9 21:07: Yeah.

10 21:07: It's not like we're doing a bona fide job offer letter and forcing
11 them and threatening time loss.

12 21:12: Right.

13 21:12: That would be-- I think you could interpret it by reviewing the
14 whole claim if you needed to, to decide whether it was--

15 21:20: By I think clearly by--

16 21:20: --at will.

17 21:21: --attendance that they showed up.

18 21:22: Yeah. Yeah.

19 21:23: You probably have a case about it, just--you know.

20 21:28: Because we also have confusion with employers thinking that
21 we have to do some formal job--bona fide job offer letter too, and then that almost
22 puts a relationship damper a little bit between the employer and worker. I mean, a
23 lot of times the employers are perfect at communicating this, wanting enhanced
24 skills for the worker, the worker is appreciative of it, and it's great. And sometimes
25 these little formal processes of, do you accept this, make them sit back and think

1 something's wrong too. I mean, I'm not...

2 21:55: Yes. Employees are very scared, and they're intimidated. And
3 they already have enough paperwork that any time we can eliminate, if it's clearly--
4 Especially if you communicate with them via e-mail. "Hey, there's this course
5 opportunity. The supervisor notified it." Everyone's like, "Oh, okay, let's go." And
6 not have formal written offers.

7 22:16: Wouldn't there typically be, like, a course completion proof of--
8 you know, something that says, yes, they have completed this course? And couldn't
9 that be part of the--you know, what we keep as employers to show that they went
10 through the course and completed it, in case it was audited and that was requested?

11 22:34: It's not necessarily even completing it. A lot of times, they'll just
12 start a class that's a subsidy program of English as a second language or GED
13 programs and stuff, and it can be online in the office with the employer. And they're
14 enhancing skills, and they're not a formal credit-- I mean, they are in a sense of
15 online material. But they may just day by day--just learning the skill, and there's no
16 sense of completion all the time.

17 22:59: I think with this rule-- And I don't know. I'm guessing that
18 when this rule was written, it was written because there were instances where
19 someone was being forced to take a course or something, and maybe they failed
20 and it was used punitively against them in a disciplinary proc-- I mean, I'm thinking
21 of, like, a case way out there. I think that's what drove this, but I don't know.
22 Doesn't it sound like it, though? Like, why--

23 23:25: Kind of created from...

24 23:25: --wouldn't someone want to do skills building?

25 23:28: Kind of created from the-- This rule came from when we lost

1 alternative work sites, using alternative work sites in the industry where workers can
2 do volunteer programs, and that wasn't going to be-- This was what we could have,
3 at least as another option.

4 23:45: Yeah.

5 23:48: That's very good input. So would it make a significant or a
6 substantial difference in the process to be able to do it other than, you know, in
7 writing?

8 23:57: Yes.

9 23:58: It would, very much.

10 24:00: Okay. Thank you very much for that. Issue No. 6, the
11 definition of work site. The definitions of work site in the 105 and 110 rules--that's
12 the EAIP and Preferred Worker Program rules--are different. For purposes of the
13 Preferred Worker Program, it's defined as-- And I'll let you look at that for just a
14 moment.

15 And then, the requirement that the work site is already constructed in
16 Oregon is not essential for purposes of the EAIP. Rather than have two different
17 definitions of the same term, the Division is considering removing the definition and
18 explaining any specific requirements for a worksite in Rule 520(2). So the
19 alternatives for your advice and consideration would be, remove the definition of
20 work site from Rule 5 and explain any specific requirements in Rule 520, make the
21 definitions of work site in the--in 105 and 110 rules consistent, or make no change.

22 25:18: And this is--the same issue is repeated on Page 16 related to
23 the 110 rule. So--just so you'll have a--get to it again later this morning.

24 25:31: Your thoughts?

25 25:33: From an employer standpoint, I think this removes the

1 requirement that it be conducted in Oregon; is that correct? Can the EAIP then be
2 outside of Oregon, the work itself?

3 25:45: Work site can, yeah.

4 25:46: The work site. So that helps quite a bit for the construction
5 industry,--

6 25:50: The impact, you mean?

7 25:51: --because we might have--you might not have work available at
8 a particular Oregon site, but there's a really good match in Washington. And as
9 opposed to sticking him in Oregon and having them clean a job shack, I could put
10 them in Washington and have them do fire watch for a line, you know. And so
11 there's some--what I'm doing as an employer, it gives me more value. I get better
12 value if I can move them to--

13 26:14: Right.

14 26:15: --a Washington site if that's a better fit for their injury. So--

15 26:18: Okay.

16 26:19: --I would vote for that.

17 29:21: And I agree with that. And I guess when you say move the
18 language or remove the language or add to it, I guess for me I would want to say the
19 language that's added.

20 26:32: Right.

21 26:32: So if it's this just being put into the rules, I can--at least I can
22 understand that. But to say yes, we need to just put language in the rules and not
23 get the opportunity to weigh in on that, open advisory is kind of-- Is there a
24 suggestion on what to add to the rules?

25 26:49: And I don't think it would be a change, necessarily, as--

1 Instead of having two different definitions of the same terms, have the rules within
2 the 105--

3 26:56: Correct.

4 26:57: --and the 110 just explain what is different for purposes of EAIP
5 versus Preferred Workers Program. I don't think the intention is to change--

6 27:04: Right.

7 27:05: --anything. It's...

8 27:05: Not to remove the definition, then?

9 27:08: Remove the definition from Rule 0005, but have the content in
10 the-- There's a rule number, 0520(2), that talks about the work site. Just have any
11 requirements about the work site that's specific to EAIP or Preferred Worker in those
12 rules.

13 27:25: They're real distinctive that way (unintelligible).

14 27:29: And otherwise, if you're looking at the-- It's the definition of the
15 term, but they're different. And in one set of rules, it's one word. In the other set of
16 rules, it's two words. They're just making them so that there's not that inconsistency,
17 but then having each program have its own requirements.

18 27:43: Yes, that makes good sense.

19 27:46: Any concern?

20 27:47: Of course, subject to actually reviewing when it comes out.

21 27:48: Sure. Sure.

22 27:51: Yeah. Any concerns about doing that? Issue No 7. We're up
23 to Rule 500 on medical releases. Does the rule need to clarify who must issue a
24 qualifying release? Some background. Subsection (4)(a) requires the insurer and
25 employer to obtain a qualifying medical release from 'the medical service provider.'

1 Should it specify that it is the worker's medical service provider? The Division's
2 intention is to clarify the language, not to create a limit. Note that Subsection (5)(a)
3 does refer to the medical release issued by the worker's medical service provider. A
4 similar issue was discussed during the 2005 revision, and the stakeholder advisory
5 committee at that time recommended using medical service provider, but not
6 attending physician. Medical service provider is defined in the Division 10 Rules as,
7 a person duly licensed to practice one or more of the healing arts."

8 Some alternatives to consider then would be to, Revise Subsection
9 (4)(a) to refer to the worker's medical service provide, revise Subsection (4)(a) to
10 refer to the worker's attending physician, or a release which--with which the worker's
11 attending physician has concurred, or to make no change.

12 29:11: I don't think we should make a change.

13 29:12: I don't, either.

14 29:13: We have workers that go to the ER and treat. It's--that's not
15 going to be their attending physician. But I'd be very concerned that we would lose
16 that opportunity if it had to be an attending physician, so I would recommend no
17 change.

18 29:26: Okay.

19 29:27: I agree. Same.

20 29:28: It's better to have clear--

21 29:29: SAIF agrees.

22 28:29: --work releases than not be able to use--put weight on those
23 releases while the claimant's trying to figure out who she--they should treat with.

24 29:40: And there's no thoughts? Okay. Thank you very much. Issue
25 No. 8, again Rule 500. It would be helpful for audit purposes if medical releases

1 specified hourly limitations. Some releases just state part-time work, but don't
2 specify a number of hours. In February 2016, the division revised the Return-to-
3 Work Status form (3245), and now it includes hourly restrictions. So something for
4 this committee to consider would be to add language requiring medical releases to
5 specify hourly restrictions.

6 30:16: I would rather you not. This is Sheri at Hoffman. We--in our
7 return-to-work program, to ensure that our workers are getting well and getting time
8 off, especially in, you know, times like this where I could have workers working 70-
9 hour workweeks, we limit workers to 40 hours a workweek, light duty. And if we
10 required a doctor to put how many hours they could work, it may be outside of what
11 I'm willing to offer that worker. And I don't want to get into a dispute with my
12 workers, so I would rather not have that as a requirement. If a doctor puts that in
13 there, that's one thing. But to have it as a requirement, I don't think that would be
14 beneficial to what we do with our particular return-to-work program.

15 30:57: Thank you, Sheri.

16 30:58: SAIF will concur with that, very much.

17 31:00: It would add a lot of work.

18 31:02: Increase...

19 31:03: I mean--well, I mean, the--on our side, but also for the medical
20 providers, because we'd be back and forth. I can guarantee it, we would be. They
21 wouldn't get it. They'd be like, no, can you do this, can you-- They'd be in more...

22 31:15: Enough of that already.

23 31:16: Yeah.

24 31:16: They would increase medical costs in a claim quite a bit trying
25 to get clarification and having--

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31:22: Slow us down.

31:22: --the doctor re-address it. And they already get frustrated enough when we want them to dot everything and cross everything and...

31:28: And really, the other thing--other way to look at it is that EAIP shouldn't drive claims management. And by putting that kind of a rule in the rules, that's a little bit of what would be happening.

31:46: And this is Melissa Schneil from City of Portland. I agree along those lines, because what would happen potentially is then we would not accommodate the employee. You would end up having a disabling claim. It would be our responsibility, the claims handler, to verify and the--contact how many hours, but we don't want to delay bringing an individual back to work and then have full access to (unintelligible). So that might be--they might be on modified work for five days, they saw an ER doctor and went to follow up, but they didn't really have a really clear instruction or description. And we will never get a clarification from an ER doctor.

32:24: Unh-unh.

32:27: This is Kimberly Wood. So I think it's already taken care of, because when you do the modified job description back to the doctor you're already putting in how many hours you're asking for that worker to--the doctor to approve how many hours. And so I think it already sort of takes care of itself in that process,--

32:44: We don't always have--

32:44: --and it's not going to...

32:44: --a job description in a non-disabling claim.

32:47: Do what?

1 32:48: In a non-disabling claim, most of the time we don't even have a
2 job description approved by the doctor.

3 32:53: A light-duty job, a modified...

4 32:54: Uh-huh. Uh-huh.

5 32:55: We don't...

6 32:56: It's not required.

7 32:57: We do them all the time.

8 32:58: We do. It's just the best practice, probably, Kim.

9 33:00: Right. Okay. I didn't realize that.

10 33:04: Yeah, I know. Yeah, it's just the best practice. If I gave an inch
11 to anybody, they'd take five miles.

12 33:09: We just do it on every one. I didn't even think that I couldn't, so
13 I just have always done it, so...

14 33:14: Yeah.

15 33:15: Okay.

16 33:17: Okay. Anything else about that? Okay. Thanks very much for
17 your input. Issue No. 9, again Rule 500. There's no clear end date for medical
18 releases when the worker does not follow up with the provider. Subsection (5)(c)
19 provides that a release must cover any period of time for which benefits are
20 requested. Section (6) provides that a release remains in effect until another release
21 is issued. If the worker never follows up with the provider, the initial release remains
22 in effect, and wage subsidy benefits continue. This is an issue more often in
23 medical-only claims. If there is no follow-up, should the rules provide for an end
24 date? Time loss is not due and payable for any period of time not authorized by the
25 attending physician or authorized nurse practitioner. Should the same be true for

1 wage subsidy?

2 So alternatives for the Committee to consider would be to amend the
3 rule to provide that if the release is open-ended and the worker does not follow up,
4 wage subsidy cannot exceed-- And then there's some various options for the
5 number of days; 14, 21 or 30 days. Amend the rule to provide that if the release
6 specifies a time frame or follow-up date, but the worker does not follow up, wage
7 subsidy cannot exceed the number of days specified in the release. Or amend 500--
8 Rule 500(7)(f) to require the documentation of the transitional work to include the
9 end date, in addition to the start date. But see the next issue; if the transitional work
10 documentation is prepared up front, the end date may not be known. So I would
11 appreciate your input on that.

12 34:53: Is the Department having trouble with this on the auditing side?

13 34:58: Again I'll have to turn to my coworkers.

14 35:01: Yeah. We see it quite often where the worker doesn't go back
15 to the doctor, but I think there's just--so the wage subsidy just continues, you know.
16 So yeah, it can be a problem. You know, for auditing, we also look at everything
17 else in the file. It's not just necessarily the medical release. But if there's no
18 additional documentation showing that the worker is actually performing modified
19 duty, then we're like kind of at a loss. Do we stop it because the doctor says, hey,
20 come back in seven days? The worker never does, so...

21 35:36: What's the fiscal impact? Does anyone know that, of...

22 35:44: I don't know that we've ever...

23 35:45: I don't think we could--I don't know if we could guess what that
24 would be.

25 35:48: I know when we had medical--tighter rules around medical

1 releases and follow-up dates and all of that, it made it nearly impossible. It was like
2 we were punishing the worker and employer because they were the second person
3 in line to get that next follow-up appointment, having to end the program and so
4 forth. It is hard sometimes to communicate to a customer if a--we have one work
5 release in the file and the worker never came back. Usually, for us, based on our
6 experience, it's more--we use the whole claim as well. And our goal in the claim
7 management is--

8 36:22: Yeah.

9 36:23: --to get that claim to release to regular work or claim closure.
10 So for us to envision 60 days or 66 days of no management, having a worker
11 encourage them to treat, that would almost be unheard of for me in my--in reviewing
12 our claims. If we have a worker that was supposed to follow up and they didn't, we
13 use preponderance of evidence again, and use reasonable and feasible, practical
14 decisions to decide when to end that. I mean, you could have 66 days in a two-year
15 period. I don't think I would-- I don't know of a claim that would go that long without
16 some encouragement to treat, or a mandatory appointment, and if they don't
17 schedule-- So usually we'll try to use that.

18 But there are a couple times where employers will take this, you know,
19 to the extreme, and say, why don't I get 66 days, I have one hospital release, but it's
20 so rare. So I would hate to mess with a rule that should build-- We should be able
21 to build the whole file, taking into consideration of what was the expect--what was
22 expected. I think our practice is if they say, you know, follow up in 14 days and they
23 didn't, we would be in contact with the employer. So hopefully we could
24 communicate that we need to have updated releases. And if they're going to
25 continue to provide work without knowing what that worker can or cannot do, there's

1 risk in that, so just...

2 37:43: So how often does this happen?

3 37:44: Right.

4 37:45: Because it's an issue. So it's not-- There must have been kind
5 of a history. Can somebody from the Department tell us how often it happens?

6 37:53: I can't say specifically how often, but it happens often enough
7 that it became an issue.

8 37:59: On medical-only claims?

9 38:00: Right.

10 38:01: We're not talking about disabling claims.

11 38:02: Okay.

12 38:03: Right.

13 38:04: Like, you were talking about the two years with 66 days. That's
14 not what we found, auditing.

15 38:10: I think I would like no change on this one, unless it's a real
16 problem for the Department. And if it is a big problem for the Department, the
17 auditors, then maybe the furthest out, like, you know, 90 days or 60 days. That's
18 what I would say.

19 38:31: Thanks, Moira.

20 38:33: So maybe the first alternative, specifying the days out-- I think
21 as insurance companies--I know I've had-- When the auditors come and it's not
22 clarified, and we've already paid the money out that, you know, you have to pay it
23 back. So I like a little bit of clarification, but I also like your idea of having some--a
24 longer time to render...

25 38:57: I would say no to the--all the bullets, but maybe consider the

1 first bullet and a longer time--

2 39:05: A long...

3 39:05: --frame.

4 39:07: I think 30 days might be fair, just because the-- You know, we
5 inform all of our employees that you are expected to go to the doctor at least once
6 every 30 days, irregardless of what your work release says. And so maybe the 30
7 days would be fair enough, that the Department require an updated work note at that
8 point or continue the reimbursement.

9 39:29: My concern with that is we're already trying--we're already
10 steering away from workers-- And that's a practice, I believe--policy within your own
11 business. But we don't always encourage every 30 days. And so the employers
12 and customers think that they have to go to the doctor every 30 days, even if they
13 have six weeks of a release already in place. And again, we see medical costs
14 increasing quite a bit when we think we have to do that. We need to understand
15 what the work releases are.

16 So I'm concerned with just 30 as being a-- You know, it just sets--it
17 sticks with that number of every--you have to treat every 30 days, every 30 days,
18 and we're finally getting away from that a little bit and listening to what the doctor
19 has to say.

20 40:15: Well, and again, I think it really comes down to claims
21 management. Claims should be managed based on what EAIP requires. And I
22 think that--I mean, I certainly appreciate the auditor's concerns. And I don't know if
23 there's a way to fix the rules so that we either have--you know, that it ends after a
24 certain amount of time unless you can find other documentation in the claim file, or
25 just to give--you know, something that says if--basically, that it does--you don't

1 require the release--the additional release unless you come in and you can't find
2 anything to support it.

3 41:02: Yeah.

4 41:02: So it gives the Department kind of one of those--this doesn't
5 feel right, it's not-- You're not feeling good about it. You don't see anything in the
6 claim file that they were actually--that there was actually some management going
7 on. Then you could stop it within your discretion or something. I know that would
8 drive everybody nuts, but...

9 41:20: But that's what we're doing.

10 41:21: That's what we're doing now.

11 41:22: I mean, a lot of times that's--we're looking at the claim. And if
12 the worker is having a hard time getting into an appointment, or something happens
13 to where it does delay it, we don't want to take away the benefit if everybody's doing
14 their part and it's evident in the claim, but we just didn't follow up within the 30 days
15 or...

16 41:41: Some treatment is follow-up in 60 days.

17 41:52: This is Carmen, Legacy Health. I do like the second alternative
18 where you talk about the wage subsidy can't exceed the number of days specified in
19 the release, since I have a lot of my employees go to our Urgent Care, and they're
20 very bad at following up. They just quit treating after a certain amount of time. So I
21 do like the second amendment in your alternatives.

22 42:12: Thank you, Carmen.

23 42:15: Why don't we take away a benefit?

24 42:16: Yeah, that would--that's--again, that's--with all due respect,
25 that's again managing the cle--you know, the claim with EAIP, and I don't think that's

1 the intent of these rules.

2 42:30: I think it's logical to apply that if you have nothing else in the
3 file, and I think that's what I'm asking. We have discretion. We have people in
4 administrative programs that are also working with claims management, or is the
5 same person. But--to use all of that is definitely how you interpret it and stuff, but it
6 seems like to have a hard, fast rule would be--it would concern me because of
7 where we were in the past with this program.

8 42:57: Yeah, that would concern me, if we went to the second
9 provision here. I'm thinking of, you know, just a couple of examples. One would be
10 a cut finger and it's a seven-day, keep it dry and whatever restriction, versus an
11 urgent care, you know, back strain for a construction worker where we all kind of
12 know that back strain probably isn't-- I mean, if it's a back strain, it's probably not
13 going to be all fully resolved in seven days. It's just-- I don't know. And then we get
14 into all of the judgment calls. And then that's going to be real hard for the auditors to
15 try to do that medical judgment call. I don't know. Unless there's a big problem with
16 this with the Department, it's almost--the kind of latitude that you've given us, unless
17 there's like an egregious, you know, error or something.

18 44:03: I would be for saying something on a time frame of saying if
19 nothing else shows otherwise, as long as there's a clause in there to say that, you
20 know, on the 31st day we've got an appointment, but--and extended it. We want to
21 know that-- We don't to go back to the old way. That's--I remember it was pretty
22 hard and fast about that, so-- And then again, what if they follow up in...

23 44:27: But my reading on the amendment is--it's just saying wage
24 subsidy can't be requested. So this is not claims management. That's on the other
25 side. This is just saying you're not going to request wage subsidy in excess of those

1 dates.

2 44:42: It gets-- This is Melissa from City of Portland. What I see,
3 because I also audit Notice of Closure-- And a lot of times the Notice of Closure will
4 order that period, when there may have not been a specific doctor note addressing
5 that extra two, three weeks because the patient--the injured worker did not follow up.
6 So I think you would want to be consistent on what would potentially be in a Notice
7 of Closure. And so that's where best judgment, best practices would probably need
8 to stay consistent, make no change with the rule. Because I've run into that where,
9 gosh, Notice of Closure ordered this much, but I don't really see anything, but the
10 Notice of Closure ordered this because they did follow up two weeks after their last
11 end date, and the Notice of Closure ordered it through that date.

12 45:44: It gets confusing as an employer if we went with the option two.
13 My concern would be I've got an employee who doesn't go back, it says they're
14 released after seven days or they need to follow up within seven days, and they
15 don't, they wait two and a half weeks or whatever. I'm not going to dog them to go
16 back to the doctor. At least, I try not to.

17 But then they go back in two and a half weeks and they--and they've
18 got another two weeks or seven days before they have--you know. And so what--
19 Do I get to request EAIP during that time frame that there's a gap? I don't know
20 what I would be able to do. And I like to know beforehand, not ask questions after
21 the fact. So for me, that would put me in a really weird position. And that's a normal
22 occurrence, to have-

23 46:29: Oh, yeah.

24 46:30: --somebody not follow up within the right time frame, because--
25 not necessarily their fault, but they just couldn't get an appointment or whatever, so--

1 And sometimes it's--they give you, you know, a two-week release and you have to
2 make an appointment with a specialist, but you can't see the specialist for a month.
3 And so it just does--putting--No. 2, to me, seems the most problematic from an
4 employer's standpoint of managing and knowing what I can request EAIP for.

5 I think an employer can manage the work releases by--you know,
6 internally, you could take a stand; you may not work beyond this, okay, we'll provide
7 you this until your release date is up, and then they can't actually continue working.
8 It would be an internal resolution.

9 47:18: And just to follow up, I think the issue that the Department was
10 seeing, correct me if I'm wrong, is when there was no follow-up at all.

11 47:23: No follow-up.

12 47:24: If the worker did follow up a week later,--

13 47:26: No problem.

14 47:26: --that's not really where the problem was coming. It was where
15 there was a follow-up date where the worker never went back. In those situations,
16 should wage subsidy continue, or should there be an end date somewhere along the
17 line?

18 47:39: Or I think in the example of--like, a six-week work release
19 wouldn't apply, because--

20 47:43: No.

21 47:43: --they have a work release for six weeks. So it's not saying you
22 have to go within 30 days. It's saying once that six weeks is up, if they don't follow
23 up again, then it would extend maybe 30 days past that. I don't think the intent is to
24 say you have to treat every 30 days.

25 47:58: Right.

1 48:00: It's just saying when no further treatment at the--when there's
2 no further treatment, then, you know, should we cap how long that release lasts?

3 48:11: Given that clarification, does that...

4 48:13: I'm sorry. Do you apply-- First bullet. I might need an example
5 of that, Matt. If you apply the first bullet to 30, so you're saying 30 days from the end
6 of the authorized period? So a 30-day period or a 30-day wage subsidy? So we
7 have six weeks where...

8 48:27: The 30 days from the end of the authorized period is a
9 suggestion. So they say you're, you know, light duty for six weeks, and then follow
10 up. So you have six weeks where you're getting EAIP, and then an additional 30
11 days if they never followed up. But if they followed up after the six weeks, or even
12 seven weeks or eight weeks, and the doctor said another three weeks, you know,
13 that-- So it's just 30 days from the end of the last release. You would get an
14 additional 30 days of wage subsidy.

15 48:54: Make it an either/or so that if the record is clear, you go by the
16 record. If it's unclear, then you have a way to end the eligibility period.

17 49:02: Yes.

18 49:03: Right. Instead of say--instead of the--you know...

19 49:05: I didn't read it that way, but what you're saying--

20 49:06: Yeah.

21 49:07: --makes more sense.

22 49:08: Yeah. That's--I think that's the intent of what we're trying to do.
23 Instead of, you know, the cut my finger, I'm off for 7 days, never go back to the
24 doctor, boom, we get 66 days of wage subsidy; right? That doesn't seem-- And
25 that's what audit is seeing. And so this is a way of saying, okay, if you didn't--if the

1 worker didn't go back to work after that 7 days, we'll give you another 30, we're not
2 going to give you the full 66.

3 49:31: Okay. So here would be a question. If you went in that
4 direction and limited it, would there be a provision that we could get something from
5 the doctor that covered that period of time?

6 49:43: Clarification. We still need that.

7 49:44: You know, if we have reason to believe that--we know that it
8 should have been covered and just...

9 49:50: Like after the fact?

10 49:52: Right. Just like you do with being able to clarify work
11 restrictions in some cases where there's been work--a work status modified, but it's
12 not specific enough for a particular purchase or something, that we have that latitude
13 to go back to the doctor and say, with this work restriction, did it incorporate these
14 elements?

15 50:05: Right.

16 50:15: Right. We're looking at the whole claim file when we're looking
17 at it. So if you've got clarification of why the worker was continuing to do the
18 transitional work, we'd be looking at that.

19 50:24: Okay. Even after the fact?

20 50:25: Yes.

21 50:26: We just want to make sure that that was actually what was
22 going on.

23 50:29: Yeah.

24 50:30: You know?

25 50:30: That makes sense.

1 50:31: Yeah.

2 50:34: With that clarification, are there less concerns about maybe a
3 30-day or a-- Is the 30 day the appropriate window? We actually offered several
4 here; 14, 21 or 30.

5 50:45: I think 30 days would be the appropriate--with the allowance of
6 an after-the-fact clarification from the doctor in case--in cases where that was
7 important.

8 50:57: So we have the clarification in there, and it's not being-- I
9 mean, that's not on here to change. So I agree. I think we need to make sure we
10 can get clarification or use the whole file (unintelligible), obviously. But to me, the
11 first bullet doesn't read what we're saying exactly. Am I...

12 51:12: Yeah, I think we would need to state it--

13 51:13: Okay.

14 51:13: --so that it was absolutely clear. Because I misunderstood the
15 issue when I read it to you, and it was a misunderstanding all around.

16 51:23: So it would basically be 30 days to get clarification, almost.
17 That's what I think you're going for. Is it--is that...

18 51:29: No, no, no, no. It clar...

19 51:32: I know what you're asking for. But is this the way it's going to
20 be worded, would be 30 days to get a follow-up if you didn't within that 30 days? I
21 guess I'm still confused on it, because it...

22 51:41: Yeah, it doesn't say-- Because we had talked about...

23 51:43: Right.

24 51:44: Okay.

25 51:44: And honestly, the alternatives here-- You know, based on this

1 conversation, we'll go back and rework some of what is worded on here. So I think--
2 let's not maybe focus on--

3 51:55: Right.

4 51:55: --what's here now, based on the conversation that we just had.

5 51:58: And one thing on there is maybe look at that wording, the 30
6 days from the date that--either that the release ends or is an open-ended release,
7 like, cover both of those or, you know, just not restrict it to an open-ended work
8 release.

9 52:20: Okay.

10 52:21: But here it specifies open-ended.

11 52:25: Melissa from City of Portland. So it makes sense to me, what
12 the state is trying to accomplish, because when I'm trying to request reimbursement,
13 trying to determine the end--proper end date has been difficult at times. But--so just
14 to kind of restate, we have a work release through June 1st, and the employee hasn't
15 followed up. And then the examiner or the person reviews and says, hey, are you
16 going to go back, and the employ-- There's that ongoing communication that goes
17 beyond the extra 30 days, that I'm trying to get an appointment, or my doctor says, I
18 don't want to see you until this time. Would that type of information be considered
19 preponderance that the work--there's a working relationship, an ongoing
20 communication between the employee and the claims handler trying to get that
21 follow-up appointment? Because that does occur sometimes,--

22 53:24: Yes.

23 53:25: --especially during holiday season, doctor vacation. So most of
24 August you can't get in with a doctor, a specialist, and during the Chris--between
25 Thanksgiving and Christmas, that's a hard time to get in with a doctor, especially a

1 specialist. With that, how would your thoughts be? If you don't actually see an
2 appointment, but you see the ongoing communication, due diligence between the
3 claims handler and the employer that's requiring that information and the examiner
4 making attempt--I mean, the injured worker making attempts to get in.

5 54:03: And then they eventually did get an appointment, or they...

6 54:04: And they eventually did get in.

7 54:05: A medical follow-up?

8 54:06: Well, I think if they eventually got an appointment, it's a moot
9 point, because now they have an appointment and they have a new release or a
10 regular work release.

11 54:11: But a lot of times, it's even bigger than that. So if we're in that
12 exact same situation, all of a sudden the claim relationship goes bad if your worker
13 quits or stop--you know, does stop. But all of that time from the end of the
14 restrictions, that six weeks, and then the, you know, two--extra two weeks we were
15 negot--trying to get them in, trying to get them in and they quit, the employer did the
16 right thing in continuing that modified work.

17 So I think it's--we want to--if we're sitting there having worker
18 agreeing--and all the documentation and everything supporting that we're all on the
19 same plan, and all of a sudden a decision of the worker to quit and not go to the
20 appointment or whatever and the claim goes a different direction-- I'm afraid two
21 weeks of work site--or modified work is a lot to an employer when they're paying
22 those wages, mitigating time loss, and all of a sudden we say, no, lost release ended
23 on six weeks" and because the worker didn't go to that appointment that we all
24 thought they were going to go to and decided to do their own thing, we don't get to
25 reimburse them for those wages, when we're encouraging them to continue to keep

1 working. I mean, even when--I mean, that's going to happen.

2 55:15: And that seems...

3 55:16: And that's when I say a preponderance, I want to--if the
4 employer and the worker, everybody's all on board, but one decision of, no, I've
5 decided to do my own thing-- It happens all the time.

6 55:26: It does.

7 55:26: And it may be down the road that we'll get them back on board,
8 but, you know, take a different job-- But the employer did the right thing in providing
9 modified work based on the restrictions we knew at the time, and then all efforts
10 show throughout the claims management that everybody was in--on a plan of action,
11 but then the worker quit or something else. Maybe the employer's situation
12 changed, layoff season came on or something, and the worker didn't go back to the
13 doctor or whatever. But I'm just--I'm concerned that those short periods of time
14 when all of the effort was made, that we're not going to be able to...

15 56:02: In the scenario I heard where we talked about maybe a seven-
16 day release for a cut finger, for example, which would be a fairly minimal claim, if the
17 recommendation of 30 days was included, that would give 37 days of wage subsidy,
18 if I'm not mistaken, out of 66 days. So after 37 is if--you're saying they might quit
19 after, for example, the 37 days, before the end of 66, and that's where the gap would
20 be?

21 56:33: Well, we don't direct the medical care of the worker. But once
22 they are--the claim is accepted or something, they do--they have to treat with a
23 managed care organization or whatever. So there's that transition of time when a
24 worker is trying to get in with a different doctor, or get an appointment or find another
25 doctor. And so depending on when that happens throughout the claim, if an

1 employer is basing all of their information on the releases that they have at that time,
2 and something--while they're trying to get everything in place, something happens to
3 where the worker does quit or leaves, the employer is based on all of the work
4 release at that time, and that worker may never follow up again.

5 So yes, I did it from the seven-day example. I'm sure--I couldn't
6 imagine doing 66 days on a laceration. I mean, that's a great example if that was all
7 of them, but reality is we put a rule in there it's going to have to apply to all of the
8 medical releases, all of the situations.

9 57:28: But even in your six-week example, so they have six weeks of
10 release. That's 45 days, plus another 30. I mean, that's 75. There's your 66 days, I
11 mean, because you're adding 30 to the end of the release.

12 57:39: So if the work release was two weeks, that means...

13 57:41: The worker has two weeks, and then--

14 57:43: Thirty day from that.

15 57:44: --30 days. I mean, why...

16 57:46: Well, in your example, if the worker quit, there's no light duty
17 being worked anymore.

18 57:49: Well, what--kind of restating this. Let's say it's towards the end
19 of the season or seasonal, something like that. So an employee is injured, and they
20 have an ankle injury and they're off modified work for two to three weeks, and
21 they're supposed to follow up. And then at that three weeks, the employee doesn't
22 follow up. So then the contact is made to the employee, hey, you need to get to the
23 doctor, we need to verify your work restrictions, that type of thing. And they're still
24 accommodating the modified work. Then all of a sudden, at that point the plant
25 shuts down, it's seasonal, they decide to go away to go to college, they don't want to

1 live in Oregon anymore, and they just disappear. And during that two, three weeks,
2 four weeks after trying to get that authorization so it ends up being 45 days or 60
3 days, you're working due diligence to lose all of that time when you accommodated
4 them. I don't know if I'm articulating it, but I'm trying to...

5 58:55: I don't think they're suggesting that you wouldn't get that time.

6 58:56: No.

7 58:57: No.

8 58:57: No.

9 58:58: But that's the way it's reading, almost.

10 59:00: That's the way this is reading. But like Cathy was saying, we
11 don't want to pay attention to what this--how this is reading, we want the--about the
12 conversation we're having. That's what we're moving on. They wouldn't--we
13 wouldn't deny that.

14 59:05: It wouldn't be--yeah, it wouldn't be a situation where a
15 laceration or something--7 to 10 days and they didn't follow up, and then-- But it
16 would be more of a situation where it was a little bit more a significant injury, and
17 then the employee is just not following up and disappears. That does happen a lot.

18 59:26: Yeah.

19 59:26: I think as long as the state considers that with the--
20 administrators can take preponderance that effort was made. I mean, there has to
21 be some good faith here. And when the file shows that good faith was made and
22 everything, and that really the employer did the right thing, it needs to be--the right
23 thing needs to be done. Because we can't think of every scenario.

24 59:43: Right.

25 59:43: I just know when we start messing with releases it starts

1 increasing medical costs quite a bit. So the maximum you can get out of this
2 program is 66 days. So that 7 release versus 66, I mean, that--it can't be that much
3 of a risk of taking a chance of increasing the medical too much, too. That has to be
4 taken into consideration.

5 60:02: Okay. That was very, very good information, good
6 conversation. We'll take that all back and do the best we can to craft a rule that
7 ultimately everybody will be able to weigh in on when we propose the rules. But any
8 last thoughts on Issue No. 9 before we move on?

9 Issue No. 10, again Rule 500, on transitional work. The Division has
10 identified the following two issues related to transitional work requirements.
11 Subsection (4)(b) requires the insurer and employer to identify a transitional work
12 position. Transitional work is defined in Rule 5. The last sentence of the definition,
13 which is, "Transitional work must be within the employer's course and scope of trade
14 or profession, unless the work is skills building," is beyond the scope of a definition.
15 Is Rule 500 a better place to state the requirements for a transitional work position?
16 So that's similar to one of our other questions in terms of just placement of the
17 definition, or something that goes beyond a definition.

18 Subsection (7)(f) requires the insurer to maintain documentation of the
19 transitional work, including start date, wage and hours, and a description of the job
20 duties. It makes sense that this documentation be created at the time the position is
21 identified, or at least by the time reimbursement is requested. However, the Division
22 has seen documentation that appears to have been created for purposes of audit,
23 long after the transitional work position ended. See the alternative under the prior
24 issue regarding including the end date of the transitional work position in the
25 documentation. The end date may not be known at the time the position is

1 identified.

2 So the alternatives for the committee to consider would be to move the
3 substantive language regarding transition work from the definition to Rule 500;
4 amend the rule to include a time by which transitional work position be documented,
5 similar to the question we just discussed. At the time the transition work position is
6 identified, before reimbursement is requested, during the EAIP period would be
7 options. And would the time frame be more appropriately placed in (4) or (7) or in
8 both places? And then as usual, one of the options is to make no changes to the
9 rule. So I know that was kind of a mouthful, but any concern about movement of the
10 substantive part of the definition to Rule 500?

11 62:32: Just moving the language, no, that's okay.

12 62:35: Okay. And how about the--your advice on amending the rule to
13 include a time by which a transitional work position be documented?

14 62:47: Yeah, that'll change.

15 62:49: I think-- Jaye Fraser again with SAIF Corporation. I think from
16 our perspective, sometimes the documentation isn't just a piece of paper that spells
17 it out. Rather, it's in claim notes that document the conversation with the employer.
18 It could be in the EAIP file. So it's not that it's just going to be in one place. So
19 maybe depending on how you define documentation we'd be okay with the change,
20 but what we don't want to see is that there has to be a new piece of paper--

21 63:24: Uh-huh.

22 63:25: --that's generated, documenting the transitional work. It's--it
23 just--in the life of a claim, depending on what's going on, sometimes all of that
24 documentation is between the claims adjuster and the employer, and it's
25 documented in the claim file. That's where it is.

1 63:44: The employer's file.

2 63:45: Which--they're not saying it has to be an additional piece of
3 paper. It's just saying clearly documented. And that would be, I would assume, in
4 claims notes, because they're saying a time...

5 63:53: Yeah.

6 63:55: But they're saying a time frame. We should put a time frame.
7 Maybe it needs to be done before you send it for reimbursement.

8 64:00: Isn't that the case right now where we--in order to get the--you
9 know, to ask for the reimbursement that we're listing the job duties at that time?
10 We're giving you that information on that form.

11 64:13: On what form?

12 64:15: On the recovery request, the reimbursement request. I don't
13 actually do that form for the Department.

14 64:22: You're...

15 64:23: I was just putting money in that one.

16 64:25: Yeah, you're not putting anything like--nothing...

17 64:27: It doesn't have job duties on there?

18 64:28: No.

19 64:28: SAIF's does.

20 64:29: Okay. SAIF's...

21 64:29: SAIF for our customer. When our customer requests a wage
22 subsidy--

23 64:36: Right.

24 64:37: --to our claim--or to us, then we have them fill out a form to take
25 their information from their--

1 64:41: Oh. That's what we do, then.

2 64:41: --HR department and everything.

3 64:42: Okay. So we are--well, SAIF is, CIS is--we have a form where--

4 we have that at the time we request the reimbursement. So we're kind of forcing it

5 to happen at that time.

6 64:55: At the-- Yeah, not...

7 64:55: But not everybody...

8 64:56: Okay. We don't see that. And sometimes the auditor is not

9 seeing that until they're letting them know, oh, we're going to be including you.

10 65:01: But to the state, you're doing a--just a form.

11 65:04: Straight...

12 65:05: How many days-- They're not getting all of that documentation,

13 and that's what we're talking about.

14 65:09: Could we have an example, maybe, of what the issue is? I

15 mean, I guess...

16 65:12: Well, I just have one that just keeps popping in my head. But

17 for example, when that documentation was requested, there was all of a sudden a

18 form--paper handed to me that was not dated. It was just, this is what you asked for,

19 so here it is. Well, that's not the same as saying the worker was given transitional

20 work duties. That's--this is what we're going to say he did, you know.

21 65:33: Well, you're presuming that, though.

22 65:42: Well,--

23 65:43: I mean...

24 65:44: --right. I couldn't say--

25 65:46: I mean, which is (unintelligible) file.

1 66:46: --specifically that she was--that this document was typed, you
2 know, over here and handed to me. It doesn't say that specifically, but I had the file,
3 and it wasn't in the file, so...

4 65:59: Not to say claims...

5 66:01: We never have everything...

6 66:02: Not to say claims--the majority of those are going to be like
7 that. We have very sophisticated employers that understand the return-to-work
8 process. And their files--there's a lot of times where they're documenting all of this,
9 taking it from their payroll information, you know, the job duties and stuff, the
10 supervisors, and then they submit all of that to us on our form, and it will be at the
11 end. It will--

12 66:21: Right.

13 66:21: --be on our wage subsidy request form, and they'll put all of the
14 information together. We may have in our file documented, the worker went back to
15 light duty, went back to modified work, because that's all they need--claims
16 management is to know, and then the hours to report and support the--what's going
17 on the claim, but they don't necessarily capture the detail of what they're doing in the
18 claim on a non-disabling claim. Sometimes in disabling we're not really detailed in
19 our notes all the time, but employers are going to submit a form and put all of that
20 information together and sign it with supporting wage subsidy and...

21 66:55: Right. Your form does say that.

22 66:57: Yeah.

23 66:57: Your form has all of that information on it,--

24 66:57: Not...

25 67:00: --but a lot of companies have nothing.

1 67:01: Nothing.

2 67:02: So there's nothing.

3 67:02: I have a suggestion.

4 67:02: It's just a...

5 67:05: Oh.

6 67:06: So for my non-disabling claims, like for teachers and things like

7 that, I don't include--if they go back to work in their classrooms and the job is

8 modified, I don't include, like, a job description. But if I did, would that be what

9 you're looking for? If they go and work at a totally different site, I always have the

10 job description in the file. But am I understanding that in a position where they go

11 back to their regular job but it's modified, then would a job analysis be sufficient for

12 that, or do you need something additional?

13 67:41: This is just talking about a time frame for the documentation,

14 not the documentation itself.

15 67:45: Okay.

16 67:46: So this would take away from the time of audit. If we had a

17 referral written, we wouldn't be able to provide additional information around this

18 subject, because it wasn't within the time frame.

19 67:55: That's just additional information. That's not--I mean, I don't

20 think that that's what they're speaking to.

21 68:01: Right.

22 68:01: (Unintelligible) missed payroll, we provide payroll that's missing

23 or, you know, things like that. There can be sometimes, like, additional information

24 that they want. I'm just concerned about a time frame. If it's a couple instances, is it

25 really worth changing a rule just because of a few...

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68:15: I think it's more than a couple instances.

68:18: Well, for the time frame, period, we're just wanting to see that that was all discussed or decided during the EAIP period. You know, if all of a sudden a year later there's something just typed up because the auditor came in, well...

68:33: That's reasonable. I think that's reasonable.

68:35: Uh-huh.

68:36: I do, too.

68:37: And so I think it's completely reasonable that there should be documentation, and that could be in many different forms,--

68:43: Right.

68:44: --that is available, and that--before the insurer submits--or self-insured employer submits for reimbursement.

68:53: I think that's what we're asking here, is what time frame is reasonable. At the time of the reimbursement?

69:00: Yes.

69:00: Uh-huh.

69:01: Yeah.

69:02: Yeah, the reimbursement.

69:02: Right there.

69:03: As opposed to at the time of audit.

69:04: Yeah.

69:06: Seriously.

69:07: Yeah, right.

69:08: Right. It all should be ready to go when you submit the

1 reimbursement to the state,--

2 69:11: Right.

3 69:12: --so that you know all of your stuff is together and there's no
4 question.

5 69:15: But we would prefer that you have it before you request
6 reimbursement.

7 69:19: That's reasonable.

8 69:20: That's reasonable.

9 69:20: Very reasonable.

10 69:21: Okay.

11 69:22: So I just want to say--it's a suggestion, but then I'm arguing
12 with myself that yeah, we don't want to do it, but I just want to put it out there. Why
13 not change the form that we are required to send in to the Department that would
14 add just a couple lines just to say, you know, just briefly the job tasks? But then I
15 can already hear the argument, so...

16 69:48: Yeah, SAIF might have a problem with that.

17 69:52: But it would force everyone to make sure they're--

18 69:54: Right.

19 69:54: --doing...

20 69:55: You couldn't do it, because the--an extended period time of
21 modified work, the job requirements change--

22 70:01: Change, yeah.

23 70:02: --on a constant basis, and the different tasks-- So they might
24 be able to do more tasks for a short period of time, and then they go on to a
25 different--so it would be pages and pages, potentially.

1 70:12: Good point.

2 70:13: Okay. Thanks for raising that, though, because I had the same
3 question in my mind. And so I'm glad we had a chance to talk about it.

4 70:20: You had another-- Down at the bottom, see the alternative--

5 70:22: Yeah.

6 70:23: --under the prior issue regarding--including the end date of the
7 transitional work position and the documentation. I just want-- Because we have a
8 very formal process that's very clear when somebody's put on light duty, but it does
9 not include an end date because we don't know what that's going to be. And we
10 also--I think that the other thing is many employers have policies surrounding this
11 light duty. Ours is good for 60 days. Then we have to evaluate if it's appropriate
12 still. So I don't have any end dates on documentation.

13 But for the file, when we go to do the reimbursement, that file is very
14 comprehensive as to beginning and end days of the transitional work, so--and it's
15 based on the doctor's recommendations. So is that-- Am I completely off--am I
16 completely off base as to what that paragraph meant?

17 71:15: I'm not sure.

18 71:16: Yeah, I'm not sure that they really were that parallel, these two
19 issues,--

20 71:18: Okay.

21 71:19: --because all I'm looking at here is a--you know, a date certain
22 by when there would be information on file that could--you know, could be looked at.
23 And it looks like the consensus around the table was that that be available at the
24 time reimbursement is requested. I'm not looking at an end date in this issue, am I?

25 71:38: Yeah. I don't know if that was even--if that was something that

1 should've been someplace else.

2 71:42: Yeah.

3 71:43: It was related to the prior issue about medical releases, but we
4 didn't really go there, because the conversation went in a different--

5 71:48: Okay.

6 71:48: --direction. So I think you can disregard that.

7 71:50: Okay. Great. Thanks.

8 71:54: Issue No. 11, again, Rule 500, on payroll records. It would be
9 helpful for audit purposes if payroll records included dates and hours worked for all
10 wage subsidy periods, not only when the worker has hourly restrictions. Some
11 background. Paragraph (7)(c)(A) requires payroll records to include dates and hours
12 worked each day if the worker has hourly restrictions. This information is helpful in
13 all cases to determine the number of days worked and included in the wage subsidy
14 period, and which days are paid leave.

15 Under Senate Bill 1587, passed in 2016, beginning Jan. 1, 2017,
16 employers will be required to provide employees itemized pay statements that show,
17 among other things, dates worked, rate of pay, gross wages, net wages, number of
18 regular hours worked, and number of overtime hours worked.

19 Alternatives for the Committee to consider would be remove "If the
20 worker has hourly restrictions," from the second sentence of (7)(c)(A), amend the
21 rule to require payroll records to include those items required by Senate Bill 1587, or
22 make no change.

23 73:10: SAIF would say no change.

24 73:11: No change.

25 73:13: Yeah, I...

1 73:14: AOI would say no change, having suffered heavily over 1587.

2 73:22: City of Portland would say no change.

3 73:24: (Unintelligible) no change.

4 73:29: Okay. That was consistent. Okay.

5 73:33: That was quick.

6 73:34: Yes. Thank you very much. Issue No. 12, Rule 512, end of
7 eligibility. A new section should be added to Rule 512 stating that EAIP ends when
8 Preferred Worker Program benefits begin. And some background. This language is
9 necessary to avoid overlap between the two programs, so the Division and the
10 Worker Benefit Fund is not reimbursing the same costs twice. Do you have any
11 concerns about that kind of clarification?

12 74:08: It appears to make sense. Am I missing something?

13 74:15: So when a preferred worker begins, as in--I mean, begin in
14 what?

15 74:20: Wage subsidy?

16 74:21: Wage subsidy begin and accessing benefits, begin on premium
17 exemption? I mean, begin is kind of a...

18 74:27: So when benefits began. So PE--if PE is in place, that's a
19 benefit. So the date premium exemption starts, EAIP would end.

20 74:36: Oh, okay.

21 74:38: And this has been--this has actually been kind of an issue for
22 us in the sense that premium exemption can be put on a policy, and really
23 nothing's--no benefit's ever accessed. It's there in case a claim occurs. They stop
24 paying the premium. But the same scenario can happen where you have premium
25 exemption in place. And I guess in advocating for a team of specialists who

1 administer the program at SAIF, you end because of premium exemption being put
2 on. So if we put premium exemption in place, but we're in the proc--that would end
3 the benefit. But if we're still doing temporary transitional work, waiting for things to
4 get in place, premium exemption is the only thing that started. There's no--there's
5 nothing really overlapping, I guess, in their eyes. And it's true, because if we
6 accessed a purchase or a worksite mod or something like that, that's like the
7 benefit--accessing the benefit of the Preferred Worker Program.

8 We've had some examples. And there seems like a lot of them,
9 because I think it's happened a lot lately, but where we had premium exemption put
10 on the file, everything was going in the way--direction we want, and all of a sudden
11 the--and the claim was still open, but we thought we had (unintelligible) everything
12 and it went south. And that claim is still open now nine, ten months later, and we
13 can't access any more EAIP because we put premium exemption on, because we
14 thought the file was going in the direction it was, and something-- You know, and it
15 happens. And it's just--if no other benefit has been accessed and we put premium
16 exemption, to have that end seems somewhat wrong when you take into
17 consideration the same--a different scenario, but where a claim that fall--a new claim
18 falls under premium exemption, and that worker has a claim in the new claim. We
19 can access EAIP benefits on that claim, but it's under premium exemption. So we're
20 accessing benefits.

21 So I guess my theory is the double dipping is happening in different
22 scenarios, so I'm concerned about premium exemption being what ends Preferred
23 Worker. We're applying that based on conversations and stuff, but it just seems so
24 many times that we've had opportunity where we could've used the programs a little
25 bit better if that wasn't the benefit that ended it.

1 77:01: Well, because-- And premium exemption isn't really a benefit
2 from the fund. It's a...

3 77:10: Until...

4 77:11: Until later.

5 77:13: Claimant (unintelligible).

6 77:15: Right. So it's one of those things that it's the insurer at that
7 point who's not taking premium, so it just doesn't seem logical.

8 77:24: It's really hard to explain to a customer when you're ending
9 benefits and you can't because you started one-- And you're encouraging it, too, at
10 the same time. Everything looks good, and you're helping them with forming
11 accommodations and all. But it just seems like it's not real clear when you have the
12 different scenarios, and one that is okay to do is actually getting claim cost
13 reimbursement, purchases and all that. We can basically defer it, and we can
14 access EAIP benefits during that time, and just-- I'm concerned about premium
15 exemption being what ends the program. And should it really be the purchases or
16 the wage subsidies and things like that that really show the program being used?

17 78:05: Claims cost reimbursement, maybe?

18 78:06: Well, I guess the question would be, if the worker is still in
19 temporary transitional work, why are we starting PE? Why are we starting premium
20 exemption if they're still in transitional light-duty work? Even while we're in the
21 process of worksite modification, we can come out early and look at modifications.
22 And then once the job is modified, they're starting a job--a permanent modified wor--
23 job. So that's how we look at it as PE-- In the 110s, PE starts the date of hire,
24 which is the date the worker begins work as a preferred worker. So if they're still in
25 a temporary transitional job, PE shouldn't have been put in place anyway.

1 78:42: See, and with--and we-- And you've been on a couple of mine
2 with me, and I know they're very complex, but a couple cases where we're meeting
3 the Preferred Worker benefits and we can't get the worksite mods and stuff in place
4 and order and all of that until the eligibility of a prefer--the worker is pre--determined
5 Preferred Worker eligible.

6 So a lot of times we'll have customers that don't want to take that risk
7 and offer a permanent job unless we have the work--the premium exemption in
8 place. It's a benefit to the employer to know. Because if a claim occurs, injured
9 while doing that job, they have the premium exemption, they have the claim--they're
10 not responsible for the claim. So that's a huge benefit for customers, to offer
11 permanent modified work. So--and a lot of times they'll do that, and it's usually the
12 transition of a job from the light duty into the permanent, but it's just--it's conflicting
13 with saying that because we don't want benefits to overlap or the programs and
14 stuff. It's just--it's too straight, I guess, and ending, and not being able to have other
15 reasons to consider, I guess.

16 79:52: Well, I have--I just have a question for the--so--because you
17 guys manage the claims. So how often does it happen that we're moving to
18 permanent modified work and starting PE, and they haven't already had 66 days of
19 wage subsidy for reimbursement? Because really, that's what the--that's the benefit
20 they will be losing out. B starting PE and we're saying no more EAIP, how often
21 have they not already done their 66 days of...

22 80:14: It's not even had to do with the wage subsidy. It's those
23 worksite mods and stuff. And perhaps Preferred Worker consultants are the ones
24 that are encouraging us to go back and access EAIP. But if the insurer put premium
25 exemption on, we can't do that.

1 80:26: Right.

2 80:28: So if they're determined a preferred worker and a preferred
3 worker card is issued, we're good. But if we put that premium exemption on the
4 policy and lose our premium into--on the policy, that ends the program. So it just
5 doesn't seem quite fair in that sense that they're really not getting benefit--accessing
6 benefits yet. Once they start those benefits, that's clear. But just because we want
7 them determined a preferred worker so the employer knows that okay, now they're a
8 preferred worker, and we're going to start-- We can access EAIP and stuff still when
9 they're determined a preferred worker, but as soon as we put the premium
10 exemption on it they end. So if they want them to go back and start doing that job
11 while they're--a temporary job as a preferred worker, they hired him as a preferred
12 worker in that job and we're still waiting for worksite mods--they don't want to bring
13 him back even in a temporary job as--while they're waiting for worksite mods if we
14 don't have a premium exemption in place, because there's a risk of reinjury.

15 81:11: Sure. Well, that's the benefit as the claim...

16 81:21: Right.

17 81:21: I mean, say there's no benefit to the employer, but the benefit
18 is huge if there's a claim.

19 81:25: Yeah.

20 81:25: It's a huge benefit.

21 81:26: Well, yeah, if there's a claim.

22 81:28: Right.

23 81:28: Most of the time, there's not. And I know the Department is
24 anxious for the Preferred Worker Program to be used more. I mean, I hear a lot of,
25 why aren't we--why can't we get workers, you know, to use the Preferred Worker

1 Program? And so from my perspective, anything that discourages access to either
2 program isn't a good thing, so...

3 81:58: But you can understand us not wanting double dipping?
4 82:00: Right.
5 82:01: How would you verify...
6 82:03: Reword it?
7 82:05: I just wouldn't have premium exemption alone--
8 82:07: Right.
9 82:08: --be the benefit--
10 82:09: Right.
11 82:10: --that ends...
12 82:13: Because you wouldn't even have that information at the
13 Department. I mean, we've had--I've called to try to see if Preferred Worker Benefits
14 have been accessed, and it's difficult at times to even verify so we're not double
15 dipping with EAIP. But when we're administering employer injured (unintelligible)
16 and we're doing purchases, injured worker can also activate those benefits of
17 Preferred Worker. And there's been several times I've worked with a preferred
18 worker consultant where we're pur--trying to get the same purchase items in place
19 for the employer while the worker's working with Preferred Worker in the same
20 purchases. So it just--it seems like, I guess, is--does the Department have a way
21 where they're going to be able to verify this, too?

22 82:49: To verify that PE is in place--
23 82:50: Well,--
24 82:51: --or not?
25 82:52: --that benefits have--yeah,--

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82:52: Right

82:53: --that benefits have started with the premium exemption.

82:57: Well, those proposed 110 rules that we'll go over.

83:00: That's...

83:01: But currently, no.

83:04: Well, and I think the other thing to remember is that the employer has 90 days to tell us that they have hired a preferred worker.

83:11: Right.

83:12: And so we'll go back to the date of hire, and I use that term loosely, for--to put the premium exemption...

83:21: Right. As you should, yeah.

83:22: Right. So I'm not--again, I'm not sure that simply having premium exemption is the benefit that you want to draw your line on. That's all.

83:35: Do you have a lot of this happening? Because I mean, I think I'm a pretty sophisticated employer. I would never have considered-- I'm not sure how I could double dip, quite frankly. I mean, there would be an instance where I might defray actual purchasing a--you know, some equipment, but it's because I know that they've got some surgery or something where I know that it's better for me to wait and not use that purchase of modified equipment at this point, and use it at a later date. And I suppose that might coincide with the time frame when I'm looking at potentially offering somebody permanent work. But I mean, that's--I guess I just-- It seems hard for me to imagine that that could happen a lot.

84:22: Well, we're not going to teach you how to do it. No lessons today.

84:26: So this has got to be more about-- Is this more of a self-

1 insured issue? Sorry.

2 84:33: No.

3 84:35: No, that's not really...

4 84:36: No.

5 84:36: Have you guys run into it? Yeah, it just doesn't seem like it
6 could happen. I don't know how that could happen.

7 84:39: The more claims you have, the more options.

8 have very many instances where I've had to--even had the opportunity to hire
9 somebody as a--under the worker--Preferred Worker Program.

10 84:50: Well, it's really...

11 84:54: It hasn't happened in our industry.

12 84:54: It's going to be...

13 84:55: Yeah, just-- It's very difficult.

14 84:56: It's going to be--the employer use of the Preferred Worker
15 Program is where it's going to show up, because the employer injury is now
16 transitioning from EAIP to--

17 85:02: Yeah.

18 85:02: --Preferred Worker. And I mean, the EAIP reimbursement
19 happens, what, a year after claim closure? So I mean, are--like, there's an overlap
20 period when we were--Preferred Worker was going in, and EAIP. Is there anybody
21 looking exactly at what date?

22 85:17: Yeah.

23 85:17: I want my money back as soon as (unintelligible).

24 85:22: Well, we do. We reimburse our customers as soon as we get
25 our reimbursement packet.

1 85:27: Oh, okay.

2 85:28: Isn't the job offer letter, you know, where you get-- You know,
3 you put the date on there, people sign it. Isn't that required then for employer use of
4 the Preferred Worker Program on wage subsidy?

5 85:40: Not on...

6 85:40: Not for premium exemption.

7 85:40: Not unless you get the other benefits.

8 85:42: Yeah. Not for premium exemption.

9 85:43: Not for-- Yeah, not for premium exemption. But isn't that the
10 document that-- I mean, we need that for wage subsidy. We need that for worksite
11 modifications. So why not skip the whole premium exemption and make it be that
12 job offer letter? That would be the date.

13 86:02: That's something worth considering.

14 86:06: Yeah, I think there's a consensus that we don't want wage
15 subsidies to overlap--or worksite modifications to overlap; right?

16 86:16: It's finding a way, because one of the conflicts we have in
17 administering it is that we interpret it--SAIF, in administering EAIP--as the definition
18 of transitional work--you must be providing temporary transitional work. And once
19 we had a permanent job offer, we would end the program. And we were instructed
20 that that's not correct, because it's--the claim's still open. So--and in good fairness,
21 because a lot of times it doesn't work out, and so they go back--you know, and so
22 they said it's not an end reason.

23 So taking that into consideration, and then when the claim closes or if
24 Preferred Worker starts--a lot of times employers or workers are wanting to get
25 those benefits started on Preferred Worker, so they ask for eligibility for Preferred

1 Worker. And once that doesn't end it, if they become a preferred worker while the
2 claim is open, the worker-- That doesn't end the program. But finding out that we
3 should have been ending it when we put the premium exemption on, that's kind of
4 been a surprise too. And so I think that that part-- And then not knowing how you
5 guys track that so we can double check, too. So I definitely want something easier
6 to transition--

7 87:25: Sure.

8 87:25: --from to the other that's also easy for the customers to
9 understand as well.

10 87:31: Yeah, because it's very gray, as we all know.

11 87:35: Well, it's difficult to explain to the customers.

12 87:37: It is. It really is.

13 87:38: Because I have a hard time understanding it to articulate.

14 87:43: And we have vocational coordinators out there, too, that need
15 to understand that transitional process too.

16 87:45: Yeah.

17 87:47: Yeah. They don't understand it, so...

18 87:51: Any last thoughts on Issue No. 12 before we go to a break?
19 Okay. That was all very good information that-- We will consider all of that. And
20 after--if we can get back together, oh, a little--just a little before quarter to 11:00,
21 because we're going to cut now. And if you can be back in 15 minutes, we'll go
22 ahead and pick it up with an issue that I think is going to be pretty important to this
23 group. So thanks very much.

24
25 (off the record)

1 88:27: Okay. We're back on the record. And I believe we're on Issue
2 No. 13, having to do with Rule 520, wage subsidy. Stakeholders have asked the
3 Division to consider changing the EAIP wage subsidy reimbursement back to 50
4 percent of the worker's gross wages. Some background. The Division reduced the
5 wage subsidy from 50 percent to 45 percent of gross wages in mid-2013 as part of
6 an overall strategy to reduce depletion of the reserves in the Workers' Benefit Fund.
7 The Division would like to hear from stakeholders on this issue. A reimbursement
8 rate of 45 percent still provides a significant incentive to employers, and the
9 Department has not seen a drop in use of EAIP wage subsidy benefits since 2013.

10 So we'd appreciate your input on this concept. Some of you actually
11 may have been at the meeting where we decided to drop it down. And if you had
12 seen what was happening to the Workers' Benefit Fund at the time, it was pretty
13 dramatic in terms of what was happening to it, and things have improved since then
14 with the economy.

15 89:33: Well, it made perfect sense, Fred. It made-- And I think we all
16 felt that. I think there-- At that time, it was dropping to 40 percent or 48 percent, and
17 45 percent seemed very fair. You know, I think it's such a successful program, and I
18 think it really does encourage--- For Hoffman, we do what's called contractor-
19 controlled insurance programs where we insure everybody on the jobsites when we
20 have a \$90 million job or more. So that means that we're herding cats, and we're
21 not SAIF Corporation. So we're having to herd everybody. And being able to offer
22 up the EAIP is a great incentive to keep people on the site. And I'm very proud to
23 say I still don't have a permanent total disability claim anywhere in my history, and I
24 think that's because we get right in there, and I think encouraging people to do that.

25 The 45 percent, you know, it made perfect sense. I think I would like to

1 see it go back to the 50 percent, you know, for nothing else but we took the hit, and
2 to encour--continue to encourage people to provide return to work. And I think that's
3 a value to our system. We're one of the only states-- Our friends in Washington
4 now have that program, but we are the only other state I'm aware of that has that
5 program. And I would like to keep it back at the grassroots, which was the 50
6 percent, so...

7 91:01: Okay. Thanks, Sheri. Additional thoughts?

8 91:04: Melissa Schneil, City of Portland. And yes, like Sheri said, we
9 were all very aware, but now that--I would like to see it increase back up to the 50
10 percent. I don't think reduction-- We all recognize the budget cuts, and we had
11 reduction. But now that things are stable-- And also, to keep--that the funds are
12 used for what the intent was, is basically for an injury, Preferred Worker, and not
13 other type stakeholders trying to attack funds for other uses other than what the
14 Workers' Benefit Fund was intended for.

15 91:49: Joe?

16 91:50: Joe Crelier, Portland Public Schools. We also support the
17 increase to 50 percent. It's a remarkable program. Unless there's other information
18 we need to consider about the Worker Benefit Fund, we support the 50 percent.

19 92:04: Okay. Thank you, Joe.

20 92:07: Betsy Earls from AOI. And I--AOI would also support that 50
21 percent--going back to the 50 percent, and I would echo what Melissa said. Working
22 in the legislature, as I know a number of you do, every day I see people looking for
23 possible, you know, sources of funding. So if we go back to the 50 percent, I just
24 want to make sure that this group and the Workers' Comp Division are keeping a
25 sharp eye that the money is going for what we intend, and isn't being diverted to

1 something else or, oh, look, they went back to 5 percent more, we can use that for--
2 you know. And if we start seeing things like that, I would want, you know, to commit
3 to maybe a re-discussion of the issue.

4 92:48: Thank you, Betsy.

5 92:49: And City County Insurance supports the return to the 50
6 percent. One thing I like about the 50 percent, besides it being more return for the
7 employers, is that it's consistent with Preferred Worker Program, 50-percent wage
8 reimbursement. It's just easier to say it's-- It just flows better. I know that that's not
9 a fiscally sound argument, but--

10 93:12: Okay.

11 93:13: --it just does, 50 percent.

12 93:14: Yeah. Okay. Thank you very much. Issue No. 14, again Rule
13 520, on paid leave. Should the term paid leave be defined or further explained?
14 Subsections (b) and (c) provide that wage--of--(b) and (c) of Rule 520(1),
15 Subsections (b) and (c) provide that wage subsidy may not start or end with paid
16 leave. The reimbursable paid leave cannot exceed the worker's hourly restrictions.
17 The meaning of the term paid leave seems clear. It's time during which the worker
18 was paid, but not working. However, some insurers have argued that some types of
19 leave that are paid, such as paid time off, shouldn't be considered paid leave under
20 the rules.

21 So alternatives would be to add language to Rule 520 that further
22 explains what is meant by paid leave. Add a definition of paid leave to the
23 definitions rule, Rule 5; re-word 520(1) to remove the term paid leave, for example--
24 And then there's an example given there of some alternative language. So your
25 thoughts about paid leave?

1 94:38: I don't understand the question.

2 94:40: I don't understand, either. It's like, what am I missing?

3 94:42: I'd like to hear from the insurers that have argued that PTO

4 shouldn't be counted as paid leave.

5 94:52: Is there anyone here for whom that was true?

6 94:53: I couldn't say specifically. I don't keep track of who argues

7 specifics, just-- I know it seems really simple. It really does, you know. But we

8 have issued referrals saying that wage subsidies shouldn't include this date because

9 this is paid leave. And whatever term that particular paid leave item was, the insurer

10 argued that that's not paid leave, it's not sick time, it's not vacation time, it's not--

11 95:23: It's PTO?

12 95:23: --paid leave.

13 95:25: What's PTO?

14 95:26: Well..

15 95:27: Paid leave.

16 95:28: Paid time off.

17 95:28: Paid time off.

18 95:30: That was just an example, you know. Like I said, I can't really

19 remember specifics and--of who actually disagreed with it, but it...

20 95:39: Paid time off is an issue of premium audit, you know, but not in

21 this. I just--I can't even...

22 95:47: Right.

23 95:48: It's like a different...

24 95:49: So none of those people are...

25 95:50: In the room.

1 95:52: So paid time off--
2 95:53: Is there anybody here that wants it?
3 95:53: --could be like holidays, because we have a paid time off
4 policy. So if I've got everybody on the construction site taking Thanksgiving off, I'm
5 obligated to pay this person TPD so--for that time; correct?
6 96:12: If it's a Worker's...
7 96:13: If they're not working. Yeah, it's a Workers' Comp claim. So
8 just--so--but if I pay them like everybody else is getting paid for the holiday under
9 PTO, then wouldn't that be-- That would still be part of my reimbursement. Is that
10 what we're talking about?
11 96:31: As long as it's not on the first or--
12 96:32: Right.
13 96:32: --last day--
14 96:32: Right.
15 96:33: --of the wage subsidy. You have to return to modified work.
16 And then if it's the second day, you get it reimbursed.
17 96:37: There you go.
18 96:40: We've never had a problem...
19 96:40: So is this something that we don't need to change?
20 96:43: I don't think we need to change it.
21 96:44: Okay.
22 96:44: I admit I made a mistake.
23 96:45: You made a mistake?
24 96:46: I did. Yeah, I made a mistake. But I inadvertently requested
25 reimbursement through the date of the Notice of Closure.

1 96:53: Oh, it was you.

2 96:57: And so, you know, after audit I'd learned--I looked very closely
3 to see when they actually saw the doctor. So I know if they saw the doctor at the
4 end of a shift, then I document it and I can count it. And so it was a learning
5 opportunity for me.

6 97:10: Okay.

7 97:11: So--but now that I've learned that-- I just used to match the
8 Notice of Closure, which--that was my mistake. I didn't look to see that the doctor
9 appointment was at--

10 97:20: That's good to know.

11 97:20: --8:00 a.m. I look now to make sure that--when the doctor's
12 appointment documented on the note. And so moving forward, I don't have a
13 problem with how the rule is now.

14 97:31: We don't (unintelligible) standard week if it's an unpaid leave
15 on there unless it's broken down...

16 97:36: Well, it didn't show a paid leave. It showed eight hours regular
17 modified work all day on the timecard, so I didn't catch it a lot of times. The
18 timekeepers didn't catch it.

19 97:51: So is there anyone here who thinks that we should actually
20 change the rule? Okay. Thank you very much. Issue No. 15. Again, Rule 520,
21 worksite modification items, tools and equipment. Should the rules specify a time
22 frame in which worksite modification items, tools and equipment must be purchased,
23 delivered or used in relation to when the worker returns to regular work? Some
24 background. The rule currently requires that worksite modifications must be ordered
25 during the EAIP. The Division has seen cases in which the employer ordered

1 equipment, knowing the worker would return to regular work before using it for
2 traditional (sic) work. This is not the intent of the program. The Division wants to be
3 cautious, however, not to penalize an employer who orders an item in good faith, but
4 the worker never uses it for transitional work, for example, if the item is on
5 backorder.

6 So prior to 12/1/2007, this particular rule provided that modifications
7 must be provided for and used by the worker during the Employer-at-Injury Program,
8 except under the following conditions. The modification equipment had been
9 ordered under the EAIP, and documentation is provided that the equivalent
10 modification items were loaned to and used by the worker while the worker and
11 employer were eligible for the EAIP; or the employer can demonstrate that
12 modifications were provided in good faith, and the worker refused to return to work.
13 So an alternative for this Committee to consider would be to amend the rule to add a
14 time frame for purchasing, delivering and using--or using EAIP items.

15 99:30: You know, I had an interesting conversation with one of my
16 subcontractors. They wanted to know if they could order a computer for something
17 and EAIP would pay for it. And I go, the guy is not going to be able to work light duty
18 for probably two weeks. I'm not comfortable with this little scenario here. Even if
19 they can get the computer tomorrow, the guy is only going to be using-- He's an
20 operator, for heaven's sakes. He's only going to use the computer, you know, a very
21 short time. I felt icky about that. It's like, no, that's not what the Worker Benefit
22 Fund is for. So, you know, I'm sure that other people feel comfortable with that, but I
23 just--I have to say I didn't feel comfortable. I deterred them from doing it.

24 100:11: Moira?

25 100:12: I would vote for no change on this, with the understanding

1 that-- Doesn't the--don't the rules give the director authority, that if there's a pattern
2 going on with an employer and the purchases, and it's not looking good, it stinks,
3 you know, and that they-- That you can do a further investigation to kind of drill
4 down with that employer if there's some shady practice going on. Anyway, that's
5 what I would vote for, because I think that adding caveats and, you know, time
6 frames, limitations to this is really going to be--it's hindering it. It will slow things
7 down. And already EAIP is a fast-moving program. So...

8 101:02: So how much does it happen where you guys notice a pattern
9 by a particular-- Now I'm curious if you actually do ever-- Since you have that
10 ability, do you notice those patterns by certain employers or certain groups or...

11 101:17: Well, we haven't finished this recent cycle.

12 101:20: Okay.

13 101:20: But we did document areas where we thought that things
14 were a little--there was nothing wrong, per se, by rule, but it just kind of felt like
15 maybe the same people were buying the same stuff over and over and over and
16 over, and the workers were-- I mean, you can see in the documentation that the
17 worker is going to back to regular--

18 101:39: Like what I'm seeing now.

19 101:40: --work within a couple of days, so hurry up, let's go get the
20 spot.

21 101:36: Yeah.

22 101:44: It just-- You know, like I said, it didn't violate the rule, so it
23 wasn't like we can't allow it, but it just kind of-- So we've just been documenting it.
24 And we're going to share it with the program and stuff, just, you know, some
25 concerns that we have about it, but...

1 101:59: Well, I think this--in your case, if the worker were going to be
2 at home on TTD and the computer would have kept him working for that week and a
3 half, then we would want you to buy the computer. But I think we're--what's
4 happening in some instances where, you know, it's Tuesday and the worker brings
5 in a release saying he's going to be released to regular work on Friday, so let's order
6 a piece of equipment that we know is going to take two weeks to get here.

7 102:23: Yeah.

8 102:24: You know, technically, by rule, they ordered it during--you
9 know, when the worker...

10 10:27: Yeah, so they get it.

11 102:30: So that's where it's like...

12 102:33: So I guess-- Kimberly Wood. I--my concern is I actually did
13 order a very hefty-sized piece of equipment that I got to take a \$5,000 deduction on--

14 102:42: Yeah.

15 102:42: --for this worker, and we ordered it. We thought it was
16 something that would just be available, and it ended up taking, like, six weeks to get
17 it for some-- I still don't know why it took so long. The worker was back at work.
18 We ordered it in good faith. What I don't want to have happen is-- That's a big
19 chunk of money. We probably wouldn't have bought-- It was one of those pieces of
20 equipment that really does benefit all employees. And we wouldn't spend that
21 money normally, but we got to have a \$5,000 discount on it, and that's encouraging
22 us to purchase something that then now is used by all employees once that
23 employee is no longer able to use it, but that--we could have been stuck and ended
24 up having to pay that out of our pocket if we end up changing this in any way and...

25 103:24: Well, that's what we don't want. We want to avoid that. We

1 don't want that to happen. So I guess the discussion, is there a way to do both?

2 103:32: I'm not sure, but I'll tell you the re-- When I found out about
3 EAIP, it was because you guys used to--back in the day, you would produce this
4 great little magazine, and it came out, like--I don't remember if it was quarterly or
5 monthly or whatever. Anyway, I remember reading it. And I read about somebody
6 down in Eugene, and they were a cleaning service. And they purchased a bucket.
7 They had a lot of back injuries because these guys were picking up the buckets and
8 dumping them. And so they pick--they purchased this bucket that--like, state of the
9 art. You didn't have to pick anything up. It just elevated itself.

10 Anyway, but every time they had injured worker, they bought a new
11 one, and eventually they didn't have to buy any new ones because there was
12 enough for everybody in the organization. That is a smart use of this program. And
13 if you're evaluating, they've already used this, they've already got one on site, so
14 why isn't...

15 104:22: Yeah.

16 104:22: Why can't you have the injured worker use that? I think
17 that's...

18 104:25: That's great.

19 104:26: For me, I was so impressed with that employer. I thought that
20 was a brilliant plan that they had going. They continued to purchase those that they
21 might not have purchased otherwise. And so, you know, I guess I discourage or--
22 not jump to the conclusion that just because they purchased a lot of something, that
23 doesn't mean that they're abusing the system. They may be actually reducing, over
24 the long haul, all of their--

25 104:51: Sure.

1 104:51: --employees' injuries, and I think that's a really smart
2 employer. And so I guess I would just caution to not jump to the assumption,
3 because I--that was the reason why I started using EAIP, because I thought that
4 employer was just brilliant.

5 105:06: Okay.

6 105:07: I thought, what a great use of the program.

7 105:08: Well, I don't know if-- I'm not so comfortable with that. I just--
8 You know, if you're going to-- I don't know. Whatever I say is going to be unpopular
9 because I don't agree with that theory that the Worker Benefit Fund-- Because
10 workers pay for that, too. And it's for the injured worker at the time of injury. And
11 you know, I just--I'm not comfortable with that. Sorry, I'm just not.

12 105:33: I think the difference is you come from a very large
13 organization that can afford to go out and buy all of that equipment for your--

14 105:37: Yeah.

15 105:38: --employees, but not all companies can. A lot of our
16 companies are very small. I think the majority of SAIF's--

17 105:44: Right.

18 105:45: --insured are very, very small employers. They can't afford to
19 go buy that equipment. They might want to. But if this process allows that to occur,
20 to me, it is benefitting all of those workers in that particular company. And so for me,
21 I just think that was--I think that's a smart use of that fund, to help reduce...

22 106:03: Susan Montgomery from SAIF Corporation. I really support
23 what you're saying, because we have employers that-- The healthcare industry is
24 one where large facilities and multiple wings and-- So we do buy purchases quite
25 often that look like multiples, but it's for a different area. So it's access to that piece

1 of equipment too that's important in that injured worker's transitional work. If
2 equipment is in another wing of another hospital, having to go get that to do a patient
3 lift is not really supporting that worker. Having it right there to do a patient lift
4 supports the worker and the patient.

5 So I think multiple purchases are appropriate in a lot of ways, but we
6 also do due diligence to make sure that it's really needed. We will ask a question,
7 and we document that. You know, did you not use what you bought before? No,
8 because of this reason. Great. We document that, and we (unintelligible).

9 106:51: Melissa Schneil, City of Portland. I agree with Kimberly,
10 because there are times across the river--we don't want things to be unloaded,
11 unloaded. Less handling. But along--going backwards a little bit, I do have
12 conversations with my contacts; hey, individuals to be released to regular work X
13 date, we don't know if they are going to be regular work or not, so if you're going to
14 purchase something, you need to purchase it now. Otherwise, if they are released
15 to regular work, that's not going to happen. And that's the standard conversation I
16 have. I'm not talking about the simple, you know, they're going to be released to
17 regular work. A lot of times, you truly don't know. Or it looks like they're improving,
18 but a lot of times doctors say, hey, just another 30 days.

19 So I'd like to get early intervention--early in on the EAIP program,
20 versus wait and see, oh, are they released to regular work, before you make that
21 decision. That's just what I do on-- I mean, I do raise that, and have that
22 conversation and document in my notes. If you're going to order something-- It
23 looks like they have their next appointment. We don't know what their work status is
24 going to be.

25 108:10: When Workers' Comp does their audits on EAIP, I know that--

1 and I imagine everybody feels this way, but I take the feedback very seriously. So if
2 the audit team would say, hey, you know, what we're seeing here--I mean, that
3 would just--it would matter, and we would fix it. I would know that either we're
4 starting to veer off in the wrong direction or--you know. But to see it change by rule
5 and us be, you know, hindered and constricted here-- It's such a fast-moving
6 program. We're trying to do the best we can with what we've got.

7 And we're working with employers that--you know, this is not on their
8 radar, you know. I mean, we're trying to-- There's a lot of moving parts. And so I've
9 been able to use this program for the ergonomic equipment, you know, doing--you
10 know, what people are mentioning here, for the good of the injured employee, but
11 also really for the good of that work crew. That feels really good in using the
12 program, that we're making a difference maybe in one small way in a physically
13 demanding job, keeping in mind we have a lot of older workers still out there, who--
14 You know, so...

15 109:30: I think one of the things--this is Karlene with SAIF
16 Corporation--that I'd like to add is the program does well. And we've taken an
17 increased focus on making sure our justifications capture everything, but the
18 program also allows worksite modification to prevent the worsening of a con--of the
19 condition. And that's where I see a lot of times where we will go in towards the end
20 of the claim, and it may-- When you're stepping back and looking at it, it looks like,
21 okay, he's been out of work all this time, and now you're getting something? But
22 after time, they're progressing and getting better, and you've seen opportunities
23 where something they--we never knew about comes to our attention.

24 So it's also down to the insurer's justification. And we, too, learn a lot
25 from audit, because-- Not that we don't see enough to administer it, but we know

1 our customers very well. So it's all up here in our head, and we've got to get it out
2 on the paper and make sure it's there too. So I think the rules allow for those types
3 of things. The property becomes the employer's to what they do with it. We don't
4 want that property just sitting in a closet somewhere and say, don't use it, because it
5 was bought for an injured worker. So we encourage them to keep that equipment
6 and use it. So if another claim comes along-- And them taking that item from
7 somebody that's using it also can be looked at pretty bad, too. So I see that there's
8 been a huge improvement with the changes in the past of where we're at now with
9 this.

10 110:54: And to kind of go along that line is where it's purchased for an
11 employee and they continue to use it after they're released to regular work, but a lot
12 of times I've seen is it gives incentive for the employer to say hey, this piece of
13 equipment actually works, and then they plan for it in their budget in the next budget
14 cycle. And so I do talk about--it's an opportunity. Because industrial ergonomics is
15 a growing field, and with a lot of our heavy construction workers they're a little afraid
16 to go from what they've always known, and now there's a lot of opportunities to try
17 different things. And I admit, sometimes the Employer-at-Injury Program allows
18 something--someone to use something within their work restrictions, and they say,
19 "Hey, we can do this."

20 111:40: And this is cool if you have it.

21 111:41: And, "Let's get this in our budget for our next fiscal year," and
22 it's purchased. And so we've seen some of that. And sometimes they say, "You
23 know what, this doesn't work, and we're not going to ever use this again."

24 111:49: It goes both ways.

25 111:54: And so...

1 111:54: Okay.

2 111:56: But at least it's not out of...

3 111:57: But I think the administrators of the program--the insurers or
4 administrator of the program need to take into consideration-- I mean, we will tell
5 our customers no, because we pre-approve our purchases with our customers to
6 help take that risk away. But if there's an appointment in two days, we want to know
7 what those restrictions are, so we will hold off and encourage. And it's--you know...

8 112:17: It's a case by case...

9 112:18: Yeah. It's putting some balance to it, being reasonable,
10 feasible and practical. That's in the rules. And that's what we should do, is use that
11 reasonableness to-- Is it really reasonable to purchase that when we know we're not
12 going to get it in two weeks when we have an appointment in a couple days? But
13 we also have been encouraged to use the program to transition into Preferred
14 Worker, too. So that's another--I just want to bring focus, is that we will do
15 purchases towards the end. It's not a regular release, but you know, closure is
16 coming up. And that's to help transition from the temporary to the permanent, so...

17 112:51: Jaye, you had your...

18 112:53: Maybe--you know, I mentioned the use of bulletins and FAQs
19 earlier for another issue. I think this would maybe be an opportunity that would
20 benefit all of us if, you know, as you are out doing audits and you see things that are
21 making you feel kind of (makes noise), kind of give the industry some advice. And
22 then we all benefit from what you're seeing at particular audits. You don't have to
23 reveal who it was, but--

24 113:21: Okay.

25 113:22: --you can give instruction, I think, that would maybe help us.

1 And that way, we don't end up throwing the baby out with the bathwater. Because,
2 you know, I think Kimberly's description of ordering a piece of equipment that was
3 expensive, and then finding out that it wasn't--you know, after--and waiting and
4 waiting, well, where is it, where is it, that can really be a terrible burden to a small
5 employer, especially a small employer that we want to use these programs, and we
6 want to give them the opportunity to get their workers back to work and eliminate as
7 much time loss as possible.

8 113:56: And I don't think the rule--the proposal is saying take away
9 good faith. That--

10 114:01: No.

11 114:01: --is keeping good faith. But I do want to say this. Susan's
12 example, hospitals. Vendors will give us quotes and tell us everything they're going
13 to do, and we think everything is going there, and a lot of times there's that third
14 person who can't get the item. And all of that would fall under good faith, I'm sure.
15 But I just--I wouldn't want the rules to change to too restrictive. I'd rather it be
16 addressed. If SAIF did something wrong, I want to hear that feedback directly. And
17 then also have the auditors consider, you know, the other things too.

18 (Unintelligible) would be an example. I mean, sometimes hearing that
19 we see employers or customers ordering it when they know the release is there
20 because there are just a handful of those, versus there is time to order it, and I think
21 those examples are good. We don't want the--we don't to think that it wouldn't be
22 appropriate to order something close to the end. It very well could be. And I think
23 Matt's example about two weeks of time loss over a computer that you're only going
24 to use for two weeks-- I would do that in a heartbeat. I would approve that in a
25 heartbeat, because a usually a \$1,000 computer versus two weeks of time loss,

1 that's huge. So...

2 115:09: Or could have kept a non-disabling claim non-disabling,--

3 115:12: Yeah.

4 115:09: --versus disabling.

5 115:13: Yeah.

6 115:14: And that's a huge...

7 115:14: I think it's important to show that positive--how to use the
8 program, so I really encourage the Q&As (unintelligible) educating the whole
9 industry on stuff like that.

10 115:24: So to summarize, I think SAIF Corporation would say no
11 change.

12 115:27: Okay. Okay.

13 115:28: We have passion.

14 115:29: But bulletin...

15 115:30: Correct, I did--we did hear that, you know, the
16 recommendation for a frequently asked questions bulletin, something like that.

17 115:36: Yeah, I think that would be a good use of that.

18 115:37: Okay. Thank you very much for all of that good advice on
19 that. And we're on to Issue No. 16, I think, now. Again Rule 520, on warranties. A
20 stakeholder has suggested that the rules clarify whether equipment warranties are
21 eligible for reimbursement. The Division does not currently reimburse for warranties
22 or extended service plans which do not address the worker's restrictions, do not
23 support the function of a tool, and likely cover a period of time well beyond the end
24 of the transitional work position. However, the Division is open to discussing the
25 issue. Does it make a difference what the item is? Does it depend on the terms of

1 the warranty, or whether there is a deductible?

2 So an alternative, then, would be amend the rule to clarify whether
3 equipment warranties or extended service plans are reimbursable, and in what
4 circumstances. Your advice?

5 116:26: Are we talking about on equipment, like what Kimberly was
6 just talking about purchasing?

7 116:32: Yeah, it would be purchases.

8 116:36: Computers, iPads, phones.

9 116:38: Yeah. You buy an iPad,--

10 116:39: Like assistive...

11 116:39: --and they say, hey, for 200 extra dollars, you get AppleCare
12 for three years-- You know, stuff-- It's extended services or...

13 116:46: Well, that's always a good investment for me.

14 116:49: Right. So currently, we don't allow, like, the--we don't
15 reimburse--

16 116:56: Okay.

17 116:57: --warranties--extended warranties. So the employer has the
18 option of paying for that or not.

19 117:04: Got it. Thank you.

20 117:05: Is it a problem?

21 117:07: Is what a problem?

22 117:09: The way it is right now, just--we exclude the--you know,
23 reimbursing for the extended warranties. There's--is somebody asking for...

24 117:17: Yeah, I don't think it's a problem. I think somebody raised that
25 they want to discuss whether or not it's something we could add to the rules that we

1 would--either would pay for it, or clarify the rule saying we're not, because the rule
2 doesn't say we don't. It's a...

3 117:29: Oh, I see. Yes.

4 117:31: It's more educational to a customer too, because when you
5 get asked about the warranty when you're at the cashier...

6 117:35: Right. Right. Yeah.

7 117:36: And so a lot of times, customers may not know when they're
8 out there making that purchase. There's other kinds of warranties to consider,
9 though, just for a couple examples that we've seen. Trust me, the vendors in the
10 world in stores that sell these are catching on well that if you want to have a chair
11 assembled that'd purchase--that if you-- That's part of a warranty. So it could also--
12 You're paying for a chair to be assembled, but it includes the warranty at the same
13 time. We've seen a lot of package deals where it's kind of confusing, yeah. So to
14 get a chair assembled through the store, and it comes with an extended warranty on
15 it. So it makes it look like we're purchasing a warranty, when you're also-- Really,
16 what you're wanting is the chair assembled.

17 118:23: Uh-huh.

18 118:24: So it's a little confusing for the customer.

19 118:26: Particularly, I think in one instance we saw where the warranty
20 for the chair itself--the manufacturer's warranty was void unless you had it officially
21 assembled by the store. And then there was a package extended warranty. So, you
22 know, it was one of those--

23 118:43: All right. Okay.

24 118:44: --odd, weird...

25 118:45: I've haven't seen those.

1 118:46: Yeah.

2 118:46: I do know that I didn't know about the extended warranty deal
3 until audit came, and then we owed a bunch of money for that.

4 118:53: Oh.

5 118:53: Okay. So that's where I found out. Nobody ever told me, and
6 I've come to all the meetings. So I mean, to clarify that in the rule one way or
7 another would probably be good for people who don't know.

8 119:05: I agree with that, clarify it one way or the other.

9 119:07: One way or the other.

10 119:09: But those are some compelling circumstances there, I mean,
11 because we want the equipment assembled; right? Just like we need it delivered
12 and installed.

13 119:18: And sometimes warranties are also included in a service
14 package or a training package (unintelligible) training on it. So they're bundled
15 together, I think, is the part we can clarify, those situations where it might be okay to
16 pay for a warranty if it's a part of a package that's larger than just a warrant--
17 extended warranty, if that's where you want to go. Because there's such a variety of
18 options out there in the marketplace and they're ever-evolving, it would be--
19 clarification would be very helpful.

20 119:51: Okay.

21 119:52: I agree with clarification.

22 119:55: Well, and that's what we're asking, is where would it be
23 acceptable. The rules were written at a time where it wasn't as...

24 120:02: We weren't...

25 120:03: We didn't even think about it.

1 120:03: Yeah.

2 120:04: I think honestly, it was something that-- I think Preferred
3 Worker rules are clear; right? Does that have wording in there that extended
4 warranties or something like that aren't included? I thought...

5 120:14: Yeah. Yeah. Yeah, it is. I think so.

6 120:19: Well, and I think--you know, I guess just for the consideration
7 of the conversation, you know, I think that the world has changed so much. And you
8 know, extended warranties-- I mean, I will always remember my first experience
9 with an extended warranty was when my husband and I bought our first car in 1983.
10 And we were in with the dealer and--who happened to be a friend, and he asked us
11 if we wanted to buy an extended warranty. And I kind of looked at him, "For the
12 car?" And I said, "No, I don't think so." And he said--and I said, "Well, do you think
13 it's a good idea?" And he said, "Jaye, I wouldn't sell them if I didn't make money on
14 them." And I said, "That answers my question." But in today's-- But then at the
15 same time, I was with my folks and they were buying new iPhones and questioned,
16 "Do you want extended care, the AppleCare?"

17 121:18: Exactly.

18 121:18: And I looked at my mom and I said, "Absolutely, absolutely,
19 we want it." She goes, "I don't want to spend"-- And I said, "Mom, you want it." So
20 okay, they bought it. What does she do when she's opening the phone?

21 121:31: Oh, no.

22 121:32: She dropped it on the ground. And my mom is a very fit and
23 capable 84-year-old woman, so-- I mean, it's not because she was older. It was
24 because she--it's slippery. And so I guess there are--a war--an extended warranty
25 can be something that adds significant value to the purchase that the Worker Benefit

1 Fund has made. And I guess the question for the Department may be, you know,
2 would you rather pay for a few extended warranties so that the fund doesn't--well,
3 you basically have an employer intentionally getting a product that gets broken two
4 days into being used, and then we have a worker who has to go back out on time
5 loss. So just for consideration.

6 122:23: And if I could just add? Because we too learned through
7 audit--and see both sides, trust me. Having warranties added in and researching all
8 of them, it's not easy. But out of the ones that we had, I researched and tried to
9 learn from it, what does our customer wanting it--you know, did all that. Extended
10 warranties in most cases are not the same package that you already have being
11 extended. It is additional services or items that you're getting that you wouldn't get.
12 So that was one of the things our customers really-- Because they explained to me
13 why they would even purchase it. I mean--and that was the number one thing.

14 We had one worker working from home. And they purchased
15 equipment, put it in place, and the only way they can get services on site in that
16 worker's home from the vendor was to purchase the extended warranty for 90
17 bucks. And so if anything went wrong, they provided a service on site for that
18 worker and that house. The employer didn't feel comfortable servicing the
19 equipment and stuff. So there is times where I feel like they could be justified and
20 supported. There are times where--I'm telling you a lot of times we just purchased--
21 or authorized it because the customer said they needed it.

22 And so I guess there's also employers--or we have customers that also
23 have policies that all of their equipment has some form of an ext--of warranty on it,
24 not just the manufacturer. So we had a customer saying it's their policy. So then we
25 went and reimbursed them for buying a computer that they--on the program. So we

1 run across some pretty unique situations.

2 124:00: Kind of let me clarify what I said about the 110s. I was
3 thinking of the \$2,500 available to protect worksite mod items, so it doesn't
4 specifically say warranties. So that was a little different than that. But I think that's
5 even more--for me in the Preferred Worker Program, it's important because we do
6 want the prog--the thing to last. But also-- Well, part of the issue in Preferred
7 Worker is when you're using a worker's benefit it's using the worker's worksite
8 modification funds, which is limited. I mean, \$25,000 sounds like a lot, but it's not
9 when you're buying equipment. So, you know, it's like oh, we could also get this
10 other piece of equipment, or we could pay \$500 for this warranty. And so when
11 you're not getting--when you're using a worker's-- In Preferred Worker is what I'm
12 talking about. But when using their funds for a warranty, and then it's preventing
13 them from getting additional equipment, you know, that's-- So I think that's kind of
14 been the mindset, part of it is.

15 124:57: That's where discussion what is the best use and not--

16 124:59: Yeah.

17 125:00: --would be a case-by-case situation,--

18 125:00: Yeah.

19 125:01: --because there are going to be some times that might be
20 more beneficial to use it, the warranty,--

21 125:05: yeah.

22 125:06: --versus is this \$500-- You have to weigh it out.

23 125:08: Right.

24 125:09: There's no black and white.

25 125:10: Judgement--you know, you have to exercise some judgment

1 about where is the best use-- And that was, I think, all I was suggesting, is the
2 Department consider, you know, are there instances where extended warranty--
3 You know, Karlene has given you a couple of examples where it's not just an
4 extended--

5 125:26: Right.

6 125:26: --warranty on the manufacturer's warranty, it's something
7 different. So just consider it in your discussions as you're--

8 125:33: Okay.

9 125:33: --going forward. We'd appreciate it.

10 125:35: So yeah, I guess...

11 125:36: Clarify it one way another in the...

12 125:37: Well, we don't have a--like, \$100 pay-for-what-you-want kind
13 of thing to help them. So in those times where the customers feel like the benefit
14 would be covered, and they'd just make that impulse decision at the cash register--

15 125:47: Okay.

16 125:48: --for that five seconds, yes or no...

17 125:52: So I've heard that, regardless of what we do, it needs to be
18 clarified--

19 125:55: Yes.

20 125:55: --one way or another.

21 125:55: Yes.

22 125:57: And that there are a little more--there are a few more nuances
23 than maybe this issue takes into account, you know, the situations that Karlene
24 described, you know, where something may be a package deal, and you don't get it
25 assembled unless you get the extended warranty, that kind of thing.

1 So with that, I'd like to move on to Issue No. 17, and up to Rule 540 on
2 reimbursement requests. The requirement that the insurer date stamp documents
3 should be revised to accommodate electronic records of receipt. Section (3)
4 requires the insurer to date stamp each reimbursement request document with the
5 receipt date, and to receive all required documentation within one year from the end
6 of the EAIP in order to qualify for reimbursement. The Division has revised rules in
7 other areas to allow flexibility as more companies go paperless. So amend the rule
8 to allow for electronic record of receipt.

9 126:51: Yes.

10 126:51: Yes.

11 126:52: Please.

12 126:53: Any objections to that? Okay. Thank you.

13 126:58: Joe?

14 127:00: Joe Crelier, Portland Public Schools. Not an objection, but-- I
15 support anything that goes paperless. And also, it's kind of in line with Issue No. 20,
16 but is there a way to remove the Social Security number requirement for any e-mail
17 forms and that kind of thing where there could be some protected information, cyber
18 security issues?

19 127:25: So the Employer-at-Injury Program reimbursement request
20 has a Social Security number field on it?

21 127:29: Yes.

22 127:30: Yes.

23 127:32: Because they're non-disabling claims, we don't have a way to
24 identify--

25 127:34: Right.

1 127:34: --the worker.

2 127:35: So yes, how we set up claims. Yeah, I don't know that--I don't
3 have an answer that, but that's a good, and it raises-- We had a special committee
4 not too long ago on electronic communication, or more specifically, how our rules set
5 up barriers to electronic communication. And one of the things we talked about was
6 security, and whether our rules ought to, you know, specify that anything that goes
7 electronically must go by secure--some kind of SFTP, some kind of secure standard.

8 And I believe that there was some consensus that it wasn't really the
9 Department's role to tell people how to send and receive information, whether--you
10 know, what level of encryption they have to use, that kind of thing. It's not our area
11 of expertise. But ordinary email is not secure, to the best of my understanding. I
12 don't understand how it--why it isn't, but I know it isn't. We're not allowed--in the
13 De--in the Department, we're not supposed to correspond and include medical
14 information in emails that goes back and forth, say, to a claims adjuster, because it
15 could be intercepted and put the person at risk. But the Social Security number,
16 that's a very valid point, and...

17 128:48: Well, and it's not--that's not the only personal information
18 that's on there. We don't even send emails--we're not supposed to even send
19 emails with claim numbers, names, addresses, date of birth, any of that. So it's not
20 just Social Security number. But we do need it for identifying--for employment
21 records, for Child Support Division. We need it, especially to identify which worker--
22 which person we're looking at.

23 129:10: You know, and the issue of Social Security numbers has been
24 something that we've talked about over the years. And, you know, technically,
25 Social Security numbers have never--in fact, the federal law says that they're not

1 supposed to be used as identifying numbers. And most employers and most
2 businesses have done away with using a Social Security number and created other
3 numbers. And I know that that becomes an IT issue for the Department, but this has
4 been an issue that's been around with identity theft and all of that over the years.
5 And I guess I would just-- You know, I mean, it's an issue that we have internally as
6 well, but as we have the opportunity to stop using Social Security numbers, I think
7 that that would behoove all of us.

8 130:06: Yeah, we have removed it from every form except a handful,
9 like 801, 827,--

10 130:11: Uh-huh.

11 130:12: --and...

12 130:12: We appreciate that.

13 130: And the EAIP reimbursement request, I believe, is one, because
14 we get them and it's the first time we've ever heard of the claim in some cases
15 because of the non-disabling status. But it is a valid point, Joe, and I'm glad you
16 brought it up. The more times people let us know, then that all factors into what we
17 ultimately do. We are one of the agencies that has been a lo--around long enough
18 so we're grandfathered in, as they put it, when they had the Federal Privacy Act.
19 We're allowed to require the SSN, but that doesn't mean it's necessarily the best
20 practice long-term. We've minimized it, but we appreciate your input on that.

21 130:52: Kind of a side note. Just a random thought. Maybe changing
22 the form that requires Social Security only on non-disabling claims. We don't have
23 to put it on disabling claims, just--it starts reducing it.

24 131:09: Thank you, Melissa. That's...

25 131:11: Except that's not--even on the disabling claims we don't

1 always have the Social Security number, because it's not required on the 801. And
2 we still need to verify employment. And I know the Child Support Division needs the
3 information. So I'm not sure that that would solve it.

4 131:28: Yeah. It's almost as though the State of Oregon would have
5 to come up with a new way of identifying--cross-matching workers, and I believe that
6 the only game in town still, unfortunately, is the SSN.

7 131:39: Does WCB number verifies--the insurer's WCB number, isn't
8 that the one that's verifying the employ--or you used to--for EAIP to verify?

9 131:48: Well, we're checking-- No. The employer number you're
10 talking about, yes. That will identify which employer you guys are putting down that
11 they work for. But for us to verify that the worker actually was employed at the date
12 of injury or was employed during wage subsidy or whatever, we have to locate--go to
13 employment screens and look, and lots of times you can't find it just by name.

14 132:08: The department--employment department. So it's another
15 agency--

16 132:11: Yeah.

17 132:11: --that we don't have control over. We have a special
18 interagency agreement with them to be able to look at their screens.

19 132:22: Yeah. Very good point, though. And I'm sure there will be
20 more to come over the years about that, so-- Issue No. 18. Again Rule 540,
21 regarding reimbursement requests. Sections (5), (6), and (7) regarding minimum
22 requests, subsequent requests, amended requests and associated administrative
23 costs seems redundant and confusing. These sections could be clarified to state
24 more clearly that the first request for reimbursement must be for more than \$100,
25 and subsequent requests can be less than \$100, but reimbursement for those

1 requests will not include an administrative cost. Well, I guess has this particular rule
2 been confusing for you, and would you like it to be clarified?

3 133:06: The only confusion we get is our employers read this as--
4 And they're--the--always the request part, because this is insurer's request to the
5 Department. And sometimes people get online and see that and think that it's their
6 request. But they also try to use your (unintelligible) form, too, the one that we use.

7 133:22: Oh.

8 133:23: We don't have a problem with that, though.

9 133:31: Okay.

10 133:31: Okay.

11 133:32: Issue No. 19, Rule 550, Section (3) on audits. The Division is
12 considering changing the language to provide that if conflicting documentation exists
13 and there is no clear preponderance, reimbursement will be disallowed. The
14 documentation is clear in most reimbursement requests, so this change is not
15 expected to have a significant impact, but we'd appreciate your input on that.

16 133:59: No change.

17 134:00: I'm not sure what I-- What is conflicting documentation?
18 That's kind of a slippery slope.

19 134:08: So we get conflicting information on doctors' notes often. We
20 immediately go to the doctor's office and say, okay, so what is it that you meant?
21 And we need something new issued so that we can be sure that we're
22 accommodating appropriately, or know what the limits are. That's done long in
23 advance.

24 134:28: So yeah, can you explain more of what you're...

25 134:33: Well, I can tell you what conflicting documentation would look

1 like. The doctor says the worker can go back to work, but they are still on
2 transitional duty. That would be conflicting.

3 134:41: Uh-huh.

4 134:46: I don't know.

5 134:47: Well, I used to be in audit, so my vocational reviewer position
6 is a newer position. So I was part of the EAIP audit. I can think of examples where
7 we would see the claims adjuster had claim notes that said they were working
8 regular work. The doctor had said they were working regular work. We had a wage
9 subsidy request for those dates. And when we'd send a referral saying, "I don't think
10 those qualify," the response we would get was, "No, they were wrong, this one
11 document that we have that says they were working light duty is the one that is
12 right." So that would be the conflicting. So we would find a preponderance of three
13 or four different sources saying, "No, they're back to regular work," and then one that
14 would say, "No, they're still doing light duty." So it--that is something that we saw at
15 times.

16 135:34: But that's what the rule says, is that it's preponderance that--

17 135:38: But it says that if there is--

18 135:38: --wins first.

19 135:40: --if there's no clear preponderance, reimbursement will be
20 allowed. We're saying that...

21 135:43: In the scenario you gave, I would say that wouldn't have been
22 allowed to support preponderance.

23 135:50: So what we're saying is-- Well, look at the preponderance of
24 the evidence. I mean, if the preponderance favors reimbursement, fine, no
25 questions. If there's--if the preponderance favors reimbursement, but right now the

1 rule says we--

2 136:00: Yeah.

3 136:00: --will allow reimbursement...

4 136:01: Yeah.

5 136:02: Except that doesn't sound right, the way I said that.

6 136:03: No.

7 136:04: But it would just be shifting it so that...

8 136:05: You just want to shift it--

9 136:06: There must be a preponderance of evidence.

10 136:06: --so that it's (unintelligible) around. Yeah, that makes sense.

11 136:09: When there's conflicting--literally conflicting documents like on

12 the same treatment date or something like that, and then we-- But still, the

13 preponderance usually always makes us lean one way or the other, so...

14 136:25: Okay. It seems like that resolved the concerns, that

15 clarification, then.

16 136:26: Uh-huh.

17 136:27: Okay.

18 136:27: Yeah. Thank you.

19 136:29: Issue No. 20. Bulletin 260, Form 2360, Employer-at-Injury

20 Program Reimbursement Request Form. This bulletin and form will need to be

21 reviewed for revisions as a result of rule changes. This is really a placeholder.

22 Ideally, changes to all related materials should be coordinated as they are published

23 at the same time. I guess do you-- We--I guess we talked briefly about possibly

24 changing the reimbursement percentage rate from 45 to 50. That would necessitate

25 a change to the form, of course. And also, there was some talk about putting some

1 things in bulletin or FAQs. And that might possibly go in that bulletin, or maybe it
2 would be a different bulletin. I'm not sure. But is there any other input you have on
3 the forms and bulletins that are used for the program?

4 137:16: I guess the only comment that SAIF would have is the
5 bulletins--that's what you produce. The forms, though-- If we have to do any
6 programming, that's always a concern to us, because it's expensive and we have
7 competing projects. So to the extent you don't have to make a change to the form--
8 I mean, I understand if there's something where it absolutely has to be done, but this
9 little change is possible.

10 137:47: Or lead time.

11 137:48: Or lead time. Lead time.

12 137:54: Okay. And the remaining issues that we have for Division 105
13 are all what we call housekeeping, although that's sometimes a matter of opinion,
14 although we try to be careful in using that designation. And I think rather than my
15 going over all of these line items, I would encourage you to look at this, if you
16 haven't already, or just--if you have anything now that you want to bring to our
17 attention in terms of any concerns. A lot of it's just grammatical and use of some
18 consistent terms. But any comment on the housekeeping items?

19 138:46: I just had some questions regarding the client and worker
20 using-- Wasn't that what we talked about? I can't remember, because I was
21 concerned about whether...

22 138:59: Well, I think the question (unintelligible) I haven't had a
23 chance to look at--look at all of the--whether it's consistent across all of the rules. It
24 is a very specific relationship between (unintelligible) difference. And we look at it
25 very specifically for--you know, for coverage of premiums. So we just want to make

1 sure that we're not introducing a new definition, adding these sections...

2 139:19: Okay. So we should look at the Division 50 rules in--

3 139:21: Yeah.

4 139:21: --addition, and make sure that...

5 139:23: Yeah. And I have not had a chance to review that.

6 (Unintelligible) possible to make sure...

7 139:31: Okay. Good point. Okay. Are we ready to move on to the
8 Preferred Worker Program? I guess this one is going to seem very familiar. The
9 first issue is definition of worksite, again in 105 and 110. Those definitions are
10 different. And then we go on to provide what the EAIP definition is. And for PWP,
11 the worksite must already exist in Oregon. So there is the difference between
12 whether it has to be in state, or it might possibly be out of state.

13 And then again, rather than have two different definitions of the same
14 term, we're considering removing the definition and explaining any specific
15 requirements for a worksite in Rule 350 under Worksite Modification - General
16 Provisions. Would there be any concerns about doing that consistent with what
17 we've discussed with the EAIP definition? Okay.

18 Issue No. 2. Rule 7, reconsideration, the appeal process. The
19 process for reconsideration and director review is difficult to understand. The rule is
20 confusing, and the process for reconsideration and director review is not clear to
21 parties or Division staff. Also, the rule refers to the administrator, director and
22 division, and the terminology should be consistent. So we are planning to clarify that
23 rule regarding reconsideration and director review. There's not a lot there in terms
24 of questioning for you to ponder, but if you have any particular concerns about Rule
25 7 in particular we'd be glad to talk about them now.

1 141:16: Well, my question is, what is your intent? Is it just to clarify--

2 141:21: Yes.

3 141:22: Yes.

4 141:22: --or...

5 141:23: Not to change. Like, for-- We're planning to use, I think,
6 director almost exclusively, unless it says mail something to the Workers'
7 Compensation Division. Then we'll use division. But I think our plan is to use
8 director, because that's where the authority is really vested.

9 141:39: Yeah.

10 141:46: Issue No. 3, Rule 240(5)(c) on the preferred worker
11 information. Many workers who enter into a claim disposition agreement before their
12 claim is closed do not realize they may still be eligible for the Preferred Worker
13 Program, and permanent restrictions are needed to determine eligibility. By way of
14 background, a worker may not waive eligibility for preferred worker status in a CDA.
15 When the worker enters into a CDA prior to claim closure, the insurer still must
16 process the claim until permanent restrictions are known. The requirement to
17 provide information when the parties enter into a pre-closure CDA is not clear.

18 So alternatives for your consideration is to revise the rule to clarify the
19 requirement for reporting preferred worker information to the Division when a CDA is
20 approved before claim closure, add language stating the insurer's obligation to
21 continue to process a claim after a pre-closure CDA for PWP benefits, or make no
22 change.

23 142:47: So this is something that has a direct impact on claims
24 management. And when there is a pre-closure CDA, the rules are very clear in the
25 claim site of it that we let workers know that they are not giving up medical benefits

1 or preferred worker benefits. So it's already very clearly explained to them. And so
2 I'm--we're not clear--or really understanding what needs to be a clarification in the
3 Preferred Worker Program side when it's already-- It's part of the claims process
4 piece and it's already done there, but it's listed out in the CDA document, and the
5 director approves the CDAs anyway. And so to us it's already part of that process
6 as far as notifying workers that they're not giving up their preferred worker benefit
7 and what is entailed with that, so...

8 143:48: There was somebody in the back there?

9 143:50: Ryan Weeks with Mason and Weeks Vocational.

10 (Unintelligible) a little bit.

11 143:57: (Unintelligible.)

12 143:57: You bet.

13 144:02: There are still some extra-- There's one next to me, too. So if
14 anybody wants to come up, you're welcome. And a couple over there, so...

15 144:09: Well, in regards to this, we see a lot of people who we've met
16 after claim closure, and they had no idea they're a preferred worker. A lot of people
17 (unintelligible) worker don't know what that benefit is. They're not sure if it comes
18 from the insurance company or the state. They really just have no idea. And after a
19 settlement of a claims disposition agreement, what we find is that they say, well, I'm
20 done, I've settled everything out, I don't have any benefits, I've sold everything off for
21 a lump-sum value. We've even had the attorneys who do a lot of settlements, based
22 on discussion we've had with the employee or the worker that they didn't know when
23 the settlement was going to happen, so that we get the call from the insurer saying,
24 hey, the claim has been settled, go ahead and do your normal closing process, send
25 us a closing report, contact the individual, let them know what is going on, to find out

1 they didn't know it was settled out or anything. Well, call your attorney. But they will
2 obviously get more information about the Preferred Worker Program because really
3 that's what we specialize here at our company. But I don't meet a lot of employees
4 or workers who settle out their claims and know anything about the Preferred Worker
5 benefit.

6 145:14: We notify workers in correspondence and lots of
7 documentation. And unfortunately, I've even heard it from injured worker attorneys
8 that they're--they have workers come to them with envelopes they haven't opened. I
9 don't think that changing anything in the rule is going to help an injured worker know
10 that they're a preferred worker, know about the program. I think it's--I mean, it's-- I
11 don't know if you were here at the beginning. It's--the Preferred Worker Program is
12 a program we'd all like to see more workers use, because it's a great program. It's a
13 wonderful program. But I just don't think changing anything in this rule-- Because
14 we already are giving the notice to the injured worker.

15 146:02: The first bullet, though, actually talks about the requirement--
16 you know, just a concept, the requirement to report information to the Division. Then
17 presumably the Division could take some kind of action if we knew permanent
18 restrictions, et cetera, to determine preferred worker status.

19 146:21: Well--so I'll clarify.

20 146:22: Yeah.

21 146:24: The clar--the issue, and maybe it's not well-stated, is that
22 when a worker enters into a pre-closure CDA before med stat, before knowing their
23 permanent restrictions, they CDA-- We send them a letter, hey, CDA, you might be
24 eligible for the program. They call us. We call the insurer and say, we've got a
25 worker who's CDA, can we get a copy of the permanent restrictions? And they say,

1 oh, we're done with that worker, the claim's is CDA, they stopped going to get
2 treatment, we don't have any permanent restrictions. They--so it's becoming an
3 issue more and more, and we see it-- It's--a big issue is at the point of the pre-
4 closure CDA it's like the claims process stops, and then we can't get information to
5 determine whether or not a worker is eligible for the program or not, because
6 processing isn't going up until med stat.

7 147:17: Well,--

8 147:18: We...

9 147:19: --I'm not--I cannot sit here and say that never happens,
10 because I'm sure it does. Okay? But a CDA doesn't change the fact that the worker
11 has medical benefits. And so we continue to manage the claim until medically
12 stationary time, whatever that is. And somehow, we need to be able to provide
13 permanent restrictions more clearly. We can do that. But again, that's part of the
14 claims process, and what we should do whether there's a CDA or not. CDA doesn't
15 mean anything, I mean, as far as that piece of it. We're--they have medical benefits,
16 and we have to bring that to conclusion. So CDA change that in any form or function.

17 148:04: Right. That's not what we're hearing when we call to get the
18 meds.

19 148:10: From that adjuster.

20 148:10: From the adjuster. We're not hearing that, and it's stopping it.

21 148:13: Can you require that? Can you say, we need you to--

22 148:17: We educate them on that.

23 148:17: --get the--to get a work capacities evaluation and...

24 148:20: We have requested that,--

25 148:21: Right.

1 148:22: --and we've been told that we can't require them to pay for a
2 work capacity eval.

3 148:26: But the program allows you to send--

4 148:27: Yeah, that's where the problem is.

5 148:28: --the worker; right?

6 148:30: On our dime. But our question is, why should we pay to get
7 permanent restrictions,--

8 148:34: Right.

9 148:36: --when it should fall--it should be part of-- Like you said, it's
10 part of the claims process, regardless of whether or not a CDA has happened.

11 148:42: But the ones that I've been involved recently, because I have
12 seen a few of them, are where we have an accepted condition where they're headed
13 for a release to regular work. Other conditions come into the claim, and it gets really
14 ugly. And no decision is made on those, but we settle. And our accepted condition
15 is release to regular work. Any kind of permanent restrictions or anything that
16 would--is usually related to those--the condition that was settled, I guess, that's in
17 there. And that's the one I see often comes across. I'm not saying that's the only
18 one. But we wouldn't address those; right? Because we--

19 149:18: Uh-huh.

20 149:18: --settled that. And so we're not going to seek a Work Comp...

21 149:21: So it would be like a DCS (unintelligible)?

22 149:24: Or CDAs.

23 149:25: Right. Well...

24 149:26: Well, yeah. CDA is only for the accepted condition. CDA...

25 149:30: They're usually both.

1 149:30: Right. And we understand that.

2 149:32: Yeah.

3 149:32: Never been claimed or processed in the claim.

4 149:34: But there should be something at some point that says there's
5 a regular work release due to the--

6 149:38: Right.

7 149:38: --accepted portion.

8 149:39: So if the Department called you and said--and you just sent
9 them a note from the doctor saying, you know, that this person can do regular work
10 on the basis of the accepted claim. But you know, I've run into a couple of them
11 where there were pre-closure CDAs. But in those cases, you know, we wanted
12 Preferred Worker Program benefits. So I was told, well, we made permanent
13 restrictions. So we did have to send out for work capacities,--

14 150:04: Okay.

15 150:04: --and then that had to be looked through to the attending
16 physician. So there were quite a bit of costs associated with that, but we would do
17 that, I mean, to get those benefits. Can--it seems that you could require--if you know
18 that there is a potentially eligible preferred worker on a pre-closure CDA, couldn't
19 you write a rule to require that the insurer complies?

20 150:29: Well, that's what...

21 150:30: That's what we're trying to do.

22 150:31: That's what we're proposing.

23 150:31: That's...

24 150:32: Oh, is that what you're...

25 150:32: Yeah.

1 150:33: Well, I don't know if it should be any different.

2 150:34: I don't think the Preferred Worker Program...

3 150:35: I know. That's what I was just saying. I think it should be in

4 the claim...

5 150:38: Claims rules.

6 150:39: The claims rules,--

7 150:39: And...

8 150:39: --not in the preferred worker rule. Oh.

9 150:42: And I would support that. And if it's not happening, that's

10 where it needs to be, because it's the claim side in the house that isn't doing that

11 work. And so if it needs to be a requirement or needs to be happening because it

12 isn't happening, it needs to be there. And I'm not exactly sure what the rules say

13 around that currently.

14 151:03: Yeah. Well, and that's the...

15 151:04: Vocational rules...

16 151:05: They're being--workers are being told they no longer are able

17 to go to the doctor. And their claims adjusters are not allowing it. And we're calling

18 the claims adjusters, and the claims adjusters are saying, my case is closed, I'm not

19 paying for anything more.

20 151:17: Okay. Well, then all the more reason-- And Jen is right.

21 Claims adjusters are not going to look here. They're going to look in, what, the 60s?

22 The 60s.

23 151:26: Or Division 30. Maybe the claim closure rules. Would it be

24 the 30s?

25 151:30: No, it would be the 60s.

1 151:32: But...

2 151:33: And they're open right now.

3 151:36: Part of the-- I think, just to support where it needs to go in
4 that section, sometimes there's a problem where the employee--it gets to be that
5 Catch-22 situation. Is--the reason why they did a pre-closure CDA is the employee
6 doesn't want to treat anymore, and you can't get them--you can't get the attending
7 physician to agree to what the final standings are. You do an IME, they don't
8 concur. And the employee says, I just want to get out of here, and you do a CDA
9 and get the claim resolved.

10 It's lack of education on the examiner's part to not do that final thing
11 that-- They think, hey, I'm done, and they're happy and they're moving on to their
12 other claims. So a clearer rule under the administrative that if there is need for
13 clarification of what sort of permanent disability is probably a more appropriate place
14 for it. And then you can work on your--on the preferred worker end.

15 152:35: Yeah. And our--the way we approach it is when the--you
16 know, the adjuster says in that situation, well, the worker just stopped receiving
17 treatment, we call the worker back and request eligibility and say, call your adjuster
18 and figure out how you can get another appointment so that you can close this out
19 and we can find out if you have permanent restrictions or not.

20 152:53: But if it's in the administrative rules, then they'll stop the
21 spiraling and the specific--if the employee doesn't cooperate. They have--the
22 adjuster has some--

23 153:03: Yeah.

24 153:03: --basis to not keep spinning that circle--

25 153:06: Sure.

1 153:07: Because you see that happen, and all of a sudden it's 60
2 days, six months later, and all you're doing is-- You finally get that independent
3 medical evaluation. They say they're fine. You get the permanent, and then the
4 attending physician doesn't concur, and then it starts all over again. And you do see
5 that quite frequently in claims.

6 153:27: Sure.

7 153:29: Just to go back on the (unintelligible) standpoint, on the front
8 line, so to speak, these people work labor-intensive jobs.

9 153:35: Uh-huh.

10 153:36: They're not paperwork--document readers. They don't know.
11 They're getting a lot of paperwork, and that's--they couldn't-- Most of the males I've
12 worked with, their wives are in charge of the documents. These guys don't look at it.

13 153:46: You said that.

14 153:47: I'm just being honest.

15 153:48: Yeah, it's true.

16 153:49: It's true. And the last thing they're ever going to do, especially
17 in all of the process involved with meeting doctors' appointments, going through
18 paperwork from the insurance companies-- They have no idea what these benefits
19 are. They could read the language in front of them, and they still couldn't explain it
20 to you. So I'm just saying what I've noticed is they don't know.

21 154:08: And I appreciate that, and I think that's true. And it's not
22 whether it's preferred worker benefits or EAIP benefits or anything else out there.
23 There is a lot of that. Because we all know our system is so complex and so
24 involved, and there's so many pieces they don't understand or misunderstand.
25 Okay. I'm not sure, though, putting some kind of change of rule here is going to

1 change that, because it's still reading a document. I think it's better knowledge and
2 education on all our parts. I am very concerned, if I'm understanding correctly what
3 you're saying. And workers-- And there are adjusters, especially at SAIF, that are
4 saying because--just because they claim CDA'd, everything's over, because that is
5 not what a CDA is. Okay?

6 Now, there could be all kinds of things within a CDA in that a worker
7 thinks, my back still hurts or whatever, and I'm still treating when a doctor says,
8 no, you don't need any more treatment. So yes, we're saying no. But I think we
9 need to be careful on exactly what we're saying and how we're saying it. But I also
10 encourage--if there's really something like that going on, you need to let--tell
11 someone besides the adjuster.

12 155:16: Yeah. Call Jaye

13 155:18: I'm all for--

14 155:19: Yeah.

15 155:19: --educating people and letting them know about the Preferred
16 Worker benefit, and what can we do to help make that happen. I'm not sure putting
17 it--putting--changing something here--

18 155:29: Yeah.

19 155:30: --would help that.

20 155:30: I'd just like to see something change.

21 155:33: And I think--I agree--I mean, I do agree with you. My concern
22 is anything in writing, because that's my experience too. When I talk to injured
23 workers, and if I do initial contact, I say, you're going to get so much paperwork, I
24 think we're still back in the 70s trying to support the lumber industry, because that is
25 just what's going on. And it's going to be redundant, it's going to be confusing,

1 because they're kind of saying the same thing but they're saying different things. So
2 call us, and we'll try to explain it to you in English. And continue reiteration, because
3 it is an overwhelming world. And that's where--putting something else in writing,
4 that's just something else you're going to...

5 156:14: They're going to pass right over it.

6 156:15: Because it's just too much paperwork. They don't-- It's
7 overwhelming. And if I wasn't in the industry, I'd be like, what is this, I don't want
8 to...

9 156:25: The workers that learn and that have PROs that are
10 assisting,--

11 156:27: Yeah.

12 156:28: --(unintelligible), every one of them.

13 156:29: (Unintelligible) They're here all the time.

14 156:31: I don't have an answer for this, really, but...

15 156:33: Yeah.

16 156:34: I think awareness-- I mean, just in talking about EAIP and
17 Preferred Worker, our customers get confused on those two programs constantly.

18 156:40: Yeah.

19 156:41: And I've been doing this for 16 years with just employer injury
20 program, and now recently have been more active with Preferred Worker. I think
21 that it's just the fact that we're here and support--we need to keep talking about it
22 and using our resources, educating them and stuff. But I think it's improving, and
23 with my small experience I've seen great improvement. It seems to be--

24 157:02: Are...

25 157:02: --more active.

1 157:03: Sorry.

2 157:03: Sorry.

3 157:04: Sorry. Are you asking for something more to be said to the
4 worker in this?

5 157:09: No. That's...

6 157:10: No.

7 157:10: No, it's more of the...

8 157:11: For the insurer to report to the Division? Is that what this was
9 saying? Am I reading it correctly?

10 157:15: Yeah. Or the requirement to process the claim through med
11 stat even when a pre-closure CDA-- I mean, it sounds like that's a--it's in the 60s,
12 but it's no always being done.

13 157:25: I would vote--if we're going to change something here, vote
14 that the--that if an insurer is requested to--in these cases, in these particular kind of
15 cases, to get a--you know, permanent restrictions clarified, whether it's by a PRO or
16 by the state, that we ought to do it. I mean, I just thought that you would just do that.
17 But I wouldn't want to see a rule that says that on all pre-closure, you know, CDA
18 closed claims that we have to get that for you.

19 158:01: Yeah.

20 158:02: You know? And I know you can argue that a bit, but I just
21 think it should be upon request, because it is not a small deal.

22 158:10: No.

23 158:11: I just went through it. Which is great. We're happy about it.
24 But it--the cost on that, on level two or whatever it--level one PCE, and then looking
25 back to the attending physician, and the charges for that and the time it took. So

1 we--but we would happy to do it upon request.

2 158:30: So I have just a question, because I've never been a claims
3 adjuster. So in that case, there was a pre-closure CDA, and then we requested
4 permanent restrictions, and so you had to do additional costs. Wouldn't you be
5 required already by rule to process it through that?

6 158:46: No.

7 158:47: You just stop it?

8 158:48: We just stop. With the CDA, you're done. You're done in
9 terms of the person-- The claim is closed. And so you could have a worker who has
10 permanent restrictions, but they've never really been defined.

11 159:02: And that's the issue. Because with the CDA, prior to med
12 stat--

13 159:05: Right.

14 159:06: --or whatever, it should still be processed through to closure.

15 159:08: Well, I'm not a claims adjuster.

16 159:10: Yeah. And that's what we run into where it's like, hey, we're--
17 Not closure. I didn't mean closure. I mean processed through to med stat.

18 159:18: I think we're-- I'm sorry. I think a little bit we're talking in
19 circles. I think we're all on the same page in that we want to utilize Preferred Worker
20 Program as best we can, and somehow that isn't happening in giving people what
21 they need. Permanent restrictions. When a claim is CDA'd, it doesn't change the
22 fact that we have to manage the claim to med stat and closure, because we are still
23 paying all medical benefits.

24 What it does change is, at the end of the claim when the worker is
25 finally medically stationary and treatment is no longer needed, we don't have to send

1 them for exact permanent impairment restrictions, a PCE, because that part is
2 already settled out. They've chosen to not go that route. So we aren't required to
3 have the PCE. That part is true. To have a statement from the doctor that they are
4 now med stat and these are their restrictions-- Okay. We all know some doctors will
5 get very detailed in what that is, and other doctors aren't as detailed. So maybe
6 there's something within that piece of it that needs to be looked at. I still think that
7 needs to be part of--

8 160:33: 60?

9 160:33: --yeah, of claims and 60, and not part of this per se, because I
10 think-- Adjusters aren't ever going to come here to look at how to manage the claim.
11 So I think this is something that needs to be part of 60, and re-clarified and looked at
12 in that arena, what are we doing there, and what do we need to provide at the end of
13 a claim when that occurs?

14 160:57: Right. And just to clarify, we're not requesting that it has to be
15 a PCE. We're not even getting that statement from the attending physician--

16 161:03: No.

17 161:03: --that it's medically stationary, because they just--the claim
18 just stopped. So that's where--exactly, that's where...

19 161:10: When you guys come in, a lot of the times it's that time where
20 we're just paying medical right after settlement and stuff, so we may not have that.
21 But I mean, I would want to know what you guys do after the adjuster says no. I
22 know we've been working a little bit more together, and I'm there for that too.

23 161:24: Yeah. And these aren't workers that are going back to their
24 employer at injury. So--

25 161:27: Right.

1 161:27: --there's not necessarily even the motivation on the insurer's
2 side to help get them back to the employer at injury. Maybe they're not going back
3 to the employer at injury. So we put the bur--I mean, we put the burden back on the
4 worker. You know, you need to contact your adjuster and, you know, you need to
5 contact your doctor and make an appointment to get that final documentation.
6 There's nothing that we can do.

7 161:47: Yeah. At this point...

8 161:48: (Unintelligible) job analysis for the new position, especially if
9 returning to employer at injury, to support the one-year (unintelligible) modified job.

10 161:56: So we can say, hey, we're going to do a job analysis, we
11 should get a direct response from this doctor to tell us whether he could do this or
12 she could do this. So that gives us a good idea on where we're going, but those
13 aren't CDA claims. So we already have that built into the system when they're not
14 CDA. But when the CDA comes in, there's a lot of gray area after that, and a lot of
15 things ending-- That's where the conversation is (unintelligible) 60s. This is really
16 an adjuster's topic. But from our side, we see it as it's our topic, because these
17 people are underinformed. They're not going to read the information. They're going
18 to need to hear it from somebody. But if their attending physician has not given
19 them any permanent limitations, I don't know what I'm limited to.

20 162:34: Well, you know, again, I just want to make sure everybody
21 understands. CDA doesn't mean they're not getting medical treatment for the
22 accepted conditions. CDA doesn't have anything to do with that.

23 162:44: Right.

24 162:45: And so that is a misunderstanding with a lot of workers.
25 Sometimes they think once they've settled they're over and done, but that isn't the

1 case. And we don't tell them that.

2 162:54: At this point, I...

3 162:55: All of the documentation, and even the CDA itself, is very
4 clear that they have medical guidance.

5 163:00: Okay. We're...

6 163:02: I understand the confusion.

7 163:03: We're due to-- Well, we can pick this conversation up right
8 after lunch. We're due to break now. I wanted to let you know that this room won't
9 be actually monitored during the lunch hour. You're welcome to stay. There's a
10 restaurant in the basement. There's restaurants downtown, of course. But if you
11 have personal items, you may want to take them with you during the lunch hour, and
12 we'll-- We want to start at 1:05, I just wanted to let you know, back up.

13

14 (off the record)

15

16 00:00: And we're back on. Thanks for coming back. We were
17 discussing Issue No. 3 when we broke for lunch, regarding CDAs and sending
18 information to the Department, that kind of thing. Any additional discussion on that
19 before we move on? Okay.

20 Then we'll move on to Issue No. 4 regarding Rule 290, premium
21 exemption. Also Rule 390 and Rule 325 in these rules, premium exemption. The
22 requirement that the employer notify the insurer within 90 days of the date of
23 eligibility or hire has created issues in the reimbursement process. The Division is
24 considering changing the rule to require the insurer to notify the Division within
25 seven days of activating premium exemption.

1 Currently, the employer is required to notify its insurer within 90 days of
2 hiring a preferred worker in order to qualify for premium exemption. Could this
3 requirement have the unintended effect of limiting the statute, which provides for
4 premium exemption during the first three years from the date of hire, regardless of
5 when the employer notified the insurer? While some workers may not want to
6 disclose to the employer that they are a preferred worker, the benefits are intended
7 to be an incentive to hire or to retain the worker.

8 So some alternatives to consider. Amend the rule to eliminate the
9 requirement for the employer to notify its insurer within 90 days, amend the rule to
10 provide for division approval of premium exemption. So I would just appreciate any
11 thoughts that you have on either of those two bullet items there.

12 01:44: Why is everybody looking at me?

13 01:47: Right. I think on the-- And I might have this wrong, but I
14 understand that one of the reasons why you want early notification is that you want
15 the employer to ha--be actually exempting their--the salary from pay--reporting
16 payroll. You want--that you want that-- I mean, it's premium exemption, claim cost
17 reimbursement. So if you wait for a year down the road, and then the person gets
18 injured, then are you thinking that it go--it retroactively comes into play, whether or
19 not the employer was exempting their salary? Does that make sense?

20 02:29: The...

21 02:29: They wouldn't have taken advantage of the premium
22 exemption. But is this like-- I mean, I think it's great if you guys would do this. I
23 mean, this would be wonderful. But, you know, it means that they're not taking
24 advantage of the premium exemption piece of it, because they don't even know--

25 02:45: Right.

1 02:46: --that they're covered--
2 02:47: Right.
3 02:47: --until that injury happens.
4 02:48: Right. Maybe Matt was going to...
5 02:51: Well, the--that's prior to the 90-day--where they have 90 days
6 to notify their insurer. There wasn't a time frame. And so what would happen is a
7 worker might be there for a year, get injured and say, oh, by the way, I'm a preferred
8 worker.
9 03:04: Right. So...
10 03:05: So then the claim's covered. And then there was the issue with
11 going back, and do you reimburse premiums for that full year prior.
12 03:12: Well, that's a secondary issue.
13 03:14: A big issue.
14 03:14: Actually, it's a big issue.
15 03:15: It's...
16 03:17: Are you finished or not?
17 03:17: Oh, no. So that's why we put in the 90 day, because we looked
18 at it as an incentive to hire. They--so they didn't have 90--the employer now
19 currently has 90 days from the date of hire to notify their insurer, so...
20 03:29: So when the injured worker doesn't go back to work at the
21 employer at injury, then the preferred worker status really belongs to the worker, and
22 they're the ones who are supposed to say, "oh, hey, employer, hire me, because I'm
23 a preferred worker. And so that's--and that's one of the purposes of the Preferred
24 Worker Program, is to-- If we go back in the legislative history, it's to get workers
25 who are--who have been injured and who have a permanent restriction to have an

1 employer who says, you know, I'll take a risk on that worker because of the benefits
2 of the Preferred Worker Program. So if you have a worker who gets hired by an
3 employer, and the employer doesn't know they're a preferred worker until a year
4 down the road, and then they get hurt,--

5 04:21: And they file a claim.

6 04:21: --and they go, "Oh, by the way, I'm a preferred worker," that's
7 not what the purpose of the program is about. The purpose of the program is to get
8 the worker back to work. And so if you suddenly provide benefits for having hired a
9 preferred worker because you were lucky, then I think it gets in the way of what the
10 program's purpose is. And it becomes a problem for us when we're administering
11 the program if we have someone who comes to us a year down the road and says,
12 oh, give me premium exemption. We've already been collecting premium for a year,
13 audit-- And so that becomes a problem.

14 05:06: So then kind of the second piece to this is-- And this goes to
15 our earlier conversation, Karlene, about the Division. We don't know if premium
16 exemption is in place. It can provide an--it can be an issue at reimbursement for
17 claims cost reimbursement if we know-- We don't know if that 90-day threshold was
18 met or not, so that piece of-- We're considering changing the rule to require the
19 notice, the letter or some sort of notice to the program, hey, we activated premium
20 exemption for this employer, this worker, and then we'd add it to our system. And
21 then it would be easier on the reimbursement end. We would know if benefits had
22 been activated or not.

23 05:44: Quite often, we're the ones who tell the employers about
24 premium exemption, or how to apply it, even though it does say it on the card. Get
25 this card to your insurer, a copy of it within the first 90 days. We do our mods or

1 whatever it is, and then we leave, and maybe follow up later.

2 I had an instance recently where we had that very conversation a year
3 later, maybe even longer. The worker got hurt. The employer thought he had
4 complied. He apparently hadn't. I had no way of--I was not a part of that process at
5 all, because I told him what to do, but then I don't have any idea if he did or didn't.
6 And ultimately, it was determined by the insurer that he didn't, so he was on the
7 hook for all of that. He thought he was covered. There was some confusion on his
8 part, because we--I had no notification. I'm not really a part of it, other than telling
9 them about it, and then continuing with my process.

10 06:37: And other times, the employer will notify their agent, thinking
11 they're notifying their insurer, and their agent never notifies the actual Workers'
12 Comp insurer. So they thought they met that--you know, I notified my insurer. So
13 it's a way for us to sort of be able to follow up with an employer and say, hey, did
14 you--we've noticed that it's--we haven't received notice yet, you're close to your 90
15 days, you need to contact your insurer.

16 07:05: I think when the rules change from not having the 90 days
17 there has been a transition request for customers learning and stuff, and I think that
18 we've seen great improvement. I mean, it's been a big change, but I've seen an
19 improvement in that area for the most part. And we have also been implementing a
20 lot of processes to help customers understand that part. But I would say if we don't
21 have some type of notification, it loses the intent of what the program is, an incentive
22 to hire preferred workers.

23 I mean, I would love for our customers to benefit every time. I mean, it
24 would be nice. But at the same time, it's also costing the insurer to have to go back
25 and look at all those records. And that's why I think the 90 days was established, is

1 to hold accountability of the program, because when do you stop? Is two years too
2 late? Three years? It's usually...

3 07:56: An eternity?

4 07:57: Yeah. Yeah.

5 07:58: It's--you know, it's hard, because I'm sure--being a preferred
6 worker, it's hard to just give that information sometimes, even if you have the
7 incentive. And we hear that, too. But I know the Department has done a great deal
8 of training, and we see improvement on workers, you know, understanding those
9 benefits. So I think it's more awareness.

10 08:15: Uh-huh.

11 08:20: And as far as the insurer notifying the Department when we put
12 premium--you know, PE on there, I mean, I suppose there's no real reason we
13 wouldn't want to do that, except for--it's one more process for us. And just when
14 you--the way the--for us, anyway, the benefit of an additional piece of paper,
15 additional reporting requirement...

16 08:48: Right now, you have--for the reimbursement purposes, we're
17 require--we ask that, anyway. We ask for that.

18 08:55: But not for the seven days...

19 08:56: For claims cost reimbursement.

20 08:57: Right.

21 08:58: Yeah.

22 08:58: We ask for proof of premium exemption.

23 09:02: Right.

24 09:02: We ask for proof that you guys activated it.

25 09:03: Right.

1 09:04: So wouldn't you--are you saying that that would--there would
2 be an additional step beyond that, that you would have to notify...

3 09:08: Oh, yeah.

4 09:09: If the proposal-- If I understand-- And maybe I don't
5 understand the proposal. It would be--require the insurer to notify the Division within
6 seven days of activating premium exemption.

7 09:18: (Unintelligible) of premium exemption to our policies.

8 09:23: So you're saying because some of them aren't--you're not
9 requesting reimbursement,--

10 09:25: Right.

11 09:26: --there would be an additional-- There's a lot of...

12 09:27: Yeah, a lot-- Most of the time--most of the time, there's no
13 claims cost reimbursement. That's almost the--I mean, those are more rare, the
14 premium exemptions. That's what we're using as an example. It's not--most of the
15 time, it's not a benefit really being accessed, except for the fact that they're not
16 paying premium, which is obviously a benefit to their employer. But they're not
17 accessing anything out of the fund at that point and--until--unless there's--

18 09:53: No.

19 09:53: --another claim during that time. And that's when the benefits
20 really start getting accessed; claims cost reimbursement, or if worksite mods or
21 wage subsidies are put in place. And that's when they work directly with the
22 department, where we are reporting stuff. So I guess this ties into, like, what you
23 were saying, Matt. It's like, should premium exemption really end EAIP if--

24 10:20: Right.

25 10:20: --we're not even reporting that? And we already are reporting if

1 there's claims cost reimbursement being accessed, and we're already encouraging
2 our customers to get all of the information together to go to the Department to
3 access other benefits they have to-- That's when you are notified, and you have that
4 data, I would imagine.

5 10:38: This is one of those times I'm actually going to disagree with
6 SAIF.

7 10:43: You're allowed.

8 10:44: I like it. That's how I learn.

9 10:45: I think there's a lot of small businesses that just--you know,
10 EAIP and work--the Preferred Worker Program, it's just too foreign for them, and
11 they're not sophisticated. They're not--they just don't have the manpower to figure
12 out the programs and do all of that. But I actually like the idea of there being a
13 second tier there to say, hey, you thought you did this but you haven't yet, and we
14 want to make sure you get that opportunity. So I kind of like the idea of the
15 requirement. I realize that it's a burden. I'm wondering if there could be--instead of
16 seven days, it could be a longer period of time, so they can batch them in bigger
17 amounts and do them less often.

18 11:26: Well, the other option would be for the Division--for our
19 program to approve premium exemption and notify the insurer. And then you're
20 not-- We're then sending you a letter saying, this worker has activated PE. They're
21 able to access all their benefits in one stop, and then you get a letter-- That's the
22 way it used to be, probably three or four rule changes ago, or more, where...

23 11:51: It would be more streamlined for our reimbursement purposes,
24 that's for sure.

25 11:54: What happened that changed it to the way it is now? I mean, I

1 know there's been three or four changes, but...

2 11:59: Yeah.

3 12:02: I thought it had to do with just our workload back when it...

4 12:06: That's what I've been told.

5 12:08: I remember the...

6 12:09: Yeah.

7 12:10: I think the premium exemption has always had insurer

8 participation, always. You had to have it. We have to have--review the policy and

9 make sure that there's no gaps in coverage. And all of that information, if it's

10 (unintelligible) of the claim, we have all of that information.

11 12:24: Plus, you wouldn't necessarily be in a position to always know

12 when an employer had notified us that their--that they were requesting premium

13 exemption, because there wouldn't be any benefits that would be activated other

14 than that.

15 12:42: Currently--

16 12:43: Yeah.

17 12:43: Right.

18 12:44: --written.

19 12:45: And also, SAIF--if we have a situation where an employer says

20 they thought they reported it and we collect that information, we will get an opinion

21 to--go ahead and apply it. I have many occasions to where there was maybe a--

22 12:56: You have lots of discussion.

23 12:56: --misunderstanding or something. We just add additional

24 information.

25 13:01: In this case, that's not what I--what the employer was told.

1 They were told that it was us to make the decision.

2 13:06: Right. And the 90 days is still fairly new when it comes to a
3 complex set of rules that's not used that often, if you think about it. I mean, we did a
4 huge amount of training out there, and still the customer was like, "90 days?" They
5 have so many time frames with Workers' Comp to begin with. But I think changing it
6 could almost be more confusing, but I don't know. I know that in the past it was a
7 huge cost for going back and fixing it. But if there was, like you said, some type of--
8 something that's not so--no, you did it past your 90 days, or maybe the--it starts
9 effective once they notify the insurer.

10 13:43: Again, I think that there's an issue between whether we have--
11 A worker goes back to the employer at injury. That's easy. It's when the worker--
12 And you know, you all approve the preferred worker status for the worker, and-- You
13 know, if you notify us, who are you going to--are you going to tell us that the
14 employer is entitled to premium exemption? Because you don't necessarily know
15 who the new employer is. Or it could be a new employer months down the road.

16 Well, that's the--at the--you know, the initial hire, when we're doing the
17 mod or whatever, that's one of the benefits. We would add premium exemption to
18 our system and send a letter. That's what-- It used to be they would sign a card, the
19 pre-- They actually signed the back of the preferred worker card.

20 14:33: Yeah.

21 14:34: We would approve premium exemption, and we'd send a letter
22 saying this--you know, this employer-- Our system shows who their current insurer
23 is. We send a letter to the current insurer saying, this is who--or this employer has
24 activated premium exemption for this worker. I guess what would be a situation
25 where premium exemption would be denied?

1 14:55: Well, if it's more than 90 days.

2 14:57: Well, yeah. That's why...

3 14:59: But...

4 15:00: If we're approving it up front,--

5 15:01: Yeah.

6 15:03: --the Division, within 90 days, obviously, because that's--

7 15:05: Yeah.

8 15:05: --the way the rule is, and we send it to you, it sounds like...

9 15:08: Well, and I don't think we would object to that, but what I

10 wouldn't want to have happen is it be the only way that we could apply premium

11 exemption, because you might not be out there doing a worksite mod.

12 15:20: A lot of times, no.

13 15:21: A lot of times, you're not, so I...

14 15:22: Or we're waiting for the worksite mod.

15 15:24: I wouldn't object to-- In those circumstances, that makes

16 complete sense to me for you to say, hey, we're out here doing this, and if there's

17 been a communication gap someplace, that's fine. It's just that there are

18 circumstances where we would apply premium exemption, and you all wouldn't even

19 necessarily--

20 15:42: Sure.

21 15:43: --know about it.

22 15:44: The way...

23 15:44: There could...

24 15:45: Go ahead.

25 15:46: Well, I said there could--a possibility could be-- Because we

1 have--in the 110s, we have sort of an employer-at-injury activated set of rules and a
2 worker activated. It could be, for the worker activated, the Division approves it for
3 the employer at injury and the insurer.

4 16:00: I think I...

5 16:01: I don't know. Because you're already involved, and you said
6 that's...

7 16:02: Right.

8 16:03: --easy, you're over there. But it's when a SAIF-insured
9 employer or whoever--your insured hires the worker just off of Craigslist or whatever,
10 and that worker happens to be a preferred worker. That's where the
11 communication-- It's not--it's--I would say it's rarely, if ever, employer-at-injury
12 activation. It's that worker activation where we're telling the employer-- It may not
13 be on an on-site. It may be in a wage subsidy, and we're calling to approve the
14 wage subsidy. And we always say, "By the way, you've got 90 days to notify your
15 insurer." So it would be a way for us to approve that, perhaps.

16 16:43: I think any way we can help injured workers, if we advocate on
17 their behalf and if you guys do that, I think that's fabulous, because I do believe
18 those are the ones that are missed often. We're notified on every preferred worker
19 automatically at closure from the Department, and those are all taken--looked that,
20 and work with the employer in figuring out if they're accommodating that modified--
21 permanent modified job. So in those cases, I think we have more hands-on with our
22 customer where we don't work with the preferred workers when they've left the
23 employer at injury.

24 17:15: Well, if...

25 17:16: And actually--and my concern is always that it'd be the worker

1 who says, I'm the preferred worker, when they're changing employers, because it
2 really is up to them whether they-- Because they feel vulnerable about it. But if you
3 are involved, that's happened.

4 17:32: Yeah, we're only involved because the worker has talked to the
5 employer. We would never call an employer and say, hey, you just hired a worker,
6 you know.

7 17:38: Yeah.

8 17:40: So you could just call us and tell us or give us the information
9 we need, and we would...

10 17:44: Yeah.

11 17:45: Well, it doesn't seem good service for the worker or the
12 employer to say, okay, here's the benefit, go call someone else and they'll take care
13 of it for you, when I--when we could do it and save them the process, because
14 they're busy. They have jobs to do. They're trying to work. And they may be
15 confusing what we're saying, anyway. So yeah, if both sides can accommodate that
16 happening, I think it's a good idea.

17 18:05: I think that's...

18 18:05: I think it's an awesome idea to have you...

19 18:08: And I guess my preference-- And maybe this is part of--
20 because I'm a control freak, would be if you notify us that you are out working with
21 an employer and a preferred worker, that would be our clue to approve the premium
22 exemption. But if what you're really saying is that they are eligible for premium
23 exemption, it's up to us then to...

24 18:29: Well, they would provide us the card number, I would imagine,
25 right, because you're already working with the worker.

1 18:32: Some kind of notification.
2 18:33: Kind of notification with the card number.
3 18:34: Because we would have to have that at audit for a worker
4 activated.
5 18:37: Yeah, (unintelligible).
6 18:38: If you all don't mind doing extra work, that's--that will be good.
7 That would--
8 18:42: I think that would...
9 18:42: --eliminate that stuff falling through the cracks.
10 18:44: Well, we're typically talking to them in some fashion anyway, so
11 the workload wouldn't necessarily be so much.
12 18:51: It's really an injury...
13 18:52: Yeah.
14 18:54: So I was actually agreeing with them.
15 18:58: You're trying so hard.
16 19:01: I think that we have to remember that it is employer-at-injury
17 activated. And we did remember, but it is. The rules are--there's a...
18 19:09: Well, and it's hard. It's hard when we know we have a
19 preferred worker who's come back to work for another one of our insureds, and we
20 can't say anything.
21 19:19: Yeah. We might even have to claim the minimum preferred
22 worker, but we still can't do anything.
23 19:24: Because it is...
24 19:24: I mean, we don't say anything.
25 19:27: Yeah.

1 19:28: It's on the worker.

2 19:30: Okay. The...

3 19:31: So the more we can do to educate, the better.

4 19:33: Okay. That was very good information. Thank you very much.

5 Are we ready for Issue No. 5? Okay. Issue No. 5, affecting Rule 330, claim cost

6 reimbursement. The time frame for submitting requests for reimbursement is not

7 clear. The current language starting the time frame at the end of the quarter within

8 which payment was made seems unnecessarily confusing.

9 In 1990, the rules provided that requests for reimbursement be made

10 within one year of payment, and the department would reimburse on a quarterly

11 basis. In '97, the rule was changed to require requests be made within one year of

12 the quarter within which payment was made. The language was changed in 2009 to

13 require requests to be made within one year of the end of the quarter within which

14 payment was made. The rulemaking records state this change was, to provide a

15 more specific time limit for requesting claims cost reimbursement. However, it is not

16 a clear time frame.

17 So alternatives would be to amend the rule to require requests to be

18 made within one year of when payment was made, or amend the rule to require

19 requests to be made within 15 months of when the payment was made, or leave the

20 rule as it is, or any other alternative you might think of. Your thoughts?

21 20:50: Either one is better than what you have right now.

22 20:53: Agreed.

23 20:58: Are there times when it would require 15 months, as opposed

24 to a year?

25 21:08: I don't think that either way...

1 21:12: Yeah.

2 21:13: Okay. Issue No. 6, again affecting Rule 330 on claim cost
3 reimbursement. Paragraph (2)(c)(B) requires the insurer to include a payment
4 certification statement, but it is not clear what that is, or why the Division needs it.
5 Some background. The Preferred Worker Program Quarterly Claim Cost
6 Reimbursement Request, which is Form 3014, contains the following statement over
7 the insurer's signature line; I certify that the costs listed are reimbursable costs
8 under Oregon Administrative Rule, et cetera, the claim costs reimbursed by the
9 Preferred Worker Program are not and will not be included in the data that will affect
10 the employer's rates or dividend eligibility, and the payments reported have been
11 made in the amounts indicated and not been--have not been previously reported,
12 and reimbursement is requested in the amount of-- And then fill in the blank.

13 Alternatives would be to revise the rule to clarify the requirement for a
14 payment certification statement, revise the rule to refer to the reimbursement request
15 form instead, or again make no change. Do you see any value in that language
16 requiring that there be a payment certification statement, or would a reference to the
17 form be sufficient, since it more or less includes one of those; right?

18 22:37: Well, I don't know if the form is sufficient.

19 22:42: Again, is this an issue?

20 22:45: Just a clarification of what's in the email.

21 22:47: Yeah. I guess, would there be any concerns about doing that,
22 just referring to the form?

23 23:00: No.

24 23:01: Okay. Issue No. 7, again Rule 330, claim cost reimbursement
25 and settlements. The requirements for reimbursement of settlement amounts need

1 to be updated and clarified. Paragraph (6)(c)(A) requires the parties to submit the
2 original proposed disposition with appropriate signature lines for the Division and for
3 the Workers' Compensation Board's ALJ approval. The Division does not need the
4 original, and the Board and the ALJs or Administrative Law Judges no longer sign all
5 settlements, only claim disposition agreements. Subsections (6)(a) and (6)(c) use
6 the term disposition, but section (6) applies to all types of settlement, not just claim
7 disposition agreements.

8 So the alternatives include revise (6)(c)(A) to remove the requirement
9 for the original proposed disposition; revise that same rule to remove the
10 requirement for appropriate signature lines for WCB or ALJ approval; and revise (6)
11 to replace "disposition" with "agreement," "settlement," "stipulation," or a combination
12 of terms; or again make no change to the rule.

13 24:23: That's a lot of information here.

14 24:24: Yeah.

15 24:25: It's a little confusing. What--it is very true that all approvals of
16 the CDAs and the DCSs are electronic now. We get the card on the CDA that it's--
17 We get notice. So the signature piece isn't necessarily--on the original document
18 isn't necessarily needed anymore. We get notification that you guys--that the
19 Department has approved it.

20 24:53: Our con-- I think this was-- I might have been the one that
21 brought this up. I'm not certain. With the claims disposition agreements--I'm sorry,
22 the DCSs, the Board doesn't require--doesn't sign them anymore. They send you
23 guys, I guess, a letter of approval or whatever.

24 25:10: Uh-huh.

25 25:10: So our rules do say that we have to have the signature line in

1 there, and that we need the originals. So I think I was just wanting this to be more in
2 line with what the Board was doing. So we don't want to require to have that
3 signature line in there if the Board is not requiring it, and then we also--we
4 obviously--I don't think we need the original if the Board doesn't need the original.
5 So that's-- And I was just kind of clarifying and streamlining it to go along with the
6 Board.

7 25:33: We're certainly not going to object to that.

8 25:34: We still-- For the CDAs, you know, there still is a requirement
9 to have the signature line in there for the Board, because they still do sign those. So
10 we would still want that, but not for the disposition--for the DCSs.

11 25:46: DCSs.

12 25:46: Yeah.

13 25:47: Yeah, we're going to...

14 25:48: Okay.

15 25:49: That would be fine.

16 25:49: Okay.

17 25:49: Okay. Thank you very much. Issue No. 8, Rules 335 and 337
18 regarding wage subsidy. The Division is considering the following revisions related
19 to wage subsidy. Allow unlimited use of wage subsidy with a maximum dollar
20 amount, and limit wage subsidy to one use per employer instead of one use per job.
21 Some background. Some workers need more than the current two uses of wage
22 subsidy to successfully return to work. An example would be if the first job doesn't
23 turn out to be a good fit for the worker. The maximum dollar amount could be
24 indexed to the average weekly wage, as well. The Division has seen cases in which
25 the employer changes the job title after six months to extend reimbursement. Thus,

1 one of the options was to limit to one use per employer.

2 Alternatives include revise the rule to allow unlimited use of wage
3 subsidy with a maximum dollar amount, revise the rule to limit wage subsidy to one
4 use per employer. Well, I'm really interested in your advice on this one.

5 26:55: Just directly to that point, we see a lot of times employers get
6 pretty excited about their return to the Employer-at-Injury Program coming back to
7 the initial employer, putting it a one-year worksite mod placement and getting right to
8 the end and going, hey, we want to change this because we've added new jobs,
9 duties that he could do or she could do, and we could get this modification
10 equipment to expand our horizons, so to speak.

11 So that, for me, kind of has leaned into telling employers we've got a
12 great benefit bringing this individual back, but you don't get a chance to keep going
13 through the system to add new options to your company so you can, you know, grow
14 that much on the back of the Preferred Worker Program on one injured worker. So I
15 think just in that matter revising it to one per employer makes more sense, but giving
16 that option out more often to that individual. Today, people don't work one or two
17 jobs in a lifetime.

18 27:45: But also promotions--I mean, a lot of times preferred workers
19 apply for new jobs and stuff and--shortly after. And I see that they would really
20 benefit in a position that they just were promoted into, or new opportunities, so we
21 wouldn't want to hold them back.

22 28:02: I'm a--I'd rather see money than the one employer, because we
23 currently have a situation where we have a lot of older employees that are retiring
24 and wanted to retain employee. So we hired him into a position, but he doesn't want
25 to stay in that position. (Unintelligible) opportunity--gets a job, it would be nice to be

1 able to access the funds, and not have it detrimental because he took a little position
2 to start working, going on...

3 28:35: And then you use the wage subsidy for the lower position, and
4 then--

5 28:36: Yeah.

6 28:36: --you-- Okay. Okay.

7 28:37: And then a new position at a different location that's not, I
8 mean, a truly new position. In fact, that's one of the delays we had in determining
9 whether or not to use a preferred worker, is whether or not the position would be
10 open. And it didn't look like it would be open within the next year or two, so-- So I
11 wouldn't like to see one use...

12 29:04: One use per employer.

13 29:07: So what is it, proposing keeping the maximum amount the
14 same, 180 days, six months, or is it proposing, like, a maximum dollar?

15 29:15: Well, both. Still six months, but--and 50 percent. But instead
16 of two uses, that's really been--is really the sticking point there. Some workers, as
17 Ryan said, especially with work restrictions, may need more than two opportunities
18 to successfully return to work, especially if they're changing careers. And we see it
19 often enough to make us cringe when we do a wage subsidy. In good faith, it's--they
20 were hired, but in the wage subsidy and it wasn't a fit, and we spent \$200 on a wage
21 subsidy. They only had one use left. That doesn't seem like we're really providing
22 them the opportunity to really return to work in today's economy. Four or five years
23 on a job is not that--

24 29:59: Right.

25 29:59: --is quite often the average. So to say you get two shots at

1 something with the work restrictions doesn't seem really like we're providing all that
2 we can. So the idea would be instead of having two uses, have unlimited uses of a
3 capped amount of money. So maybe I only need one wage subsidy for my type of
4 wage that I'm requiring, but perhaps somebody with a much lower wage job and
5 lower skills might need five uses of the same amount of money to become
6 successfully employed. So get rid of that two. Still keep it capped so it's not
7 unlimited, but give those individuals that need more opportunity more chances. And
8 subsequently, if I've used it all but \$1,000, I could perhaps go to my last employer
9 and say, I can offer you \$1,000 if my wage is reimbursed. It's all I have left, but at
10 least I can use a little bit too for an extra shot.

11 30:53: And what about exceptional disabilities?

12 30:55: Exceptional disabilities? That's a great question. That could
13 fall under the same category. They get 75 percent for a year. So the time frames--
14 don't think we're proposing that they change, but their dollar amount could
15 potentially be different.

16 31:12: What's the fiscal impact of that as far as (unintelligible) used a
17 lot more, is that going to-- If we're already increasing it up to 50 percent, I'm just
18 kind of curious.

19 31:25: Well, we're not increasing it 50 percent. It's 50 percent of their
20 gross wages reimbursed for six months. So that will stay the same. That's the max
21 for any one job. I don't know that we've come up with an actual number yet, but
22 we're looking at what an average wage subsidy would be. And let's pretend it's--
23 \$10,000 is an average wage subsidy. Well, if you get two of those, the average
24 would potentially be \$20,000 as your fund. So use that as a starting figure. Not
25 necessarily increase that greatly, but have more flexibility within an amount.

1 31:55: We've run preliminary numbers for the purposes of this meeting
2 enough to know that with our--with these proposed changes, there's enough, but we
3 would come up with more exact numbers when we're writing the draft rules.

4 32:11: Aside from the potential fiscal impact, if that was too much for
5 the fund, if we were to find that out, are there any concerns that we should not do
6 that, provide more than two uses?

7 32:26: I think it makes sense. You know, one always worries about
8 the examples where there are going to be people who will take advantage of it. But I
9 guess the question that we have to consider is, does that potential outweigh the
10 opportunity to get workers, you know, that extra chance that maybe some of them
11 need? And it seems to me that our ultimate goal is to have the worker successfully
12 employed, so that makes sense.

13 32:56: We did kind of hear two different sides of the issue in terms of
14 whether it should be limited to one use per employer, so I know we weren't--there
15 was definitely not consensus on that, which we don't always achieve, of course, in
16 meetings such as this. But do you have anything more that you'd like to add on the--
17 I guess the--it was to address a particular problem of maybe misuse of the program
18 by some employers. But obviously some employers use that very well and
19 responsibly, so it's--I guess it's often the people who use things irresponsibly that
20 can affect things for everyone else, so...

21 33:32: But returning to that, if it's the employer that misuses this, is not
22 being responsible, it doesn't fall back on the worker losing out, and they get the
23 chance to use it again with a different employer. And that's why I like to see that
24 open to other--more people.

25 33:43: And that does put the worker in a difficult situation. It is their

1 benefit to offer an employer-- Just because you hire a preferred worker does not
2 mean you get their wage subsidy, but once you're hired, give me your wage subsidy
3 or-- Your second one is really a bad situation for a worker. At the same time, it is
4 used-- And I preach to them, use it to move up in the company.

5 One thought that I considered was one use per year. That might
6 separate that. Because what we get is, okay, the wage subsidy is about to end,
7 we're going to move him from this to this, that's awfully the same, and it just really
8 feels-- And the worker is not going to be in a position to say no about their wage
9 subsidy, because that could very well end the employment. So something to get rid
10 of that little piece, while being able to use it to get that promotion or move up to a
11 different position.

12 34:37: When you say one use per year, you mean per employer?

13 34:40: Yeah. So if I--

14 34:41: Okay.

15 34:42: --get hired and they use my wage subsidy, after that six months
16 there needs to be a gap. You can't just roll right into the next wage subsidy,
17 because that it usually pretty apparent that they're just trying to stretch it out.

18 34:56: Any thoughts on that?

19 34:58: And it would be employer at injury--two uses, too? Is that what
20 you're...

21 35:02: Well, I'll say just to clarify, this is worker use.

22 35:06: Okay.

23 35:06: The employer at injury would still get, you know, their one wage
24 subsidy. But if they were with the employer at injury, used the employer-at-injury
25 wage subsidy, and then got moved into a different position, the worker would have

1 the option to offer one of their wage subsidies, which is the way it currently is.

2 35:19: Yeah, that sounded...

3 35:20: Change-- Yeah.

4 35:22: I feel like that's okay, honestly.

5 35:24: Yeah.

6 35:25: Okay.

7 35:28: Thanks for your input. Issue No. 9, affecting Rules 345, 346
8 and 347, employment purchases. The rules on employment purchases have not
9 been updated in several years, and the Division has identified the following updates
10 to reflect the current economy and recent workforce trends. And there's some
11 similarities to the last issue that you'll recognize. Allow unlimited use with a per-use
12 cap and a maximum dollar amount per category. Should the number of allowed
13 uses be different depending on the category?

14 Tie maximum expenditure limits to the cost of living. Increase the per-
15 use cap for tuition from \$1,000 to \$2,000. And should the maximum expenditure for
16 tuition not be per-use? Increase the per-use for lodging from \$500 to \$1,000.
17 Clarify that the combined period of one month for lodging, meals and mileage mean
18 within one month's period of time, not combined. Increase the per use, per cap--or
19 per-use for clothing from \$400 to \$500, with unlimited use up to \$1,000.

20 Add a new category for transportation-related purchases, including
21 vehicles, to enable the worker to get to the work--get to work in the short-term, such
22 as a bus pass, gas, insurance, or car repairs such as new tires. These types of
23 expenses are currently treated as miscellaneous. The purpose is to help the worker
24 get to a job, not to help maintain a vehicle. A reasonable cap may be \$1,000 with
25 90--within 90 days of hire.

1 And amend the language as follows to reflect current practice. “The
2 Division will provide payment, but will not otherwise assume responsibility for
3 employment purchases.” The Division may make direct payment, but has no liability
4 after the purchase. And clarify in Rule 347 that, although a request may be made
5 “prior to employment,” there must at least be a job offer and start date. And the time
6 frame in Rule 347 of three years after the date of hire seems too long for one job.

7 So I know that’s an awful lot of stuff, so we’ll probably go back and
8 we’ll address them one at a time. So your thoughts on allowing unlimited use with a
9 per cap--use cap and a maximum dollar amount per category?

10 37:53: I could provide a little clarification. This is real similar to the
11 wage subsidy. And currently, how it is is we have--you get two uses of clothing
12 benefit, for example, when you become a preferred worker, and they are for \$400
13 maximum apiece. So that essentially amounts to two jobs you can get work-related
14 clothing for. The first issue there with that is it has--the amount has not changed in
15 20 years. It has not kept up with the cost of living. So that’s one issue.

16 The other is you get two uses. So when you use a clothing for--a
17 clothing allowance for a job, we highly recommend that they get \$400 worth of
18 clothing, because that’s one of your two uses. They might not need \$400 worth of
19 clothing, but typically they’ll figure out a way to get there. And that’s fine, but the
20 idea of--for these to use unlimited use, but cap the total, but you can use what you
21 need, rather than a big chunk here and a big chunk there-- I might need \$20 of
22 clothes for one job. My next job, I might need \$150 for the job. But in--the way it is
23 now, I’ll probably buy \$400 for each, because those are my two uses. But this
24 allows greater flexibility, while also increasing the total amount for all the different
25 categories. Clothing was just an example.

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39:13: Any concerns?

39:14: I think it's fundamentally reasonable. And it does seem--the current method seems to maybe drive use of the fund that doesn't necessarily need to happen. So instead of using...

39:30: Or you don't even know,--

39:30: Yeah.

39:30: --because you haven't been doing the job long enough.

39:32: Yeah.

39:32: And if there's obstacles and delays and exposed to injuries, that...

39:37: And again, two uses--I don't know really where that was determined that that will get you back to work. And this allows you more opportunity to try things. And if you don't succeed, you still know you have another opportunity.

39:53: And the related question, which--should the number of allowed uses be different depending on the category of service or category of purchase, I guess?

40:06: Tools and equipment have two uses. Clothing have two uses. Tuition has two. They all essentially have two uses, except for moving has one. Is there a reason why they shouldn't--any of them shouldn't be unlimited use within a dollar amount?

40:24: Other than moving.

40:25: Other than moving.

40:25: Yeah. Move once.

40:29: Okay.

40:31: Okay. Thanks. And then tie maximum expenditure limits to the

1 cost of living. And there was a cost-of-living clause up above in the last issue that I
2 don't know if we actually talked about. I guess that would be some kind of indexing
3 method either to the state average weekly wage or to the consumer price index or
4 something like that.

5 40:49: Well, that was an idea so that, like, we don't have to every
6 couple years reopen the rules to-- And I think we did it with voc. So that every
7 couple years we don't have to reopen the rules because things are more expensive.
8 It kind of--as the cost of living moves up, the category just naturally increases with
9 that. That's one idea that's up, so...

10 41:12: Any concerns about that?

11 41:14: Which index are you thinking of tying it to?

12 41:15: Yeah.

13 41:16: Yeah.

14 41:16: In voc, we indexed it to the state average weekly wage,--

15 41:18: It was the state average weekly wage.

16 41:19: --which is typical of some other Workers' Compensation
17 benefits. I don't know if that's applicable to these categories, though.

18 41:26: Employment purchases? Clothing? Tools? Tuition is a whole
19 other thing. That--

20 41:33: Yeah.

21 41:33: --goes up in...

22 41:37: The thought is that in 20 years we don't have to open it up, and
23 it's been 20 years since we've changed the limits.

24 41:44: So we--what, are we looking at average weekly wage as the...

25 41:47: I don't remember what-- There was--we were working with

1 IITR on that, and we hadn't run those numbers yet to compare if we should do
2 either/or. I think we were going to do it similarly to voc,--
3 41:57: Yeah.
4 41:58: --if I remember correctly.
5 42:00: Yeah, tie it to something specific.
6 42:03: Yeah.
7 42:03: Yeah, I don't have a big concern. I would just encourage you,
8 like I always do, to make it consistent with as many other things that you have--
9 42:09: Right.
10 42:10: --as you can.
11 42:11: Agreed.
12 42:12: Agreed.
13 42:12: And...
14 42:13: So much of what happens in Workers' Comp is tied to average
15 weekly wage.
16 42:17: Yeah.
17 42:18: With one exception, I think, for PTD in terms of what's going to
18 be a suitable job to go back to. That's index tied to the federal poverty level.
19 42:27: Yeah.
20 42:27: That was statutory, so we didn't have any say about that one,
21 but...
22 42:31: Yeah, don't go with that.
23 42:36: That's exactly what I was thinking.
24 42:37: Increase the per-use cap for tuition in from \$1,000 to \$2,000.
25 And then should the maximum expenditure for tuition not be per-use? I guess it's

1 just a question of whether you think that's the appropriate increase, given the
2 amount of time that's gone by, in terms of the practical aspects of what it costs.

3 43:04: That's kind of the catch-up to the 20 years that we haven't.
4 And then moving forward we tie it to something, because it hasn't been changed in a
5 very long time. And getting tuition books and fees for \$1,000 for training required for
6 a job for 1,000 bucks is pretty difficult.

7 43:24: If you're taking the time frames for the number of uses off, are
8 you going to--are you going to run into situations where somebody's using all of their
9 benefits in the first quarter, and they're going to get to the second quarter and
10 they're not going to have anything?

11 43:39: That's a good question. And we-- I don't know that I stated
12 that right. There will be a maximum amount, but there will be a cap per use, too.

13 43:47: Okay.

14 43:48: So for example,--

15 43:48: That does make sense.

16 43:50: --our clothing-- I don't know if it's in this one or not. Yeah,
17 down below. A total of \$1,000 for clothing. Max per use is \$500. Because it's--

18 44:00: Okay.

19 44:01: --been \$400 for 20 years. So we'll raise it in case there is a
20 need, but-- The max they could use at any one time is \$500, but they could use less
21 than that until they reach \$1,000.

22 44:10: That makes better sense. Okay.

23 44:11: So it will all be capped per use, as well.

24 44:14: So there was a related question on tuition, whether that one
25 should be per use. Does that mean that they might be able to spend it all at once?

1 44:22: That's the question.

2 44:23: That's the question.

3 44:24: That's the question. Tuition maybe being a little different

4 animal than the others, typically more expensive.

5 44:36: Well, I guess with tuition my question would be, what's a use?

6 Is it a quarter? Is it a class? Is it...

7 44:44: It's a job. So I get hired to work here, and they want me to

8 take--

9 44:49: Whatever it takes--

10 44:49: --a couple of classes to get a...

11 44:50: --to skill up to that job?

12 44:51: Yeah.

13 44:52: Okay.

14 44:53: Because we're not a--you know, we're not a retraining program,

15 so we--

16 44:56: Sure.

17 44:57: --don't want to get into, like, oh, we're going to try to help you

18 get your associate's degree. It's, you know, I got--

19 45:00: Right.

20 45:00: --hired here, they want me to take, you know, an Excel class,

21 this class, this class to get my computer up to speed.

22 45:07: Yeah. No, I understand. I just didn't know how you were

23 defining that.

24 45:09: That's a good question.

25 45:13: I don't know. I have no idea.

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45:16: Okay.

45:17: Well, for instance, like getting a CDL for a new job, a commercial driver's license. So I was just actually looking to see what the cost was on that right now, because that's something that comes up frequently.

45:26: It is. And it's way more. We end up combining with voc rehab, State of Oregon, OVRs. We can put in our portion, the \$1,000. But if that preferred worker has a job waiting for them as a driver and they need a CDL, voc rehab is on the hook for the rest, because that's all we have is three grand. And sometimes they can do it, sometimes they can't.

45:45: IITR is saying it's \$4,700 for the CDL.

45:48: Yeah, that's about right.

45:49: Wow.

45:49: And it's, like, a one-week class. So it's something that we can do quick. It was done a lot in the 80s, I know that,--

45:55: Uh-huh.

45:56: --but we've kind of gone away from that.

45:58: Wow.

45:58: That was my first thought, is the CDL.

46:00: Yeah.

46:01: And that's a common...

46:02: It is.

46:02: We're helping...

46:03: A requirement--

46:04: Yeah.

46:06: --is would be able to drive with no restrictions, but they don't

1 have a CDL, so they're...

2 46:09: And there would be a job offer on the table, so it's something
3 that would lead to employment if-- But we can't do it all by ourselves right now.

4 46:26: One of the bullet points is increase the per-use cap for lodging
5 from \$500 to \$1,000.

6 46:33: And that's lodging associated with training, if they have to
7 travel.

8 46:39: Oh, I'm tempted to just go to Vegas.

9 46:44: I just have a question. This was part of me learning about this.
10 I don't deal with the tuition on (unintelligible), but-- So would the worker-- I mean,
11 we can see the preferred work--or any worker, anybody can--like school, but is it the
12 same idea that you have with the other purchases, maybe like the wages, request
13 the second one in--within a year? I mean, is there a time frame? They just keep
14 changing,--

15 47:09: So they don't become a--

16 47:10: --I got my CDL, now I want to go to something else.

17 47:11: --perpetual student situation?

18 47:12: Yeah.

19 47:13: Well, it's something that's required by--for the job. And then we
20 do discuss it with the employer. So you're requesting this person become a master
21 gardener. That is actually one that we did. Yes, she needs--she's going to be
22 running my landscape crews, blah, blah, blah, blah, so she's going to need
23 that, and maybe a, you know, pesticide certification. So we talked to the employer to
24 find out exactly what that person needs, so they can't just kind of--oh, I want to do
25 this and I want to do that.

1 47:48: I was sitting here thinking as we're talking about this that-- I
2 don't know if we have-- Is it bill or what?

3 47:56: Bill.

4 47:57: It came from Washington. But, you know, I think one of the
5 things that sets Oregon apart from other jurisdictions--I know it is--are our return-to-
6 work programs like Preferred Worker. And this is--I mean, this is a great program to
7 get people back to work. So I think what--I think these proposals are really-- You
8 guys have been creative. It's very good. I like it.

9 48:25: On the top of Page 22, I guess it is, clarify that the combined
10 period of one month for lodging, meals and mileage means within one month's
11 period of time, not combined. So you can't just piece them together over a year or
12 something like that. It has to be within a one-month time frame, I guess, just to put
13 some parameters on that. We already talked a little bit about increasing the cap for
14 clothing to--from \$400 to \$500 per use, with unlimited use up to \$1,000. And then
15 the new category of transportation-related expenses.

16 49:05: Can you talk a little bit more about what you're thinking or--
17 Because I was kind of reading this, and there seems to-- I'm just a little confused.

18 49:13: The transportation?

19 49:15: Yes, please.

20 49:16: Typically, when a worker gets a job-- Well, a lot of time-- Not
21 every time, but sometimes they'll say, I need to get gas to get there, I haven't had a
22 job in six months, and I just got hired and I can't get there, I'm having to commute 40
23 miles. So we can't move them, but it's still a long commute. It costs money. Or, my
24 tires are bad or, I have a car, but, you know, something's wrong with it. And we
25 want to facilitate that becoming a successful job, and the first part is really important.

1 They're not going to get to miss days right away. And they typically are low on funds
2 to get that stuff going. The idea is let's help them--now that they've got the job, let's
3 help them to get it started right, because that's as big a part of return to work as
4 anything, is the first part of the job. That's why they have probationary periods.

5 So if they can't get there with reliable transportation now, this is to add
6 it--get it away from miscellaneous so it's a little bit more standalone. We have this--
7 you have this amount of money to help get you started with your transportation to
8 get you to and from work. The reason--the reasonable cap part is \$1,000 within 90
9 days of hire. We don't want to pay for their gas forever, but we recognize it's going
10 to be a while before you get your first paycheck, you might have some stuff you
11 need to take care of for that. So within the first 90 days, we will facilitate making
12 sure you can get to work. Or making sure they have the clothes, making sure they
13 have the tools. Let's make sure they can get there, too.

14 50:39: What kind of documentation would you request, or foresee
15 requesting or requiring?

16 50:45: Well, if the car won't run, an estimate from the shop. What's it
17 going to cost to get this car running? Or we had one recently, I can't pass DQ, so
18 you can't legally drive. So, you know, what does it cost to get, you know, whatever it
19 takes to do that? Or my tires are bad and it's not safe to drive, the battery won't
20 start. I don't know what...

21 51:06: Well, I'm thinking, you know,--

22 51:07: Travel...

23 51:07: --more than fuel. Because if they can't afford to get to work,
24 that gap of how to get the reimbursement, what type of documentation. If someone
25 calls you and says, my car is broken, I have no gas, I have no money to get to work

1 and I'm going to start missing days, how are you going to facilitate a prompt--
2 What's that process? Because that what I see more of a barrier, is getting it to
3 them--

4 51:34: Well, one of...

5 51:34: --in that first period.

6 51:35: One of the ways that we have changed how we pay for items or
7 provide payment for them is through a SPOTS procurement card, a Visa. So we can
8 quick--pay quicker than we used to. It used to be reimbursement or a purchase
9 order, which could take a substantial amount of time. We can now call a Les
10 Schwab and pay for it over the phone if we need to, so that's going to facilitate that
11 quicker.

12 As far as gas, I can tell you that tomorrow I am headed to Brookings
13 for a preferred worker workshop, and I'm stopping off in Grants Pass for an onsite.
14 And a specialist who does those sort of things is going with me, and while we're in
15 town she is going to purchase a gas card for a worker. That's not typical, but we
16 definitely recognize that that's an issue, and we really try to be flexible to do that.

17 52:26: So Brian, are you saying when you purchase a gas card in this
18 scenario--is it for a limited time until you get your first paycheck in two weeks, and
19 then after that you're on your own, or is it-- What do--how is the time frame going
20 to...

21 52:36: That's what I would envision, some sort of time frame. We'll
22 provide you-- How--where do you live? Where do you work? Okay. That's a 20-
23 mile commute. Okay. We could--the reasonable amount might be \$60 in gas. So
24 we will provide...

25 52:46: Talk to the employer, and the first paycheck will be on the 1st of

1 August.

2 52:49: Yeah. Yeah. And all of this is verified with the employer, too.
3 That's the other piece of that, is no request goes without us talking to the employer
4 and verifying that they do, indeed, have a job, and they have a need for the item too.

5 53:03: So would that be the same if a worker-- I mean, would-- The
6 worker wouldn't be able to just automatically submit for reimbursement. There
7 needs to be a need or a...

8 53:14: It has to be an approved agreement--

9 53:15: Yeah.

10 53:15: --before they do that. They're welcome to purchase it ahead of
11 time. It may not get approved. We recommend they don't. But it needs to be an
12 approved agreement before anything can be done.

13 53:26: Yeah. They fill out the employment purchase agreement. It
14 has the employer information, worker information. The employer has to sign it. It
15 lists on there what they need. And we verify with the employer employment and all
16 that. (Unintelligible) send checks.

17 53:41: And this would be new, not--I mean, a new--in addition to
18 keeping the miscellaneous category?

19 53:51: We currently re--do a little bit of car repairs, \$400 at the most,
20 after scru--this type of scrutiny, under the miscellaneous category. What we're
21 finding is that more and more workers need car repairs because they've been out of
22 work and whatever happens. And so we're proposing keeping miscellaneous for
23 miscellaneous purchases, and having this be a separate category.

24 54:16: And not allow this category to-- I mean, when you run out of
25 this, max out, and if they want the access again it's not going to fall under

1 miscellaneous...

2 54:24: No.

3 54:24: Right.

4 54:25: Right.

5 54:26: And one of the things with miscellaneous is it specifically states
6 it's not used to bolster any of the other, you know,--

7 54:32: Yeah.

8 54:32: --categories or whatever, so-- Miscellaneous is used a lot for,
9 you know, eyeglasses, hearing aids, just other things that are an obstacle to
10 employment, but that don't fall into other categories, so...

11 54:49: I think a lot of that category came out of the preferred worker
12 workshops we're doing when we're talking to preferred workers, and that issue kept
13 coming up. You know, I can't--I don't have a car to get to work. So it became, well,
14 maybe this is something that we really need to take a look at as a barrier to
15 employment, in addition to the other things we're providing.

16 55:14: The third to the last bullet is, again, one that would reflect
17 current practice, that the Division doesn't assume responsibility for the employment
18 purchases.

19 55:25: But the rule currently says that we will not purchase directly. I
20 think he actually...

21 55:28: Yeah. And you are now...

22 55:30: Yeah. We say we don't purchase, we provide payment, but
23 that's just a play on words, I think.

24 55:36: It's technology changes, opportunity.

25 55:40: We've been asked to update this rule.

1 55:42: Yeah.

2 55:43: You're doing it. I think it makes sense.

3 55:46: I think some of the forms even say that that's not an option, and
4 I know that it is, that you guys do.

5 55:54: Even worse, now that we have a SPOTS procurement card
6 we're not reimbursing as much as we used to. We're able to provide payment
7 quicker and get the item quicker that way, so we're using it more and more, but we
8 are paying for the item.

9 56:10: And clarify in Rule 347(4) that although a request may be made
10 prior to employment, there must at least be a job offer and a start date. And the last
11 item, the time frame in 347 of three years after the date of hire seems too long for
12 one job.

13 56:30: Uh-huh.

14 56:32: So that is the-- When the preferred worker requests an
15 employment purchase, they may make the request prior to employment, but not
16 more than three years after date of hire? Just to put that in context.

17 56:41: Right. Yeah. Otherwise, it might not be understood. But yes,
18 three years after the date of hire may be a little too long. I don't know what would be
19 a reasonable period of time in which to bill.

20 56:56: And this doesn't include modification. This would just be things
21 you need to--for the job.

22 57:00: The thought of employment purchases is--it's to help them
23 accept employment. You know, you need tools to start work. So we get requests
24 where--I've been working here for a year and a half, sure I could use some tools,
25 you know. I mean, is that really the intent?

1 57:20: And if they're working for that employer and they change jobs,
2 that's a new job, so that doesn't apply. So they could request benefits for the new
3 job, but...

4 57:29: What if it's not a new job, but new responsibilities? So maybe
5 an expanded job.

6 57:35: I believe our policy is it needs to be 50 percent additional duties
7 to qualify for a new job.

8 57:42: But that is an argument to keep the three years. If you're
9 adding additional duties and now you need some tools that you didn't need for the
10 first year, you're still doing the same job, they just added some responsibilities...

11 57:52: But you guys are the ones who are doing this, so...

12 57:54: Well, I don't know who suggested that part.

13 57:56: I--yeah, I don't know.

14 57:58: I think we all did.

15 58:01: I don't know that we'd get a ton of them--

16 58:01: I think we all did when we were looking through...

17 58:02: --super late in the process. I don't know that we say, sorry, it's
18 been three-- The only time I run into that is if I've been working with somebody for a
19 long time and they stay in touch, like I did a creation and then I did a modification,
20 and then six--the employer is really into them, and six months later they need tools
21 because now they're going to add duties. And then another six months later, oh, we
22 want to train them to be this, because it's a really successful situation. So they're
23 slowly accessing benefits as this worker becomes more valuable to them, but that
24 doesn't happen that often.

25 58:33: So they can re...

1 58:36: So it currently says they have three years?
2 58:39: From the-- Yes.
3 58:43: It is a long time. But at the same time...
4 58:46: I think that was to request reimbursement of something you
5 purchase, like, from-- I didn't think it was...
6 58:50: It's one year for that.
7 58:51: Oh, that's right.
8 58:54: It's consistent with other reimbursement programs.
9 58:57: It seems like...
10 59:00: If you're not seeing it as a problem-- I mean, I guess I sort of
11 assume that you all were seeing problems, and it was making it difficult for you to
12 administer the program. But if it's not--that's not the case, then I would hate to see
13 somebody need the reimbursement.
14 59:20: I don't think these things have been difficult to administer,
15 because we're able to have policies,--
16 59:27: Uh-huh.
17 59:27: --but we're trying to make it clear to administer.
18 59:30: Yeah. Well, yeah. That makes sense. I get that. I appreciate
19 that.
20 59:33: Yeah.
21 59:34: And I think as Matt said, it's--I think we liken these to employer
22 incentives and worker benefits, all in the idea to return to work. And--
23 59:42: Uh-huh.
24 59:42: --if you've been there two years, have you returned to work
25 may be the question.

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59:45: Yeah.

59:48: And so--

59:49: That makes sense.

59:49: --for clarity, potentially, somebody could say, hey, I still have these tools that I could get,--

59:55: Yeah.

59:55: --two years, but they don't necessarily need them.

59:58: Well, we would talk to the work--the employer and say, does he need this socket set? And the employer might say yeah or might say no, but that's-- it could happen, yeah. You have up to three years to request these benefits.

60:10: So you ha--let's say you stay with the three years. This worker says, boy, I'd sure like those tools. You call the employer, and the employer says, yeah, he doesn't really need them. So that's--that takes care of that.

60:21: We would deny it, yeah.

60:22: Right. So I don't know. It seems like three years--it's all debatable within the three years.

60:33: Three years seems reasonable. It does seem long, but it does seem reasonable to me because we see it all the time. A doctor will declare a worker med stat, but eventually they're going to need a total knee or a total shoulder, something like that. So we already know at the point of med stat that the worker is going to get worse. So it makes sense that you would continue to offer benefits for a while.

60:59: And this wouldn't affect modification. That's a whole separate category. That's three years as well. This proposal is just for employment purchases.

1 61:05: I think it's ridiculously long. I don't know why they let it go that
2 long, but for tools and equipment-- They can't do the job, or they're doing the job,
3 and after a year it's a suitable job.

4 61:19: You can pay your own way kind of thing.

5 61:20: Oh.

6 61:20: Well, if they have their own tools-- You know, sometimes
7 working with employers, they also say, tools and equipment, go to the cheapest
8 place to get them, just get as much as you can. And the worker is going, look, I use
9 these every day, I'm not going to go to, you know, Harbor Freight, I'm going to go
10 get some Snap-on Tools or something. Well, those are going to last a lot longer. So
11 it's really-- That's where I see-- I just think three years is pretty long.

12 61:45: Okay.

13 61:45: So, like, what's--what would you consider long?

14 61:48: I would give them, like, 90 days after the one year, so you'd
15 have 15 months.

16 61:52: Fifteen months?

17 61:53: At 15 months, you would have to know. Meaning that you've
18 done the job for a year. You've got three months to clarify what you were getting
19 (unintelligible).

20 61:58: Well, there is a thought that after a while you can pay for your
21 own tools, because everybody else--

22 62:02: Well, that's what I just said.

23 62:01: --is doing it too.

24 62:03: That's what I just said, you fund yourself.

25 62:04: That's kind of part of the game, I think. You've been employed

1 for a year-- I'm thinking about employer at injury, returning to the employer at injury,
2 one year of modification after all worksite mods are involved, and we can sit there
3 and go, let's make sure this works. The vast majority I've done with you gentlemen
4 has always been really great jobs. We've had one that fell through a couple years
5 ago, a year ago. But most of those times, they've got everything in place really
6 quick after about 90 days at the worksite mod, getting everything there. They got
7 their tools quickly, because the worksite mods are waiting for--waiting for them to be
8 modified, wherever they're coming from. Nothing is really manufactured here
9 anymore, so we're going to wait for it be delivered. Outside of tools and equipment--
10 everything else, three years makes sense, but not really tools and equipment.

11 62:48: And it is a \$2,500 benefit, so there's plenty of money to figure
12 out what you need, but that's just my opinion. I think the three years was just
13 brought up as a question. I don't think anybody had, like--you know, but we could
14 talk about it and see.

15 63:04: It is (unintelligible) inconsistencies like you were saying, where
16 an injury has the year. And that part of it, I do think that they get--customers get
17 confused, whether it's the worker or the employer, because they still are trying to
18 figure out who's activating, worker or employer. So consistency is great, but I do
19 know that I see a lot of Jenny's example, too, where it takes nine months to a year
20 before they have that other surgery. You also see those end up being
21 (unintelligible).

22 63:37: Well, that's where Brian was referring. That's worksite mods.
23 And those are going to--they get the three years no matter what for those, because
24 we know that there's going to be changes physically. Even if they're med stat,
25 they're not waiting for a new knee, most of the attending physicians say, you're not

1 really going to get any better, you're going to deal with pain now, we're just talking
2 about pain management. Thank you. But we're doing stuff with that, and it's going
3 to take time. But tools and equipment was like-- Do you need a caliper to do your
4 job or not? If you do, you better get help now.

5 64:05: Yeah. Employment purchases are not related to restrictions in
6 any way. They are just what's needed for the job. Modification is-- We're not
7 proposing the same thing. And it is three years because--for those very reasons.
8 We may take a while before we're able to figure out exactly what they need, or their
9 needs might change.

10 64:23: Okay. Well, thank you for your advice on that. I guess we
11 didn't have a magic number to throw out there. And I know we've got some different
12 ideas, but we'll--again, we'll take all--that all back and consider what we think we
13 ought to do, and then you'll have another shot at these when we propose them.

14 Are we ready for Issue No. 10? Rule 345(2), placement assistance.
15 Placement assistance services can be very helpful for a worker, but the current rule
16 and mechanism for payment is a disincentive for counselors to provide the services.
17 The Division would like to provide an incentive for counselors to provide placement
18 services, increase the use of placement services, and increase the number of
19 successful placements.

20 Some background. Placement assistance is a little-used category.
21 The requirement that services result in employment of at least 90 days makes it
22 difficult for a counselor to get paid for services they've already provided. The
23 purpose of services should be to help a worker get a job. Counselors spend a lot of
24 time providing services before the worker is ready to apply for a job. And if the
25 worker does get a job, the counselor has little control over whether the worker is

1 able to keep it.

2 From 2011 to 2015 there were 46 requests for placement assistance.
3 Less than 1 percent of preferred workers use placement assistance. Only a handful,
4 3 to 8, of 162 certified vocational counselors have provided placement assistance.
5 Average time spent preparing a worker for job search. And then I'm not going to
6 read all of that to you, but there's a lot involved.

7 The Division has considered the following options for rule change, and
8 would like the committee's feedback on these and any other ideas. Define
9 placement assistance as "Services to provide the worker with skills to find
10 employment, including but not limited to intake, résumé writing, interview skills,
11 resource development, online application development, iMatch profile assistance,
12 job search skills coaching, and employer contacts."

13 Pay for a certain number of hours before the worker finds a job, pay at
14 half the billable hourly rate, or \$42.50, for services. Include payment for travel, one
15 half billable hourly rate, plus mileage reimbursement. Allow one-time use of up to
16 \$1,000 for up-front services, and allow the category to be used twice. Review or
17 remove the requirement that the worker retain employment for 90 days. Revise or
18 remove. And pay a portion, \$200 to \$500, up-front, and the rest, \$200 to \$500
19 again, after the worker is employed for 30, 60 or 90 days. And then pay a post-
20 placement bonus.

21 67:12: And just to clarify, these are just various options. They're not--

22 67:15: Right.

23 67:15: --necessarily a package?

24 67:16: Right.

25 67:17: It could be any--a combination of different things? Just ideas

1 we've--

2 67:21: Yeah.

3 67:22: --come up with.

4 67:24: I think the idea that we had-- And it goes back to those
5 numbers, 1 percent used. And I think a lot of that is because not a lot of counselors
6 are providing that service, because it is very difficult, I'm-- You know, Ryan, you
7 could probably speak to that better than me.

8 67:40: When we did the pilot program two years ago?

9 67:40: Yeah, did the pilot program two years ago. And yeah, you
10 could go get--help place them in a job. But then they have to stay there 90 days, or
11 you don't get a penny for your services that you've already provided. So that's kind
12 of cross your fingers and hope for the best. Our thought was to really provide more
13 opportunities for these workers to find jobs, because we get those calls all the time,
14 and the idea is that a lot of them need up-front services. They need help writing
15 their résumé, getting an application together.

16 Some of these workers-- And that's one thing that's easy to forget.
17 Somebody might have been on the job for 20 years and were not planning on ever
18 job searching again, and now all of a sudden--get a new job. They don't even know
19 you do it online anymore. So there's a lot of services up front that they need to
20 become ready to apply for a job. And those should be paid and billable whether or
21 not the next step is taken. But provide that money for someone to work with these
22 individuals and get them ready. And then if they place them, provide a payment for
23 that right away. They got a job, great. If it's a good fit, we probably know that after
24 30 days. And provide another incentive or another placement bonus then, because
25 in the first 30 days I think the PRO may have some sway or some--be able to stay

1 involved enough to see if they can maintain the job. The next 60, I don't think that
2 they would.

3 69:02: It's really just trying to get the funding to meet with the
4 individual, because I get the calls. They might get a call from Preferred Worker
5 saying, you can call these providers, they can help you. So you get the random call,
6 and the gentleman is in Eugene and I'm in the Corvallis area. He says, if you can
7 come help me (unintelligible). The first thing I'm thinking is, have you ever spoke to
8 Bob Grimes (phonetic) or somebody else, let me give you the closer person.
9 Because nobody wants to drive anywhere that you're not getting paid. That's just
10 the way it is.

11 And so when you're working with these workers, a lot of times you'll
12 find too is that they're--labor-intensive jobs. They're not used to communicating very
13 well. That wasn't something they've done. It's not their skill set. So you can sit with
14 them and go over a résumé, make them look great on paper, but somebody has to
15 sit with them in an interview and explain the Preferred Worker benefits to that
16 employer, explain why they haven't worked for the last three years is because of a
17 work-related injury, but all the process involved and how they can be benefited at
18 that new job.

19 So for--a lot of PROs that I've talked with who are on the program all
20 said the same thing, is that there's a lot of great ideas here, but I really need-- I
21 want to be there with them. I want to meet with the employer. I want to talk about
22 the benefits. I want to explain why they're not here by themselves. And if they're
23 going to get the interview anyway-- You've already helped them with the résumé.
24 So that's really what we're looking at. It's just some up-front cost reimbursement. I
25 don't think it's any long-term problem. Waiting 30 days for reimbursement is great. I

1 like that better than 90. I'm not going to do a 90. But the 30 days--well, it takes 30
2 days to get paid all the time, so that's normal.

3 Most of these, I think, are pretty right on. The résumé, you're doing it,
4 you know, a couple hours max. (Unintelligible) individual going to become a résumé
5 writer. Résumés are changing constantly with the world we live in, anyway. So I'm
6 just trying to get them to understand what they're selling to that employer. But if they
7 could already do it, they wouldn't need my help.

8 70:55: And I think that-- I don't know. I have a daughter who has
9 been recently looking for work, and it's a different market out there than, certainly,
10 when I was looking. And I think having professional help, especially for people who
11 have been in labor-intensive jobs who've never had to go look for a job instead of
12 just showing up and saying, hey, I want to work, or going to the union, having--being
13 in a union hall and they send you out or whatever, I just think it's really important.
14 It's really important. I don't think anybody wants to work and not get paid, so...

15 71:35: Well, that...

16 71:38: I remember when this rule came out. There was a lot of
17 discussion, that--

18 71:40: Yeah. Me, too.

19 71:40: --seemed unfair that you wouldn't get some type of a service.

20 71:45: Well, even during the pilot program, if we get six months, it
21 would kind of work out to be about four and a half or whatever from the time you
22 started. But you guys got the re-- How many of us actually requested any
23 reimbursement for working with any of the people we did in that time period?
24 Anybody?

25 72:00: Yeah, we had some reimbursement.

1 72:00: Yeah.

2 72:01: A couple.

3 72:01: We had some, yeah.

4 72:01: Did you get some reimbursements? Because it seemed like
5 when we were talking a lot after that, speaking to a few counselors, and they said,
6 oh, yeah, I met with so-and-so and so-and-so, and I asked if they would drive to see
7 me because I wasn't going to drive to Salem or drive to Eugene, and then they took
8 the time to come visit with me and we talked about everything, and it was all peachy
9 and fine. But at the end of it, I said, look, I'm not able to go with you to do this, but
10 I'll be happy to pass on information, and I'll even talk to the employer over the phone
11 if you'd like, but I'm not going to go.

12 72:30: Well, and that-- I think we took the pilot into account when we
13 didn't use a lot of it for this, because this is--because of those things. And I think
14 that this would provide more of an opportunity, not just for you, but for workers. We
15 do preferred worker workshops all over the state. We're doing one tomorrow in
16 Brookings. And these are workers--some of them are working, but the majority of
17 them are not. And I know if I had--if we had a placement benefit that worked and I
18 could invite, say, you to a Corvallis one and you would have access to 15 preferred
19 workers in the room, we would get some jobs. We would get a lot of jobs at that.
20 And that's really what we're here to do.

21 We have an interagency agreement with the Oregon Employment
22 Department right now, and we are staff side on iMatch, and I can write job postings
23 for preferred workers only. We have 34 of them right now. You must be a preferred
24 worker to apply. We're having a hard time getting preferred workers into those jobs,
25 number one, because most of them, when I meet with them for workshops, they

1 don't have an iMatch profile yet, and they don't-- You know, that's something they
2 could be helped with, or they could have a résumé. You know, we're getting the
3 employers to want to hire them, and now we need a legitimate placement benefit to
4 get those workers the help to get these jobs filled. Because the employers--if we
5 can't fill them, they're not going to keep trying, so...

6 73:42: Right.

7 73:42: Yeah.

8 73:43: And some of these-- Like, you're talking about iMatch. I
9 wouldn't even bill for that. Because if I met with the individual, I'd say, I want you to
10 do these things, first of all, I want you to go to the Employment Division, you're going
11 to--they've already got professionals working there to do this job, the state pays
12 them every day, go take care of it, when you're done with that, come back to me and
13 we'll move on to the next step.

14 I really only want to be there for them to actually physically be involved
15 with that employer, the first contact, the initial review to make sure they go, they
16 don't completely ham it up right off the bat. And so we can get them at least one
17 foot in the door, get the employer's ears perked up about the benefits associated
18 with employment, help the under--help them understand. The worker going, I really
19 don't know about my Preferred Worker benefits, but I got these benefits by the state,
20 and hand them a piece of paper isn't going to work. You need somebody to explain
21 they're being back not just by this individual, but some other entity. If they don't see
22 it--if they don't see it, the employers are kind of like, I don't know who you are, all I
23 see is you haven't worked for two and a half years, and that doesn't look good.

24 74:36: And you're telling me you need more modifications.

25 74:38: Right, and you want some mods, I don't know what you're

1 talking about.

2 74:41: Yeah, I agree. Any time we can get someone else that knows
3 the program to talk to that employer. Because you hit it on the head. You know, the
4 minute the interview goes, I see you were out of work for two years, could you
5 explain that-- A lot of times, that's the end of the interview. If there's not somebody
6 there to kind of-- Because they can't always talk about it. That's why we go out and
7 work with them, to try and give them the information. But they're still not
8 professional job seekers, so they need that extra help.

9 75:04: Like truck drivers, the guys that work in the logging industry.
10 They haven't done résumés. They haven't interviewed for jobs. They just have
11 been sent from one organization to the next their entire career. They have no
12 communication skills when it comes to getting employment. So you look at them
13 and they just--I'm not going to do it at all (unintelligible), so they just sit at home.
14 They're scared.

15 75:25: How often can workers use this benefit?

16 75:28: Well, right now it's a....

17 75:31: Max of \$2,000 as many times as you like. But typically, it just--
18 it gets billed \$2,000. So our proposal-- Like, we went and met with counselors
19 throughout the state, and just pretty much asked them, what would it take to get you
20 to use the placement assistance? And that's where we, you know, got how many
21 hours and everything. But yeah, I mean, there needs to be some services--some
22 payment for--that's not tied to a job. Because there is value--we feel that there's
23 value in paying for somebody to help them write a résumé. Anyway, so what was
24 the question?

25 76:08: We proposed \$1,000 for up-front services. So if you write them

1 a résumé, Ryan, for example, and then they move to Portland and Lisa Broten
2 (phonetic) helps them with interviewing, those all come out of that \$1,000. They
3 have \$1,000 to get skilled up to be able to apply for a job.

4 And then placement bonuses for those that are providing placement
5 services to them. The thought was, some money when they get placed, they start
6 their job, and some money when they make it 30 days. So we thought four of those.
7 So you could get placed into four different jobs, basically. Right now, it's just a dollar
8 amount. So you get the up-front services, you're ready, you're skilled, and now you
9 have four opportunities for someone to help place you in a job, with the idea that
10 hopefully that will result in long-term employment.

11 76:57: And I presume that bonus concept is to encourage placing
12 people in work...

13 77:05: Good jobs. Not just go to there, yeah. Yeah, you can have--
14 you can get a placement benefit when they start a job. But if it is a quality job and
15 it's a right fit, you're going to get more money. It's going to be--you're going to be
16 more successful within the program if you provide quality work.

17 77:20: We want the incentive for the counselor to be to find him a job,
18 also. I mean, their résumé writing and everything and all the up-front is great, we'll
19 pay for that. We don't want that carrot--like, get them a job and you'll get more,
20 because we want to pay for a job.

21 77:30: Yeah, it makes sense.

22 77:32: I like it.

23 77:35: It sounds like that's pretty positive feelings about this particular
24 category and changing how it's paid.

25 77:46: Would you ask the providers if they were okay with being paid

1 half the billable rates?

2 77:53: Well, I think that--it was half--it was supposed to be half the
3 billable rate for travel.

4 77:57: For travel. Yeah, those two--

5 77:58: Oh, okay.

6 77:58: --should've been one. Yeah. You get paid the regular billable
7 rate for what you're doing, but travel you get half.

8 78:04: Yeah. Yeah.

9 78:05: Okay.

10 78:05: Yeah, that's (unintelligible).

11 78:06: That's a good question.

12 78:09: We're going to pay half, but we want you to use it. No, those
13 are--that's for travel. There's a regular rate for--standard rate for actual work.

14 78:20: Well, thank you.

15 78:20: Somehow that helps employees to not be afraid to use the
16 preferred--their preferred worker benefits?

17 78:27: Well, we hadn't established it yet, so I...

18 78:29: I mean, in the trial.

19 78:31: Well, in the trial-- I didn't ever charge, because I didn't want to
20 take out of the fund for something I didn't think I could help them with. I could help
21 them with writing a résumé, but it really depends on the character of the worker
22 themselves. And the ones that I was meeting with, they just didn't present very well,
23 which is a pretty common scenario. So the biggest benefit I could be to them was to
24 actually be with them when they were meeting with a prospective employer to help
25 just take off the edge, to get them more comfortable to really do the sales side of the

1 job.

2 They were really good at what they wanted to do. I'm sure they had a
3 lot of experience, and really put a lot of information--they gave me a lot of
4 information about who they are and how they got there. So I was like, I think you've
5 got everything you need, you just--I'm going to show you how to present that. And
6 that's what we really dealt with. (Unintelligible) for it, but I think some of us were
7 thinking, we're pretty busy already with our everyday lives, and there wasn't a big
8 incentive to go out and assist these people, truthfully.

9 79:25: And I--and the trial really was not based on our proposal here.
10 It was based on some other criteria. And I think, as Ryan mentioned, the individuals
11 who partook the preferred workers were probably not representative of the overall
12 preferred worker population. We would refer them--if they called and were like, I
13 can't get a job, can't get a job, can't get a job, well, here, we're doing a pilot, call
14 them. We now have access to a lot more means to connect job-seeking preferred
15 workers to these individuals, these PROs, so I think they'll have more successful
16 candidates to work with than what the pilot had.

17 80:03: It sounds like that was a classic adverse selection process.

18 80:06: Uh-huh.

19 80:07: It was.

20 80:07: Yes, it was.

21 80:08: So is the process you refer them to the PRO to get the
22 assistance, or can a preferred worker just come to you and ask for the assistance?

23 80:17: Any and all, yeah. We want them to go direct-- I also want the
24 PROs that are interested in this to give us a list. And if somebody is in their area,
25 we're going to say, call Ryan. When we do preferred worker workshops, I would

1 love to have a PRO there that wants to work with them. And I'll hand them to them,
2 and they can go from them. Any way we can.

3 80:35: But oftentimes the workers are calling us--

4 80:37: Yeah.

5 80:38: --and were--you know, hey, I need a job, do you have any?

6 And so we would then refer them. Or something we started doing is every new card
7 that's issued, we wait about 30 days and then we call the worker. Hey, did you get
8 your card? Are you working? If you're-- And the hope is, you know, when the new
9 rules are in place, if you're looking for work, there's counselors that can help you,
10 you know, so to touch base with every worker that gets a card.

11 81:03: And on that, I've done a lot of work outside of--once they're
12 done with the insurer's claim closure, everything is done and they come back to--hey
13 Ryan, remember you told me to get my eligibility and said I wasn't eligible for voc,
14 but I got preferred worker benefits. And I would tell all of my clients, hey, you know,
15 I will support you after the claim is closed with your preferred worker benefits. It's
16 something we do. It helps me network with local employers. I might not be meeting
17 with an employer that I will use that here, but there might be another injured worker
18 that's going to go, and then he knows my name and face. So that's been a ben--that
19 is the benefit I've taken from this. I've been waiting for this provision to happen. So
20 I'm sure I'm not the only one. We could take advantage of the financial side of it, but
21 right now that's where it's been, more of a networking tool.

22 81:45: I think the networking, just on a side note, will be good for
23 training sites as well. You're not going to be able to place a preferred worker in each
24 one, but you may be able to use that employer as a training site. So it's just going to
25 enhance the whole process.

1 81:57: Definitely. Definitely.

2 81:59: So does the Division have any--I think it's a great idea, but
3 does the Division have any sense of how it will review the program to see if it's
4 successful? Have you thought about that?

5 82:14: The placement assistance piece? We've talked about looking
6 at it. I guess it depends on the definition of success. And that was the issue--with
7 the way it is now, we didn't consider it success unless the worker had a job and
8 worked for 90 days. So we have the ability--or we will have the ability to look up and
9 see how many of those workers that use the placement assistance actually got a
10 job.

11 82:40: Have good job.

12 82:41: Retain a job.

13 82:41: And that would be successful, yeah.

14 82:44: You referred to--a lot of the preferred workers you're working
15 with are, like, in the construction industry and stuff. So is a lot of the 90 days not
16 met because of the industry change or layoffs or job-- I mean, is that--does that play
17 into it?

18 82:58: I don't know what you would...

19 82:59: The 90 days of placement?

20 83:00: Yeah.

21 83:00: Yeah.

22 83:03: So if you get with a, you know, jobsite and job...

23 83:05: I would say no, because we could modify it if that was the
24 issue.

25 83:08: We just threw those dates out as a...

1 83:10: Oh, okay.

2 83:11: Provide half of the incentive now, and we'll pay you if they keep
3 the job a certain amount of days, and those were the suggestions we had.

4 83:17: Yeah. And the current 90 day is an issue because it's a
5 disincentive for a counselor to even try.

6 83:25: Right.

7 83:26: So they're--at this point, they're not even trying,--

8 83:28: Okay.

9 83:28: --because we're asking to put potentially months and months of
10 work up front, and then hinge at payment on that worker staying for 90 days, so...

11 83:36: Yeah.

12 83:36: When I first got into this industry, I was working for Mr. Mason
13 (phonetic). He had done this-- He's just a really kind person. He was taking care of
14 a lot of people, and we never got reimbursed for any of it. So when I first stepped in
15 here, I was like, wow, you do a lot of work for free here. Because he just couldn't
16 turn anybody down. That's his personality. But I got to a point where I was like,
17 well, I can't stay in business doing this, so that's not going to happen unless we get
18 some incentives.

19 But then again, we want to help people. We understand what the
20 problem is. As soon as you meet them, you know what the problem is
21 predominantly; right? That's where we come in. And I've worked with Brian and
22 Matt on a lot of these with the Employer-at-Injury programs. And once the
23 information is out there, which we've been talking about all day, they love it, they're
24 sold, and they pass on more to their friends and family.

25 84:30: Okay. Thanks very much for all your feedback on that. It

1 sounds like--again, it's very positive. There's one substantive issue left. So we were
2 scheduled to take a break at 2:30, but if it's okay with you all, I'll just--we'll just go
3 ahead and do Issue No. 11. And then we'll be into things that are really more
4 housekeeping in nature. Okay?

5 84:51: There's also that issue about the--

6 84:54: Oh, yeah.

7 84:56: --work training programs.

8 84:57: Oh, that's right.

9 84:58: There's more than one issue.

10 84:59: That's true. Okay. So maybe I'll leave it up to the wisdom of
11 the group, because we do have a significant issue after the end of the housekeeping
12 items under this, which has to do with work training programs under--it's list--the
13 statutes are listed; work experience or school directed professional training
14 programs, persons in college, work experience and professional education
15 programs. And basically, how workers can be--you know, can get the benefits to
16 which they would be due under any other kind of a normal--what we would consider
17 a more average or typical claim. But if they're injured in one of those work
18 programs, you know, how they get--benefits maybe anybody's information, data or
19 anecdotes, anecdotal information even on what you all do now. So do you think we
20 ought to take a 15-minute break and then come back, since we've got a bit to talk
21 about, or do you want to just keep going?

22 85:57: I'm going to take my personal--own personal break, so...

23 86:00: I need a break.

24 86:00: Okay. Okay. Okay. Let's get back together by 2:45 and we'll
25 pick it up.

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(off the record)

86:09: Okay. The recorder is back on.

86:11: Yeah, I think so.

86:14: And before I forget, if you're on the telephone with us today and you didn't get to announce yourself this morning, if you could send me an email after this meeting? I'm Fred, dot, H as in Harry, dot Bruyns, B-R-U-Y-N-S, at Oregon.gov. And just let me know so that I can have you included for the good of the minutes that we're going to be doing.

So I believe we're on Issue No. 11 now. And I think you're going to recognize that this one is consistent with a couple of the others. Affecting Rule 350, 351 and 352 on worksite modification. The amounts allowed for worksite modifications have not changed in several years, and need to be updated. In addition to the higher cost of living, workers today change employers more often than they used to. The Division is considering the following changes. Increase the maximum from \$25,000 per job to \$50,000 per eligibility with unlimited uses, but a per-use cap of \$35,000. Corresponding language in another rule, 350 and 351, would need to be updated, or 351 could possibly be--(2) could possibly be removed as redundant.

Increase the amount in Rule 350(2)(d) for modifications to prevent further injury or exacerbation from \$1,000 to \$2,500. For vehicle modifications under Rule 350, require the worker to have the applicable classifications on the worker's driver license. Increase the limit on the cost of rental items and consultative services from \$3,500 each to \$5,000 each.

1 Remove the last section of sentence--of 350(1). It appears to be--just
2 to repeat what is stated in (2)(f). Clarify the language in Rule 350(6), as the Division
3 does purchase worksite modification items directly. "The Division will provide
4 payment, but will not otherwise assume responsibility for worksite modifications."
5 Revise the language in Rule 350(2) to be consistent with proposed changes to wage
6 subsidy, unlimited use, once per employer. So kind of going back and talking about
7 these one at a time.

8 88:50: So a while back Matt did a--you went back and did a
9 comparison of costs of...

10 88:56: Yeah. So just to clarify, when it says it hasn't been changed in
11 several years, it actually has never been changed, because it was \$25,000 from--in
12 1993 or whatever, when the program started. So we looked at just inflation and
13 everything, and \$25,000 in the 90s is equivalent to \$53,000 today. Equipment costs
14 are a lot more. So--and then our--what we're running into a lot is-- You know, our
15 whole purpose is to try to get a worker back to work with little to no cost to the
16 employer. With a \$25,000 cap, we're increasingly asking the employer to contribute
17 money. For, you know, the \$29,000 mod, we're asking them to spend \$4,000. And
18 a lot of them are willing to do it because they see that, you know, they're getting a
19 big piece of equipment for \$4,000 in some cases. But yeah, it just needs to be
20 adjusted, really.

21 89:50: And then on that, since you're kind of getting half your value, as
22 opposed to before, not only are we asking employers to contribute more, we're using
23 more and more of the worker's benefit for each modification. You get \$25,000 as
24 your funding lifetime. You can dip into it twice. So we use \$10,000 for one
25 modification. The next job, you have \$15,000 left. Well, if we're using \$25,000 for

1 one, you have nothing left, and you've got one shot at that job.

2 And kind of with the other benefits, one or two jobs may not be realistic
3 to get someone back to long-term return-to-work. So not only are we asking
4 employers to pitch in more often, we're also using up all of the benefits on one shot.
5 This first proposal of increasing it to \$50,000 would effectively put it back in line with
6 where it was in the 90s as far as value for dollar. It would also--by putting in a per-
7 use cap of \$35,000, that gives us an additional \$10,000 to provide equipment and
8 modification for an employer so they're less likely to have to kick in money, but that
9 also preserves some benefit for that worker. There's no way we can use it all in one
10 shot. Plus, I don't like necessarily the idea of giving an employer \$50,000. That
11 might look kind of like--whoa. But that way, it preserves the benefit for the worker,
12 but it also provides for that employer.

13 And the unlimited use goes back to what we're saying with the others.
14 But a good example of that is, tomorrow I'm going down to do a modification for a
15 worker, he's used his benefit once, but it was for a chair. That's one of his two uses.
16 Whatever I do next time or tomorrow, and it's not going to be much-- He'll probably
17 end up using \$5,000 out of the program. And that's fine if that returns him to work,
18 but he did not get full use. He might need that chair for four or five more jobs, but he
19 can't have it, because we will have used it twice and he's done. So
20 that--it goes back to that unlimited use. Let's get them what they need as often as
21 they need it until they've made it back successfully to work, rather than just give
22 them two shots and then they're done.

23 91:54: Your thoughts?

24 91:56: What's the fiscal impact of increasing that? I don't know how
25 many workers are in the system. So what's the actual impact on the fund?

1 92:04: We don't have exact numbers until we do the final rules. And
2 we took all of this into consideration. But running the preliminary numbers with all of
3 these changes, there's enough to cover all of that with-- We're not worried about it.
4 We don't have the--I don't have the specifics right here with me.

5 92:20: Did you do anything on, like, the number of max mods?

6 92:24: Yeah. So currently, it's about 20--I think 20--between 25
7 percent and 27 percent of mods are maxed out at 25. So it's not every single
8 modification we're hitting the \$25,000 mark, so not every worker would use \$50,000.

9 92:40: Well, and then they'd only get to use 35. So those 25 percent
10 of mods, the max they could be would be \$10,000 more each maximum, the...

11 92:48: And when we run our numbers, we'll use it with the maximum
12 numbers.

13 92:52: How about for worksite creation? I mean, can we increase that
14 at all, \$5,000?

15 92:59: We didn't propose...

16 93:00: We haven't found-- We talked about that one, as well as the
17 other benefits, and we--among us, we didn't find that we were going over that very
18 often. Most of--more often than not, the creation, for whatever reason, was--\$5,000
19 seemed to be enough. I didn't see the employer kicking in all that often.

20 93:15: And it's a newer category that's only been around for a couple
21 of years, so...

22 93:20: So it's probably closer to realistic numbers as far as what the
23 cost of goods are now, as opposed to the others that haven't been revised since the
24 90s.

25 93:32: And then the other ones within-- So the way the modification

1 rules are written in the 110s, within that \$25,000 budget, we have, you know, a
2 discretionary of \$1,000 for preventing worsening. Well, you know, it could be a
3 chair. It could be, you know, other smaller pieces of equipment. But that \$1,000 is
4 currently not enough for buying, you know, anti-fatigue mats or anti-fatigue mats and
5 a chair, and maybe a height-adjustable desk that isn't necessarily tied specifically to
6 restrictions, but it's going to prevent further injury or exacerbation. Just gives us a
7 little more to use for those circumstances.

8 94:22: I don't know if it-- Was there a cost-of-living index intent on this
9 one or not? I know that we had it for the other programs on the indexing--

10 94:33: I don't...

11 94:34: --feature.

12 94:35: I don't think so.

13 94:36: It was the-- But we might look at that when we're-- I don't
14 know.

15 94:41: Potentially.

16 94:41: We were more worried about those purchases, that--

17 94:44: Right. Right.

18 94:45: --employment purchase category.

19 94:46: Yeah.

20 94:47: These are bigger ticket--

21 94:48: Right.

22 94:51: --that we might want to look at more often in a voc.

23 95:01: Any--I guess any concerns about the categories or--I mean, or
24 the dollar amounts, multiple uses, maximum--you know, unlimited use?

25 95:13: The only thing that-- We wanted to make sure that in some

1 way you weren't limiting--when you were talking about the total dollars, limiting for
2 exceptional disability, because I think that's a little bit different.

3 95:25: Yeah. Right. Right now, exceptional disability, there isn't a
4 cap.

5 95:28: Okay.

6 95:28: So that would remain...

7 95:29: We're trying to make sure that--

8 95:29: Yeah.

9 95:30: --you weren't thinking about...

10 95:30: We would remain--that would remain the same. That's...

11 95:32: Okay.

12 95:32: Yeah.

13 95:32: Yeah, that's a great question.

14 95:35: And did--is this tied back to the 105s in any way? Didn't we
15 talk about employer at injury going up to \$35,000?

16 95:41: Well, so...

17 95:42: Yeah.

18 95:42: So this is--so worker use, we said \$50,000 with a maximum
19 \$35,000 cap. And I don't know why it's not in here, but for the employer-at-injury
20 use of the program, the proposal would be to increase that from \$25,000 to \$35,000.
21 Since it's only a one-time use,--

22 95:58: Yeah.

23 95:58: --there's no need to get rid of \$50,000. We'd stay at that
24 \$35,000 per use cap.

25 96:02: So it would be consistent on both?

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96:03: Yeah.

96:03: Yes.

96:04: That's good. Be consistent

96:06: Yeah.

96:10: And I think that would apply to the employment purchases as well under employer use of the Preferred Worker Program. They wouldn't get the overall cap, but-- For example, clothing. We propose to go from \$400 to \$500, so that \$500 would count for the one use. Their categories would go up--

96:27: To...

96:27: --the same. Yes, it would all be consistent. It didn't get listed there.

96:29: I think the biggest benefit is not having a restriction on how of-- I mean, the number of requests. I mean, that's--

96:35: Yeah.

96:35: --really what it is. We were talking about examples where--you start off with a fatigue mat, and then that's one of your requests.

96:42: Yeah.

96:43: So I think it almost makes this urgency to spend the money if you guys go out there.

96:47: It does. It hap-- And it's--especially when you see that they've used it and they haven't received the full potential of it. Or they use it once, \$25,000 and they're done. And then a year later, they call up and say, hey, they got laid off. I can't modify--we have other benefits but I can't modify your next job. We've used it all, nothing left. So that puts-- Then they're on their own. I mean, that's not a good situation either.

1 97:15: I would say all of the suggestions that I've heard so far like
2 increasing, because there's definitely a lot to support it. It obviously is concerning
3 coming from a 2008 deduction and seeing the Employer-at-Injury Program being
4 one of those that helped fix the budget. But I guess the--I'm surprised it's as soon
5 as it is, and thankful at the same time that it's--the fund is doing well. It seems like a
6 lot of increase all at once, I guess, but that's not--it's definitely also supported in
7 need.

8 97:49: It's been a long time--

9 97:50: Yeah.

10 97:50: --since the categories have been looked at. The whole...

11 97:52: The fund is doing great.

12 97:55: Yeah. The fund is doing better. It's very much tied to the
13 employment--

14 98:00: Right.

15 98:00: --you know, the rate of unemployment, employment. And I
16 think we're at record employment levels in Oregon, so...

17 98:10: You know, the thing I don't really have a feel for in all of these
18 increases is how--I mean, how much they're used. Do you know what I mean? I
19 mean, I understand that we're doubling some of these, but I mean, are we giving out
20 10 doubled awards a day of some of these things? Do you know what I mean? Or
21 like 100 or...

22 98:30: No--

23 98:30: I mean,--

24 98:30: --doubled awards.

25 98:31: --I was assuming they were relatively occasional.

1 98:36: Which category? Any of them or...

2 98:38: Well, for example, we've got the \$25,000 per job to \$50,000 per
3 job per eligibility. You know, something like that. How often would a \$50,000 award
4 occur in a week? I mean...

5 98:52: Well, there wouldn't be a \$50,000 award ever. That's their--for
6 lack of a better word, that's their pot of money for modification for their career. They
7 can dip into it. In our proposal, the max they could use in any one job would be
8 \$35,000.

9 99:06: Oh, I see.

10 99:07: They could never use the \$50,000 all at once. That would
11 preserve the rest for a potential job down the road. How often do we get to the
12 max--to that amount now? Right now, we're doing--

13 99:16: Yeah.

14 99:17: --25 percent of them reaching \$25,000. That doesn't mean that
15 25 percent will reach \$35,000. That just means we're maxing their--we're taking that
16 whole pot--

17 99:26: Okay.

18 99:27: --25 percent of the time we're taking that whole pot from them
19 in one shot. So they get no--they have nothing left for a different job.

20 99:32: Okay.

21 99:33: Does it-- In 2015 we had 149 work--

22 99:38: Okay.

23 99:39: --site modifications.

24 99:40: Thank you.

25 99:40: Yeah.

1 99:41: And 25 percent of those, then, would have been \$25,000. The
2 other 75 percent would have been less than that--

3 99:46: Okay.

4 99:47: --for that use.

5 99:48: Because I understand the fund is healthy. And that's great,
6 and I don't have an objection to increasing these. I just was wondering. If we really
7 were taking that big of bite out by-- And I didn't--

8 99:57: Right.

9 99:57: --think we were,--

10 99:58: I don't think so.

11 99:59: --but...

12 99:59: Well, and that's-- You know, in comparison, in 1988 we had
13 293 worksite mods for the year, so it's--Preferred Worker as a whole has gone down
14 since then, but that's what we're see--that might be part of...

15 100:16: Yeah.

16 100:17: What I'm trying to say is even though employment's gone
17 down, we're seeing this--the incline--the--and we're able to promote all of these
18 changes. We're able--

19 100:29: Uh-huh.

20 100:29: --to support them--

21 100:30: Okay.

22 100:31: --without--

23 100:31: And I would say even though we're increasing it to...

24 100:33: --taking a huge bite.

25 100:34: Right.

1 100:35: Sorry. I would say--

2 100:36: Go ahead.

3 100:36: --even though we're increasing it to \$35,000, it would be rare
4 that we would hit that \$35,000 cap. Most of the time, when we're going over, we're
5 going over \$3,000 or \$4,000. So now, you know, the \$25,000 mod is a \$29,000
6 mod. In the last year, I think I would have hit the \$35,000 cap on the mods I've
7 done, which is--would be a quarter of them, maybe three times.

8 101:01: Uh-huh.

9 101:03: In our charge, any time we go out to do a worksite
10 modification also is to do the mod in the most, you know, fiscally responsible way
11 possible, you know, purchasing used equipment as opposed--

12 101:15: Sure.

13 101:15: --to brand new, or looking at a-- Just because an employer
14 may want this big piece of equipment, if this piece of equipment that costs a lot less
15 would overcome the restrictions, then that's the piece of equipment that we're going
16 to buy, so...

17 101:31: Another thing that we're looking at, and it goes along with
18 another one of the proposals that we didn't really talk much about, was increase the
19 limit on the cost of rental items and consultative services from \$3,500 to \$5,000.
20 One thing that we're really trying to get a handle on is possibly doing some sort of
21 lease--and this doesn't really have to do with the rules, but lease-to-own on big ticket
22 items. We don't like purchasing a--say, a \$20,000 forklift and have the worker work
23 there a month and leave. His benefits used up, we spent 20 grand. What do we get
24 out of it?

25 Looking at finding a way to come up with a more fiscally responsible

1 way to, say, rent an item for 90 days, a typical probationary period. We're going to
2 rent this lift for you. If it works out after the 90 days, we have lease-to-own, we'll
3 purchase the rest. But if it doesn't work out, we didn't spend 25 grand on something
4 that the worker is never going to use. So we are looking at other ways to reduce
5 that max number as well, because it's--we don't like that, either.

6 102:38: Thank you. I think--I mean, I think everything we've talked
7 about here today makes good sense. I just--when somebody said something
8 about--wow, these are a lot of increases, I suddenly thought-- I had been going
9 along assuming that this was a relatively small population that we were talking
10 about, and I wanted to make sure.

11 102:55: It is a small--

12 102:57: Okay.

13 102:57: --population. There is not very many people who become a
14 preferred worker.

15 103:01: Yeah. Okay. Thank you.

16 103:03: Well, and I think to--you know, to Betsy's point, I mean, these
17 are a lot of increases. And for any of us who sat through the rules when we were
18 looking at benefits on EAIP and reducing those benefits, that's a very painful
19 process. So I'm excited about the changes that you're loo--you know, you're
20 proposing. I think they're long overdue. But at the same time, that little cautious-- I
21 do work for an insurance company. The little cautious conservative part of me
22 says-- It's a little worrisome, because once it's out there it's really hard to--

23 103:43: Roll back.

24 103:43 --roll it back if you need to. And so, you know, I almost--
25 there's almost a piece of me that says on the cost of living, as much as that might

1 make sense, it might be better to just let the rulemaking process-- I mean, the rules
2 get opened often enough. These were open, what, four years ago?

3 104:07: Uh-huh.

4 104:08: So I mean, we could--we've had opportunities to increase the
5 benefits. So that's just a thought.

6 104:16: Okay. Thank you, Jaye.

7 104:21: And I have to agree with your thought because I think typically
8 injured workers--bringing them back to work, early invention helps. They're more
9 successful in getting them back to regular work and successful in recovery, so I'd
10 rather see funds on the front end than the back end if there's a choice, so...

11 104:43: Okay. Thanks, Melissa.

12 104:47: I'll just add a caveat to that. To agree with what Brian and
13 Matt are talking about, we see the same thing, that the workers are putting forth the
14 effort once they get past the fear factor of using these benefits and how to use them,
15 usually with the support of another entity, whether it's the worksite mod consultant,
16 voc counselor, somebody working with them, helping everybody understand the big-
17 -greater picture. And what we see is there's still this uncomfortable feeling of how to
18 use these subsidies. Employers aren't sure if they're stepping on somebody's toes.
19 It's extra paperwork. They don't like. But ultimately, they're never--it's not often
20 they're used to their fullest capacity. So it's not understood.

21 And then at the end of that, what we find is the worker isn't really
22 understanding the system, and down the road something falls out with the employer,
23 and then we go, too bad, so sad, you don't have any more benefits, you didn't even
24 use a quarter--or used a quarter of what you had, but that's it. These new rules, at
25 least in this section, really help us from our side to say, hey, look, you have more

1 opportunities, don't think this is a sink-or-swim kind of thing with this employer, you
2 have another option. Because constantly we get the worker going, what if I give up
3 my benefits, and then the employer doesn't keep me? You have other benefits.
4 And hopefully that's not the case. So it's nice to see something available.

5 106:03: Thanks, Ryan.

6 106:04: I do agree with you with--that employees present that
7 preferred worker card when they are hired.

8 106:12: Okay. Any additional thoughts on this issue? Anyone on the
9 telephone? We haven't heard from you in a little while. I hope you're still with us.
10 Issue No. 12 is kind of a placeholder issue to remind us that we may need to make
11 changes to either Bulletin 189 or the form that it con--the forms that it contains. I'm
12 not sure that we discussed anything today with-- It may be that the wage subsidy
13 form would have to change, and maybe the-- Would the purchase forms have to
14 change to talk about unlimited use, or any of that?

15 106:57: They don't talk about anything.

16 106:58: They don't...

17 106:59: No.

18 106:59: They don't show--they don't talk about the limits? Okay.

19 107:03: No. No. They talk about something, but not--

20 107:03: Yes.

21 107:04: --not the dollar amount, nor the uses, no.

22 107:06: Okay.

23 107:07: They're just a place to put what you want and sign.

24 107:10: And I will just do my due diligence of--just remember, every
25 time you change a form that we have to use, it's a problem for those of us that are

1 using those forms, because we've got to--

2 107:21: Right.

3 107:21: --redo them, so...

4 107:22: Well, and...

5 107:23: If you have to because of the rules or a statute change, we
6 get it. But because it could be working a little better or we want to tweak it here or
7 there, I'd just ask you to use a little bit of discretion on that.

8 107:35: I think the only form that would need to be changed would be
9 the placement form, because that's a substantial change in that. The others, I don't
10 think, change at all.

11 107:41: You're not going to like that I recommend they add the SAIF--
12 or the insurer claim number to the employer activated benefits.

13 107:51: We'll talk...

14 107:55: Anyway...

15 107:55: So as with all issues, if you have any thoughts, you know,
16 after the meeting about any of the issues that we talked about, we'll go--feel free to
17 send me the information in writing, or just pick up the phone and call me. There's a
18 number of housekeeping items here that I will not go over. Some of it's grammar.
19 Some of it's removing he/she and things of that nature.

20 108:18: So Fred, there is one that shouldn't be in here anymore based
21 on one of the prior issues, on the top of Page 27. It talks about--where we would
22 remove the words "in Oregon" where we talk about worksite because it's already in
23 the definition. But--

24 108:33: Oh.

25 108:34: --earlier we talked about changing--moving the definition. So

1 this issue should have come out, and it was my fault for leaving it in there, so...

2 108:39: Okay. Thanks, Cathy. So if you have any input on the
3 housekeeping items, we would appreciate that. If not today, then at any time. I say
4 at any time. Probably, within the next couple of weeks would be great.

5 And then our last substantive issue, although it has more than--it has
6 multiple facets to it, is on Page 28, and it's just-- There are no rules in Chapter 436
7 regarding how to determine eligibility and calculate benefits for injured individuals
8 covered under 656.033, that's participants in work experience or school directed
9 professional training programs; 656.046, persons in college work experience and
10 professional education programs; 656.135, deaf school work experience trainees;
11 and 656.138, apprentices, trainees participating in related instruction classes.

12 Some background. Individuals covered under these sections who are
13 injured while participating in the training programs are entitled to Workers'
14 Compensation benefits. Individuals covered under 656.033 and .046 are not entitled
15 to time loss benefits, but the individuals are otherwise entitled to medical services,
16 permanent disability, return to work and vocational assistance. The filing of a claim
17 for benefits is the exclusive remedy of the individual and any beneficiaries.

18 We do not know how many claims arise in these situations. However,
19 for those claims that are filed, there are no rules to provide guidance for determining
20 eligibility for an amount of benefits. The actual benefits provided to individuals may
21 not be consistent. There may be some rules that inadvertently present roadblocks to
22 these individuals being found eligible for the benefits to which they are otherwise
23 entitled.

24 Issues specific to 105, 110 and the 120 rules include how to determine
25 wage at injury, employer at injury, and job at injury. The rules related to claims

1 processing, that's Division 60, and PPD, that's Divisions 30 and 35, may also be
2 affected. The Division will seek input from future advisory committees specific to
3 those rules.

4 So we would like your feedback related to this issue, including any
5 direct experience you have with claims covered under one of these sections. What
6 would be most helpful to provide guidance to parties in these claims? Should
7 language be added to the 105, 110 and 120 rules for how to determine eligibility for
8 EAIP, Preferred Worker, and vocational assistance benefits? Although we'll talk
9 more about the vocational assistance benefits on the 27th. And if so, what elements
10 should the rule include? Are there obstacles in any of the rules to these individuals
11 and their "employers" being able to access the benefits they are entitled to by
12 statute?

13 So I guess starting with the first one, is there anyone here who has
14 direct experience processing claims covered under one of these sections? And
15 maybe from that experience we can learn a little bit about what's worked.

16 112:00: I do.

17 112:01: Okay.

18 112:01: Yeah. We have them.

19 112:03: The only time I've ever seen this come up is somebody who's
20 already participating in voc. We had a guy who-- The light in the bathroom at
21 Computer Skills Plus fell and hit a worker in the head, but they were already getting
22 voc in another claim. And we had a guy burn himself in the--a welding program, but
23 he was also already getting voc. So I've never seen this come up when they weren't
24 already getting voc.

25 112:35: Okay.

1 112:36: That's the only time I've seen an injury occur or something
2 when they were going through a voc program. There might have been a slight
3 interruption in the voc program.

4 112:48: Was the injury treated as a brand new injury?

5 112:51: Uh-huh. It's a whole new claim.

6 112:53: Okay.

7 112:56: And we don't see those often.

8 112:58: No.

9 112:58: I mean, they're pretty rare.

10 113:01: Occurred...

11 113:02: I've seen three in my ten years.

12 113:04: Yeah.

13 113:05: I mean, it's not something that is...

14 113:09: So Jenny, in that example, how would you figure out, like, his
15 average weekly wage and things like that if he was in a training program? Do you
16 remember how? I think that's what we're curious about with these.

17 113:22: Or job at injury.

18 113:23: (Unintelligible)--

19 113:24: Or yeah, what his job at injury was.

20 113:24: --because the worker was never entitled to an eligibility
21 evaluation because they were already given voc.

22 113:32: So, like, for instance, are you thinking of (unintelligible) new
23 injury after he was already in--working on EAIP-- Brian and I were working on...

24 113:42: Okay.

25 113:43: So there was no change, because he's already in voc. Where

1 are you putting-- We're not even at permanent mod before the next injury was
2 brought up as a new accepted claim. So the status quo kept-- The only thing we
3 had to do was do a job analysis to make sure that the attending physician--

4 113:58: Right.

5 113:58: --understood there was a new injury. Would that change the
6 new job modification? He said no, so we just stayed with that.

7 114:06: And it was a new claim that was accepted for that specific
8 injury, but it didn't have any restrictions or permanent modified work or anything like
9 that related to that new claim.

10 114:16: Well, it wouldn't restrict him more than we already
11 (unintelligible)--

12 114:18: Correct.

13 114:18: --that we're changing the job. So in that case, it doesn't really
14 apply.

15 114:26: Isn't it similar to, like, volunteers and stuff too?

16 114:29: Well, that's what I was thinking, because assumed wage like a
17 volunteer firefighter or...

18 114:34: I see those.

19 114:35: Yeah, I see those.

20 114:36: Because they're not--yeah, because they're not really...

21 114:38: Because otherwise you have to pay. There's no such thing as
22 unpaid interns any longer. Well, maybe at the state. I don't know.

23 114:44: Well...

24 114:45: At the state. But you can't in private industry. You have to
25 pay a wage.

1 114:50: Well...

2 114:50: So even if they were in class, and part of their class was to do
3 employ--is to do work experience, they would still be paid for their work experience,
4 because any employer would have to pay them to be on the jobsite.

5 115:03: No.

6 115:04: A school-directed professional training program could be put
7 on by a community college that isn't related to voc. It can be a training program.
8 And they have the ability to get comp for that training program. And they would be
9 training, and it's specific in either the 33s or the 46s that the training--I don't know
10 the exact wording, but is essentially what someone employed in that position would
11 do.

12 115:29: But then...

13 115:29: But they're not getting paid.

14 115:30: They're--so the college,--

15 115:31: It's a school-directed-- Yeah, it's through the community
16 college.

17 115:33: --they're acting as the employer.

18 115:34: Yeah, but-- Exactly. But there's no wage. Yeah, there's no...

19 115:37: Yeah, there's no...

20 115:37: Right.

21 115:37: I get that. Okay.

22 115:38: There's no wage. And technically there's no job at injury, so
23 that's another condition if they can't return to that training program.

24 115:46: But I still kind of look at it the same as a volunteer firefighter
25 or-- Like, if you are working within a pool, the agency then does assume wage. So

1 depending on-- Years ago when I used to handle special districts. It would be on
2 the locations. Some locations, it was like a--\$1,200 would be their monthly assumed
3 wage. So I would think their insurance policy would have a basis of what their
4 assumed wage would be.

5 116:18: The policy would be based on a wage of some sort.

6 116:20: Of some sort.

7 116:22: Yeah.

8 116:22: That's my assumption, just based on my experience in
9 volunteer firefighters and-- But I don't know, because I haven't had-- I've handled
10 claims for...

11 116:35: Well, I was going to say, that's how we do the premium.

12 116:37: Yeah.

13 116:37: I don't do this very much.

14 116:39: Yeah. Would that be how you would establish premiums?

15 116:43: Well, it would be based on the wage, yeah.

16 116:48: Well, I just had a preferred worker that was a firefighter, and
17 they--he's still volunteering, and they're modifying his volunteer work every time he
18 shows up. And so they got the premium exemption, but they're not--because they
19 still pay the assessment rates and stuff, but they're not going to get a wage subsidy.

20 117:02: That's a whole different...

21 117:06: Well,--

22 117:07: That's a whole different...

23 117:08: --we probably couldn't modify for a school-directed
24 professional training program. They just would--could potentially become eligible if
25 that training program was determined to be the job at injury that they couldn't return

1 to. I don't know that we could...

2 117:19: Uh-huh. Yeah.

3 117:24: Yeah. Gosh, this was a long time ago, so I can't remember
4 what we did. I think we actually just did a DCS (unintelligible).

5 117:32: In the college--or the school-based training, they're paying
6 Workers' Comp on those on those?

7 117:38: For school-directed professional training programs, they have
8 the ability.

9 117:42: Right.

10 117:42: They can request it. It's not a...

11 117:43: They can request it.

12 117:44: It's not a requirement. They can request it. And...

13 117:47: And it helps protect you so that--

14 117:49: Sure.

15 117:49: --there wouldn't be a civil lawsuit.

16 117:50: Civil, right. I didn't know that we could even do that.

17 117:55: Like at Chemeketa, they have a...

18 117:56: We use this to protect workers in occupational skills training
19 with employers who say, I don't want to foot the bill in case something happens to
20 this person while I'm training them for a new job. So we use local community
21 colleges to cover those costs.

22 118:06: Yeah. Like Chemeketa has a nursing program, and they--

23 118:08: Right.

24 118:09: --do all of this, like, lifting of patients and--

25 118:10: Yeah.

1 118:01: --you know, stuff like that, and it's exac--it's exactly what
2 you're talking about. They're doing the exact work, basically.

3 118:16: Yeah. So in that scen--in that scenario, if they were injured
4 and couldn't return to the training program, that's where our questions come up.

5 118:21: That's what happened.

6 118:22: How do we determine the wage, and how do we determine
7 the job at injury--

8 118:27: Yeah.

9 118:29: --if they can't return to it? Is that--is it the equivalent of what
10 they're--

11 118:31: Training.

12 118:32: --doing or they're training for?

13 118:35: If I remember correctly, with the volunteer firefighters we
14 determined that their job at injury was firefighting. It was sometimes a problem with
15 their real job when it was a high-paying job and their volunteer job was-- This was
16 before supplementals, so that's how long ago it was. So it was a problem when they
17 couldn't do their normal job, and they were based--the time loss based on the
18 assumed rate of...

19 118:58: Firefighting...

20 118:59: Most of them were \$1,200 a month.

21 119:01: Ouch.

22 119:04: Well, and under 656.138, it specifically says that the insurer or
23 the director may fix wage rates for those apprentices or trainees participating in
24 instruction programs which may only be used for purposes of computations under
25 this chapter. So the statutes give me direction there. I guess I don't know-- Unless

1 you guys are running into problems,--

2 119:42: Well,...

3 119:43: --my preference is...

4 119:44: Not having rules (unintelligible).

5 119:46: Yeah. I just would leave it alone.

6 119:50: The idea was to find out if anybody has run into it, and how
7 you're processing it, because it is rare, but we have seen it. We're wondering, okay,
8 how are they--how is the--

9 120:00: Well,...

10 120:01: --industry doing this?

11 120:01: And part of the concern is consistency, the same--

12 120:03: Right.

13 120:04: And being consistent. Exactly.

14 120:05: --between...

15 120:08: So yes, it has come up. So the thought is, should we put
16 clarification in the rules on how to determine eligibility, for consistency's sake?

17 120:25: I don't know if you can put enough clarification in the rules
18 that-- Each circumstance can be slightly different, and the rule may not apply to that
19 circumstance. And that it might create more rules, unfortunately. That's just my
20 initial thought, but it might have to be situation--a case-by-case situation depending
21 on the insurance coverage, what's covering and what that coverage policy was, what
22 they agreed to do. I mean, so I don't know if there's an easy answer or easy rule. I
23 don't know. But that's my initial thought, is there's so many different interpretations,
24 that thing doesn't fit in that box,--

25 121:08: Yeah.

1 121:11: --that it would go down the rabbit trail of more issues.

2 121:18: It's a really interesting problem, actually. Sorry. I'm on the
3 board at Chemeketa, and I can just see the ramifications.

4 121:26: Yeah. Uh-huh.

5 121:27: And we-- Yeah. I mean, even to the firefighters and stuff, life
6 safety people.

7 121:36: I can't remember when I handled (unintelligible) about
8 volunteers, what we did. That was years ago, too.

9 121:46: Well, it's--I heard several people, I think, probably say, you
10 know, it would be similar to volunteers and using an--perhaps using the assumed
11 wage used to determine premium; right? And I don't know what kind of assumed
12 wages they are. You mentioned \$1,200 a month is typical for volunteers.

13 122:06: Well, that was, you know, 25, 28 years ago, so--

14 122:08: Oh, okay.

15 122:08: --I don't know what the current is right now.

16 122:16: In terms of some of the other aspects, even in voc--in terms of
17 vocational assistance, when the worker would be likely eligible and things like that,
18 it's not as clear, you know.

19 122:31: As soon as the doctor says they can't return to regular work.

20 122:34: Yeah.

21 122:34: That's what I would look--if I was handling...

22 123:36: And then what's regular work? That's the key.

23 122:38: Well, we've got to go back to regular work, because we're
24 having problems with that right now.

25 122:40: Is it this...

1 122:41: Our doctors don't understand the semantics to it or...

2 122:43: Well, is it the school-directed professional training? Is that the
3 regular work if that's where they were injured? Is that...

4 122:48: That's how I would look at.

5 122:48: That's--for preferred worker, that's-- My main question is--I
6 can't find them eligible unless they cannot return to the job they had at injury, is--that
7 professional training program that was covered with the policy, is that the job at
8 injury that I can look at for them?

9 123:03: Well, similar, but not exact. Again, firefighters, we currently--
10 And also, we cover the first six months before they go into the-- City of Portland has
11 a special fund for fire employees, but the first six months while they're going through
12 the training program it's under the Oregon Workers' Compensation program. So
13 even though they're paid a regular wage, if they can't return to the training program,
14 which is different than the actual firefighting work or police work, then we voc them,
15 we go through the whole processes of a Workers' Compensation claim. So even
16 though it's only a--it's like six months, and then they have the training on--like, police
17 officers will then go on to some street training after the academy. So that's how we
18 look at it. (Unintelligible) they'd get regular wages. So it's not quite like the
19 schooling, but the job at injury is the firefighter training. We don't measure a regular
20 firefighter or a regular police officer. It's what they're doing during the academy.

21 124:14: It seems logical if you think about going to school and stuff.
22 You're not trying to get them to be a full-time student.

23 124:19: Right.

24 124:20: No.

25 124:22: Yeah. If they're learning to be a welder, obtaining their

1 certificate.

2 124:25: So what's preventing them from going to their career, you
3 know...

4 124:29: As a welder, you know, you would look and see, can they
5 return as a welder?

6 124:32: And the rule does state that they--those programs, they're
7 doing this job typical--or they're doing the duties typical of that position. So I mean, I
8 think that that's what it should be, but that's just me.

9 124:45: If you're injured doing the training for a job, that's the job.

10 124:47: Yeah, that's what I would look at it as.

11 124:50: And if they can't return, then I--we could potentially find them
12 eligible for preferred worker, which they can't--they can't continue the training, so...

13 124:57: Maybe just how far into the training were they to determine--
14 If it was the first week and you have a one-year program--oh, you don't really do that
15 much at the job yet.

16 125:05: That's the other part of that.

17 125:07: Well, and that brings us back to do we need to put something
18 in the rules, because who's going to determine--

19 125:11: That's right.

20 125:12: --how far into the--

21 125:12: Yeah.

22 125:12: --job qualifies you for it. That's what we're basing your job on.

23 125:18: Same with the wage, too. Do we know what the policy is
24 written for what wage? It is for the student or is it for the trainer?

25 125:27: That goes with any job. You can have a utility worker get

1 injured their first day at work and that was what they were hired for, and before that
2 they were a computer programmer. So their job at injury was a utility worker, they
3 were supposed to dig ditches, and their--it doesn't matter that they've only worked
4 one day. They fell in a ditch and had it collapse on them, and we're stuck with--
5 That's--

6 125:51: Uh-huh.

7 125:50: --the process.

8 125:55: I think some of this is going to come up in the 120s. We
9 looked at suitable wage.

10 126:01: It will come up again in the 120s.

11 126:02: Yeah, it will.

12 126:03: There's a couple different things they're going to add to this
13 one piece.

14 126:05: For preferred worker, we don't--it doesn't matter what the
15 wage-- It's just the job. But--

16 126:09: Right.

17 126:10: --when you get in the 120s, then you look at suitable wage.
18 So what are you basing the wage on?

19 126:14: Uh-huh.

20 126:14: So...

21 126:16: We're going to see changes with minimum rates, 20 percent.
22 but that's all going to come into play.

23 126:25: Thank you very much. Do you have any additional thoughts
24 on this particular issue; what we ought to do, what we ought not to do?

25 126:35: Well, I think you need to be very cautious in putting anything

1 in the rules without much more conversation. I'm not exactly sure what Division 60
2 says around this--

3 126:45: Yeah.

4 126:47: --because it's such a rarity that we run into this kind of thing.
5 I'm not saying it hasn't ever happened and it is the assumed wage and it's--whatever
6 they have been trained to do is what we have applied it for. I mean, like you said, if
7 they were hired and it's the first day, that's the job at injury. And then they would be
8 eligible for everything there. Now, for me to answer exactly how we figure out the
9 wage, I would have to look at a couple examples or something to have better
10 answer.

11 127:19: And for those of you will be here on the 27th to talk about the
12 120 rules, this issue is also part of that discussion, because we expect there may be
13 some different folks at the table, so...

14 127:27: Yes.

15 127:28: We'll talk more about that.

16 127:28: Does the Department have the ability to gather some
17 examples from different insurers, self-insurers and regular insurers, that would give
18 you--

19 127:37: Oh, yeah.

20 127:38: --some ideas of how those are being done so you could get a
21 sense? It seems like that might be a good starting point, to figure out--are they
22 doing it in different ways or are they-- Basically, everybody's doing it the same way.
23 And your answers are right there. You just didn't know whether you wrote them
24 down. I don't know whether you could do that, but that might be a good way to start.

25 128:00: Well, of course you've given us some of that today. And it

1 sounds like it's not a frequent occurrence, certainly. Volunteers, yes. But these
2 work programs, not so much. Not common. If Jenny only remembered three cases,
3 I think-- So I guess that's pretty much all we had on the agenda. Is there anything,
4 you know, while we still have the time, that--you know, that you think maybe we
5 missed today, something that you in particular wanted to talk about? Any--or any
6 issues you want to revisit while we still have the chance? Okay.

7 Hearing none, please, if you do have thoughts after the meeting on any
8 of these agenda items, please-- You probably all have emails from me, maybe more
9 than you wish you had in your inbox. So you can just send your comments to me, or
10 you can pick up the phone and call me, and I'll document whatever you want me to,
11 and then distribute it around the Division a little bit, and we'll certainly give it every
12 consideration.

13 But in terms of the path that we're on, I think we're hoping to file
14 proposed rules--did we say by-- It was the middle of August. Are we still shooting
15 for...

16 129:22: I think August is maybe a little-- I think September is probably
17 more realistic.

18 129:27: Okay. Okay. Probably by the 15th of September for a hearing
19 in October, because that's how it works. You have to file by the 15th of any given
20 month, and you can hold a hearing the following month. So it's probably then pretty
21 much on the same schedule as Division 50 and Division 60. We have a number of
22 rules in play right now.

23 129:46: And 120.

24 129:47: And 120, yeah. So we really appreciate your time. And I
25 know it's been a long day for a lot of you, and so I'll let you go. And I hope you have

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a safe drive, and I'm sure we'll talk again.

(WHEREUPON, the proceedings were adjourned.)

CERTIFICATION OF TRANSCRIPT

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I, Amanda Knapp, as the transcriber of the oral proceedings at the 7/19/16 hearing before Administrative Law Judge Bryuns, certify this transcript to be true, accurate, and complete.

Dated this 16th day of August, 2016.



Transcriber

CERTIFICATION OF TRANSCRIPT

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I, Ashlee Kohan, as the proofreader of the oral proceedings at the 7/19/16 hearing before Administrative Law Judge Bryuns, certify this transcript to be true, accurate, and complete.

Dated this 16th day of August, 2016.



Proofreader