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Meeting Transcript

Workers' Compensation Division Rules
OAR chapter 436: Division 120, Vocational Assistance to Injured Workers
July 27, 2016, 8:30 a.m. to 4 p.m.
Room F, Labor and Industries Building, Salem, Oregon

Attendees:	WCD attendees:
Daedra Buntin, Portland Public Schools	Brian Nease
Debbie Lytle, City of Portland	Cathy Ostrand-Ponsioen
Janet Schmidt, SAIF Corporation	Colette Hittner
Jaye Fraser, SAIF Corporation	Danae Hammitt
Jeff Schiminsky , Mason & Weeks Vocational	Daneka Karma
Jennifer Flood, Ombudsman for Injured Workers	Fred Bruyns
Jenny Bates, SAIF Corporation	Heather Grogan
Kathy Wallace, Wallace & Associates	Katie Bruns
Katy McDowell, Tonkon Torp LLP	Kristin Anderson
Kevin Anderson, Sather Byerly & Holloway LLP	Louis Savage
Kimberly Wood, Perlo Construction	Matt West
Kristen Weiler, Portland Public Schools	Troy Painter
Robin Burman, Liberty Mutual Insurance	
Ryan Weeks, Mason & Weeks Vocational	
Sheri Sundstrom, Hoffman Construction	
Susan Montgomery, SAIF Corporation	

BEFORE THE WORKERS' COMPENSATION BOARD OF

THE STATE OF OREGON

RULEMAKING ADVISORY COMMITTEE

WORKERS' COMPENSATION DIVISION RULES

OAR 436-120, VOCATIONAL ASSISTANCE TO INJURED WORKERS

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The proceedings in the above-entitled matter were held in Salem, Oregon, on the 27th day of July, 2016, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

1 TRANSCRIPT OF PROCEEDINGS

2
3 00:05: So thank you very much for coming. My name is Fred Bruyns.
4 I coordinate the rulemaking process for the Workers' Compensation Division, and I
5 really appreciate you all taking your time to come down here. Some of you actually
6 have come back. You were at a meeting with us last week. And we know it's a
7 serious investment of time, and we really do appreciate it. I know that's a lot of time
8 out of your workdays, and it's not easy and it's certainly not free, so we really do
9 appreciate it.

10 There are some handouts for today's meetings at the back of the--
11 today's meeting at the back of the room. That would be an agenda, and also draft
12 rules. The draft-- Excuse me, not draft rules. Just the current rules. But they're
13 something that we'll really need as we go along, to refer to. If you're on the phone
14 with us today, the agenda and draft ru--and the rules are on our website. So if you
15 have any difficulty finding those, you can let me know. I could probably just give you
16 a couple of quick instructions on how to find them on our new website, so...

17 This is an Advisory Committee meeting. It's an informal process, not
18 like a public hearing. But it's the best chance we have to influence the rules,
19 because it will help us form the draft--the proposed rules. And when we file those
20 with the Secretary of State, everybody will have a chance to provide testimony on
21 those, so we really appreciate the input that we receive today. We have some
22 Division staff around the table, and we'll provide information as we can, but we're
23 here mostly to listen to you and provide information, as I say.

24 If you're on the telephone with us this morning, keep in mind it will pick
25 up background noises in your office, so you may want to mute the phone as needed.

1 Also, please don't put us on hold unless you're certain you don't have any
2 background music or messages that your customers hear when you do that,
3 because we have no way to turn them off. You actually may leave the call and
4 return as many times as you like.

5 So I've introduced myself. I'd like to begin with the folks on the phone
6 with us this morning and have you introduce yourselves to the Committee. So if
7 you're on the phone with us, could you let us know who you are?

8 02:15: I'll begin. This is Kristin Anderson, vocational reviewer in
9 Medford. Good morning and thanks for coming, everybody.

10 02:21: Welcome, Kristin.

11 02:22: Thank you.

12 02:24: Hi, Fred. This is Robin Burman, team manager, Liberty Mutual
13 Insurance.

14 02:28: Welcome, Robin.

15 02:30: This is Debbie Lytle, City of Portland Risk Management.

16 02:35: Welcome, Debbie.

17 02:40: Katy McDowell with Tonkon Torp.

18 02:42: Welcome, Katy. Anyone else? Okay. Hearing nothing, I'm
19 going to go this way.

20 02:57: My name is Cathy Ostrand-Ponsioen. I'm a policy analyst with
21 the Workers' Compensation Division.

22 03:02: Jennifer Flood, DCBS, Ombudsman for Injured Workers.

23 03:06: Susan Montgomery. I'm Return-to-Work and Employer-at-
24 Injury Program manager at SAIF.

25 03:11: Janet Schmidt, Claims Division at SAIF Corporation.

1 03:15: Jenny Bates, vocational supervisor with SAIF Corporation.

2 03:18: Jaye Fraser, SAIF Corporation.

3 03:20: Daneka Karma, policy manager with the Workers'
4 Compensation Division.

5 03:24: Sheri Sundstrom, Hoffman Construction.

6 03:27: Troy Painter, Workers' Comp Division.

7 03:29: Kristen Weiler, Portland Public Schools.

8 03:30: Kevin Anderson, defense attorney at Sather, Byerly &
9 Holloway.

10 03:35: Heather Grogan with Workers' Comp.

11 03:39: Katie Bruns, vocational reviewer with the Workers'
12 Compensation Division.

13 03:34: Matt West with Workers' Comp Division.

14 03:46: Danae Hammitt, Employment Services Team Manager,
15 including Voc.

16 03:50: Okay. Thanks, everybody. With that, I'm ready to go into our
17 agenda. Do you have any questions about the process or the agenda before we
18 begin, what the plans are for today? I can tell you briefly that we are scheduled to
19 meet this afternoon as well, because we didn't think we could complete our agenda
20 in the morning. We really have no idea how long it's all going to take. So we won't
21 actually spread it to a full day unless we have to, but my guess is we will have to
22 meet this afternoon.

23 We're actually moving to a different room, unfortunately, over the noon
24 hour, because I couldn't find a conference room available for the entire day. So this
25 afternoon we'll be in Room 260, which is on the second floor. But I'll remind us all of

1 that later on today, because I'll need to take note of it myself because I'm going to
2 need to move the phone up there, so-- Again, any questions?

3 Okay. Then we'll begin right at the beginning of our agenda, on Page
4 2 of the document, actually. In late 2015, the Workers' Compensation Division
5 considered proposing a legislative concept for the 2017 legislative session that
6 would've established a date certain by which eligibility for vocational assistance must
7 be determined. It allowed reimbursement from the Workers' Benefit Fund for the
8 costs of certain vocational services provided to eligible workers, and extended the
9 maximum length of vocational training plans and time loss payable during training to
10 24 months.

11 The Division is not moving forward with statutory changes, but rather is
12 focusing on possible rule changes with the following goals; facilitate access to
13 benefits for workers who meet eligibility criteria, improve timeliness throughout the
14 process, enhance communication between the parties, and improve the clarity and
15 readability of the rules.

16 Listed below are several issues grouped by topic, aimed at these
17 goals, as well as other issues that date back as far as 2012, when these rules were
18 last revised in their entirety. The Division would like the committee's feedback on
19 the issues, and welcomes other suggestions for making improvements in the
20 vocational assistance process.

21 So that was just a very general introduction to kind of let you know
22 what framework we were working from. So beginning with Issue No. 1, "likely
23 eligible." The relevant rule is Rule 5, the definitions, which is actually number-(10).
24 The current definition and application of the concept of likely eligible makes it difficult
25 to identify a date certain by which the eligibility evaluation process must begin.

1 By way of background, ORS 656.340(1)(a) and (b), the insurer and
2 self-insured employer shall cause vocational assistance to be provided to an injured
3 worker who is eligible for assistance in returning to work. For this purpose, the
4 insurer and self-insured employer shall contact a worker with a claim for a disabling
5 compensable injury or a claim for aggravation for evaluation of the worker's eligibility
6 for vocational assistance within five days of having knowledge of the worker's likely
7 eligibility for vocational assistance, from a medical or investigation report, notification
8 from the worker or otherwise; or the time the worker is medically stationary, if the
9 worker has not returned or been released for the worker's regular employment, or
10 has not returned to other suitable employment with the employer at the time of injury
11 or aggravation, and the worker is not receiving vocational assistance.

12 In 2009, the Division adopted a definition of likely eligible which now
13 provides that it means the worker will be unable to return to regular or other suitable
14 work with the employer-at-injury or aggravation, or is unable to perform all of the
15 duties of the regular or suitable work, and it is reasonable to believe that the barriers
16 are caused by the injury or aggravation.

17 The date a worker is likely eligible is not always clear, which makes it
18 difficult to enforce time frames and can ultimately delay benefits to workers. Under
19 the current definition, a worker may be medically stationary, but not likely eligible.
20 Another interpretation is that 656.340(1)(b)(A) applies only before the worker is
21 medically stationary. This would make--this would most often be a severe injury
22 when it is clear the worker will not be able to return to work. If the worker has been
23 declared medically stationary, then ORS 656.340(1)(b)(B) applies and the process
24 must begin.

25 So some alternatives for this committee to consider. Revise the

1 definition of likely eligible to apply only when the worker is not yet medically
2 stationary, remove the definition from this rule and explain the concept in Rule 115,
3 explain other ways to pinpoint when the eligibility evaluation process must begin.
4 And one alternative, as usual, is to make no change. We'd like the committee's
5 input on any of these. They are not mutually exclusive. Some of them, you know,
6 could--you know, more than one of them could actually take place. And so I'd
7 appreciate your input on likely eligible.

8 09:06: I ran this by a few of the attorneys in the office. And the first
9 one that kind of came up as an issue-- And it's a statutory thing, so I don't know if
10 we'll be able to fix it. The five days is a very tight window for most of our clients to
11 try and get something reviewed, maybe get a second opinion, hey, do you think this
12 actually meets the definition of likely eligible, and get that turned around. But again,
13 if we're just doing rule changes, I don't know how much we can do with that. The
14 other issue that came up was just the- reasonable to believe that the barriers are
15 caused by the injury.

16 It's not really clear for us on what to do with combined conditions. If
17 there's a lumbar strain and you know, preexisting arthritis, and the work restrictions
18 are due to the arthritis but the injury is limited to the strain, when would that voc
19 evaluation get triggered under the combined condition? I don't know that we came
20 to any conclusions on it, but those were kind of the two areas of concern from our
21 office, at least.

22 10:09: Well, in terms of that second concept especially, does anybody
23 here have any--you know, kind of a good answer for that in the combined condition
24 example?

25 10:24: We don't really know what to do with combined conditions,

1 either.

2 10:30: Oh.

3 10:31: I've tried to push some voc counselors on it, saying when you
4 went through the analysis of determining work disability, you asked the doctor, you
5 know, what would they have been able to do if they didn't have the preexisting
6 condition, what their base and residual functional capacity is. They still might be
7 able to do their job at injury if it wasn't for the preexisting condition, but the voc
8 counselors have just flat-out told us they don't see anything that allows them to
9 make that sort of--kind of determination on what's due to the injury, what's not. Just
10 as long as there's a claim and they can't go back to work, then they're going to do
11 the voc.

12 11:10: Okay. Well, thank...

13 11:11: And it would be nice if there was a little more leeway there for,
14 you know, actually figuring out why is the worker not able to go back to work.

15 11:21: Okay. Well, thanks, Kevin, for raising that. I don't--I guess we
16 don't have a solid answer for you right now, but it's something that we can certainly
17 talk about and find out if we can provide any clarification on that, or if the laws and
18 the rules are basically silent in terms of how to handle it.

19 11:37: If I could make a comment, Fred?

20 11:39: Yes, Heather.

21 11:40: This is Heather, Kristin. As a voc reviewer, what we generally
22 look at is that likely eligible is just that, that there's a possibility, and that the point of
23 likely eligibility is to get the worker referred to a counselor for an eligibility evaluation.
24 If during that eligibility evaluation the counselor says, well, these are the restrictions,
25 it's a combined condition, so I don't know yet what--you know, which things are due

1 to the injury, at least the eligibility evaluation will get things started.

2 And the counselor can say, you know, if these restrictions are due to
3 the barriers from the injury, then they would be eligible, you know. And fur--maybe
4 further information needs to be obtained, but at least it would start the eligibility
5 process.

6 12:54: Yeah.

7 12:54: So...

8 12:55: I thin--I think it makes sense to have that broad kind of initial
9 point to get the process going, but right now I don't think the counselor has that kind
10 of discretion to say, you know, it's not clear what's due to the injury or what's due to
11 a preexisting condition right now.

12 13:12: We can look in the-- We're just going to grab whatever we
13 need to from this meeting. We can look into it.

14 13:18: I see. Okay. All right. I won't go into too much detail, then.

15 13:22: Actually, I thought it was really interesting, I mean, because I
16 was about to ask, you know, what kinds of situations...

17 13:30: No, you're...

18 13:31: This has obviously come out of issues that the Department is
19 dealing with. So what are you trying to solve, I guess is my question. Because, you
20 know, obviously the five days is statutory, as Kevin has pointed out. Likely eligible is
21 statutory. So I mean, what--I am just--what are we trying to solve here?

22 13:53: Yeah.

23 13:55: We're trying to create a time frame that's clear. So if likely
24 eligible is gray, are we trying to say with--when it's obviously likely eligible it's going
25 forward, or if it's--if there's different criteria we need to come up with when it's a

1 combined condition, we have to figure out what that is? But right now it's gray.

2 When does the clock start ticking for an eligibility?

3 14:23: Well, I hate to say it, but it's kind of like the word reasonable.

4 14:26: Yeah.

5 14:27: It's kind of in the eyes of the beholder. And there are probably
6 some obvious situations where, you know, someone has a catastrophic injury and
7 they're paraplegic and they used to be working in--you know, they used to be on the
8 hillside in logging. They're likely not going to go back to their regular work.

9 14:47: And those are the examples we came up with. That is what we
10 believe might have been the intent with the law, that it's those obvious examples.
11 That they're likely eligible--they lost their legs, so they're going to be eligible, so let's
12 move it forward. Otherwise, it needs to wait until it's med stat and go forward.

13 15:05: But is the issue if they've lost their legs we're saying they're
14 likely eligible, but there isn't anything that gives the Department the regulatory
15 authority to say to an insurer, hey, that may not have determined likely eligible, of
16 moving on that decision, that they're--that they can actually sit and wait until they're
17 medically stationary, even though the guy's, you know,--

18 15:31: Right.

19 15:32: --like, one of those obvious cases. Is that what we're
20 experiencing?

21 15:36: Right.

22 15:37: Okay. We don't have a clear time frame of when the--when
23 everyone had the knowledge and is able to say, yes, they're likely eligible as of this
24 date, when that paperwork came in. Go ahead.

25 15:53: Well, the other issue is, just looking at the statute, it doesn't

1 look like likely eligible should be applied to every single case. It's--prior to med stat,
2 you use the likely eligible criteria. Once they're med stat, forget about likely eligible
3 and move forward with the regular voc process.

4 16:10: Which...

5 16:11: So currently, likely eligible is being applied to every case.

6 16:14: Every case.

7 16:15: Med stat, well, they're not likely eligible, so we don't need to do
8 a voc eligibility evaluation where-- That's--if you look at the statute, it's not and/or,
9 it's or. Either they're likely eligible prior to med stat, and once they become med stat
10 forget about likely eligible, move forward with voc, either regular work release, not
11 eligible. So you move forward with the normal voc process, instead of applying likely
12 eligible to those cases after med stat--or at med stat.

13 16:44: Say that all again. That was good.

14 16:49: So does it need an or in here somewhere?

15 16:52: Well, the statute is or, and that's what the last-- But currently,
16 the rules are written so that likely eligible is applied to everything, and not just prior
17 to med stat where it's those extreme cases. Like you gave the example, there's an
18 extreme case, you don't need to wait until med stat. Because they're likely eligible,
19 you can move forward with voc. Well, if that doesn't apply, once it's med stat, forget
20 about the likely eligible piece and go with the-- You know, do they return to
21 suitable--to the current--you know, or the...

22 17:24: Criteria.

23 17:24: Criteria. There you go.

24 17:27: So an issue on the employer's side that I can see is that if we
25 are going to apply the likely eligible prior to the med stat, we often run into

1 somebody who is on light duty for months and months and months, and we think the
2 doctor is not going to release him back to their regular job. So if we get the voc
3 process going prior to med stat, and all of a sudden, the doctor says, just kidding,
4 here's a med stat, you know, full-duty release, then we've spent a lot of money on
5 the voc process, perhaps, that we wouldn't have needed to if we waited.

6 18:04: Right. So the thought would be that you're-- That--in that
7 case, if it's kind of wishy-washy, then they wouldn't be likely eligible. Likely eligible,
8 the way the thought is, that we're looking at--is that it's those extreme--it's obvious.
9 If it's not obvious, then they don't meet the likely eligible criteria. Then you wait until
10 the claim plays out.

11 18:25: So how do you put that into rule to make sure that it's not
12 vague to where it can be interpreted as being vague, and we don't penalize
13 somebody for not making that decision? I think you've made it very clear that it's for
14 the extreme cases.

15 18:38: Sure.

16 18:41: So I think that needs to be very clear. And then if then the or
17 becomes very clear, medically stationary-- So--because I think the--I think it makes
18 sense that likely eligible is for those most severe cases, because it is very difficult.
19 And especially if you're considering putting--you know, taking advantage of the
20 Preferred Worker Program for those people that, you know, probably can continue to
21 do their work in some capacity. So I would recommend that it is very clear, as
22 opposed to being vague, so we don't have--

23 19:10: Right.

24 19:12: --people getting penalized for making a decision that they
25 thought was right, so...

1 19:18: And that's our intent, is to try and make it more clear.

2 19:21: But this isn't clear, or we wouldn't have all of these questions. I
3 wasn't clear what you guys wanted.

4 19:25: Okay.

5 19:25: Sorry. Sorry. It was not clear. And Kevin was very eloquent,
6 so thank you, Kevin.

7 19:32: Well, and speaking from a worker's perspective, I believe it
8 needs to be clear so insurers aren't penalized for not doing something that they
9 should have been doing. But I think, from the worker's perspective, that those
10 workers that should have the ball rolling early on are getting the ball rolling early on,
11 instead of waiting, you know, a year and a half until they're med stat to get the voc
12 rolling.

13 19:58: And I think SAIF does a good job of starting early. But if we
14 were to look at this strict definition of likely eligible in those extreme cases that you
15 were talking about, the worker might meet the definition of likely eligibility the day we
16 accept the claim, and that seems like it's obviously way too soon to start an eligibility
17 evaluation. The worker might still be in the hospital or--

18 20:24: Yeah.

19 20:24: --skilled--

20 20:25: Yeah, I get what you're saying. Yeah.

21 20:25: --nursing facility. So--

22 20:27: That's a good point.

23 20:27: Yeah.

24 20:38: --when we accept the claim, and then we don't send it out the
25 same day or--

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20:32: Right.

20:32: --within five days-- So we do need something more specific than just likely eligible.

20:39: Well, and also, Jenny, there has to be, you know, medical documentation for--you know, for the likely eligible. I hear what you're saying about the-- Yeah, there--I'm sure there are some workers who first day of the injury they're obviously likely eligible, but it doesn't seem reasonable to send them for voc at that--

21:08: Right.

21:08: --point.

21:08: Uh-huh.

21:09: So yeah. Yeah.

21:10: Well, the other thing, too. I want to-- Because in the construction industry, I have a lot of workers who do not--we do not take away their jobs from them, for heaven's sake, you know.

21:19: Uh-huh.

21:20: So if you start too soon on this process and you're wrong, you are going to break somebody's spirit.

21:25: Yeah.

21:26: And I am very, very sensitive to that with my construction workers and--because it happens very easily. Somebody puts some thought into their head, and the next thing you know they're going down a hole that they don't need to go down. So I think there has to be some sensitivity around this discussion as well as to what that actually means to somebody that's never heard the term vocational rehabilitation before.

21:49: Correct.

1 21:49: And we might need to take that into consideration, that--if it's
2 just the eligibility piece. And then there needs to be some time frame before the
3 actual plan, so that they don't think they have to start a plan. We're talking just the
4 eligibility right now.

5 22:04: I don't think that hits what I'm thinking.

6 22:06: Okay.

7 22:06: You put the notion into somebody's head that they're--they
8 cannot go back to their career, that--

9 22:13: Okay.

10 22:13: --is a very difficult--

11 22:14: It's spiraling.

12 22:15: --discussion to have. And so there has to be some intention as
13 to when that discussion is going to occur to make that evaluation. And I think, you
14 know, that goes back to the sensitivity of the vocational counselors, too, that you
15 may be working with. I don't think that they intend to go in and break somebody's
16 spirit, obviously, but I think it has to be intentional. And you can't just put something
17 into rule and not think about the ramifications. I'm very sensitive when it comes to
18 this vocational rehab. Because I can tell you, in the 24 years that I have been doing
19 my job I've only had one successful program, and that is a 911 operator.

20 So, you know, my goal is to keep people motivated, and do everything
21 I can possibly do to ensure that they have full recovery so they can remain in the
22 trades. And so I don't want to have some kind of rule that takes away that ability to
23 continue to focus on total recovery of my workforce. So that is my soapbox for the
24 day.

25 23:16: Thank you. Thank you, Sheri.

1 23:18: And I guess the one thing I'd like to add in all of that, it is
2 potential that the legislature actually intended, with the use of a word like likely
3 eligible to provide the kind of flexibility I think I heard Sheri talking about, is--when
4 we are talking about injured workers who come from all different walks of life, who
5 do all kinds of things-- And you know, Sheri is talking about a particular industry, but
6 there are other places where the whole idea of getting back to somebody's--to their
7 work, particularly with catastrophic injury, you know, something--I really want to go
8 back. And maybe it takes them a little time. You know, as Jenny said, if you're
9 talking about finding somebody eligible within five days of a catastrophic injury,--

10 24:02: Yeah.

11 24:03: --we may all know in our hearts and our minds that person isn't
12 going to be able to go back, but they're not there.

13 24:09: Yeah.

14 24:10: The worker is not there. And you have to give them time to
15 grieve and to get through that process. So I guess, you know, as much it makes it
16 easier to administer for all of us, sometimes when we put too hard-and-fast rules
17 around things, I'm afraid that we actually may end up causing more harm than we're
18 solving a problem. So that's...

19 24:34: Well said.

20 24:34: There's my soapbox.

21 24:36: Well said. Thank you. Thank you. Well said.

22 24:37: Well, that really takes my concern about the impact on workers.
23 It really opens that--our eyes to how that can impact. Because you're right, you
24 know, the day after a laborer has had a pretty catastrophic injury, the last thing they
25 want to really hear is--

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24:58: Yeah.

24:58: --you're never going to do that job again.

25:00: Yeah.

25:00: Because they've spent the last 30 years doing that and-- But on the other end of it, those workers that are waiting and waiting and waiting and just on time loss, and the insurer isn't moving, you know, two years after the injury, and it's somewhat obvious to all of us that that person isn't going to move forward, that's a concern on that end.

25:27: It's hard to define what that would...

25:28: Yeah.

25:30: Because I do think there's a point at which somebody realizes that their career is not going to work for them anymore, and it would be nice at that point if they knew there was something out there that they could access.

25:45: Jennifer,--

25:46: You going to get a buy-in before that point, anyway.

25:48: --do you ever sit down and, like, look at a file and, you know, tell them, like, hey, have you asked for a voc referral or like...

25:54: We have--we-- Not that I look at files.

25:56: I know, but...

25:29: But yes. I mean, if a worker is like, hey, I'm never going back, I don't know what I'm going to do, nothing is rolling along, we will take those individual cases and try to work them through finding out, hey, are we moving on anything? I will say that there are times where an adjuster is under the impression that--I really don't have to do anything until they're med stat, what are they complain-- I don't mean to seem snarky. But, what are they complaining about, they're getting time

1 loss getting every two weeks. Whereas the person is wanting to figure out what
2 they're going to be doing for the rest of their life, so-- But is there a large volume of
3 that? No.

4 26:39: Well, and I think that--you know, I think it makes sense that
5 there's something to help those people that are not focusing on getting those people
6 moving forward. You know, I am insured, but I act like a self-insured employer, so I
7 have certain goals and--but there's-- You know, but I have to ride my claims people
8 really hard to make sure that we know what that end game is going to be. And I
9 think that that's because they ha--they have their little book of rules, and they go by
10 their rules. So I understand why it would be helpful to have some type of criteria in
11 there. I just want to be really careful about--

12 27:16: Uh-huh.

13 27:16: --how we do it.

14 27:20: And I think if the likely eligible is meant to be the broad entry
15 point, it's fine to have flexibility in the definition as long as there's also flexibility in
16 kind of the control over what happens, and of course doesn't happen, in those five
17 days.

18 27:36: Are there any triggers that would let you know that it is time to
19 look at likely eligible? I mean, if, you know, the time is obviously not the day after
20 the claim is accepted, are there other points where it would become the right time,
21 something that was definable, and something that would be easy to administer?

22 28:00: Administer...

23 28:02: Each claim is individual.

24 28:03: Right.

25 28:04: It's going to progress at its own pace. You know, I appreciate

1 what everybody is saying, because it is hard, and yes, adjusters can get stuck in
2 the--this is their mantra. But in the same breath, they know where a claim is
3 progressing, and at this point in time we know we're not going there. And the
4 adjusters have conversations a lot of times with the workers--and Jennifer, you're a
5 part of that sometimes, that we know they're not going there, and we ease them into
6 that thought process and conversation. You know, we'll (unintelligible) voc as soon
7 as we have knowledge, but we're measured in when and how, depending on the
8 worker and what's happening. Some workers come out of the--right out of the gate
9 and they want to have the conversation. Others, they don't want to talk about it until
10 we're there, so...

11 28:52: Sometimes, a doctor will say, this person is likely not going to
12 be able-- I mean, I see that.

13 28:59: Especially if they're going to have surgery. So it's like--it's 9 to
14 12 months out or--the recovery from surgery. And I guess that was something I'd
15 like to see a little bit more. It's been a year since they've been injured. Surgery is
16 the next option. Again, recovery time is 12 months. Well, you know, we're talking
17 two, three years before that person is, you know, ready to get back. Are they likely
18 eligible at that time? That could be a conversation I'd like to see happen more
19 from --certainly, from the doctors' input.

20 29:26: Thanks, Jeff.

21 29:27: Our concern with the doctors is always, though, I don't know
22 what his work restrictions are, he might be physically capable of going back to his
23 job, but he probably shouldn't be doing that heavy stuff anymore.

24 29:36: Yeah. Sometimes they're the ones that create a lot of the
25 issues.

1 29:44: Well, and you might have the doctor saying they shouldn't be
2 doing that, but they are going to be doing that.

3 29:48: Yeah, they are.

4 29:48: They're going to choose to do it.

5 29:50: Well, if it makes sense-- You know, one of the things is that
6 they're no longer with the employer at injury. You know, there's no hope for a re--a
7 return at all. You know, there's no light duty. There's no return. There has--there is
8 just--it's zero on the horizon. That makes sense. I--and Ryan, I think that ties into
9 what you're saying. You know, they've been off work, and then they're going to be
10 off for even longer. Yeah, the potential of going back into the industry they were in
11 may be much more difficult.

12 30:23: Any additional thoughts on this? I know that's not a--it's--
13 there's no easy answers to this one, so...

14 Issue No. 2, a new Notice for Likely Eligibility. This affects Rule 17. A
15 stakeholder has suggested that a likely eligibility--a likely eligible determination
16 require an associated notice to the worker. Some background. Under the current
17 rules, there is no requirement that the insurer notify the worker that the worker has
18 been determined likely eligible for assistance. The stakeholder has suggested that a
19 Notice of Likely Eligibility be sent that informs the worker of potential services the
20 worker may be giving up if the worker agrees to settle his or her claim before
21 eligibility has been determined. If the definition of "likely eligible" is changed as
22 discussed above, such a notice may not be needed, because the worker would be
23 referred for an eval--eligibility evaluation within a few days of being declared
24 medically stationary.

25 Some options then for you to consider. Amend the rules to require a

1 Notice of Likely Eligible, amend the rules so the worker is advised they are giving up
2 rights to vocational assistance when they settle their claim, or make no change. I
3 appreciate your thoughts on any of that.

4 31:38: Where did this come from? A stakeholder? Do we know what
5 type of stakeholder?

6 31:43: I don't recall.

7 31:43: I'm just curious.

8 31:44: I don't know. We put most iss-- Any--almost any time a
9 stakeholder raises an issue, we will put it on the agenda, or the stakeholder will
10 bring it themselves to the meetings. I don't know.

11 31:55: Well, it must have something to do--because you guys have the
12 alternative about settlements. So did something come up about settlements or
13 something?

14 32:02: Well, that was part of-- It's up in the background, too. That
15 was part--the person that raised the issue--that was part of what the notice would
16 include would be you are--you have been found likely eligible, here's what you may
17 be potentially eligible for. I think that was part of the proposal.

18 32:24: So under ORS 656.236, the claims disposition agreement, the
19 cover sheet tells them that they're giving up vocs. So they're already notified when
20 it's a CDA. So that is already part of the process, part of the rules.

21 32:41: And I think we just spent a good amount of time talking about
22 how difficult it is to determine what that likely eligibility means. So to be sending a
23 notice to a worker when there's really no way to actually put your finger on what that
24 means would be really pot--create all kinds of issues and uncertainty for a worker.

25 33:08: Also, we all understand that likely eligible means that a worker

1 is entitled to an eligibility evaluation. But if you tell an injured worker that they're
2 likely eligible, I think they're going to hear, I'm probably going to be eligible.

3 33:23: Oh, yeah.

4 33:24: And that's not really fair--

5 33:25: Right.

6 33:25: --to set a worker up like that.

7 33:27: Yeah.

8 33:28: Is there anything in that What Happens When You're Injured
9 On the Job packet that talks about vocational rights or...

10 33:35: Yes.

11 33:37: Yeah.

12 33:40: Yes?

13 33:40: I'm wondering if the background on this has more to do with
14 settlement if they don't understand what voc means when they're giving that up to do
15 a settlement. I'm just curious if that maybe has more to do with it than the likely
16 eligible piece.

17 33:55: I think...

18 33:56: But it...

19 33:56: I think that's probably...

20 33:57: But it would be more complicated--if you don't even, like, have
21 a clear-cut definition for likely eligible--if we don't know what we're talking about as
22 far as that, then the worker is not going to--

23 34:09: Uh-huh.

24 34:09: --be able to understand it, either.

25 34:12: Also, if they meet the definition of likely eligible, you should be

1 referring them out, which requires a contact to the worker, so this would seem
2 redundant to me. It should just be a notice of an eligibility evaluation to start.

3 34:34: I think there was two--there's kind of two issues. The CDA one
4 has been brought up, but your-- I mean, they--workers are already notified in the
5 CDA paperwork, and then they're also--the unrepresented workers are required to
6 talk to the ombudsman, and they explain the voc part. So there was that piece. But
7 there's also-- I think where this Notice of Likely Eligibility or not likely eligibility--I
8 don't know if that was-- The way the rules are currently applied, applying likely
9 eligibility--the likely eligible definition to every med stat worker is workers are--they're
10 never notified that they're not eligible for-- They're never notified of anything. So,
11 like, a wor--a claim closes. If they're regular work release, you know, there's
12 probably not a need to notify them. But there are those kind of ones that, you know,
13 are kind of gray, so maybe an insurer decides they're not likely eligible, so I don't
14 need to do anything.

15 Well, the worker never receives notice. They don't know that they can
16 request eligibility for voc. They don't know that-- They don't have anything that's
17 appealable. So there's a lot of workers that are falling through the cracks. So that's
18 where this came from, is some sort of notice saying, okay, you're med stat, but
19 you're not likely eligible, so we're not required to do an EE on your claim. Then at
20 least they would know that some sort of decision has been made, if that makes
21 sense.

22 35:56: Well, I'm confused. Okay. So earlier, you helped us to
23 understand that we have an or situation here, likely eligible before claim closure, and
24 then they ha--you know, there's a possibility they have to go through that eligibility
25 process after--pardon me, before med stat.

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36:15: Correct.

36:16: After med stat. So I would think that by the time we get to that piece, they would know if they're eligible or not. Are you saying that...

36:27: No, I'm saying-- Correct. When we make--if we make that first--

36:30: Oh, okay.

36:30: --rule change-- That's why it says...

36:32: So if-- And make that very clear. There is an or in there.

36:35: Yeah. And if we amend it, then this notice wouldn't even be--

36:38: That's what I'm thinking.

36:39: --necessary. But if we didn't amend it and left it as it currently is, then there's kind of that gray--where it's being applied to every-- So this ki-- there's kind of two different-- If the first change happens, then this change probably wouldn't even be necessary.

36:57: So, you know, I was on MLAC when we had the whole debacle where we had to go in here in the statute where you had to return to your job at injury and with the employer at injury because we didn't put an or in there when the statute was published. And so it's--it was very clear from that point going forward that if you--if--so the following here went into effect. The or--you had to return with-- to work with your employer at injury or your job at injury, or you had to do the voc assessment.

So is--when you're say-- And I'm sorry, because it just jumped into my mind. So are you saying people are not doing those voc assessments because they're saying they're not likely eligible? Because I think that's very clear in the statute. You return to work with your employer at injury or job at injury, and if one of

1 those two things do not happen that you then have to do the voc assessment. What
2 happened with that?

3 38:05: Is that true,--

4 38:06: Why is that not-- It is true.

5 38:06: --that they must do a voc assessment if they're not released to
6 their regular work?

7 38:13: Well, under the current rules, they must do a voc assessment if
8 they're unable to return to regular or other suitable employment with the injury--
9 employer-at-injury, or unable to perform all duties, and it's reasonable to believe that
10 the barriers are caused by-- So that's where it's really gray.

11 38:28: That's the rules. That's the rules.

12 38:30: That's the current rule.

13 38:31: Because the statute was very-- And believe me, I understand
14 the statute, because I got on my hands and knees and begged Bob Shiprack
15 (phonetic) to work with me and put an or in there, because that and would have
16 required everybody that, practically, got injured in the industry would have to go
17 through voc.

18 38:47: And that was what I was thinking, too. We need to be careful
19 that this doesn't impact every single worker,--

20 38:54: Sure.

21 38:55: --and insurers needing to send paperwork or notification with
22 every single worker. It is those that are not able to return to their regular job or
23 employers.

24 39:06: But what is happening is that some insurers see that a worker
25 has a low income, low suitable wage, and they'll say, well, they're not likely eligible

1 because they can earn--you know, they can work at anything. And so they don't get
2 eligibility evaluations. And that's not always true. Just because the suitable wage is
3 minimum wage or less, it's not always true that they're not eligible for voc.

4 39:33: I think that happens.

5 39:34: Yeah. Yeah.

6 39:35: And even when it's not, maybe, a low wage.

7 39:38: Well, yes. That was just an example I...

8 39:40: Well, maybe that's the wrong language. Maybe it's they're--
9 likely that they will need a vocation--or an eligibility evaluation. They're not likely
10 eligible, but it's likely that they need an eligibility evaluation because they're not
11 going to be returned to--

12 39:59: Yeah.

13 39:59: --suitable work. I mean, that's really more of the issue.

14 40:02: But we have the statute.

15 40:03: The statute.

16 40:04: Yeah.

17 40:04: The statute's clear.

18 40:05: Right. But the rule is not, which is why we need--

19 40:06: Okay.

20 40:06: Right.

21 40:07: --to fix the rules--

22 40:08: Right.

23 40:08: --to be--

24 40:09: Clearer.

25 40:10: --clear like the statute.

1 40:10: Because I think there's a lot of people that won't realize that if
2 they're not released under what you just described you're supposed to have an
3 eligibility evaluation.

4 40:18: Right.

5 40:18: Right.

6 40:19: Yeah, there are a lot of insurers that don't follow...

7 40:21: I agree.

8 40:22: Yes.

9 40:24: And that was why somebody suggested, well, some sort of
10 notice at least. But if we fix the rule, there wouldn't be the need--

11 40:29: Right.

12 40:29: --to notice, because med stat would trigger an EE.

13 40:31: Yeah.

14 40:32: If the statute-- The statute is actually relatively clear on that.

15 40:37: Sure.

16 40:37: I mean, that's the one part that is clear.

17 40:40: I made sure.

18 40:40: So if insurers aren't doing what they're supposed to do, hold
19 them accountable. I mean...

20 40:47: Well, that's why we're trying to change the rule.

21 40:49: But do you need to change the rule, I guess is my question.

22 40:52: We have no way of knowing who's not...

23 40:56: Because...

24 40:57: Oh, go ahead.

25 40:57: No. No, go ahead.

1 40:59: Unless a worker complains or an attorney complains, you
2 know, we don't hear from workers. Sometimes they don't know that they should
3 have an eligibility evaluation. And so we don't hear from them, and they just kind of
4 fall through the cracks.

5 41:17: I believe that's true.

6 41:19: So I have a question, because we--when--last week when we
7 were talking about wage calculations, that rulemaking came about as a result of an
8 audit. How come we aren't figuring-- I'm sorry. SAIF Corporation. Why aren't we
9 figuring out if people are actually doing this or not before we...

10 41:38: Yeah.

11 41:39: Because I understand it's vague. I will agree with you guys, it's
12 vague. But I think--as you said, you don't know. But what you don't know, you don't
13 really know because--you don't know because we haven't done an audit to find out if
14 it is an issue. So I would think...

15 41:53: Start with somebody else first.

16 41:57: Bring it up.

17 41:58: It is curious.

18 42:01: Well, and we've attempted an audit several years ago. And
19 because the timeline was vague and insurers were able to say that, well, they
20 weren't likely eligible, we never got notice that they were likely eligible, we weren't
21 able to pinpoint a date and prove that they did know that they were likely eligible to
22 move forward.

23 42:22: So I wanted to comment, then. I'm Daedra with Portland Public
24 Schools. And I guess with all of the different audits that the state does on various
25 issues like time loss, you know, whether or not things are paid timely and

1 (unintelligible) timely, when we're doing all of these different audits of claims, I guess
2 I don't understand why the first step isn't to just whenever--you know, when you
3 guys are tracking whether or not Notices of Closure are being issued timely that
4 there isn't a means for you guys to set up some sort of auditing system to audit
5 things that an NOC has been issued on to start taking samples of whether or not
6 people are being compliant or not. I mean, is that an option?

7 43:02: Do we have an auditor in here?

8 43:04: Yeah, we don't have...

9 43:04: See if Troy's down there.

10 43:05: Is Troy down there?

11 43:05: Troy.

12 43:06: Who is also a--

13 43:07: Troy, you're an auditor.

14 43:07: --data person.

15 43:09: He's something...

16 43:15: I mean, given that we audit so many other aspects of
17 compliance, I don't understand why maybe we're not taking that into consideration
18 before we make a bunch of changes to just see who's being compliant, what specific
19 issues are we not being compliant in? Are there specific instances that we see
20 where people aren't getting submitted for an evaluation when they should be,
21 versus, you know, just because examiners maybe don't understand the rules
22 properly, or if it-- You know, what are the trends?

23 43:46: My understanding, though, is that the rules aren't clear enough
24 to perform an audit to where they could make those findings when they're out doing
25 that audit. That's my understanding.

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43:56: Correct.

43:57: I don't get...

43:57: That's what we found with the...

43:58: I don't get voc. You guys know I don't get voc. But that-- because I pushed on that, saying, well, what do your rules say? Are they compliant with the rules? Well, my understanding is the rules are too vague to hold the insurers accountable to what the statute is saying.

44:16: Yeah.

44:17: Because right now we're seeing--they're never doing an eligibility evaluation. And when we ask, they say, well, they were never likely eligible, even after med stat.

44:27: And what are they basing that on, though?

44:29: I'm sorry?

44:30: What is that based on?

44:32: That's our question.

44:33: Their interpretation.

44:34: Their interpretation, exactly.

44:38: So I guess another comment that I would make, then, is that-- so with every NOC that's issued, there's a cover sheet that goes in that says, you know, these are the items that are in your Notice of Closure packet, and that's--this is what they mean. Is there something--some language that we can add to that that just becomes mandatory language that puts a worker on notice of some rights? If that's a mandatory document that we already have to send when an NOC is issued, that's a form that at least puts the worker on notice if there's some language--you know, if there's mandatory bold language that has to be included in that packet of

1 information with regards to their eligibility rights.

2 45:16: Thank you.

3 45:17: I think that--you know, I think that was something we thought
4 about, considered, so that may be a very good idea.

5 45:23: Yes.

6 45:25: I don't know. How many workers actually...

7 45:27: Jaye?

8 45:28: What's the difference?

9 45:20: I think what I'm hearing is that-- Because I guess I read the
10 statute in the rule to mean that you either determine that someone is likely eligible
11 and give them their rights, or--

12 45:42: Uh-huh.

13 45:44: --if they are med--once they're med stat, then you do the
14 evaluation. So you're telling me that there are insurers out there who say that we
15 didn't think they were likely, so therefore--ven though...

16 45:49: Yeah.

17 45:59: What's that section? B? C? What is it?

18 46:03: Because they think...

19 46:04: So the statute is...

20 46:04: Because they...

21 46:05: B, big B.

22 46:06: In order to have to do it, they have to be likely.

23 46:06: Right.

24 46:07: So they're saying that doesn't apply, because of the or?

25 46:10: Yeah. And if you look at--if you actually look at the rule in the

1 120s, 0115, the way the rule is written, it's applying likely eligible and med stat
2 together. So the rule is written not the way the statute--

3 46:24: Great.

4 46:24: --is written. It's written incorrectly. So that's what we need to
5 fix, so that the rule isn't--so 00115 says, "The worker is likely eligible for vocational
6 assistance in A, and then the worker is medically stationary." So A and B are
7 applied together, and that's not the way the statute is written.

8 46:42: And if we do address that, then it does become less subjective,
9 and probably easier to audit too, I would imagine.

10 46:49: Uh-huh.

11 46:51: As long as it just doesn't create a whole lot of extra work in
12 paperwork,--

13 46:55: Yeah.

14 46:55: Right.

15 46:56: --you know, for all insurers--

16 46:57: For every single client.

17 46:58: --and workers.

18 46:59: For those folks that currently do it the way the statute is written,
19 it shouldn't increase it. But for those who say, I don't have to determine eligibility
20 because I never determined them likely eligible,--

21 47:12: Then that gives...

22 47:13: --then they're not doing anything,--

23 47:14: They'll do more work.

24 47:14: There will be an increase there.

25 47:15: Uh-huh.

1 47:17: I guess we--on behalf of SAIF Corporation, we would just soon
2 not have another piece of paper to send. It's--I mean, we pepper our poor injured
3 workers with so much information. And I've said it at previous meetings, and I'll say
4 it again. I have heard from injured worker attorneys that--their injured workers come
5 in with piles of unopened--

6 47:42: Yeah.

7 47:42: --envelopes from their carriers, and--which means they're not
8 reading what they're getting anyway, so sending more paper isn't going to solve the
9 problem.

10 47:52: Now...

11 47:53: But if we're-- I'm sorry.

12 47:54: No, go ahead.

13 47:54: No. No. If we're changing the rule to better match the
14 statute...

15 47:58: We wouldn't need that additional notice.

16 48:00: Yeah. You wouldn't have to.

17 48:01: Right.

18 48:02: That's the--what we want to do.

19 48:04: That's what we...

20 48:05: We don't want to send extra paperwork either, but we need to--

21 48:08: Yeah.

22 48:11: --fix--if there's a gap there.

23 48:15: Are we ready for Issue No. 3? Availability in Oregon. This
24 affects Rule 145(2)(b). The issue is, with the ease of electronic communication and
25 online training, it may no longer be necessary that the worker be physically available

1 in Oregon to receive training. If the worker has an Oregon injury and meets the
2 eligibility criteria, the worker should be entitled to assistance if the worker wants it
3 and is willing to participate remotely. If the requirement is removed, then
4 Paragraphs (A) and (B) can also be deleted. If Paragraph (2)(b)(B) remains in the
5 rule, a stakeholder raised the issue that it contains several double negatives and the
6 intent is not clear, so we'd want to fix that as well, I guess. If the rule is changed to
7 no longer require the worker to be available in Oregon, Rule 175 will need to be
8 revised, and (10) of Rule 443 can be removed.

9 Some alternatives would remove--would be to remove the requirement
10 that the worker be available in Oregon, and make conforming changes to other rules
11 as required, include the de--and define availability in the worker responsibilities in
12 Rule 520. Your thoughts on that kind of remote training?

13 49:33: Are you sure you want to hear it?

14 49:35: Yes.

15 49:36. You know, I have workers that come from all over the United
16 States. They're called travelers. And they come in here from Louisiana-- I can tell
17 you every state in the union they come-- And there is-- I don't think that it is
18 possible to monitor them at-- It would cost money to have a voc counselor working
19 with these workers remotely. And I understand that-- I think somebody mentioned,
20 you know, this is great with the electronic training, but I think they need to be in
21 Oregon, especially if you're going to have other opportunities for them, that they
22 need to be in Oregon.

23 The--you know, I have a concern they go back to their other state.
24 How do you monitor they're actually doing the training? You know, these claims
25 could go on forever and ever. And I would just have--I just think it would be a

1 nightmare. I just don't think it would be manageable. I think it would be very
2 expensive. They get halfway through this training program, don't like it, and then
3 we're back to square one. So I just don't think it's a good idea. I really don't.

4 50:36: Well, I have...

5 50:37: And I don't think that's the intent. I'm sorry. Go ahead.

6 50:39: I have people in training plans that are online, but I think they
7 do have to be monitored, and I often have them in facilities where they have to
8 check in a couple times a week and make sure they're on track. I mean, they'd
9 never get done with this stuff if they were out there doing it on their own. So I think
10 they do have to be monitored even more closely than someone that's in the
11 classroom, because it's very easy to get behind.

12 51:05: I'm very much in agreement with Cathy and Sheri, that it
13 requires much more monitoring, much closer monitoring. But I think it also raises
14 the issue of what the cost is going to look like in different states, and how you can
15 adjust your reserves and really have a knowing idea of what the cost of something
16 like that is going to be when you're dealing with every state and the different costs of
17 that.

18 And then if you're dealing with those situations where we're sending
19 people to colleges to do their retraining, they're--then we're adding the expense,
20 because they're potentially out of state if they haven't been there long enough and
21 they're--and they don't have residency established in that state yet. You're dealing
22 with the extra cost of the college, you know, the training itself. You know, I don't
23 think that's fair on an employer to continue to have this nebulous, you know, fee out
24 there of not, knowing what exactly that's going to be, depending on where the
25 employee is. There has to be some control that an employer, I'm sure, can have

1 over a Work Comp claim.

2 52:03: Thank you.

3 52:04: The other thing is even if you had a counselor in another state
4 monitoring it, they don't know the Oregon rules.

5 52:08: Right.

6 52:09: They...

7 52:09: That's what we were just saying.

8 52:10: It has to be monitored by an Oregon--

9 52:13: Well, and how would you--

10 52:14: --certified counselor.

11 52:14: --determine if that's a good--it's a viable option for that worker
12 to go through that training if we're talking about Louisiana. And what's the labor
13 market for that training. Is there a job there for that? And that's problematic, I think,
14 as well.

15 52:28: Uh-huh.

16 52:28: So that's why, you know, I think the intent was great, that it was
17 to remain within Oregon--

18 52:35: Uh-huh.

19 52:35: --because we can--we...

20 52:37: I think you're looking at the Oregon labor market, too,--

21 52:39: Yeah.

22 52:40: --I think.

23 52:40: Well, exactly. So how do you try to figure out for a worker that
24 goes back to Louisiana if the training that we agreed to in Oregon is going to be
25 beneficial to an...

1 52:51: Right. And you don't just start out with picking an online
2 program. You start out with looking at what's the best goal for you, what's the labor
3 market--

4 52:57: Exactly.

5 52:57: --to achieve that goal? And it might be by online training. So I
6 just think having somebody out there doing it on their own, it never-- They always
7 run into problems.

8 53:10: Unless they had to move out of state due to financial hardship.
9 Say they've been on, you know, Workers' Comp for a while and they have to move
10 back with their parents in the State of Washington or something, just--you know,
11 save some money. And so they had to give up their, you know, vocational
12 assistance rights in the state of Oregon just because they had to move to make ends
13 meet. That would be the only scenario that I could think of that you don't want to
14 punish those people if they're in that type of situation.

15 53:35: I hear you, but I still go back to what--the labor market for that
16 particular training. It's like wow, I don't know that you--that would work. You know,
17 you--

18 53:43: Right.

19 53:43: --just don't know. I think that's--you know, that's a problem.
20 That's problematic.

21 53:48: Well, I think we already have provisions anyway for people that
22 are-- There are ways people can train out of the State of Oregon--

23 53:53: Yeah.

24 53:53: --already within our rules, so that kind of helps with that
25 loophole. But overall, I agree with that. We couldn't monitor somebody out of state

1 in their training. It's already hard enough to monitor them when they're next door.

2 54:05: Yes. It can get out of control in a week.

3 54:08: And what I'm finding with some of these online programs, as
4 you might find, is when people get used to doing something electronically because
5 they think it's easier for them--I mean, I don't even have to go anywhere, I can stay
6 at home and take care of this and sleep in, or whatever the reason is they're doing
7 that, they're not motivated a lot of times, and you've got to really stick on top of
8 them. You probably find that some people just let it go, and you're waiting for those
9 midterm grades, you're waiting for--to find out (unintelligible).

10 54:33: Well, and on top of that, many-- These programs are
11 accelerated. You have to have excellent computer skills.

12 54:38: Uh-huh.

13 54:39: And a lot of, like, the construction workers, they don't ha-- I
14 mean, they'd have a lot of help just to figure out how to do (unintelligible). I mean, a
15 lot. So I don't see them doing that out there on their own.

16 54:55: Okay. Thank you very much for your input. Issue No. 4,
17 extended training plans. This affects a numb...

18 55:01: I'm sorry, can we...

19 55:02: Go ahead. Certainly.

20 55:04: I don't know that I was finished with 3.

21 55:06: Oh, that's fine.

22 55:07: Oh, with 3?

23 55:10: Because if we keep the rule as it is, it still does contain a bunch
24 of double negatives.

25 55:17: Yeah.

1 55:18: Okay.

2 55:18: So...

3 55:19: Okay.

4 55:20: It would be helpful. We do agree with that.

5 55:26: Now I'm done.

6 55:27: Okay. Yeah, always stop me if I move on when you still want
7 to talk about an issue. Again, extended training plans affects a number rules listed
8 there. I won't name them all, except that they are Rule 443 and Rule 445. The rules
9 should allow more flexibility for extended training plans. The current limit on training
10 plans is not adequate for many workers to get the training they need. And there's a
11 quote from statute there, basically talking about the maximum of 16 months for
12 temporary disability. The insurer or self-insured employer may voluntarily extend the
13 payment of temporary disability to a maximum of 21 months. The director may order
14 the payment of temporary disability compensation for up to 21 months upon good
15 cause shown by the injured worker. The costs related to vocational assistance
16 training programs may be paid for periods longer than 21 months, but in no event
17 may temporary disability benefits be paid for longer than 21 months.

18 This language limits time loss during training to 16 months, subject to
19 extension to 21 months by the insurer or by order of the director for good cause.
20 The statute does not otherwise limit the length of the training plan itself. Rule 445
21 limits various types of training. The maximum is 16 months for formal training unless
22 extended by the insurer. Rule 443(14) allows training costs to be paid for more than
23 21 months. The Division has heard that 16-month training plans are often not
24 adequate, but longer training plans are not often approved. The focus should be on
25 the content of the training, and whether it is adequate to enable the worker to seek

1 suitable employment upon completion.

2 If an extended training plan is allowed, the worker needs to understand
3 that time-loss benefits are limited. Rule 443(3) may also need to be changed. It
4 provides, the selection of plan objectives and the kind of training must attempt to
5 minimize the length and cost of training necessary to prepare the worker for suitable
6 employment.

7 So some alternatives for this group to consider would be to revise the
8 rule to allow more flexibility for longer training plans, revise the rule to increase the
9 limits on specific types of training, basic education, on-the-job training, occupational
10 skills training, and formal training, or again to make no change to the rule, just leave
11 it as it is. Your thoughts?

12 57:52: I don't think that our rules have adapted to where we are today
13 with the academic programs that are changing. Community colleges have changed
14 drastically in the last six, eight years, especially with the downturn of 2008. For
15 instance, I recently had-- Water treatment has always done pretty much
16 occupational skills training predominantly throughout the years. Where we are in the
17 Mid-Willamette Valley, there's been kind of a change lately. And that's just because
18 of the larger towns in the area that are still publicly owned, so to speak, instead of
19 private contractors--water treatment have adopted new training plans with the local
20 community college, because that's what the community college has done. Their job
21 to go out with the director and meet with these people and say, what do you need us
22 to teach to get people employed with you?

23 And so a lot of their new employees are coming from these programs,
24 and now the new people running these programs who have that background, they're
25 saying, I don't really want the occupational skills person anymore as much as I want

1 somebody to go through this, because they're getting these--this new information,
2 and they're getting the Tech II Water Treatment certification versus the Tech I,
3 whatever it may be. But it is changing, and it does require a lot more time and
4 money from the insurers to sponsor those and get-- There are still those available
5 out there for OST. You've just got to dig a little harder and get somebody to knock
6 on their door a little more.

7 But what I'm seeing is that there's a lot of changes with the schools
8 that we're not adapting. And you know, it's hard to add some of these training
9 programs with the-- We just were not really together, is what I'm looking at. And so
10 I'm looking-- Sixteen months is great, but you can't do an Associate of Applied
11 Science degree without putting a lot of self-sponsorship time on there. And that's
12 very difficult to do for the insurer, especially if you're doing it over a summer break.
13 So the individual is not making money, but once again you're funding. We're not
14 talking about people who are very frugal, usually, or have a lot of money in the bank
15 to protect themselves, so it's just not working.

16 59:50: Thanks very much, Ryan. Additional thoughts?

17 59:53: Well, I have one. One thought is if someone is able to do an
18 associate degree program, which is not--you know, that's certainly not most of our
19 clients, but there are people that can. Those are 18 months. I mean, that...

20 60:08: Minimum, right.

21 60:09: Yeah. I mean, that's-- Yeah. And so you have to have-- You
22 know, you do-- I'm suggesting maybe changing the exceptional loss of income.
23 What's that?

24 60:19: Earnings capacity.

25 60:19: Earning capacity.

1 60:19: Earning capacity to the 18-month standard, rather than 16.
2 And most people even require some basic education or computer skills before they
3 can even do that. So it takes a lot to get somebody back to where they can be
4 competitive. So I agree that 16 months is not a lot of time. I mean, there are some
5 people that can only do occupational skills 12 months, period, and that's all they can
6 do, but...

7 60:48: Well, and the schools are really not on our side. So when you
8 go meet with a school, if you have a client that's ready to do this, and it looks like--
9 and the insurer's going no, we'll back this, it looks like a good avenue, the school
10 does not back us up on that. They tell the individual totally different things than
11 things. You're telling--you're doing, this is your job, to go to school. So you're
12 responsible for these grades. You go to class, you take care of all of your
13 responsibilities, because you're getting paid to do that. But then the academic
14 counselors and them, they're going, oh, you can't take that many classes, you can
15 only take 12 credits, you need to work your way into this, you haven't been in school
16 in 10 years. And you're over here going, if you don't do the 15, 16 credit hours, we
17 won't make it. It's impossible. And so we're--that's what I mean. We're not lying.

18 And so if the academic system out there is in its own--doing its own
19 thing and we're trying to adapt to our rules that are antiquated here, then we're not
20 going to get it done. And I've had a lot of people actually go through associate
21 programs and been really successful. OST, occupational skills, is by far the greatest
22 avenue for employability. by the way, but formal training is--we're moving that way.

23 61:57: Do you have some suggestions for specifics? The...

24 62:01: Well, for like water treatment, for instance, I still like the OST.
25 We're looking for options there right now. We did get lucky and found them. But the

1 writing's on the wall. The people we talked to in our labor markets are going, this is
2 where you're going to go,--

3 62:15: That's what they prefer.

4 62:16: --this our pool of people for-- That's where it's going.

5 62:18: Uh-huh.

6 62:18: Yeah. And that's just one. But aviation maintenance program
7 out of the Eugene Lane Community College is probably one of the best occup--best
8 academic programs out there, because it's a two-year associate degree program.
9 But, you know, if you look back through the history of the labor market, how the
10 trends change with occupations, you know, after Vietnam all of those jobs were filled
11 up in the aviation maintenance industry from veterans, but they're all baby boomers
12 and going away now.

13 62:44: Uh-huh.

14 62:44: And so they've got a big gap to fill. And these are great-paying
15 jobs, because you can go to the diesel mechanic school at LB or Chemeketa and
16 talk to their directors and say, after two years, what do you get out of this, how many
17 people are getting jobs, and they're going to tell you, I don't know, the top couple
18 students maybe. And what are they going to make? Maybe \$13 to \$15 an hour to
19 start out. You can go down to Lane Community College, the aviation school, and
20 you go, what's the employability of your class? 100 percent. What's the average
21 wage? 20 plus dollars an hour.

22 So it's kind of like--the way I look at it as you're digging a ditch no
23 matter what. That's your job, your training. You're going to--you're all digging the
24 same ditch. And at the end of two years, what do you want out of digging? Spent all
25 that time. And so you can get on this route and put all of your hopes into this

1 opportunity that might not exist, or you could go down this route that has a much
2 better labor market. But it still has to be funded, and right now we really don't have
3 the funding.

4 63:38: So could I ask a question? So you talked a lot about formal
5 training. So the suggestion also is on other types of training. You mentioned
6 occupational skills training. Is 12 months still adequate for somebody to be trained
7 or is...

8 63:50: I would like to see that changed, and also basic education.
9 Like, we have a lot of people whose first language isn't English. So I might have to
10 do basic education for 6 full-time months, and then part-time during occupational
11 skills training, or I might do 16 months, the first part may be--4 months would be
12 strictly basic education, but then half--have half all the way through the rest of the
13 training plan. So I think--I mean, some people have to have that much to have a
14 chance of getting into an occupation where you have to speak English. So I think
15 those time frames--occupational skills training, I think, shouldn't have one. That's
16 my thought.

17 64:35: I think if it's just-- For me, pure OST--

18 64:37: The same as academic, there's no...

19 64:38: --isn't bad for a year. But if you've got to mix in some academic
20 support to get in there, then we're having more than 12 months.

21 64:44: And we have flexibility now in the current rules.

22 64:46: If the insurer agrees in its own-- But I don't know that...

23 64:52: Well, I've never had problems with SAIF when--for instance, as
24 one of the insurers, when I've done occupational skills and the academic put--

25 64:58: Uh-huh.

1 64:58: --together, but that's not the way it is in those cases with other
2 insurers. I know that. But mixing them, it's been okay. But with straight OST, 12
3 months for me has always been okay, because the employers are usually surprised
4 they get a free employee for 12 months to train. They're like, really? Because after
5 that, that's why employability is so great.

6 65:15: Uh-huh.

7 65:16: You're going to have to hire somebody sometime.

8 65:20: The self-sponsoring time is really tough. It's really tough. You
9 get through your first year and it's summer, and then fall, and these guys are like, I'm
10 not making money, but I want to finish this, and I'm not getting any support. That's a
11 really difficult time for a lot of people coming back.

12 65:35: That's when we have people say, can I still CDA, will the
13 insurer still settle this with me?

14 65:44: So I'm curious about the labor market at this point. Is it not
15 supporting jobs for our injured employees if they don't have, like, an AA degree?

16 65:56: No. It just depends on the occupation. There's--the trends are
17 always changing; right? Labor markets are always going to adapt to what's going on
18 with everybody else. And CNC Machining--Manufacturing is really coming back in
19 the Willamette Valley, Portland metro area, everywhere. It's kind of come back to
20 (unintelligible). It's one of the few manufacturing that's coming back to Oregon.

21 But what we find out is the manufacturers that are producing these,
22 their technology is changing fast, because they're having to adapt to what's going on
23 worldwide. And so the schools are way behind. And so the training, what we're
24 finding--occupational skills is actually better for CNC right now, because the
25 employers are saying I've hired four people from that school and it's been a waste,

1 I've got to retrain them, I don't want them. Just give them to me. Let me teach
2 them. I can teach them how to do this. So there, academics is not helping them.

3 Water treatment, for instance, going back to that, historically was
4 always occupational on the job. But now we're seeing the larger municipalities that
5 still hire within, which is kind of unique because they really do less there than they
6 would at the small (unintelligible), but they want the academics. It's just a mix. It
7 depends on the occupation. And right now, Oregon is really fighting, like every
8 state, for jobs, you know, and we're trying to see where we're going to-- We haven't
9 even gotten, really, to the green things, how we're going to create more jobs there
10 yet. We haven't seen much change on that.

11 Yet we know that solar panels--for instance, if you want them on your
12 house, these programs, those people that are putting (unintelligible), they're years
13 booked up. They can't even help you. And you go, well, wait, you must be looking
14 for employees then, if you're booked out over a year. Well, we don't have many
15 programs to send them through.

16 67:40: Well, I want to clarify one thing. Most of my clients can't do an
17 associate degree. But, like, I have a union rep. He's working on an associate
18 degree in IT. I have a former county sheriff. He's doing an emergency management
19 associate degree. So there's--it's kind of-- You know, you get the whole spectrum.
20 I mean, we've got a lot that couldn't go to college, so-- But I'm just saying those that
21 can--had a very, very high wage can accomplish an associate degree. Then it's
22 going to take them-- If they-- I mean, not every client can do 16 credits a term.

23 68:16: I know.

24 68:17: They're lucky if they can do 12.

25 68:18: Right.

1 68:19: So that's why I'm think--I was thinking 18 months for people
2 that are at that level seems appropriate.

3 68:28: Any additional thoughts on the time frames?

4 68:32: Yeah. Basic education, either longer or in-- We have some
5 clients that have to have it all the way through.

6 68:38: Right.

7 68:39: So I don't know...

8 68:40: There's still going to be a-- I mean, with academics you get
9 some people that really want to push for the academic that you're not sure about.
10 We'll do academic pretests, and they'll be right on the fringe. But they're really
11 motivated, and they've been doing everything you've asked them. So I understand
12 even from the insurer's side, to say-- You want to make sure this person is really
13 going to do this, because they're never been here before and they don't understand.
14 They're like, you know, I've worked 80-hour weeks. It's not the same thing. It's not
15 the same thing. And they don't get it until they get into it, but by then it's too late.
16 We're not going to go back and go, oh, hey, they've already accepted this, the
17 money is on the table, you bought it, you're going to eat it. So they just have to do it;
18 right? But the-- More or less.

19 But there has to be something to maybe transition in there to make
20 sure they're ready, other than just placement scores. So I don't know how we'd
21 adopt that, but we need more time on the training for occ--for academic plans, and
22 some way to figure out if it's going to be suitable.

23 69:41: Okay. Thank you very much for all of your input on that.

24 69:42: How often does this come up? Is this, like, a highly disputed
25 issue?

1 69:49: What part?

2 69:50: It can be, yes. However, how often does it come up? It's not
3 that often. As Cathy said, there aren't a lot of workers that even qualify for an AA
4 degree in something. But there are some that it is so obvious that that's the best
5 way to get them back to suitable employment that--you know, there shouldn't be any
6 argument over it, but the--but insurers may not agree be--just because they don't--
7 You know, it says 16 months. That's all they're willing to do, or less. So, you know,
8 yes, it's an issue, but-- And I'm trying to think. You know, we may have three, four a
9 year where it's a dispute.

10 70:44: You know, just--not to be Debbie Downer on this, but it's not
11 just the insurer. It's the employer. And so we're always-- I mean, I--we want to get
12 people back to work, too. Just, I guess, ask the Department to always be cognizant
13 that at the end of the day, you know, we may be writing the check, but the employer
14 is paying the bill. So just be careful in what we fix and how we fix it.

15 71:13: Okay.

16 71:13: Now, all I'll add is that there are usually people that make, like,
17 an average of \$33 an hour or more.

18 71:18: Yes.

19 71:19: These are not...

20 71:19: Yeah.

21 71:20: There's whole other types.

22 71:23: Yeah.

23 71:23: They're making, you know, \$30, \$40 an hour, but they're the
24 ones that may get talked into a training program, and then don't want to be a part of
25 it and end up going back into the trades. You know, so that's why I'm not saying too

1 much on this, because my workers don't really tend to want to do these training
2 programs.

3 71:41: Well, and I think that's true, Sheri, that--again, at least on the
4 disputes, because I don't see all of these kinds of plans that you guys get, because
5 they're not all disputed. But on the ones that I've seen, first of all, the counselors are
6 very careful on who they recommend do an AA degree. It's not just the money. It is
7 the suitable wage but it's also the worker's aptitudes and-- You know, if somebody
8 has worked out in the woods since they were 16 and make \$40 an hour, whatever,
9 that's not going to be a person who wants an AA degree. So...

10 72:26: Well, first of all, they'll place in the math--20.

11 72:28: Yeah.

12 72:29: The first writing class...

13 72:30: Right.

14 72:31: They have to have four writing classes before they could even
15 start the program. So it's not suitable for...

16 72:35: Yeah. No. No. So it's not just a suitable wage that's
17 considered.

18 72:41: I think that goes back to the likely eligibility. You know, that's
19 something that's-- Claims Management 101 is making sure that you're identifying
20 those workers that may end up needing training, and keeping them occupied while
21 they're recovering by helping them with those classes. So hopefully...

22 72:58: Uh-huh.

23 72:59: You know, and they may need that for anything. You know,
24 they need to be brushed up on any kind of skills. I think that's a good claims
25 handling practice.

1 73:07: And Sheri, you make a really good point. Some of the folks
2 that are needing help with English as their second language--you know, if they've
3 been sitting out there for a year and a half on time loss, and then it's like, oh, well,
4 now we need to do these classes, it's like, you know what, I could have been doing
5 those--

6 73:25: Yeah.

7 73:26: --while I was sitting at home or...

8 73:28: Well, we get a lot of those from SAIF and optional services, and
9 it makes all the difference in the world--

10 73:33: Yeah.

11 73:33: --for people that...

12 73:34: Yeah. Right.

13 73:35: I mean, because you just don't learn English in--

14 73:37: Yeah.

15 73:37: --six months.

16 73:38: That's impossible.

17 73:40: Can you imagine?

18 73:41: And kind of going off of what Jaye was saying, I was thinking
19 about--as the minimum wage keeps climbing up, the employers have to take that
20 into consideration. That's already their big issue right now on a lot of them. You
21 have high-wage construction--like, prevailing wage construction--

22 73:55: Yeah.

23 73:55: --people. When they get injured, they don't want to go back to
24 school. They don't want to change a job that makes them \$30 or \$40 an hour,
25 because most of us weren't making \$30 or \$40 an hour with education, so-- Right.

1 So really, they go back and they go, that's not going to benefit me and do all that
2 work, something I've never done. But what do they end up doing? Going back to
3 their job--

4 74:15: Yeah. They're back in the trades--

5 74:16: --until they finally can't work at all.

6 74:17: --until they get hurt again.

7 74:18: And then Social Security picks up.

8 74:20: I know, yes.

9 74:21: But either way, we're really--we're eating from the fund
10 somewhere. Ultimately, we're all paying for it.

11 74:28: Yeah.

12 74:29: And I think that's-- For me, I keep thinking--I don't really want
13 to pay for everybody else's problems all the time, just like-- But as an employer,
14 hiring somebody--it's like a child, I like to look at it. They're my responsibility. And
15 so if they get hurt on my watch, well, it's going to cost me. Don't hire them if you
16 don't want to pay for them. Don't advocate if you don't want to pay for them.

17 74:56: But one thing I want to say. I appreciate what I'm hearing in
18 this room today, because I've been very discouraged by the whole voc process
19 because it has been a complete failure in the construction industry, I believe. But I
20 love hearing what you're saying about some of these programs that you're looking
21 at. Because from my perspective, everybody wants to make everybody a cost
22 estimator, and there's only so many cost estimators in the construction industry.
23 And it's usually residential, anyways. It's not in commercial.

24 So hearing what you're saying, it--I appreciate that you're really going
25 outside of the box, and that you're looking at these programs, and that you're going

1 out of your way to find the programs that-- And unfortunately, some of them can be
2 more timely. I would, in a New York second, say yes to something like that, to pay
3 the extra and to pay-- I just would. So knowing that-- You have to understand from
4 the employer's perspective what Jaye is referring to is--there's a lot of counselors
5 that just have (unintelligible), and that has been my disillusionment with the voc--the
6 whole voc process. Because if I'm an injured worker and somebody's telling me I
7 can do this job, and I'm sitting here as the employer saying, that's a joke, there's no
8 way they're going to be able to do that, they're never going to get hired in the
9 construction industry doing that, it's very, very discouraging. So I really like what I'm
10 hearing from you. I appreciate that. And Cathy, you as well today. So I just have to
11 say that because I'm always the negative-- As Jennifer would say, mention voc to
12 Sheri and it sets her off. This is--it's nice.

13 76:28: Well, actually, there are a lot of people that can complete
14 training programs. But I think the construction industry is--it's hard. A lot of them do
15 go into the wastewater-- I've got one guy right now who is was a construction
16 worker that's...

17 76:40: Well, I keep reading that-- Actually, Jennifer came up with
18 some statistics about how last year during one of the conventions about how many
19 voc eligibilities were done in 2014, I think. Remember that?

20 76:52: I must have gotten it from Heather.

21 76:53: Yeah.

22 76:54: Yeah. And it was a big deal, as a matter of fact. We were all
23 there. And it was the talk about--well, how many people--what do we think the
24 percentage of those were successful?

25 77:03: Oh, right.

1 77:04: It was shocking. The vast majority that were eligible and
2 actually started a voc program were successful. And...

3 77:10: That's because now they have a choice. If somebody starts
4 when they know they have to work and they wa--you know, very successful. If
5 somebody doesn't want to do it, they settle. So I think the ones that do go into
6 training typically are. And then if something happens and it doesn't work out in the
7 first two months, we have to fix it and make it something else, because they have to
8 have resolution. So yeah, I think, truly, the ones that start finish.

9 77:41: Yay. The whole conversation was great. And I love the fact
10 that you've got employers who are saying, don't send those people to get trained at
11 some school, give them to me, we can help them out.

12 77:50: Yeah.

13 77:51: Yeah.

14 77:52: Because I've often wondered about these employers who are
15 saying, I can't find skilled workers.

16 77:56: Uh-huh.

17 77:57: And it's-- So train them. And this is a way to get them trained,
18 so that's cool.

19 78:01: Okay. Thanks all very much. Are we up to Issue No. 5?

20 78:06: I think I have one more comment.

21 78:08: Okay.

22 78:10: So...

23 78:10: Is that mace down there?

24 78:14: The issues document mentions 0443(3). The selection of plan
25 objectives and the kind of training must attempt to minimize the length and cost of

1 training. And I think that needs to stay,--

2 78:28: Yeah.

3 78:32: --because the goal of vocational assistance is to get people as
4 close as possible to a hundred percent of what they were making before.

5 78:40: I'd agree with Jenny. Good point.

6 78:45: Some of the problem we had with that is insurers, perhaps not
7 anyone in this room, who will not approve even a 16-month program, because they
8 believe that the person can be trained in something that's 8 months or 12 months
9 when-- And I think this was the 10 ten. Is this the 10 percent? Okay. The 10
10 percent-- Does everyone know what 10--what I'm talking about, which 10 percent?

11 79:20: I don't know what you're talking about.

12 79:21: Okay.

13 79:21: Exceptional loss of earning capacity.

14 79:22: Exceptional loss of earning capacity. So if one training that's 8
15 months long is going to result in an entry-level wage of \$9 an hour, and another job--
16 training that's 12 months or 16 months long is going to result in a job that the entry-
17 level wage is, you know, \$9.50 an hour, but the 12 or 16-month training has the
18 potential over a period time, three, four, five years, of the worker earning \$18 an
19 hour, insurers will say, no, I'm not going to do that training, because right out of the
20 gate they don't earn 10 percent more. So that's where--Jenny, that's where they're
21 at, trying to minimize costs. That's where the...

22 80:22: I thought the 10 percent was only for the exceptional--

23 80:24: Yes.

24 80:25: --earnings.

25 80:26: Loss of earnings capacity.

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80:27: Loss of earnings.

80:27: Yeah. It only--it applies then, not before then.

80:30: I'm thinking if you remove this rule, for example, if you've got somebody whose average weekly wage is 300 bucks and they're entitled to training, you don't--you wouldn't necessarily pay for a 16-month training designed to get them to \$15 an hour. You would do a shorter training to get them to be an office clerk or something entry level, to get them back to the level that they were before.

80:58: And I don't think we want to remove it. We just-- The change is the key, because I think another issue we've been seeing is we're not approving anything because there's a cheaper route, no matter--

81:09: Yeah.

81:09: --what.

81:10: Right.

81:10: So it's to minimize costs, is what it says here, an attempt to minimize the length and cost. We're seeing that where it doesn't always make sense to go the cheaper route. We might as well approve this, because that's going to be better for the worker.

81:23: In the long run.

81:24: In the long run. So changing it somehow to clarify that the cheaper one isn't necessarily the answer.

81:32: It's like--it's not always the lowest bid--

81:35: Uh-huh.

81:35: --(unintelligible).

81:36: Yeah.

81:36: It's the lowest bid that's going to get--

1 81:39: Nice, Jennifer.

2 81:39: --the job.

3 81:40: Oh, and I totally--

4 81:41: You know.

5 81:41: --get that. But I guess the word that I hone in is on a suitable

6 employment. So I always think that I'm trying to do, I guess, the quickest and

7 cheapest thing to get the worker back to suitable employment.

8 82:00: You know, in Issue 6 we're going to talk about appropriateness

9 of plans, so-- You know, if you look at this, the suit--I agree, the suitable

10 employment. That's going to come up when we're talking about Issue No. 6 on

11 appropriateness of plans.

12 82:16: And actually, all of this is--

13 82:16: So...

14 82:16: --going to keep coming back to that 16 months,--

15 82:19: Yeah.

16 82:19: --because the exceptional loss of earnings going back to the 10

17 percent, and what we're discussing here is it's always-- We're not--we don't have

18 enough time to complete the amount of training needed to meet the suitable

19 sometimes, let alone get that 10 percent for the exceptional loss of earnings

20 capacity. So even on a high wage earner, what I found, which is a case that's been

21 going on for over two years with an attorney up in Portland on this one. The guy has

22 already graduated from school and working for Intel Corporation. We're still involved

23 in this because he had to self-sponsor for part of that period, and he did not like that.

24 But we're not there. So what I mean is if we can't even do-- For

25 instance, the employer goes, yell, yeah, you know, I know she'll make 10 percent

1 more after two years of experience. But either way, you still have to meet that
2 bottom watermark just to get them there, and I don't think we're getting them to the
3 bottom watermark when it comes to those upper--those occupations that pay more
4 in the first place, because we're not putting them into construction jobs that they can
5 do, because they can't go back to those jobs.

6 So I guess my point here is that if we--the selection of plan objectives
7 and kind of training must attempt to minimize the length and cost-- Well, initially
8 they're supposed to look for on-the-job training. How many of those go through?

9 83:41: A couple a year.

10 83:41: Maybe; right? That's it. So that's the lowest watermark that
11 we're supposed to look at. But as a voc counselor, you pretty much go on to OST
12 on most likely academics maybe for this individual in some cases. But if we're at the
13 academics, we're not even there yet, I mean, as far as--we don't have the time
14 allotted to cover that. So the exceptional loss of earnings always comes into play.
15 I've had plenty of attorneys fight me on that. And I'm on the rule, and I go, but I can't
16 prove with my labor market for this occupation that they're going to get the 10
17 percent.

18 And the attorneys get really upset, because they say, my individ--my
19 client was a \$30 an hour plus wage earner, and you're saying they can't get the
20 extra five months and the extra \$7,000, \$8,000 for this training, they still have to self-
21 sponsor? And I'm like, yeah, because I can't prove they're going to get 10 percent,
22 because the labor market won't give me that. Not for five months, because most
23 people are finishing an associate degree in five months--or the 21 months.

24 84:40: Does this mean that-- I'm thinking what they're getting at here
25 is if there's a training plan that maybe will get them the starting wage of \$20, but that

1 in five years they could be making \$26, and let's just say their wage at injury was
2 \$30-- Are they trying to say that if it could be proven that they could get a higher
3 wage, let's say if they became an RN, that most hospitals--within five years, you'd be
4 making this wage, which would be-- Is that what they're trying to say here, is the
5 longer training plan if they could eventually get a wage closer?

6 85:13: I think that's what you were talking about,--

7 85:14: That's what I was...

8 85:15: --the Kristine Hamilton case where--

9 85:16: Yeah.

10 85:18: --they only look at the entry level wage,--

11 85:20: Right.

12 85:20: --whereas, as in a couple years, the wage had potential to
13 grow.

14 85:23: Right.

15 85:24: I've seen that come up a couple times.

16 85:25: Right. Yeah.

17 85:26: It's not a frequent thing.

18 85:28: No, it's not frequent. And this certainly-- The minimizing the
19 length and cost-- Again, we're not talking about the majority of the injured workers.
20 We're talking about high wage earners. We're talking about people in more, you
21 know, paraprofessional type jobs. Or actually in construction, for instance. Some of
22 those are pretty high wage earners. So yeah, it just depends on the wages we're
23 looking at. And minimizing the length of a training program is not necessarily the
24 best thing, the best way to return a person to work, so...

25 86:13: But I have to say, for my construction workers, they--I want

1 people to be creative--as creative as possible, to get them back into some sort of
2 industry as quickly as possible. Because the longer that they're out there and, you
3 know, they're not earning their wages-- And you know, we're talking a male-
4 dominated industry where they have to be the--you know, the primary breadwinner.
5 And so I think this is important. I want people to minimize the length of these
6 training programs. I want these workers to continue to move forward in getting well.

7 And I think if you put--if you remove that, what you're going to do is--
8 Okay. Everybody is going to be put into X amount of training program. And that is
9 not in the best interest of my injured workers. It could be for lots of other people.
10 But my high wage earners, what I've learned is they will do however many months of
11 these training programs. And this is what I'm saying. I've only had one in 24 years,
12 so it's been successful in the United States, people. This isn't just Oregon. This is
13 in the United States. And Hoffman does work throughout the country.

14 I think that those workers--they get so far along, they get discouraged,
15 their grades, they're tired of it. They go back into the trades, and then they get
16 injured, and then something else happens. So I think the more--the work you guys
17 do at minimizing, trying to figure out a way to be creative and outside of the box to
18 get these guys back to work (unintelligible), the sooner the better. And that's when
19 they're going to be more successful, because-- You know, it may take two years for
20 a training program. But if they get back into the workforce, they're going to be, you
21 know, proving themselves up, and they're going to be earning more, or they're going
22 to do like my construction guys. I am sorry, but it has been a total failure on those
23 states that require voc rehab. The workers just--they just don't do it.

24 88:10: A lot of times, workers in construction weren't--they entered
25 that field because they liked working outside.

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88:18: Exactly.

88:18: They didn't like school. I see that a lot.

88:21: Yeah. And they don't have any desire...

88:22: And so--and they still want to work outside, and they don't want to go to school a lot of times. But one thing I could suggest was if adjusters look, if someone doesn't have a GED, or maybe might have a background that would suggest maybe they would be interested in working--they just took English and computer on their own, I mean, or through--you know, before they're likely eligible. If somebody was interested in doing that, that would help them to achieve a new goal later. Because when you have all of that to do by the time you're medically stationary, it rarely happens.

89:01: Well, and Cathy, my concern is you have something in here--or you take this out, minimizing the link. That's an objective. You take that objective out, and it becomes-- You know, I totally agree. And I totally understand where you're coming with--from on the success of these longer programs, but I think it's important to focus in on what you can do in the quickest amount of time to get the worker to a decent wage, to keep them motivated and make them--make sure that they're getting back into the workforce.

And so if you take that out, I'm afraid that it--all it does is-- Okay. So now my workers--instead of a 16-month program, they're doing 21 or whatever the case may be. And they still go back into the industry, and I've spent all of this money and it has really gotten us nowhere. And at the end of the day, I want my workers to be still a part of the workforce, and I want to make sure it happens as quickly as possible. And I'm only speaking for the construction industry. I'm not speaking on behalf of OSIA or anything at this point in time. But I'm very passionate

1 about this because I have been in this industry. We do billions of dollars' worth of
2 work a year. I have a lot of workers that, unfortunately, get injured. I am talking 24
3 years of experience, and only have that one successful case. And I don't know.
4 Maybe he's still not a 911 operator. I don't know. But that really says a lot about
5 what it--you know, the opportunities. So sorry, I just--I feel very strongly. You start
6 emoting this stuff, and it--

7 90:33: Sheri...

8 90:34: --gives open--jt opens something else up.

9 90:38: And my understanding of this is not that the Department was
10 saying remove this. And because you did only have--only had one success, the--
11 When I read this-- And again, I'm not that great on the voc stuff. But when it's
12 talking about minimize the length and the cost suitable, well, maybe that's why,
13 because of this being that restrictive. Maybe that's why they haven't been as
14 successful, because it hasn't been flexible enough to say, you know what, this
15 package deal over here is going to cost them \$300 more, but in the long haul it's
16 going to make them much more successful. But the decision being made--no, this is
17 the cheapest one, that's what we're going with, and...

18 91:24: Yeah. But Jennifer, in my case, I hope everybody knows, I
19 have free--I have the checkbook. And you know, I get to make those decisions on
20 behalf of Hoffman. And I would gladly...

21 91:35: You would say, I'll pay the extra \$300?

22 91:36: I would pay for it.

23 91:36: Yeah.

24 91:37: Exactly. So to be able to tell you that--

25 91:38: But with the rule written the way...

1 91:39: --I've only had one success,--
2 91:40: Yeah.
3 91:44: --it's not based on--I was trying to go cheap.
4 91:43: Right. But with the way the rule is written, I think that's what
5 the--
6 91:45: That's...
7 91:46: --Department is--
8 91:47: Right.
9 91:47: --seeing, is that some of those decisions are, we're going to
10 go--I almost used a brand new--we're going to go with this style, versus, you know, a
11 mediocre one where it may be more successful,--
12 92:03: So--
13 92:03: --because it's the dollar.
14 92:05: --I'd like--my thoughts around all of this. Because SAIF
15 certainly supports the 24. Okay? We don't have any issue with that. We agree with
16 what you described in the marketplace out there. In those situations, it's harder for
17 people to finish that program. In the same breath, we also think we need to be very
18 careful that we're not doing it in the shortest and most efficient time to suitable wage
19 so that it's not opening the door for people who--oh, I want that job.
20 92:36: Yeah.
21 92:36: Really and truly, the rule says this is--we need to get you back
22 to this. And we do need to keep employers in mind as far as who's going to pick up
23 the ultimate cost of all of this. Because if we say, we can get you in the door as-- I
24 mean, somebody used the RN program a minute ago, so-- I'm not sure if that's a
25 good analogy or not. But--so based on where we were, we get you here, but are

1 we--should the employer really be responsible for getting them out here to the
2 ultimate of what an RN can be? That--I think we need to keep all of that in mind. So
3 I'm reluctant to take flexibility out of the program, which if we take out this minimum
4 piece I think that opens the door. So I think expanding the 24, but keeping it based
5 on the front end...

6 93:26: And if we...

7 93:27: And there-- And we're not going to be able to make a rule that
8 covers every single case.

9 93:27: It's a statute. We can't change the statute.

10 93:32: Yeah.

11 93:32: Yeah.

12 93:33: No, but we're actually--

13 93:34: No.

14 93:34: --dealing with a few things. When we were adding--we're
15 layering all this into the 16-month time, the exceptional loss of earnings, all these
16 different barriers, but we're also taking it into the 80th percentile for wage.

17 93:43: Uh-huh.

18 93:44: That's a big part.

19 93:45: It is.

20 93:45: So when the construction worker is making prevailing wage, I'm
21 sorry, there's-- I tell them, guess what, there is no job we can put you into that's
22 going to get you back there. It's just not going to happen. Yeah, going to make--
23 They're not happy about working 20 years in a job, 10 years in any occupation--
24 Somebody's going to cut your wage in half. Why did you spend the last 10 years
25 doing what you did, to get hurt in the first place? So we--it's knowing your client. So

1 I can say, if you've had one successful vocational program in 24 years, then you
2 need to find new voc people.

3 94:19: I wish I-- I have not come across somebody who is really
4 creative and really, really is sincere in getting people back to work. It's all about the
5 check. So sorry, I--that's where-- I really get passionate about this, because it has
6 been a complete...

7 94:37: I will add, too...

8 94:38: But we can't change the statute today, and the statute's limited
9 to 21 months. And I know that I sat on this--

10 94:44: Time loss.

11 94:45: Time loss.

12 94:45: --committee...

13 94:46: Time loss only.

14 94:47: It's only time loss.

15 94:48: But I sat...

16 94:48: Twenty-four months is...

17 94:49: Okay. So I've sat on those committees, and there's--I haven't
18 always been the--I'm not always the most passionate person in the room, believe it
19 or not. But there's been a lot of discussion over the years around voc rehab through
20 the MLAC process. And I--you know, I'm not sure how those discussions fit in here,
21 but I know we've looked at this and discussed it so many times. And I don't-- What
22 are--I guess maybe, what are you suggesting on the taking out of this section if you
23 change it? Because we've already talked about overall. I've probably beat it to
24 death here. But what are we talking about, this section that--you're saying it's not
25 being removed, it needs to be changed. What do you change?

1 95:33: We're not sure of the exact language. We're trying to make
2 sure that--like how-- I think how Jennifer described it was exactly what we're saying.
3 We don't want to have insurers say, this is the lowest bid, we have to go with that.

4 95:46: Uh-huh.

5 95:47: We don't want that on there. There might be a higher bid that
6 works better. You said you have the checkbook and you'd rather spend the \$300
7 extra to get them that better training plan, but not every insurer does that.

8 95:59: No. Not everybody does, and not everybody will, so...

9 96:02: And based on this rule, they're able to do that.

10 96:05: And it's not saying that it should always go to the higher one.

11 96:07: Right. Right.

12 96:07: I know.

13 96:07: Yeah.

14 96:08: See, that's the problem, is then--

15 96:09: Yeah.

16 96:10: --you're going to have the people that say, well, now it's-- And
17 I'm sorry, voc people, but I--the voc counselors I have dealt with, unfortunately, they
18 would go to the higher one. They wouldn't try to be creative and try to--be limiting to
19 try-- You know, so that's part of my frustration, is I haven't-- You know, I would like
20 to get some business cards today. But haven't had that opportunity to work with
21 people who actually are focused on that. So--and I don't know what other peoples'
22 experience are, because--

23 96:39: Well...

24 96:40: --there's only a couple of employers in the room today, which is
25 frustrating as all get out, so...

1 96:45: And Sheri, I want to bring up too, with those people that you
2 have, those higher ones, sometimes there's--their legal counsel is what's driving--

3 96:51: Correct.

4 96:51: --this. Because the legal counsel is telling even the voc
5 counselor, how much is that plan going to cost, is that all, are you sure it's not more
6 than that?

7 96:59: Oh, yeah. For the-- Yeah.

8 97:00: Because instantly you're going--as a voc counselor, you're
9 going, oh, this is a CDA waiting to happen. Because they want to see it as
10 expensive as possible, so that they can go back to the insurer and go, hey, this is
11 what we need.

12 97:10: That happens, yeah.

13 97:11: Outside of voc, I do work with attorneys for injury cases. I'll put
14 these--

15 97:17: Oh, okay.

16 97:17: --reports together because it's a little small piece. Once they
17 get there, you know, if there's a major car accident, the person's time loss wages.
18 And they love that. And they want you to flex your muscle as much as you can in
19 those, because they say, you know what, based on these, this person has lost part
20 of their work life. And those insurers, when they're looking at really large
21 settlements, this is-- You know, an extra \$30,000 or \$40,000 for training to get him
22 somewhere is nothing.

23 So when I look back at the voc I always feel like, wow, we're so far,
24 we're in a different position. But then as an employer also, I understand, well, I
25 shouldn't be making that person wealthy because they get injured. So I understand

1 where we are in Workers' Comp. But understanding their clients and knowing what
2 the legal counsel is giving them, those--there are so many variable pieces involved.

3 98:06: I'd like to support Sheri a little bit. As an employer, we balance
4 out wanting to get the best for our employees that have been injured. We want to be
5 able to make them whole and get them back on the road that they need to be able to
6 support their families and themselves. However, we also have this giant thing in the
7 corner that has to do with-- You know, we're publicly funded. We are very careful
8 with how we spend our funds, and often-- As you know, I'm the Work Comp
9 coordinator. Daedra is the claims specialist. We're low on the totem pole of
10 decisions, yet we understand the Work Comp arena, having been adjusters, seeing
11 what's out there and knowing-- You know, we don't have the authority to make
12 decisions on who we go with as voc counselors, and we've had really bad
13 experiences.

14 And so we have to balance all of these things. And the concern for me
15 is looking at this and saying, let's extend the time period. One of the voc counselors
16 that we use will automatically go to that every time. And I'm not worried about the
17 people that are self-motivated, that will get through the program and do a great job.
18 I--that's not the issue. The issue is the people that work it to their advantage with
19 the voc counselor so that they come across differently than what the truth is, and the
20 voc counselor buys into it, and we're stuck with a two-year program that this person
21 didn't need, because I know their skill set is different than what they've said they
22 have. So I...

23 99:46: But don't they do testing and evaluations and write a
24 justification for why you have to spend--

25 99:51: I agree.

1 99:51: --that money?

2 99:52: They did the testing, and it doesn't match. So we're still
3 fighting with the voc counselor to get a different plan. There's always mitigating
4 factors. There's health issues in the mix, and so it makes it more complicated.
5 Sometimes the adjuster isn't on the ball with all of this, either. And so there's a lot of
6 hands in the pot.

7 100:16: Uh-huh.

8 100:17: And so we make our best case as the employer, but it doesn't
9 always go the way we want, and often it will fall flat. Because if we don't have the
10 support of the adjuster to be able to be as passionate about it as we are, then it
11 just--it doesn't come across the same. And as an employer, you have to balance, is
12 it my responsibility to speak out on this--you know, on this claim when I'm not the
13 adjuster.

14 100:47: Uh-huh.

15 100:48: And so, you know, it's complicated.

16 100:52: But Kristen, I'm thinking. You represent the public schools.
17 So who gets hurt at a public school?

18 100:58: Janitors.

19 100:59: All kinds of...

20 100:59: Janitors.

21 101:00: Janitors.

22 101:01: Mostly, and nutrition services.

23 101:01: Teacher.

24 101:02: Okay. So we're talking about a subgroup of employees for
25 the public schools that are predominantly getting injured. It's not your administrators

1 or your teachers that are getting injured. Sometimes (unintelligible).

2 101:13: Teachers get hurt.

3 101:16: Football coaches.

4 101:18: What happens with a teacher when they get hurt? They're
5 already in a pretty light sedentary job. They're instructing people; right? Now
6 unless...

7 101:24: You'd be surprised.

8 101:26: So some-- They've already got academic background?

9 101:28: Well, this is true.

10 101:29: Okay. So if you're looking at somebody--if one of your
11 teachers is injured, you can go-- The watermarks are higher. They have already
12 accomplished an academic background, so that you've got more opportunity. But
13 what are you going to do in training? They've already got a bachelor's degree, likely
14 a master's degree, so that changes that. But the people we're talking about don't
15 have any of that.

16 101:50: Right.

17 101:51: Right?

18 101:52: Right.

19 101:52: That's who we're dealing with. So what is their motivation to
20 really get through a long two-year academic degree program, anyway? They've
21 never done it throughout their history. So I think it's really taking it case by case,--

22 102:02: Uh-huh.

23 102:02: --but we're looking at the people that are being--that are our
24 primary clients. And that is, like, the construction industry, working in the brush and
25 the wood products industry, you know, some of the more physically labor jobs,

1 agriculture. The people in the public schools that I've worked with are all janitorial.
2 I've done some job analyses with teachers, but they never end up going anywhere
3 because they're teachers. So I think it's just-- Again, that voc counselor needs to
4 take into consideration who that person is they're working with, right, and understand
5 that they're only going to hurt that individual if they're pushing for the pie in the sky
6 when they know this person can't reach it.

7 102:41: I have two school district janitors right now in training plans,
8 but they're not in academic. They're in other kinds of plans. Short-term, like a
9 couple weeks academic. But occupational skills training is typic--they're not
10 typically-- If they were doing that job, but they usually don't want an academic
11 plan,---

12 103:00: Right.

13 103:01: Yeah.

14 103:02: And most of them...

15 103:02: --or are capable of one.

16 103:04: They wouldn't use-- I'd say get them on the Preferred Worker
17 and bring them back and employ them and get some subsidies for your school.

18 103:09: We try, but it's not always successful. Our Preferred Worker
19 Program is not as full as we would like it to be, and our ability to actually provide
20 jobs, you know, is challenging. But can I add a quest--or a comment, actually?
21 Slightly different, but kind of what you were saying, Ryan, earlier. And I'm going
22 back quite a ways in regards to the community colleges and the schools being kind
23 of behind the ball and really not being in support of this process of vocational
24 retraining. I'm curious if the state has considered--or if they already do some sort of
25 incentive to the colleges with regards to accepting students with this kind of

1 background, so that they have incentive and maybe they get something that allows
2 them to increase their classes that are really driven towards voc and retraining
3 people for specific things.

4 And I'm just curious what kind of things, if that's-- You know, I realize it
5 feels like a lot of times the cost is on the employers. And we're publicly funded just
6 like the state is, so the money comes from the taxpayers anyway. But I see a really
7 broad benefit when the state goes into something that--and helps all employers. So
8 when you can--if the state could step up and do things to help with incentivizing
9 these programs for the colleges or the programs that maybe aren't colleges, but
10 provide these occupational services, what can we do as an incentive to make this
11 easier on our voc people in allowing them to be more creative or having more
12 options?

13 Because it's better for our employees. As soon as we can get them
14 back in--much like Sheri was saying, you know. It's not just about them being able
15 to support themselves, but it's about-- You know, all of us have heard the statistics
16 about making sure that-- When people are active, as opposed to sitting at home,
17 and they actually have a routine and someplace to be, and they're accountable for
18 something and they have a purpose, they make better progress. You know, that's
19 kind of my argument to the minimizing, is that the longer you draw it out, it can--it
20 has the potential of being more challenging to get somebody back.

21 105:20: Right.

22 105:21: My answer to that is the states have already done that with
23 the Cooperative Work Experience, meaning-- I don't know when that was adopted,
24 but it was genius many years ago when they said, hey, you know what, we need
25 somebody to protect the Workers' Comp when we do occupational skills, on the job

1 training, because these employers don't want to cover these injuries. That's not
2 their responsibility. They're already providing training.

3 So that really opened up for all of the community colleges to say, hey,
4 we're always looking for funding, and how do we get that? Well, when the state
5 goes, well, you could provide that Cooperative Work Experience credit, because you
6 already do it for internships through your academic programs. So for instance, the
7 RN program was brought up earlier. You know, when you--when you're going
8 through a Chemeketa Community College two-year RN program, they're going to
9 put you at the local hospital for an internship period that's covered by the school. So
10 they do that for us for occupational skills, so...

11 106:12: Are you finding that program to be successful still?

12 106:15: It is.

13 106:16: Oh, it's very successful.

14 106:17: It's very successful.

15 106:17: Occupational skills training, it can be 12 months. If they do 12
16 months, they get a two-year certificate in whatever they're being trained to do,
17 whether it's service, writing or--anything. It could be anything, virtually.

18 106:31: And the...

19 106:31: They get 64 credits, so--and they get a year of work
20 experience. So let's say you do it with your Portland Community College or Linn-
21 Benton or wherever. So they get a two-year certificate in whatever it was they
22 trained to do. And there's three-page lists of everything that they used, they--
23 different kinds of training, occupations. So they get a two-year certificate in auto
24 body estimating. They also get a year of experience that you put under work history.
25 And the only thing that's different is you don't put a wage, you put internship. And it

1 works beautifully.

2 107:04: And it's an (unintelligible).

3 107:06: It's very successful.

4 107:08: It's very, very successful.

5 107:09: Yeah.

6 107:11: Return-to-work rate is very good.

7 107:14: It also brings in an out (unintelligible) to come in to meet with
8 the jobsite, to meet with that worker and say, I'm here to help you both make sure
9 you're managing this correctly. It's nice to not always have to be the person to go in
10 and do an evaluation, because we bring the Cooperative Work Experience
11 coordinator in and they say, hey, how's the first three months gone? And then they
12 do an evaluation that everyone gets to openly talk about. So you can see where this
13 is going. So that's been really successful.

14 And truthfully, my own personal point is, we can't get any more money
15 or flexibility to the schools right now. They've already--they have a hard time dealing
16 with what they've got. And I think the problem with--what I see with them is that
17 they're not listening to the labor market as well as they should be. They're just trying
18 to make money, trying to substantiate their claim.

19 108:02: Yeah. I'm sorry to break in, but we're already past our
20 scheduled break time. So I'd like us to take a 15-minute break, and then get back
21 together at 25 to top of the hour, and then we'll proceed.

22

23 (off the record)

24

25 108:16: Thank you very much. We looked at Issue No. 5, and we

1 think we've really already talked about it regarding extension of training for
2 exceptional loss of earning capacity. So rather than revisit that--unless anybody
3 brought, you know, specific comments with them on Issue No, 5, we'll skip on to No.
4 6.

5 108:37: Well, we haven't really talked about having to look at wage
6 potential over time. And I think that is problematic, because it's hard to prove what a
7 worker could make over time. And what they can make over time is dependent on
8 things that none of us have control over, like the economy and the worker's
9 motivation to succeed and all of those things.

10 109:05: Uh-huh. Well, there was, I guess, on Hamilton--in the
11 Hamilton Order, the director found that the employment service team and
12 Administrative Law Judge applied an incorrect legal standard when they looked to
13 the entry-level wage, rather than looking to the wages that the plan would allow the
14 worker to earn. And then Rule 400 includes the potential for income growth as a
15 factor in determining whether the worker needs training to return to employment, and
16 pays a wage significantly closer to 100 percent of the adjusted weekly wage.

17 So what we had on the alternatives was expand the second sentence
18 of Subsection (14)(c) to include the potential for the worker to earn, within five years
19 of completing training, a wage at least 10 percent greater than could be expected
20 with a shorter training plan. And yeah, I'd--I understand that that would be a more
21 difficult, probably, dollar number to come up with.

22 110:05: Or-- And I just really--I'm sorry, Fred, to interrupt you. But
23 looking at it now, there's--the other alternative is to clarify the rule so it--see how it
24 was interpreted so that it could be interpreted...

25 110:15: The way it was before. Okay. That's true. So Jenny, you

1 would prefer the--what we find the clarity of actually looking at the entry-level wage?

2 110:27: Uh-huh.

3 110:29: Because that's really the only thing that we can guarantee.
4 What a worker is able to get over time is really very much dependent on their own
5 work ethic, their own motivation, drive, all of those things.

6 110:46: She's left out.

7 110:48: Oh, I didn't real...

8 110:49: That's odd.

9 110:50: Uh-huh.

10 110:52: Going--and what Jenny was saying, too, Fred, was that we
11 have one right now where I feel like the legal counsel and the voc counselor, myself,
12 are both working for the same client, but we're butting heads when it comes to this
13 rule because-- One case in point was he was able to have an individual seek a--the
14 similar--same computer networking goal that I was a year or two prior to when we
15 were doing it. And they were able to get an exceptional loss of earnings capacity
16 based on a pro--plan they could put together that could show that they could get this
17 10 percent with the way they were doing it, but it wasn't an academic plan as much
18 as it was in occupational skills with some sort of workshopping and other things put
19 in there.

20 But the individual wanted to go to the Associate of Applied Science
21 degree program of Portland Community College, which had a really good program at
22 the time. The 10-percent wage was not going to show anything for me to get that
23 extra 10-- I couldn't prove it with the labor market because everybody told me again
24 the same thing the employer said; he's never worked in this occupation before, so
25 he's going to make this much no matter what. As long as he completes this degree,

1 which is our requirement, he'll make this much.

2 Now, he has a potential of always making more money, but I can't
3 prove any of that down the road. So where I find this rule frustrating is that when
4 we're--are--we're both working for the same individual, the insurer can sit back and
5 let the voc counselor and the legal counsel argue over something. It doesn't make
6 sense. We're not helping each other. We're supposed to work for this. So if there's
7 something that says more in black in white, whatever, the 25th percentile wage
8 based on some sort of factor, but I don't know what they are. Just the rule--the way
9 it sits is more argumentative.

10 112:40: Okay. Additional?

11 112:43: I think the one talking about what they could earn down the
12 road would be pretty tough to prove.

13 112:49: Yeah.

14 112:49: Okay.

15 112:52: The only thing I can think of would be if you--and don't shoot
16 me--would be if you had someone who was entering a job that required, like, a six-
17 month probationary period where they would earn X, and then if they clear the six
18 months they get a pump in their wage, that would be something that would be-- You
19 can actually, you know, write a rule so that it would be specific. And I can see that
20 that might happen in instances when...

21 113:20: But a lot of times that's based on merit.

22 113:22: Yeah. I want to say...

23 113:25: It may be. It may be. It may be. I'm just thinking about...

24 113:27: The only think I can think of is if it were something really cut
25 and dry like an RN, and you called all of the hospitals and they all got staff increases

1 not--

2 113:36: Yes.

3 113:36: --based on merit. Then maybe that, but I think it would be
4 very rare.

5 113:40: But I think the purpose isn't to guarantee that someone's
6 going to--

7 113:44: Right.

8 113:44: --earn a certain wage. The purpose is to say, this wage, 10th
9 percentile is \$9 an hour, 50th percentile is \$16 an hour. That's a potential to earn
10 more. Whether they do it or not is up to them. That's not on--

11 114:02: Oh, I see.

12 114:03: --voc.

13 114:04: Oh.

14 114:06: Whereas the same--or a different job or a different occupation,
15 the starting wage is \$9.25 an hour with the potential at the 50th percentile to earn
16 \$10 an hour. You know, that's the difference that I would be looking at as a voc
17 reviewer. Again, there's no guarantee. I'm mean, we're not going to hold their
18 hands through employment, so...

19 114:36: Was the Hamilton case just reviewing the OAR, or was it
20 based on statute?

21 114:40: It was the OAR.

22 114:42: Okay.

23 114:43: It was-- Yeah.

24 114:43: So that gives us the latitude to actually address it one way or
25 another. Okay. Thanks very much for your input on that one. And I'll probably try to

1 move things along just a little faster than we've been going, because we do--we
2 would like to complete the review today, rather than call you back for a second
3 meeting. So that's going to be part of your incentive as well, I think, not to have to
4 have a second meeting. But, you know, we will do what's necessary. We obviously
5 want to talk about the issues as much as they really need to be discussed, and get
6 your advice.

7 So Issue No. 6 has to do with the appropriateness of plans. I think this
8 is more of a clarification. The issue would be that the rules should reiterate that
9 return-to-work plans must be appropriate for the worker. Some background. The
10 Division has seen several cases in which the plan was not appropriate for the
11 worker. A plan should take into account the worker's background, including criminal
12 history, aptitude, physical restrictions, and the objective should be realistic. So you
13 know, your advice, please, on amending the rule to clarify that a return-to-work plan
14 objective must be appropriate for the worker, and realistic.

15 115:59: I was very surprised when I saw this, be-- I was shocked. I
16 don't know. I thought that was an obvious, that the worker--it needed to be an
17 appropriate plan.

18 116:12: I thought so, too.

19 116:13: Uh-huh.

20 116:13: Well, that's why I said it's really more of a clarification. If the--
21 if it isn't already stated clearly enough in the rules, then I guess it would just be a
22 matter of doing so.

23 116:22: Is it stated in the rules in terms of the criminal history,
24 aptitude, physical re...

25 116:28: Well, it says...

1 116:29: That is something we know.

2 116:29: It says we have to agree on it.

3 116:31: It says, "The return-to-work plan support document must
4 describe how the worker--" Oh, this is worker-sponsored. Nevermind.

5 116:40: So just to get-- A couple of issues. We're starting to see it
6 more and more with Preferred Worker Program. We're doing worksite modifications
7 for a worker who's completed voc. One example, the worker has com--only use of
8 one hand and was trained to be a medical billing specialist, and the voc counselor
9 said, "Well, you can just take your time and do it with one hand." Well, an actual
10 employer isn't necessarily going to hire somebody, saying, you're--it's going to take
11 you twice as long, but because you were trained in it, we're going to hire you in it.
12 So that clearly wasn't appropriate. Another one is a worker who was trained as a
13 pharmacy tech with a criminal background and can't--

14 117:15: Oh, no. You're kidding.

15 117:15: --get a job at a pharmacy because of...

16 117:17: Uh-huh.

17 117:17: And so those may be oversights, but we're starting to see it
18 more. Or as soon as plans end and job--and a worker is placed, we immediately get
19 a job for worksite modification. Well, if the goal was appropriate, shouldn't need
20 worksite modification right at the completion of the plan.

21 117:32: For somebody who lost an arm, they're always going to need
22 modification.

23 117:35: Yeah. I would...

24 117:37: Right, but they necess--don't need to be trained to do--be a
25 coder.

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117:41: Right.

117:42: That was the...

117:43: So where would you put this?

117:44: I can't think of any non-hand-intensive jobs, though. You know, what...

117:51: Well, I mean, it wasn't even the--necessarily the need for modific-- They couldn't even get a job in that field that they were trained in. So it's just-- I mean, that's why we're bringing it like-- You guys are seeing it more and more every day. Are--is there a way to clarify? Is there, you know-- What are your thoughts on it?

118:10: We thought it was a given. So if it needs--

118:10: Yeah. Well, it's not.

118:12: --to be clarified...

118:14: Okay.

118:17: Well, if it's not in there, probably it should be.

118:18: Okay. I guess it can do no harm; right?

118:20: Well, I would think everybody knows that.

118:23: I want to hear what Jaye has to...

118:25: You know, we just had a bill passed in the legislature called Ban the Box. And I think if we start putting those kinds of really specific things in here about-- I think you need to be careful. That's...

118:38: That's a good point, because criminal history did play into it--

118:41: Yes.

118:42: --years ago. But now Ban the Box, so...

118:45: And I mean, you can't ask a worker--

1 118:46: You can't ask that, so--
2 118:46: --ahead of time.
3 118:47: --they're-- Yeah.
4 118:48: You--well, you can't ask it initially. But after the initial--
5 118:52: After the initial, yeah.
6 118:52: --application, then it can be a factor in the hiring. A pharmacy
7 tech is probably not going to be hired...
8 118:57: Well, obvious--I mean, it's just--I mean, we're in financial--
9 We--I wouldn't want somebody doing that. But I just think...
10 119:05: That's an interesting...
11 119:06: Depending on how much of a problem it is, I mean, you guys
12 have to-- I just think there's a certain amount of risk when you start assuming that
13 because someone has lost a limb they can't do work--and maybe they can do it with
14 modification--that you just-- I don't know. Sometimes having things a little loose a
15 little--gives you the opportunity to do the right thing.
16 119:32: Well, just in that particular case, it was--it wasn't an
17 assumption. The worker completed his plan five or six years ago, and was
18 unsuccessful ever finding a job in the field. That's just one example.
19 119:43: Does it...
20 119:44: That's an interesting thing about the criminal history. But
21 Jenny, we've been asking everyone...
22 119:49: Always.
23 119:50: Always.
24 119:50: It's a goal that requires...
25 119:52: Because I mean, you can't do medical, you can't do

1 pharmacy, you can't do Corrections. I mean, there's so many things they can't do.

2 119:59: They might ask it, but I just would be cautious about putting
3 something in the rule.

4 120:02: Right.

5 120:03: Okay. That's an appropriate caution, and we'll take--

6 120:06: Okay.

7 120:06: --that advice seriously.

8 120:07: Can I ask who--though, who is making this decision outside of
9 the voc counselor, the worker, the insurer, and the employer about the
10 appropriateness of the plan? Because hopefully that's been vetted. And I can't
11 guarantee that-- I have some workers that would never get hired by anybody if they
12 were not in a union, because they just are--they just--they have such horrible, you
13 know, presentation skills. You know, once they get hired, they're awesome, but I
14 don't-- You know, that's part of the problem, is just because somebody goes
15 through all of this training, are they going to be--are they going to be able to get a
16 job?

17 120:39: (Unintelligible.)

18 120:41: Oh, you already did? When you locked me out?

19 120:44: No, no, no. That was the one we talked about the other day.

20 120:47: Uh-huh.

21 120:47: And Ryan was--

22 120:48: Yeah. Okay.

23 120:49: --you know, talking about working with those--to get them
24 through that initial trouble.

25 120:58: Helping them through the vetting period,--

1 120:59: Yeah.

2 121:00: --getting them in.

3 121:02: So--but I'm just-- On the appropriateness of the plan, I mean,
4 what if we--

5 121:06: That's right.

6 121:06: --get through all of this and somebody says, well, it was never
7 appropriate to begin with, but it seemed-- You know, I would hope that as many
8 people who are looking at these plans, that they are appropriate, so-- And you
9 mentioned a couple of specific incidences, but maybe-- Can--are there other--are
10 there a couple others, other than somebody missing a hand or something? I'm just
11 kind of curious. What other types of something are not so visible that--situations that
12 you've been in? I think it's a fair question, because I'm curious.

13 121:41: Sure. Well-- Heather,--

14 121:43: Well, I was just going to say,--

15 121:44: --go ahead.

16 121:44: --I recently had a dispute on a worker who had a training plan.
17 There was academic testing done prior to him entering school, but he got into school
18 and just couldn't do it for whatever reason. There was no rhyme or reason. He tried
19 hard. He was well-motivated. He just couldn't do it.

20 122:09: No, I get it. That's my issue, yeah.

21 122:12: And so there was really no way to foresee that, so that was
22 something that had to be reevaluated.

23 122:21: Okay.

24 122:22: But--so that happens less often than someone who gets put
25 into a training plan who doesn't have the aptitude. And that sometimes, that

1 someone gets put in a training plan that doesn't have the aptitude. And then it's not
2 an appropriate plan for them, so...

3 122:45: Well, it could even be something like they have tons of tattoos
4 and bodily piercings.

5 122:48: Right.

6 122:49: Are you really going to put them in customer service?

7 122:50: Right.

8 122:52: Nowadays, yeah.

9 122:52: Yeah. Yeah.

10 122:56: In Portland.

11 122:57: Portland.

12 122:58: They're more hireable now.

13 122:59: So maybe the language needs to be vague, appropriate and
14 realistic.

15 123:03: Uh-huh.

16 123:03: I have just a quick question. For the voc counselors, you
17 have, like, a code of conduct and all of that kind of stuff; right? So does that take
18 into consideration-- You're not going to take a-- Excuse the icky example. A
19 person with a criminal drug background, knowing that, and put them in a
20 pharmaceutical plan.

21 123:24: I would think you would be in jeopardy there.

22 123:27: Okay. So I was just wondering if there's other checks and
23 balances that are already in place to ensure--

24 123:35: Yeah.

25 123:35: --that those types of things won't happen.

1 123:37: Does that fall under you E&O coverage if you...

2 123:40: It's professional insurance.

3 123:41: (Unintelligible) provide professional. Okay.

4 123:44: Actually, I know a counselor that was sued because she put

5 somebody--a wastewater treatment operator into an OST. And he found out there

6 was a two-year program and sued her, because he wasn't informed of all of his

7 options.

8 123:56: All of the options, yeah.

9 123:57: I don't know how that turned out.

10 123:59: Well, there is a rule that if a counselor isn't abiding by these

11 rules that it--

12 124:06: Uh-huh.

13 124:07: --they're up for civil penalty or we can revoke their

14 certification. So we've been looking at that, too. I don't know how often they've

15 done that in the past. But as we go forward and we're doing more training and we're

16 doing--rolling these rules out, you know, we might look at other things.

17 124:22: And I do...

18 124:23: There's been a lot of PRO down there, anyway.

19 124:25: There's a lot. But I've also heard there's sometimes maybe

20 pressure on the voc counselor from the adjuster--

21 124:35: Insurer.

22 124:37: --to do something a little different. Not intentionally putting the

23 person in a bad program or whatnot.

24 124:41: Uh-huh.

25 124:41: But is that something you guys experience?

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124:47: I haven't.

124:47: I've-- Not really. It's all driven by the client, I think, usually.

124:53: Client meaning the injured worker?

124:54: The injured worker. You know, if the worker is coming from a really labor-intensive background, how long have they been working in that background? How long has it been since they got out of high school? Do they have a high school degree? What are they doing? There are so many factors involved. And just meeting with them, how do they present when you first meet them? I mean, I'll tell people, you present really well. I'll tell people, you don't present well, you're-- we're not going to go down that road, and here's why.

And a lot of times, we used to simply-- Don't take it from me. Let's go to an informational interview. I'll go meet with employers and say, well, you just give us 15 minutes of your time, half an hour, whatever, tell us about the job. They love to do that. And let them look at that person and go, I would never hire you. Because then I can walk out and go, probably not a good occupation for you.

125:38: Well, putting somebody in a pharmacy that has a criminal record...

125:43: Yeah.

125:43: Well, and the--

125:43: Yeah.

125:43: --reason why I asked that was just because, to me, the liability--

125:50: Yes.

125:50: --falls on that counselor to do that.

125:51: I think so.

1 125:52: And I just didn't know if there was other pressures that were in
2 there. Because if we write the rule to where, you know, you guys are--you are
3 responsible in the voc rules.

4 125:58: You're covered in...

5 125:59: (Unintelligible.)

6 126:00: I mean,--

7 126:01: Yeah.

8 126:01: --there is language in the voc rules.

9 126:02: Overall, though, the demographic that we're working with that
10 are going to need all of this extra training, these skills, because they're not, you
11 know, in that already, they're not looking for it. You're trying to help them. You
12 know, the people that I've had go through academic plans, I knew could do it. I
13 knew--felt had the background, had the experience, and were driven to do it. They
14 needed somebody to just hold their hand for a little bit. And most of the time, as
15 soon as you get them running, they're gone. They take off really well, meaning
16 they're going to do really well, they're successful. That's my-- But the ones from--
17 that are-- I haven't had very many people say, hey, I want to go be a--I want to be
18 an engineer, you know, who's been working in the medical field or as a truck driver,
19 driving a dump truck. That's a whole nother demographic.

20 126:46: But you had to talk someone out of--who believed they could
21 do something and said, no, you--actually, you really can't, you were in this--and you
22 want to become business management now?

23 126:54: Yeah.

24 126:54: Sorry, you just--you don't even know (unintelligible) has that,
25 probably, you know. So there's a lot of times a worker is putting a lot of pressure--

1 because they had this dream, thought--

2 127:02: Oh, yeah.

3 127:02: --they could do something.

4 127:02: Yeah.

5 127:04: So, you know, how is it appropriate? How do you handle
6 that?

7 127:05: Right.

8 127:06: Yeah.

9 127:07: Okay.

10 127:07: And a lot of times, we'll just take them to let somebody else
11 tell them they're not going to be that person.

12 127:10: Yeah.

13 127:11: Okay. Thank you very much for that. I would like to move on
14 to Issue No. 7 now, which is a notice of results-- This is under time frames. Notice
15 of results of eligibility evaluation, affecting Rules 17 and 135. There is no time frame
16 in which the insurer must notify the worker of the results of an eligibility evaluation.
17 There is a time frame for when the eligibility determination process must begin and
18 when it must be completed, but no time frame for when the worker must be notified
19 of the results. There may be some delay while the insurer reviews the
20 recommendation from the counselor, but the worker should be notified in a timely
21 manner.

22 So the alternatives to consider would be revise the rule to include a 5-
23 day, working days, time frame in which to notify the worker of the results; revise the
24 rule to include a 14-day time frame in which to notify the worker, or another time
25 frame; or make no change. Your thoughts?

1 128:05: I think there should be a time frame.
2 128:07: Do you think it...
3 128:08: Five days, I don't think, is sufficient, but...
4 128:10: Okay.
5 128:12: You know, at a minimum, I would say 14 days. There are so
6 many other deadlines that an adjuster is responsible for, but if it--they're the ones
7 doing it. And I don't know if the concept of the time frame that you're talking about of
8 notifying the worker is going to be on the responsibility of the adjuster or the voc
9 person. But from the standpoint of an adjuster, they have so many other things that
10 have requirements, and the caseloads that many of them work, when you give them
11 narrow time frames like a five-day turnaround, though it's beneficial for a worker,
12 there's no guarantee the worker is going to read it, and it puts a lot of undue
13 hardship on an adjuster at that point.
14 128:47: Okay.
15 128:48: And is there a problem here? What brought this one forward?
16 Is there a concern or an issue occurring, or just some...
17 128:55: There are some that don't get back to you or won't make a
18 decision.
19 129:02: Is there any...
20 129:03: So I have a--
21 129:03: Okay.
22 129:03: --question--
23 129:04: Yes.
24 129:04: --for Cathy and Ryan.
25 129:05: Uh-huh.

1 129:06: When you do an eligibility evaluation, do you tell the worker
2 what you're recommending?

3 129:10: It depends on where we are with that insurer. There's
4 eligibilities that are kind of pre-done to see-- Once the attending physician obviously
5 says, I don't think they're ever going back to this job, then the insurer obviously has
6 the responsibility and the time to say, let's do an eligibility.

7 129:30: Uh-huh.

8 129:31: That does not always happen. I've done eligibilities before
9 that was ever said, then found out--provided eligibility the day after the doc--
10 attending physicians did state that. So you go, oh, perfect. But the worker doesn't
11 know, because maybe there's some changes in permanent limitations down the
12 road, that they're going to go, oh, this could change the eligibility. And we have to
13 go back and do it again, and the worker still doesn't know. I guess it really depends
14 on the communication, where we're at in the whole process, but-- I think there
15 should be something, but maybe more time on that.

16 130:02: I usually explain, I don't think you're going to be eligible
17 because-- I explain the rule and--

18 130:06: Uh-huh.

19 130:06: --why.

20 130:07: Uh-huh.

21 130:08: And then--but I--then I say, I don't make the final decision.

22 130:11: Uh-huh.

23 130:11: And I have to send it in within 30 days, and that's usually
24 where I leave it.

25 130:16: Does anyone think...

1 130:18: So who makes the final decision? The adjuster; right?

2 130:19: The insurer.

3 130:20: The insurer.

4 130:21: The insurer. So I guess I'm a little thrown. I understand
5 there's a lot of time frames on a worker--I mean, on an adjuster. But if a decision is
6 being made, and the decision has been made, but then I got 14 days to tell the
7 worker, that's kind of leaving the worker in the dark. That would be like, oh, I've
8 decided to deny your claim, but I don't have to mail it out for 14 days. That's not
9 how our system works. So this isn't saying you have to make a decision in five
10 days. It's saying-- That's my understanding. It's saying...

11 130:48: Right.

12 130:49: Warn the worker.

13 130:49: Right.

14 130:50: I've made my decision. When do I have to tell the worker?
15 Well, I would say the day that you make your decision it should be going out to the
16 worker. I don't understand why there would need to be a 14-day window to do that.

17 131:02: So if--is--has there been any consideration as to where that
18 notice comes from, if the intent is to have the adjuster make that notice, or if it's the
19 vocational counselor?

20 131:10: Well, I can respond to that. I mean, like, SAIF does their own,
21 and they make--they have to talk to the attorney, but they make very quick
22 decisions. But there are some that I'll start calling, we made a dec--and I do the
23 numbers--

24 131:21: Okay.

25 131:22: --on their behalf, if it's a small insurer and they don't--you

1 know, they don't have notice. So I try to call them. But if they don't call me back or
2 say yes, I can't issue that notice on their behalf.

3 131:33: So it sounds like maybe the problem isn't so much the notice--
4 or the adjuster making the notice, it's the adjuster making the decision. That's
5 probably-- If I'm hearing you right.

6 131:47: That's what I'm hearing here.

7 131:48: Yeah. That's what I'm hearing is the real problem.

8 131:48: The time frame to make a decision. And I thought this was--
9 the decision has been made,--

10 131:52: Yeah.

11 131:52: --should we tell the worker?

12 131:53: Yeah.

13 131:54: Well, no, but we send our reports in.

14 131:55: The results.

15 131:56: But we don't make the final decision.

16 131:57: Exactly. So it sounds like it's making the decision.

17 132:00: But all we need to know is...

18 132:01: It's the results of the eligibility evaluation.

19 132:02: Yes.

20 132:02: Making the decision.

21 132:03: The decision.

22 132:04: The decision.

23 132:05: Yes.

24 132:07: So you send a report to the insurer that recommends either...

25 132:11: Yes.

1 132:11: But the worker is not copied on that. It's just sent to the
2 insurer. And then you wait...

3 132:15: Well, the attorney eventually is by the insurer.

4 132:16: If they're represented.

5 132:17: Yeah.

6 132:18: Okay.

7 132:19: So when you do the eligibility evaluation, you don't send a
8 copy of that to the attorney?

9 132:25: It's not required under the rules.

10 132:25: The injury...

11 132:27: The only thing that's required is the training plan. It has--

12 132:29: It only...

13 132:29: --to be sent to the attorney.

14 132:30: Only if the attorney has requested it.

15 132:35: Well, they get it from the insurer. We aren't even allowed to...

16 132:36: Right. But I mean, request them. Because if they don't every
17 seven months, they've got to request.

18 132:39: Okay.

19 132:40: So is 7 talking about the time frame of making the decision, or
20 the time frame from making the decision--

21 132:46: No, it's notifying.

22 132:46: --to telling the worker?

23 132:47: Notifying the worker.

24 132:47: It should be--the notice should go out.

25 132:48: Right.

1 132:49: They are eligible or not eligible 5 days, 14 days, to let the
2 worker know.

3 132:56: So with some insurers, they will call and say yes, didn't I get
4 the notice? But it seems fair that they should...

5 133:04: I don't see where it would be reasonable to say 14--

6 133:00: Fourteen.

7 133:07: --days. If the decision has already been made and it's just
8 when do you put the stamp on it and get it in the mail...

9 133:12: Some cases might--

10 122:13: Well, no, but...

11 133:13: --need it, they're waiting to CDA, and so the notice isn't going
12 out.

13 133:19: There could be other things going on. I mean, you know,
14 there could be--waiting for something else or...

15 133:28: So is there--like, there's 30 days to find a worker eligible,
16 unless it's postponed, and there's-- We're going to get into postponements later.
17 But if it's postponed and they have, like, another--

18 133:37: Well...

19 133:37: --30 days when they're-- So the...

20 133:39: Then the decision hasn't been made.

21 133:40: Well, no. But then they could receive the relevant information.
22 Then they still have 30 days to no--to make a decision once they--

23 133:45: Right.

24 133:46: --have that information. So it's...

25 133:48: That seems kind of long.

1 133:49: So to me, that time frame is built into making the decision. I
2 was reading 7 as, decision has been made, when do I tell the worker?"

3 133:58: Right.

4 133:59: Yeah, that's what I'm...

5 134:01: Yeah.

6 134:02: Okay.

7 134:04: Well...

8 134:04: It doesn't sound like anybody is opposed to actually notifying
9 the worker, that we're talking about the--

10 134:08: It's just the time frame.

11 134:08: --time frame, right, whether 5 days or 14 days is more
12 appropriate. Are...

13 134:15: I think longer stretches that-- I mean, if they're medically
14 stationary, they're--you know, their claim is closing. It seems like longer than that
15 would be a delay, a long delay.

16 134:25: I think five days is a little aggressive. I mean, there are just all
17 kinds of things that can happen.

18 134:30: Uh-huh.

19 134:31: Somebody can be out. I mean, hopefully...

20 134:33: Yeah, business days...

21 134:34: There's five days for other things; right?

22 134:35: Working days.

23 134:38: Well, they're not saying that you have to issue a Notice of
24 Eligibility. You just have to issue, on 6, notice of the results of the eligibility
25 evaluation. So...

1 134:46: But once again, the insurer sometimes can--they had that
2 opportunity to ask for an eligibility recommendation way before med stat.

3 134:53: Uh-huh.

4 134:54: Uh-huh.

5 134:54: And so they're getting that eligibility recommendation from us,
6 and then they're going, "Okay, well, gosh, I can see where you're going with this,
7 they're likely eligible under your recommendation, you're recommending eligibility
8 based on the factors that you have right now, which isn't--the permanent limitations
9 haven't been identified, but we have an--we have a good idea of where there
10 limitations are. But then all of a sudden they go to an IME, and maybe a PCE, and
11 then they get back to the attending physician, and the attending physician has their
12 own views. And then it comes back around and they go, permanent limitations are
13 drastically different than we initially, you know, thought they were going to be.

14 135:26: Uh-huh.

15 135:26: So again, when we're giving these workers information, we've
16 got to make sure they understand it. So if we're telling them, oh, guess what, you
17 were recommended eligible 5 days, 14 days after that-- They're not med stat for
18 another three or four months. And then when they get there, permanent limitations
19 have changed. Then they go, you're not eligible now.

20 135:43: Very confusing.

21 135:44: Now you've got a big problem.

22 135:45: Yeah

23 135:46: Yeah.

24 135:46: So it's...

25 135:47: Well, usually you can't overturn it.

1 135:49: Right. It's really a problem there, because-- So again, we're--
2 we don't have anybody from the medical community here representing that side, and
3 they're really important in how we determine...

4 136:00: Well, one thing I want to point out that I have noticed-- And
5 this happens consistently. I either have the workers that tell the doctor that their job
6 is nothing, or I have the workers that tell the doctor that they're lifting 300 pounds.
7 And so until a doctor actually has a job analysis of that individual worker's, you could
8 have a doctor-- You know, earlier, somebody said, you know, the doctor indicated
9 the worker is not going to return to their work. This is one of my pet peeves,
10 because the doctor hasn't even seen the job analysis. They're going on what the
11 worker said. And you know, depending on what type of worker it is and how serious
12 the worker is--it could be two different things.

13 And so that takes-- You know, you want to make sure that-- And
14 you're-- I think the goal is to continue to make sure the worker gets to the best place
15 available, which, you know, through work conditioning, work hardening--you know
16 there's a multitude of factors that can take place. So I agree. The last thing we want
17 to do is tell a worker one thing, and then it totally changes in a couple more months.

18 136:55: Well, I totally agree with that.

19 135:56: You know, that's where I-- Yeah, that goes back to my...

20 136:58: But this whole thing kind of confuses me, so I'm...

21 137:00: Yeah.

22 137:00: Well, I'm in a situation where I'm just not saying anything
23 about an eligibility evaluation, recommendation.

24 137:07: See, and from a--

25 137:08: It says...

1 137:08: --worker's perspective, that just rubs me the wrong way,
2 because the system is about workers--
3 137:10: And I'd like...
4 137:13: --and employers, and it's like, oh,--
5 137:13: I'm sorry. Can I...
6 137:14: --keep them in the dark.
7 137:14: Can I clarify that the insurer or the counselor may issue the
8 notice with the results of the eligibility eval to the worker.
9 137:22: Uh-huh.
10 137:23: But you're not doing that?
11 137:24: It's me. Me.
12 137:26: Either one? So...
13 137:28: Then it can be either one.
14 137:28: Either one but no one's doing that. But the insurer's--
15 137:31: Right.
16 137:32: Most of the time. But if I am--
17 137:32: --doing it.
18 137:33: --waiting on--if I'm looking at medical results that are really
19 different, you know, one doctor is saying something, the attending physician is
20 saying something else, the specialist is saying something else, we have no idea
21 where this is going to go, it's in my best interest with this client to not get him really
22 fired up, just to turn around and go, wait a second. So I just said, look, we're still
23 waiting on this information. And we are. We're waiting on permanent limitations.
24 137:56: But that's the postponement.
25 137:58: That's the postponement.

1 137:58: Right. Right.

2 137:50: So we've already-- I've given him a recommendation based
3 on where they sit right now on my best guess. But I don't have all of the information
4 yet, so I'm not going to go...

5 138:08: But that could change.

6 139:09: Right, that could change. And I don't want to run to this
7 individual and go, here's what I said, that's what we're going to do, because I don't
8 know that's the facts.

9 138:18: But would you consider the eligibility eval to be completed?

10 138:21: No.

11 138:21: Not yet, no.

12 138:22: See...

13 138:22: Right. Right.

14 138:24: I mean, based on those factors...

15 138:24: So it's not completed. But if it was completed...

16 138:28: Well, then I always go, guess what-- Well, I don't have to,
17 because most of the time it's already told, they already know.

18 138:33: Right.

19 138:33: So I would think that there might need to be some clarification
20 that that notice is only required to be issued once their claim has reached the
21 medically stationary status.

22 138:40: Yes. After med stat, they should be notified within X amount
23 of days.

24 138:43: Yeah.

25 138:43: But before med stat, (unintelligible) is more important, I think.

1 138:49: Well, I'm just trying to think on that, Ryan.

2 138:51: But if you have permanent restrictions...

3 138:52: Yeah.

4 138:53: Well, if they have permanent restrictions, then they're...

5 138:56: They're med stat.

6 138:56: They're med stat.

7 138:57: Yeah. So you don't want-- Well,--

8 138:59: No.

9 138:59: --not always.

10 139:00: Well, no. Sorry. But there-- If you could...

11 139:02: I lost my arm, but--

12 139:04: Right.

13 139:04: --I'm not med stat.

14 139:06: Right.

15 139:08: Yeah.

16 139:07: Anticipated permanent restrictions is not permanent

17 restrictions.

18 139:10: Yeah. Unless...

19 139:11: Permanent restrictions...

20 139:12: Because then we run into some areas-- And maybe the rules

21 have changed since I'm familiar with it, but I thought that once you had any idea that

22 somebody might have permanent restrictions, you were supposed to send them for

23 an eligibility evaluation as early as you can,--

24 139:25: Yes.

25 139:26: --if you have any sense that there are going to be permanent

1 restrictions. But like you said, that can change with an IME and things like that. Or
2 there's those situations where the worker's attorney has some evidence that there
3 might be something. And then they can request that an eligibility evaluation be
4 completed. And that might occur before a med stat date is out there, so...

5 139:50: They're getting ready to start a work hardening program,
6 they've already requested an eligibility recommendation, they're not medically
7 stationary, their permanent limitations haven't been identified, and they're right now
8 15 pounds from meeting their physical requirements for the job at injury. I wouldn't
9 have an idea of whether they're going to be there or not. But after that work
10 conditioning--work hardening program, and then the doctor going through physical
11 therapy and getting all of that done, they go, you know what, you can get that 50-
12 pound lift again, you can return to your job at injury. Anything I say before that just
13 would be thrown out the window, quite possibly. So we don't--it's almost like we...

14 140:23: If you don't have the permanent restrictions, I think you do the
15 postponement.

16 140:26: Yeah.

17 140:26: Yeah, because they're not really likely eligible if you don't
18 have--

19 140:29: No.

20 140:29: --the permanent restrictions.

21 140:30: Yeah. So that's what it comes back to.

22 140:32: Yeah.

23 140:33: Okay. Was there someone on the telephone who wanted to
24 talk?

25 140:38: Is there anyone on the phone?

1 140:39: Oh, yes. I would encourage you...

2 140:39: Yeah, because I kept hearing static.

3 140:40: I would encourage you to speak up at any time, because you

4 don't have the advantage of seeing who might have a hand raised here or that kind

5 of thing. So I do want you to be full participants to the extent that you want to be.

6 So any additional thoughts on that? I think we were a little closer to...

7 140:55: Well, my thought is if there's an eligibility evaluation

8 completed and sent to the insurance company that a decision about that

9 recommendation should have a time frame.

10 141:07: Okay.

11 141:08: But in my mind, it already has the 30-day time frame. And the

12 only way...

13 141:14: Does it have a 30-day now?

14 141:15: Well, you have to complete the eligibility evaluation within 30

15 days.

16 141:20: Because you have...

17 141:20: And the only way that I can complete an eligibility evaluation

18 is to make the decision and get the decision out the door within the 30 days.

19 141:27: Within the 30-days?

20 141:30: There was the other piece miss-- When we said 30 days,

21 that's not really just on us. That's the insurer has to respond within 30 days. So

22 what I didn't realize for a long time is--I'll go-- It might only take me a week to get

23 that eligibility done for a specific client, but I've got all of these other things-- So I go,

24 I've got two weeks, and I'll worry about that. But I didn't realize the insurers actually

25 kind of get hit on if they go-- You know, if they can get it done in half that time, it

1 looks better for them, but they're not doing the recommendation. We are. And so
2 that's where I think it comes back to that permanent limitation. It's postponed if it's
3 not permanent limitation. So the idea of even putting a notice on business that's
4 already really there after limitations...

5 142:08: Well, this isn't necessary if it's supposed to be the decision
6 made and the notice issued in 30 days.

7 142:13: Is that your understanding, Jenny?

8 142:15: Yeah. I think this is redundant. It seems like more of a
9 compliance issue for people who aren't--

10 142:22: Yeah.

11 142:21: --doing the 30 days.

12 142:23: I think SAIF's the only one...

13 142:33: Okay. Well, thank you. We'll look into that.

14 142:35: That solves that.

15 142:36: We'll look into that a little more closely and see if it's al--if a
16 standard is already there. It's possible that some people aren't abiding by it, but
17 that's a different issue.

18 142:45: I think so.

19 142:45: Issue No. 8 on postponement, affecting several rules, Rules
20 18, 125 and 135. The Division is considering disallowing postponements of eligibility
21 evaluations. The current rules allow the insurer to postpone the eligibility evaluation
22 until the worker is med stat, or until the worker's permanent restrictions are known or
23 can be projected, or because of insufficient data. If the eligibility determination is
24 postponed, it must be completed within 30 days of the insurer's receipt of the
25 relevant information.

1 ORS 656.340(1)(b) and (4) provide the time frames for when the
2 process must begin, if the criteria are met, and when the process must be
3 completed, and provides no exceptions. The Division would like to hear from the
4 committee on this issue, including some reasons why an eligibility evaluation would
5 need to be postponed. And--so I guess this is an area where the statute seems to
6 have one standard that doesn't provide any flexibility, and our rules do provide some
7 flexibility.

8 143:48: Well, a big one is if you're waiting for permanent restrictions,
9 and another one is if the worker has to-- When you're determining a suitable wage,
10 if the worker is a temporary worker, they have to get you documentation of their
11 income. And if they are a construction worker, that could be from, like, four different
12 companies.

13 144:09: Oh.

14 144:09: And unemployment insurance. So sometimes, if they're
15 having difficulty with that, that could-- You have to have that information.

16 144:18: Or use the Employer-at-Injury Program. Sometimes we'll say,
17 we're going to see if this is a suitable option, so we're going to postpone the
18 eligibility to see if we could use this back with the employer.

19 144:28: Like Preferred Worker?

20 144:29: Well, the Employer-at-Injury Program. Preferred Worker...

21 144:31: But you--why would you have to postpone the eligibility for
22 the--for EAIP?

23 144:36: Just to see if they're going to have a suitable job with that
24 employer.

25 144:39: If you have a letter...

1 144:40: Because they may not have thought of it.

2 144:42: Well, yeah. If you have a signed job offer letter from the

3 worker, then you can defer. But if you're just--

4 144:47: Yes.

5 144:48: --seeing without a letter, you can't.

6 144:50: Right.

7 144:50: Right.

8 144:51: Right.

9 144:52: Oh, I'm sorry. I was talking about deferment, not

10 postponement, wasn't I?

11 144:55: Yeah.

12 144:55: Yeah.

13 144:56: I was.

14 144:56: Yeah. Yeah.

15 144:59: So I see postponements a lot for warning letters, if the worker

16 is not getting back to the counselor, or we have quite a few attorneys that demand

17 that the initial interview take place in the attorney's office. And the attorney might

18 not be available to meet until the 25th day, or something like that. Or for wage

19 information. But it's usually something like wage, or something that we need from

20 the worker that we're not getting in a timely fashion.

21 145:35: But how long does that go on? I mean, if it's not really the

22 worker's issue, it's three years down the road and you still don't know what the

23 limitations are, still not medically stationary, don't even know if they're eligible, I

24 mean, I would like to see a little, you know, stronger justification for the

25 postponement. Obviously, if the worker is not responding, not being involved, it's

1 one thing, but, you know, there's people--there's workers in that situation where
2 they're just kind of in limbo, and it can go on for two, three, four years. And then
3 what are they going to do? By the time they get--they find, oh, you don't have any
4 limitations, well, there's no way they're going to go back to their old job, because you
5 already tried to return to the injury--you know, the employer at injury. So I don't like
6 a postponement without a definite end clause to it.

7 146:15: Okay.

8 146:15: We...

9 146:16: Thanks.

10 146:16: We wouldn't start an eligibility evaluation that soon. I mean,
11 we would never want an eligibility evaluation to take a year, let alone two or three
12 years,--

13 146:25: Right.

14 146:26: --when it's supposed to be done in 30 days.

15 146:27: Right.

16 146:28: So we're not sending them out until we have the information
17 that we need--

18 146:34: Right.

19 146:34: --to send it out. And then it gets postponed only if, you know,
20 we need wage information or, you know, the worker wasn't able to meet with the
21 counselor within a 30-day time frame, or something like that.

22 146:50: And not necessarily with SAIF, but we are seeing that--

23 146:53: Yeah.

24 146:53: --scenario for--years postponements are in place.

25 146:58: Really?

1 146:59: So again, that seems like a compliance issue too.

2 147:03: I know. I just...

3 147:03: Well, if they're able to continue to postpone it...

4 147:07: But there's not a rule that puts a restriction on it.

5 147:10: But there's not a rule with a restriction.

6 147:16: But they're not-- I mean, how are they processing it? It

7 seems that...

8 147:18: They're not.

9 147:18: If they're processing appropriately...

10 147:22: Well, it seems like-- I don't think I've ever postponed one for

11 longer than 30 days.

12 147:30: Usually, it's something that we just need a little more time for.

13 147:32: Right.

14 147:37: For example, I had one where we just said, get the wage

15 information in, and we're going to use what we're going to use by this--we have to

16 get this done. So I would think normally another 30 days should do it.

17 147:50: Would it make sense for only the voc counselors to use the

18 postponement rule, as opposed to the adjuster? Because if it's time to get the

19 eligibility done, then you've already got a voc counselor on it. And if the voc

20 counselor needs the additional time, as opposed to the adjuster getting it-- Does

21 that make sense?

22 148:10: I think it was usually the voc counselor, but I usually confer

23 with the insurer--

24 148:13: Uh-huh.

25 148:15: --to make sure they agree.

1 148:16: I like the 30-day timeline.

2 148:19: There should be a limit, yeah. If that's what you're
3 experiencing, I think there should be a limit.

4 148:25: Okay.

5 148:27: Do you have lots of people going years before-- That's an
6 interesting concept to me. I can't imagine.

7 148:37: I have met clients, though, from other insurance companies
8 that are not really Oregon-based insurance companies that--they have no idea
9 where their rights are. And I'll find out that their injury was two years ago, and
10 they're going, I don't know what's going on, I haven't talked to anybody. And
11 they're--I heard about you from a friend of a friend, I wanted to ask you-- And I'll just
12 say, hey, you need to talk to your attorney. But they've got legal counsel too, and
13 that's still not happening,

14 149:00: Uh-huh.

15 149:00: So I can't tell you what is the deal.

16 149:06: Well, I think it's fair to have a deadline.

17 149:09: Okay. Thank you very much. Issue No. 9, choosing and
18 changing providers. Affected rule is 185. The time frame for choosing a provider is
19 too long. Some background. The current rule allows insurer--the insurer 20 days to
20 notify the worker of the selection of the vocational assistance provider. Presumably,
21 in most cases the same counselor that did the eligibility evaluation will be used to
22 develop the plan. If the worker agrees to use that counselor, the process should not
23 take a full 20 days. On the other hand, if the worker objects to the insurer's choice,
24 the worker may need additional time to research other providers.

25 So alternatives would be to reduce the 20-day time frame for the

1 insurer to notify the worker of the selection of provider to 14, or perhaps 7 days; add
2 a 5-day time frame in which the insurer must notify the director if the parties are
3 unable to agree; and clarify that the worker may object to the insurer's selection of
4 provider, and provide that if the worker objects, the worker has
5 10 or 14 days in which to choose another provider. Your thoughts?

6 150:15: I had a case where this kind of came up at--I guess reverse.
7 We were in settlement discussions, but the worker's attorney said, "I want my worker
8 to meet with a voc counselor." We responded, Well, there's been a counselor
9 involved doing optional services for the last month, they've been trying to reach both
10 the worker and your office to get something going." And the worker's attorney
11 responded, "Please send him to one of these three counselors." We asked why, and
12 the response was, "Well, somebody else challenged me on this, I took it to the
13 Division, I'm happy to collect an attorney fee if you want to fight me on it."

14 Part of that is that worker's attorney. It's the way that attorney
15 operates. But it was just kind of surprising. When I started looking at the rules on
16 choosing a provider, we had one that was assigned to that employer. Not assigned,
17 but had worked with them before. And then they didn't really see any guidelines one
18 way or the other about how you choose a provider, what happens when there's a
19 conflict, other than that the rule says try and work together, and not go to the
20 Division about it.

21 And then I wasn't sure whether it was something that we really could
22 go argue and say, well, we want this one, we don't have a good reason for avoiding
23 your three. But they don't have a good reason for saying, we want these three,
24 we're avoiding your one.

25 151:37: I mean, in that scenario I almost wonder if the state could

1 intervene in the same sense that they do with an arbiter's exam of providing, you
2 know, these are the list of providers you can choose from, each party gets to
3 deselect one, and then, you know, the third option is who you're with. Having an
4 option to do it that way at least makes the rule more objective.

5 151:57: I'm going to admit my ignorance. I thought that the insurers
6 always got to pick the counselors, until I was set straight in one of those meetings
7 where I was set straight. And that was when I learned--and correct me if I'm wrong,
8 is that the insurer gets to pick the person to do the evaluation, but that the worker
9 has the choice of who their provider is, that the insurer doesn't get to choose. Many
10 times, it's going to be the same person. But I didn't know that the worker had the
11 right to choose their voc counselor. So I mean, that may be where they were
12 coming from, you know. I don't want to take away that right, if that right is already
13 there.

14 152:34: Okay.

15 152:35: But is that accurate?

16 152:36: Yes, that is accurate.

17 152:38: I think our frustration was just at that particular attorney's
18 response--

19 152:41: Oh, yeah.

20 152:41: --as to, you know, "Why not one of the counselors that's
21 already involved and caught up to speed?" And the response was, "Well, we'll get
22 an attorney fee."

23 152:49: Well, yeah.

24 152:52: Yeah, there wasn't any situation where they explained why
25 they didn't want to utilize ours either.

1 152:58: Yeah.

2 152:58: But they don't have to,--

3 152:59: No.

4 153:01: --is my understanding now.

5 153:03: They don't have to, but sometimes-- Like, we have attorneys,
6 for example, that won't use any of the counselors available in the local area. So we
7 have counselors servicing-- Like Ben, for example. And Rob Grimes (phonetic) out
8 of Eugene is going over there because the workers' attorneys over there will not
9 allow us to use any of the Bend counselors. And I think that's a disservice to the
10 worker because those counselors know that labor market, they have the connections
11 with the employers, but we don't ever get to use them because the workers'
12 attorneys won't agree.

13 153:43: So is the input that you want the rules to restrict the worker's
14 right to choose their counselor?

15 153:51: I just kind of wanted some clarification on--when there is a
16 dispute, what does the Division do? What do they look at or...

17 153:57: Basically, we just ask, you know, the insurer to submit three
18 counselors they will use, the attorney to--worker's attorney to submit three
19 counselors. And then if there are any that are the same, we pick that one. And if
20 not, we just assign one.

21 154:16: Uh-huh. I've seen that several times.

22 154:18: Yeah.

23 154:23: And so if it gets to you guys making the decision on it, why
24 was the claimant's attorney saying that she got an attorney fee out of that dispute?

25 154:34: I wouldn't know,--

1 154:34: And that could have just...

2 154:34: --because I wouldn't...

3 154:35: --been her kind of thumping her chest and...

4 154:38: Yeah. Yeah.

5 154:41: Because I've--we've had attorney fee--I mean attorney

6 counselor issue disputes, and I don't think I have ever awarded an attorney fee,

7 because they're really no specific benefit to the worker. And that's what we base our

8 attorney fees on, is how much of a benefit the worker...

9 155:00: Okay.

10 155:01: And not...

11 155:03: Okay.

12 155:04: She may have an angle.

13 155:08: She might, yeah.

14 155:09: So can I ask a question? So those that--in voc, in the

15 industry-- So it says--the rule says, "Once a worker is found eligible, the insurer and

16 worker must agree on a vocational assistance provider." So do you know--do you

17 send a notice to the worker saying you have the option to either work with the one

18 that did the EE, or do you send them--like, here's a list of a bunch of vocational

19 providers? Or is it just like a conversation that says, "Hey, what do you think of this

20 one?" So I mean, how does the worker get notice that--hey, you know what, you

21 don't really have to go with this person that did the E--the eligibility evaluation if

22 maybe you don't have the--you didn't connect with them or whatever?

23 155:47: Well, my experience is if they're represented, the attorney is

24 going to make that decision. So...

25 155:53: What if they're not?

1 155:55: Huh?

2 155:56: And if they're not?

3 155:56: What if they're not represented?

4 155:59: If they're not represented, I call the worker and say, you know,

5 Ryan did your eligibility evaluation, are you comfortable continuing to work with him,

6 you do have a choice, do you want a different counselor, I can make

7 recommendations, I can get you the list, whatever. But I would say 99 percent of the

8 time, they're like, yeah, Ryan's cool.

9 156:19: Right.

10 156:20: But it's that...

11 156:24: The time we...

12 156:25: But if it's not SAIF and it's someone that wants you to do the

13 notices for them, then I would ask the worker if they--I would inform them they have

14 a right to pick a counselor. Do they want to proceed, or do they want to investigate

15 someone else?

16 156:40: Well, we have the rule that you have to send the Bulletin 151

17 or--

18 156:45: Is with...

19 156:45: --link to it or...

20 156:47: Right.

21 156:47: Yeah.

22 156:48: Right.

23 156:49: And so about the time frames, does--did the reductions in the

24 time frames seem reasonable, and would it...

25 156:56: What's the current time frame?

1 156:57: Twenty days.
2 156:57: Twenty days.
3 156:58: Twenty days, versus fourteen or seven that have been offered
4 as, you know, possible alternatives.
5 157:05: Generally, on any time frame I'd be opposed to anything
6 seven days or less, but...
7 157:11: Fourteen days? I don't know.
8 157:14: Sometimes it's hard to reach the attorney.
9 157:16: Yeah. I was thinking that, in my mind, like for us, we would
10 make the decision and immediately a move on that decision. So I don't think we're
11 taking 20 days most of the time. But if we are, it's because of the worker's attorney
12 not calling us back.
13 157:43: Is that something that can be documented, I mean, an attempt
14 to reach someone? Is that actually meeting the time frame if you...
15 157:50: Yeah.
16 157:51: If you place a call to someone, I would think that would
17 actually be...
18 157:55: Fourteen days? It's probably usually 14.
19 157:58: Oh, yeah.
20 157:59: I think 14 days would be simple.
21 158:02: Even 10.
22 158:05: Thank you very much for your thoughts on that one. We
23 might have time for one more issue before we go to lunch. Issue No. 10, return-to-
24 work plan approval, affecting Rule 500. Again, there is no time frame for the insurer
25 to notify the worker whether the plan is approved or denied. Prior to 12/1/2007, the

1 rule required the insurer to approve or reject a return-to-work plan within 14 days of
2 receipt. Having a time frame in place will help streamline the overall process. A
3 stakeholder has also raised this as an issue. So for this committee's consideration,
4 amend the rule to require the return-to-work plan to be approved or denied with 14
5 days.

6 158:48: I think that's essential, because it could be an academic
7 program that's starting. And if you--if someone doesn't make a decision and won't
8 call you back, then the whole plan doesn't work.

9 159:01: Uh-huh. That makes sense.

10 150:04: And is 14 days fine?

11 159:06: Uh-huh.

12 159:07: Okay. Well, that one was really...

13 159:10: Because then we start up on communication...

14 159:13: We could do another one.

15 159:14: Okay. We're going to do Issue No. 11 as well, because it's
16 the last one...

17 159:17: We're on a roll.

18 159:18: It's the last one about time frames. So time frame for
19 payment of direct worker purchases. Affected rule is Rule 700(5). There is no time
20 frame for payment of direct worker purchases. The rule requires the insurer to pay,
21 and in quotes, "in time to prevent delay in the provision of services," close quote, but
22 does not provide a specific time frame. It might be helpful to specify the maximum
23 number of days within payment must--which payment must be made.

24 Amend the rule to require the payment for approved direct worker
25 purchases no later than 14 days after approval. That's for consideration. Or a

1 different time frame, or no change. So your thoughts?

2 159:58: My adjuster had a comment about this. I'll share that.

3 160:02: Okay.

4 160:04: She said that it's oftentimes--they have to rely upon an invoice
5 to pay, and she said sometimes they don't get that invoice until after school started.
6 So she said she would suggest, like other providers, that it's 40 days from--45 days
7 from receipt. Is that...

8 160:18: Yes, 45 is the rule.

9 160:19: Does that make sense to you all? That was her
10 recommendation.

11 160:24: My thought would be 30, just because it coincides with the
12 concept of the reimbursement to a worker for mileage, and things have to be paid--a
13 lot of things have a deadline to pay within 30 days. It gets really confusing when you
14 have everything at different time frames when they have similarities. So when
15 you're paying people for, you know, reimbursement of some sort, or something like
16 that, it makes sense to kind of keep the due dates...

17 160:50: Well, I would like to do that, because we pay, a lot of times,
18 workers for their mileage and so forth so that they get paid timely. We're not a huge
19 organization. So if we can get paid back within 30 days, that would be...

20 161:04: And I think part of the key here is receipt, not approval.

21 161:06: Yeah.

22 161:06: Yeah.

23 161:07: Yeah.

24 161:07: Yeah, receipt.

25 161:08: Receipt of...

1 161:09: From receipt.

2 161:10: We need receipt of...

3 161:12: Of--receipt of invoice?

4 161:12: Yes, receipt of proof of...

5 161:14: Because that's how--

6 161:15: Proof of payment.

7 161:15: --we get the worker reimbursement.

8 161:16: Right.

9 161:17: Yeah. We get something, and we...

10 161:17: It's 30 days from the insurer's receipt.

11 161:19: Yeah, and that makes sense. Just like she said, it had to be--

12 you don't get the invoice until-- As opposed to approval. You know, send it as

13 quickly as you can, and they'll pay.

14 161:32: So did I--was there sort of a consensus around 30 days?

15 161:35: Thirty days upon receipt.

16 161:36: Thirty days.

17 161:36: Upon receipt, from receipt of the invoice.

18 161:40: Invoice.

19 161:43: Okay. With that-- I apologize, but I couldn't book the same

20 room for the entire day. So this afternoon we'll be in Room 260, which is on the

21 second floor. It's a bigger conference room, a nicer conference room in its own way.

22 But we're due to meet--start the meeting there at 1:00 o'clock, and we'll start right at

23 1:00, I think. So I'll let you go. And there's a restaurant just to the left as you leave

24 here, and of course lots of restaurants in the downtown Salem area. So I would--

25 Please pick up your name tents when you leave, because I'm going to be clearing

1 out of this room pretty quickly now. And so you can set them up again when you
2 come back this afternoon.

3
4 (off the record)

5
6 00:12: Welcome back to most of you. If--and again, if anyone is new,
7 please feel free to pull up to the table. There's still chairs around here. We'll make a
8 place for you. We're up to a section of the agenda called communication. And it's
9 just under the category of notices and warnings for Issue No. 12, affecting Rule 12,
10 failure to send a copy of a notice to the worker's attorney.

11 Section (2) of this rule says, failure to send a copy of a notice to the
12 worker's legal representative stays the appeal period until the representative gets a
13 copy. This is different than the circumstance when the worker's attorney does not
14 get a copy of the Notice of Closure. Rather than the appeal period being stayed, a
15 Notice of Closure is not effective until it is sent to the worker and the worker's
16 attorney. And then there's some references to some rules and some case law. The
17 Division plans to word the 120 rule consistent with the Division 30 rules. A
18 corresponding change may also need to be made to Division 120, Rule 8.

19 So we would appreciate your input on that in terms of the notice itself
20 not actually being effective until it is mailed to all the required parties, including the
21 worker's attorney if the worker is represented.

22 01:29: I don't remember offhand...

23 01:30: That was a concern, and I appreciate consistency.

24 01:34: Okay.

25 01:35: I don't remember offhand on the closure rules, but does it

1 specify, like, if the insurer is aware of the claimant's representation?

2 01:43: Oh, that's a good question.

3 01:44: Just in the rare case where they get the attorney and they
4 haven't filed the attorney fee notice or...

5 01:49: I think they probably have to have a copy--

6 01:50: I think...

7 01:51: --of the retainer agreement; wouldn't they?

8 01:53: I think so.

9 01:53: Yeah.

10 01:53: Okay.

11 01:53: Yeah. I don't know the exact wording, but...

12 01:54: Yeah. I think it would be rather unfair, but I-- And I'm not
13 saying that we don't have a single unfair rule, but I don't think that's one of them.
14 But we'll certainly--we'll check on that.

15 02:09: Issue No. 13, reports to the director, affecting Rules 12 and 17.
16 The insurer should notify the director at certain points during the eligibility
17 determination process. Under 656.340(10), the director may require reports of
18 vocational assistance actions to assist in monitoring compliance to ensure timely
19 and appropriate benefits. To enhance its ability to monitor that ti--that time frames
20 are being followed, the Division would like to require insurers to report to the director
21 when a worker is referred for an eligibility evaluation, and wor--when a worker is
22 found eligible or ineligible for assistance.

23 So an alternative for this group to discuss would be amend the rules to
24 clarify the requirements for insurers to notify the director of certain actions taken
25 regarding vocational assistance. I guess specifically the ones mentioned; when the

1 worker is referred for an eligibility eval, and when a worker is found eligible or
2 ineligible for assistance. Your thoughts?

3 03:15: Yes. Yes, let's do it.

4 03:21: Well, let's stop and think for minute. I mean, are we talking on
5 every single plane? We're talking about a huge impact on insur--on insurers to
6 provide more information, and not-- It already says may require the reports; right?
7 So if you ask for them, shouldn't we be getting them, whoever? It says here the
8 director may require reports. So if you need certain information (unintelligible)
9 versus amending the rules to say every...

10 03:53: It's every eligibility--

11 03:55: Why?

12 03:55: --determination, not every claim.

13 03:57: Okay.

14 03:59: And...

15 04:03: I think this is the eligibility determination, the notice. Not asking
16 for reports at that point. That...

17 04:12: It would be--a copy of the notice would go to the--

18 04:14: Yeah.

19 04:14: --director?

20 04:14: A copy of the notice that the worker gets.

21 04:15: Yeah.

22 04:15: So that's not already required somewhat?

23 04:19: Isn't that currently required?

24 04:21: To be sent to the Department.

25 04:23: The return-to-work plan is--the notice of it, the ending of

1 eligibility, all of those, but not all of the notices are required. We don't receive
2 everything. And we're talking about the ones that were--throughout the process,
3 like, that were being referred for eligibility, they're--what the determination was.

4 04:48: It was copied on those?

5 04:49: Uh-huh. Yeah.

6 04:53: And the purpose for that would be?

7 04:58: To make sure that it's happening, and to know the process as
8 it's going along.

9 05:06: If we get...

10 05:07: Is everyone on mute on the phone? We're having a hard time
11 hearing over some static.

12 05:13: Right. And you don't all need to be on mute. We want you to
13 participate in the conversation. But we are picking up periodic--just white noise. I'm
14 not sure how that's happening.

15 05:21: I'm sorry.

16 05:23: Okay.

17 05:25: So I guess-- And how is that--how does that help you? It just
18 seems like an awful lot of paper flow, and I'm not sure the intent...

19 05:38: I think there has been a concern for many years that a lot of
20 eligibility evaluations that are supposed to be done are, in fact, not being done, and
21 we don't really have good data so that we can just look at our data and say, yes, we
22 know X percent of ti--the time it's not being done. And...

23 05:56: So do you track back somehow, like there's this many claims
24 and this many were settled, and this many return to-- I mean, is there a way to know
25 that, wow, there were 200 that should've been sent (unintelligible) from doing that?

1 06:12: I think there'd be indicators. I don't know.

2 06:14: We keep statistics on what we receive. I'm not sure I under...

3 06:19: But if we never receive it, we can't keep track--

4 06:22: Uh-huh.

5 06:22: --of what's going on.

6 06:24: Uh-huh.

7 06:26: Okay. So you know that it's happening.

8 06:30: So the worker might be told, but they're not sure of the proc--

9 And this is just for example. So if in 30 days it goes--they're supposed to have an

10 eligibility determination in 30 days and we're finding out that it's taking 60 for

11 whatever reason, we don't have that data right now. We don't know anything until

12 we go out and find one case, for instance, when somebody asks us. We're no--

13 we're only knowing it if they're bringing it to us. And by then, it's...

14 07:02: So if you don't get a notice, then what will you do?

15 07:10: Well, that's what we have to find out. We might...

16 07:13: So you're asking to change the rules for--and for us to notify

17 you--or insurers to notify you, but am I right that you just don't know what's going to

18 happen? This is just to see what happens?

19 07:26: It's increasing accountability that something is happening.

20 07:30: So is there--a process going to be in place if we, say, send a

21 notice that an eval has been requested? And to track the 30 days--you guys are

22 going to have a process in place to track that?

23 07:44: Correct, yes.

24 07:49: But we do want to know the extent of the impact. I don't know

25 how many, you know, times you would need to copy the director.

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08:00: So...

08:01: And this--that's--it says certain actions regarding vocational assistance. We haven't decided all of that. That's part of what this discussion is.

08:08: Yeah.

08:10: So you would know how many people were referred for eligibility evaluation and how many were eligible?

08:18: Right.

08:18: And you might also know who didn't send you anything?

08:21: And if it's timely, possibly. However we-- As we track their processes in Workers' Comp.

08:31: Uh-huh.

08:32: What would happen, for example, if you knew that XYZ company had comp cases, and you never got that paperwork from them? I mean, we'd know logically they would have had some referrals. Would you then contact them?

08:46: Well, it's a possibility-- Yes. And then it's also a signal for whatever audits we need to do, whatever we need to help educate.

08:57: These notices used to get copied to you before.

09:01: They still do. The...

09:05: The eligibility now is really...

09:06: Yeah.

09:07: Does the initial referral?

09:08: The referral does not.

09:10: So that's where we have, like, an issue tracking-- So we get a Notice of Eligibility that happened today, but we don't know if the referral happened

1 35 days ago, 45 days ago, 15 days ago. So however we can track...

2 09:21: Two years ago.

3 09:22: Yeah.

4 09:25: So is there clarity in specifically which reports you're asking for
5 then, or notices, or you're asking for notice of when there's been a referral, and then
6 eligibility notice? Are there other notices, then, that this pertains to or are we talking
7 about a specific one or multiple? I mean, I hear that we're talking about the eligibility
8 notice, and maybe the referral notice.

9 09:51: Those are the only ones I'm remembering right now.

10 09:52: Yeah, those are the only ones.

11 09:53: Two that are on there.

12 09:54: Because 0017 lists off the notices that are required.

13 09:59: Uh-huh. Uh-huh.

14 10:03: So maybe I'm just not connecting. Let me rephrase and see if
15 I'm catching up. So the rule currently states the eval has to be done in 30 days, and
16 that is submitted to the Department when it's done; correct? So you're not sure
17 where the 30--the Department doesn't ensure where the 30 days is counting,
18 because you never know when the original referral occurred?

19 10:29: Correct.

20 10:32: So it's just copied, really, on one additional notice, because--

21 10:35: Right.

22 10:36: --you're already copied on...

23 10:37: Yeah. Yes.

24 10:40: Well, and I'm assuming then you would also want to be notified
25 on postponements. So when they were legitimately postponed, you would want...

1 10:51: That would be nice.

2 10:53: Well, I think it would tell the whole picture. Otherwise,--

3 10:55: Yeah.

4 10:55: --it wouldn't...

5 10:55: Right.

6 10:55: Yeah. It would give a false impression to someone.

7 10:58: Right.

8 10:58: It would.

9 10:58: Right.

10 11:00: So we'd need that, too.

11 11:08: And if you need time--

12 11:08: So I-- Yeah.

13 11:09: --to actually assess, you know, the fiscal impact of anything like

14 this, we're going to be inviting, you know, additional comment either in writing or just

15 over the telephone after this meeting anyway, for probably until about the second

16 week--or two weeks from now, so that we can get some additional advice from

17 people.

18 11:31: I'm just trying to think if there's another way to give you what

19 you need without, you know, just this churn of paper, because it's expensive for you

20 all to get it, too. I'm not coming up with anything.

21 11:48: Well, and right now there's not a large number of voc

22 eligibilities going on. It's not every claim.

23 11:55: I'm sorry. I meant every claim for...

24 11:58: There you go, yeah.

25 12:01: Yeah. Sorry.

1 12:05: Every referral?
2 12:08: Uh-huh.
3 12:08: Oh, that's a lot. Hundreds?
4 12:11: Uh-huh.
5 12:13: Do we have a format we could use for that referral?
6 12:15: Uh-huh.
7 12:21: It seems like you could add the date of the referral to the Notice
8 of Ineligibility or the Notice of Eligibility.
9 12:29: That's a good idea.
10 12:29: Yeah.
11 12:32: That would be...
12 12:34: Yeah, so it's not an additional...
13 12:36: And the date of postponement.
14 12:39: Yeah. Yeah.
15 12:43: Thank you. That's an excellent idea.
16 12:45: Hey, that's a great idea in my book, because it's one piece of
17 pa--one thing--
18 12:48: Yeah.
19 12:48: --from everybody.
20 12:49: I know.
21 12:50: That's good.
22 12:51: Yeah.
23 12:55: Okay. Any additional thoughts on that?
24 12:58: It sounds like a good plan.
25 12:59: Okay. Issue Number 14. And when I said that we might have

1 two additional weeks, I didn't realize I-- I'm not speaking for Danae--

2 13:07: Yeah.

3 13:08: --or for Cathy in terms of how much time we need to get
4 prepared to file rules, so--but I think we will definitely take some additional comment
5 after the meeting, if--especially if you can assess fiscal impact of anything that we
6 cover here today.

7 So Issue No. 14, new information. Again, this affects Rule 165 and
8 175. Require the insurer to notify the worker when it receives new information that
9 may affect the worker's eligibility for vocational assistance. Adding this requirement
10 will improve communication between the parties, and will keep the process on track.

11 So I would appreciate your input on that, on amending the rule to
12 require the insurer to notify the worker when it receives new information that may
13 affect eligibility; require the notification within a certain period of time, such as within
14 five days of receiving that information; requiring the insurer also to notify the director
15 of that; or as always--or almost always, make no change.

16 14:09: What would you--how would you do the verification?

17 14:15: Verification that the reporting occurred?

18 14:19: I thought you were going to verify that the job was suitable.

19 14:22: Oh.

20 14:22: This is Page 12. This is Issue No. 14.

21 14:25: Oh.

22 14:26: That's the next one.

23 14:26: Okay. Sorry.

24 14:27: That's all right.

25 14:33: Is there an issue that's trying to be fixed with this?

1 14:40: That the worker does no-- The same issues that we've
2 discussed already, that this can go on for a very long time without the worker
3 knowing they're even eligible, or what the process is, or where they are in the
4 process, or why something is being postponed or-- The same type of issues.

5 14:59: Well, but this would be for the rule for end of eligibility, so this
6 worker is already eligible. They're getting services, and we receive new information
7 that might impact that.

8 15:14: Okay. This doesn't come up all that often, because the
9 standard for new information is so difficult.

10 15:26: Isn't this the same as the postponement, telling them why--

11 15:31: It's not...

12 15:31: --it's being postponed?

13 15:34: I don't think so. Go ahead, Heather. You...

14 15:39: I was just going to say, this is the--number one, based on new
15 information that didn't exist, or could not have been obtained with reasonable effort.
16 At the time the insurer determined eligibility, the worker no longer meets eligibility--

17 15:50: Oh.

18 15:50: --determination. So that's what we're talking about right there.
19 So I think what is being said is that instead of just ending eligibility, that the worker
20 needs to be--or receive the--notify that the new information may affect their eligibility,
21 so...

22 16:19: So kind of like in some other rules where before you stop
23 some-- Okay. This is what popped into my head. Sorry. The worker is traveling
24 from Salem to Portland to see their medical provider, and the in--before the insurer
25 can re--you know, not reimburse them, the travel for that, they have to notify them--

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16:41: Yeah.

16:41: --to say, no, we think in your area, blah, blah, blah,--

16:46: Right.

16:46: --and as of this date we're not going to be doing it. But the worker has some notification that it's taking effect, versus it stops now.

16:55: Right.

16:56: That's not a real good example,--

16:57: Yeah.

16:57: --because with the-- They could stop it. They just have to notify them.

17:00: Right.

17:01: Are you looking for the worker to be informed, this is going on, and it may affect your eligibility, and then when it affects--

17:08: Right.

17:08: --the eligibility?

17:10: Yeah. So I think that's what we're looking for.

17:13: Go ahead.

17:14: Well, the end of eligibility notice would explain;--

17:16: Yeah.

17:16: --right?

17:17: That would explain, right. But I think when we look at this, you know, this is...

17:26: For instance, in 0175 it's talking about--a worker was ineligible, but now the insurer has new information. There's nothing in there that requires the insurer to let the worker know there's new information, we're re-determining your

1 eligibility, is what the thought was.

2 17:46: I guess. But what--the salient point, though, is when the
3 insurer re-determines the eligibility. Because, you know, that whole may thing, it
4 kind of gets back to some of the conversations we had this morning. It may affect
5 eligibility but it might not. So here you go, worker, get yourself upset. And I think--
6 you know, I mean, I hear what you're saying. But at the same time, are we creating
7 more problem than we're solving? You know, that's all.

8 18:16: Aside from the worker having information, does it-- I assume
9 there's an appeal process or something that they can go through; right? So knowing
10 before the determination was made, I'm not sure what value is gained, other than
11 knowing that we're thinking about something,--

12 18:34: Yeah.

13 18:35: --which isn't very much information. Because a worker--it's like,
14 well, what the heck does that mean? I don't know what that means. Is it good or
15 bad? Tell me when you figure it out.

16 18:43: I...

17 18:45: I'm not sure what value. That's what I'm kind of wondering, is
18 what value does the worker gain? Because that's what you're looking for, I assume.
19 So I don't know...

20 18:51: Or wanting...

21 18:52: If you offered them an opportunity to go get counsel, to inter--to
22 interject, that's one thing, but I don't know that that's even a possibility. It's still--
23 The determination has to be made, and then they can do that if they want to. So I
24 don't know. I'm kind of confused on what the value is that we're hoping to--what they
25 can do with that information, other than wonder.

1 19:14: And then again, what does notify mean? Phone call? In
2 writing? What does that mean? In writing? Is it, again, additional work and forms
3 and letters and documents and...

4 19:30: So if they're up for eligibility again, what would be a way to let
5 the worker know that that's the case?

6 19:36: You refer them for an eligibility eval, and they'll get a notice that
7 an EE is starting.

8 19:43: And if there's no way that the worker or the Division knows that
9 that's a possibility, how are--how else do we find out that--without having that
10 notification to know that it's supposed to happen, that...

11 20:02: How do they not fall in the dark hole and not get addressed?

12 20:04: Exactly. That's more...

13 20:08: Right.

14 20:08: That's-- Thank you.

15 20:10: Sorry.

16 20:12: Is that any...

17 20:13: Yes.

18 20:14: A lot, or just...

19 20:16: We don't know.

20 20:18: Yeah.

21 20:19: It's happening enough that we get disputes on it.

22 20:23: But isn't that the appropriate time for something to happen?

23 20:26: Well, when we have disputes...

24 20:27: Because we may not-- You're really potentially putting all of us
25 in the place is--to have a dispute before there's really a dispute. It's not right at that

1 point. And so really, once you--when you say, hmm, we've got this new information,
2 we've determined that you are no longer eligible, they've already-- Has there been
3 any other notice to the worker at that point?

4 20:57: We could end eligibility or...

5 20:59: Okay. So we ended eligibility, and they have the right then to
6 appeal that.

7 21:03: Uh-huh.

8 21:03: And you get a dispute over it. And that's when it's right. I
9 guess I don't understand what notifying the worker that we might adjust is going to
10 do. I just don't. I'm struggling here.

11 21:22: Well, I don't know specific examples, but when they've
12 previously been determined ineligible, and now they have to re-determine eligibility
13 within a change of these circumstances; for--the worker, for reasonable causes, was
14 unavailable for voc assistance and is now available; their lack of suitable
15 employment-- You know, there's those reasons why. Not just that they're appealing
16 it, the decision.

17 21:47: But I thought (1) was like they--we determined them eligible,
18 but then before plans develop new information comes to light that couldn't have
19 been obtained previously, so they're found ineligible because they don't--they no
20 longer meet the eligibility criteria. I thought that was what (1) of 0165 is.

21 22:09: It is.

22 22:10: That is.

23 22:10: Yeah.

24 22:10: Yeah. I'm looking at 0175--

25 22:12: Right.

1 22:12: --in that case.

2 22:12: But that's a different situation. That's when they--that's--those
3 are for different reasons. That's for if they had reason--they were unable to
4 participate for reasonable cause, went to jail for six-- I mean, there are certain
5 reasons that you can request redetermination of eligibility, and those come up under
6 0175.

7 22:32: Right.

8 22:33: Uh-huh.

9 22:33: So the 0165--

10 22:34: Combining two things here.

11 22:35: --(1) is different, I think, than 0175.

12 22:41: So instead of falling in a black hole when that information
13 becomes available, for instance with 0175, what other--what else can...

14 22:48: When they request re-determination.

15 22:50: Because the burden falls on the worker.

16 22:52: The burden falls--

17 22:52: Yeah.

18 22:52: --on the worker.

19 22:53: If I've been in jail for six months, it falls on the worker when
20 they get out and say, hey, I want eligibility to be re-determined; is that correct?

21 22:58: Okay.

22 22:59: Yes. And the same thing if they have...

23 22:59: And the notice specifically tells them their rights.

24 23:01: Right.

25 23:02: They need to...

1 23:02: And if they had a heart attack and had to recover for six
2 months, when their doctor says, here's your release, they come back and request re-
3 determination under 0175. But I think 0165(1) is the cert-- It doesn't come up very
4 often, but when something comes out of the blue that you couldn't possibly have
5 known--I think I've had it happen twice--

6 23:28: Okay.

7 23:28: --then that comes under (1), was what I thought.

8 23:38: I'm good.

9 23:42: Okay.

10 23:43: So in looking at 0165, I'm a worker that's been found eligible for
11 voc-- And pardon my crassness here. Okay?

12 23:55: Again?

13 23:55: I know, again. I can't help it. So I've been found eligible for
14 voc, and I'm going, woo hoo, I'm going to go do voc. And then my employer at injury
15 says, well, that's going to cost me a bunch of money, I'm going to come up with a
16 suitable job for you. And I offer the worker that suitable job, and they say, no, no,
17 no. I'm not going to do that. Under (3), the insurer has the ability of ending the voc
18 because they refuse suitable employment. Is the Department saying the worker
19 should be given some window of opportunity to explain their case, or just be notified
20 that it's going to be ending?

21 24:44: Well, they would be notified that it was going to be ending.

22 24:48: So with the--with this rule revision, though, are you looking for
23 an additional notice in there?

24 24:54: Well, I think the question comes up because in the eligibility
25 process you're supposed to call the employer at injury and say, do you have other

1 suitable work for this worker? And if they say no, and then they're found eligible,
2 and then the employer says, oh, wait a minute, now I thought of something, I don't
3 know if that counts as new information that could not have been obtained previously.
4 I think (unintelligible).

5 25:19: I think--

6 25:19: Well, there would be no...

7 25:20: --the employer can still offer suitable employment, but--

8 25:23: Under (3).

9 25:23: --suitable without...

10 25:24: Okay. That would come under (3).

11 25:26: And it has to be--

12 25:26: Yes.

13 25:26: Yes.

14 25:27: --suitable on its own.

15 25:29: Oh, and this is just talking about (1),--

16 25:30: Yeah.

17 25:31: Uh-huh.

18 25:31: --not the rest of the 0165. Okay.

19 25:34: Under (1), I forget what even the circumstances were, like
20 maybe an accepted condition became denied or-- I don't know what it would be.

21 25:43: Which doesn't happen very often.

22 25:45: No, this doesn't happen very often.

23 25:49: Yeah, that...

24 25:49: Usually, it's new medical--

25 25:51: Yeah.

1 25:51: --information where a worker is eligible, and then they go to an
2 arbiter, for example, and the arbiter says release for regular work.

3 26:00: Oh, there's an example.

4 26:02: Yeah.

5 26:03: And at this point in this proposal, I would have to call or notify
6 the worker, I might be ending your eligibility and school might be over, but I don't
7 know yet, so I'll call you back in a week or two or-- That seems, to me, like it would
8 freak the worker out and...

9 26:22: Agreed.

10 26:23: Okay.

11 26:26: I didn't hear any actual support for this change.

12 26:30: I think that sums it up.

13 23:32: Okay.

14 23:33: Is that your way of saying move on?

15 23:36: I just wanted to make sure.

16 23:37: Yeah.

17 23:37: Issue No. 15, verification that employment is suitable. This
18 affects Rules 145 and 165. The Division should have the discretion to verify that a
19 job is suitable. If the basis for a worker being found not eligible, or for ending a
20 worker's eligibility, is because the worker has returned to suitable employment, the
21 Division wants to be able to verify that the employment meets the criteria of suitable
22 employment. So something for this Committee to discuss is whether to amend the
23 rule to provide that the Di--that the Division will verify that employment is suitable.

24 27:10: So my question was, how would you verify? Because
25 sometimes workers take jobs, they say they're suitable, but they don't want to give

1 you the information because they did it on their own. Like, they don't want anyone to
2 call their employer.

3 27:22: But this should be with the employer at injury; right?

4 27:24: Yeah.

5 27:25: It's employer at injury.

6 27:28: That's what I thought.

7 27:29: Is that what you intended it for?

8 27:33: Oh. Yeah.

9 27:35: So who--so it's not necessarily the employer---

10 27:37: Yes. Yes.

11 27:37: --at injury. But who's verifying that it's suitable, then? You're
12 just taking the worker's-- So they're essentially turning down voc. Then they're
13 not...

14 27:45: Uh-huh.

15 27:45: They're doing something on their own.

16 27:48: No, I understand that. But you wouldn't end it under--they've
17 been employed in suitable employment if you don't know it's suitable; right? You--
18 and probably based on the worker withdrawing voc or refusing voc or...

19 27:59: Or we would explain their rights to them and have them sign
20 some kind of documentation that...

21 28:04: That the job is suitable?

22 28:06: The...

23 28:08: But then how do we know the employer at injury is giving them
24 a suitable job?

25 28:11: Right.

1 28:12: That's where my-- With the employer at injury, we know cases
2 where they go back and-- Construction cases.

3 28:18: Uh-huh.

4 28:19: And the individual says, I'm good, we're going to make this
5 work. Okay." Everything's great. And then something happens down the road, and
6 the worker goes, you know, can they do that to me, kick me out? And we go, well,
7 yeah. Then they come out and say, you know, I wasn't supposed to climb ladders,
8 but you have me on ladders every day.

9 28:34: Uh-huh.

10 28:35: You go, well, it's a little late now, buddy, you really didn't bring
11 it up earlier. So I know that-- I don't know who checks for the suitable employment
12 when they return to the employer at injury if there's no use of Preferred Worker or
13 anything like that, because we don't go out there. We're not even told to.

14 28:47: Yeah. If they don't access the funds.

15 29:49: Right. There is no trail.

16 28:51: So you were thinking employer at injury?

17 28:53: On both.

18 28:54: Yeah. Because really, it's the employer at injury that can offer
19 other suitable employment which--the worker is then not eligible for vocational
20 assistance. But some of what we've been seeing, actually, a lot more lately is that
21 employers are being encouraged to offer something that's suitable--that they're
22 calling suitable, and--with or without Employer-at-Injury Program or with or without
23 Preferred Worker, and then it turns out--as you were saying, Ryan, it turns out that
24 no, that really wasn't a suitable job, and they're let go after the monitoring period
25 because-- Maybe it was physically suitable, maybe the wage was suitable, but

1 maybe it's not really a real job in the labor market, or it's not really a real job for that
2 employer. They just made up a job. There's nobody else doing it in that industry.
3 Not just that employer, but in the entire industry. And that can make it not a suitable
4 job, so...

5 30:07: As an employer, why wouldn't it be? If I've got an employee
6 who I think is a great employee, and they've got injuries and I can't get them on a
7 construction site anymore, if I decide to create a job in my organization that brings
8 value to my organization and it meets their physical requirements, I don't think
9 anybody should be able to tell me--

10 30:26: No. And nobody...

11 30:26: --I can't do that. But it kind of sounds like...

12 30:28: No, that's not what I'm saying.

13 30:29: I mean, I get-- What I think the idea is you want to get these
14 employers who are doing shady things.

15 30:33: Right.

16 30:34: But we should be able to get to them some other way than to
17 affect all of the other employers who-- I guess what I'd hate to do is-- The downside
18 is there are great employers out there who see value in an employee and want to
19 create something--

20 30:46: Right.

21 30:46: --that doesn't exist. So we're going to make something,
22 because it's the right thing to do and this is a good employee, we'd like to keep
23 them. I'd hate to see us damper that. As an employer, I don't want to see that
24 occur.

25 30:59: Right.

1 31:00: I agree that if there's people out there misusing it-- I don't ever
2 like seeing legislation that slaps the hand of two people and affects the--you know,
3 500,000--the rest of us. I don't like that too much.

4 31:12: Yeah. And I agree with you on that, that there are a lot of
5 employers who do make up--create jobs. In fact, Preferred Worker has a--
6 something that--they help employers create jobs. But I am talking about employers
7 who habitually do. They habitually make up a job, let the person go. Next injured
8 worker, they do the same thing, let them go. And that's what we have been seeing,
9 is certain employers who will habitually make up a pretend job. And I--we know it's
10 pretend only because once that person's gone they have no use for it.

11 Or an example is there was a worker who was working in a mill, and
12 the employer said they had permanent suitable work. The only thing he does is--
13 Oh, he's an assistant to whatever the job was he was doing. The only thing he does
14 is stand there eight hours a day watching the person do the job he used to do, and
15 sometimes sweeping the floor. That's the only thing he does. That's not a real job.
16 And I mean, nobody--no business would pay someone to stand there and watch
17 somebody else.

18 32:29: What's interesting to me is when we did-- Because I've
19 actually done this before, and I had--we had a-- We created a position as an
20 assistant safety direc--

21 32:38: Uh-huh.

22 32:39: --safety person, which the organization didn't have.

23 32:42: Uh-huh.

24 32:44: And what we knew was this is a job in our industry that's a
25 pretty valued job. And we might train them and he might move on, and that was

1 okay with us, too, but we'd at least provide him with a good, solid future.

2 32:59: Yeah.

3 33:00: And I'm fairly certain--at that time, we were with SAIF, and I'm
4 fairly certain he got put through the ringer on--what is he doing, what's he--how's he
5 going to do it? We--like, we got to ask a lot of--

6 33:10: Yeah.

7 33:11: --questions. It wasn't just a wink, wink, we're going to do this
8 and we're good to go. But we actually got asked quite a bit of questions on it in
9 order to make sure that it was a suitable position and that it was a legitimate
10 position, so...

11 33:25: And that it wasn't going to end in 30 days, 90--

12 33:27: Yeah.

13 33:27: --days or whatever. I'm just--

14 33:30: That's...

15 33:29: --reluctant to create something for the minority, versus the
16 majority.

17 33:36: Yeah.

18 33:36: And also, when it says here--I'm not really sure what this would
19 mean, have the discretion to verify. I wa--I don't even know exactly what that
20 means, or how that would be put into play. I mean, so you arbitrarily pick something
21 and tell us you want to look at it, or we have to turn in everything or-- I'm not sure
22 what we're doing.

23 34:02: Was this intended to be a discretionary review, or that we
24 would review every time that they were found ineligible because they were employed
25 in suitable employment?

1 34:11: We hadn't-- Because there's an--if there's an impact to the
2 Division, we don't know yet.

3 34:17: I see both sides of that story. The other side-- Your side, you
4 created a job, a real job. In the construction industry, a lot of people are saying,
5 yeah, I know the carpenter can't go back and do any carpenter's duties, but he was
6 lead carpenter, so really I need him around to supervise anyway, he can't do
7 everything, but he can still tell people what to do.

8 So their job's not modified, it's not created. It's not changed really at
9 all, except for they're just saying, we're not going to let that person actually be
10 physical anymore. They still are. That's what happens. But if they're at a job where
11 they're, you know, in a different--work in a manufacturing or processing plant or
12 something like that and have more administrative duties, they can still be around
13 everybody else, we see those creating new jobs. But if you're creating a job, then
14 you have benefits and somebody's going to come out, whether it's Matt or Brian or
15 somebody else-- Well, maybe not for that creation. You don't have to come out for
16 that. But for...

17 35:14: But we call them creation...

18 35:15: So what we see is that when they're put with the employer at
19 injury, you know, in a limited capacity to a similar occupation, they're going to go
20 outside--they're going to go back to the job if that's natural to them. But if they're
21 doing something that's totally different, then there's usually additional people coming
22 in to check that, because I want to make sure you're really teaching them the new
23 jobs or whatever. But I don't think there's any sort of follow-up with people returning
24 in a limited capacity to the same occupation. I think that's where this rule is
25 questioning, is who's checking in on that construction worker who the employer

1 says, oh, we've got a modified position for this individual. How do we know?

2 35:59: Well, I see another side to both of those. And the both of those
3 are valid, too. But I also see employers who don't really have the knowledge or
4 ability to know what a suitable job is.

5 36:08: Right.

6 36:08: Maybe for wage, maybe for whether it exists, but not how to
7 make that job suitable based on the restrictions they have. So I also see it as an
8 education piece. I don't see it as, oh, that's not suitable, fix it. It's, here's how you
9 can fix it, let's get them suitable with what you want to do with them. And that's
10 really how I see this being administered, is-- And a lot of people don't understand
11 how to do that. It isn't just taking away duties. It isn't just changing the--to--so it's
12 not so physical. There's lots of jobs that aren't physical, and they still can't go back
13 to those. So it's more us overseeing what is being proposed so that we can offer up
14 to make sure that that does happen, or at least have the ability to assist with making
15 a job suitable.

16 36:48: I've seen some wonderful job creations. There's also
17 sometimes some kind of blatant things, like a car dealership who has a mechanic
18 who's been there 20 years and gets hurt, so they're going to make him a file clerk at
19 \$18 an hour. Very--I mean, he's never been a file clerk. He's never worked-- It's
20 not an industry standard, so there's a-- I think it's kind of the flagrant things that do
21 happen. But would you verify through the worker if he considered his job to be
22 suitable or-- How would you do that?

23 37:20: I don't know that we talked about it...

24 37:20: The problem is the worker thinks it suitable until he's unhappy,
25 and then it's-- That's the--as an employer, that's what you get, is-- You know what?

1 That worker might have come to us and said, is there any way I can stay on as a
2 supervisor, that's what I do, I just--I'll just be--I won't wear my belt. Well, I'm in the
3 office and I'm-- And that's a great worker. He has great value to us. I want him out
4 there supervising. I want him teaching all the new guys that are coming in. Yeah,
5 absolutely we could do that. Set him up. Everything is good.

6 They get in an argument with some superintendent, and the next thing
7 is, they were making me do this, and they were making me to that, and it's not
8 necessarily a true statement. And so all of a sudden they're unhappy, and the story
9 changes. And so, you know, that's the-- I could see that happen. I've seen that
10 happen quite a few times. And I'm not out there watching them. I can't do that. I
11 have to rely on the worker being responsible to stay within their restrictions. And
12 certainly, we have work to offer that's within that.

13 But for me, I guess I'm nervous as an employer having somebody else
14 come in and telling us we have to do different things because you don't think it's
15 suitable. We know what some of these restrictions are. And so long as we're
16 meeting some of these restrictions and they're agreeable to that-- Quite frankly, if I
17 offer somebody a job as a file clerk and I'm willing to pay them 20 bucks an hour,
18 why do you care? I've given them valuable work, I guess is-- I guess I would hate
19 to see-- It's a great company and they have great benefits and they have great
20 coworkers. And so yeah, maybe they're doing file work, but they would rather do
21 that than go someplace they don't know.

22 So I just really am hesitant to kind of cut off some avenues for
23 employers, and for the workers who want to keep working for somebody. We have
24 long-time employees, very long-term employees. And so for us, I can see-- It's the
25 kind of company that really would say, yeah, we're probably not getting our dollars'

1 worth out of that, but this is somebody who's worked for us for 25 years, they've got
2 another 5 years until they retire, we don't want them to have to go learn a new trade
3 and go find an employer that may or may not like them, we'd do that for this
4 employee, they've given us 25 great years, we'd like to finish out the next 5 with
5 them. So I just would hesitate, especially in the construction industry. I can't speak
6 for other industries. But in the construction industry, I don't think that's so unusual.

7 39:52: But we want to substantiate that job.

8 39:53: I also think there's abusers.

9 39:54: Right.

10 39:55: Yeah.

11 39:55: So the problem is I don't want to go-- If the person is going to a
12 file clerk position at \$18, \$20 an hour, who's the first person who's going to get cut
13 when they're having a bad year? Well, that file clerk we're paying \$18 an hour can
14 be replaced with my niece for \$12, \$9, minimum wage. And so I think overall we're
15 all kind of--we're seeing that individual as--again, back to the rules, not just the right
16 now, but down the road. Substantiating suitable employment is-- It's not just kind of
17 get that out of this claim and onto the next step, but it's going to keep going forward.
18 And that's why we developed the Preferred Worker Program, to help those
19 employers reap in some of those costs that they're paying for. So again, back to this
20 question. Who is checking whether that's a suitable job if there's no voc involved? I
21 don't know.

22 40:41: Or the person gets injured, and they can't wait around for--to be
23 determined eligible or not, or permanent restrictions. They get a different job just to
24 make some money because they can't live on their time loss. Maybe that job isn't
25 quite suitable, but they had to make their own self-determination. I mean, they even

1 rely on the worker to provide--like, hey, you know, I was doing this job, not related at
2 all to what I was doing before, but, you know, I still--I have a lot of pain, I can't quite
3 do this job. I mean, but if that--if he was in that for 60 days, he's suitably employed.
4 It kind of revokes his whole eligibility. So I mean, who's watching that person while
5 they're trying to make ends meet, finding something different, rather than returning
6 to the employer at injury? So again, I think there is a need for monitoring for suitable
7 employment on a variety of levels.

8 41:25: And the thing--again, we certainly would not want to discourage
9 employers from taking their people back. And if you have jobs that--if you have a file
10 clerk who's been there 25 or 30 years and you want to give them a job until they
11 retire, that's great. And there's no way that Workers' Comp is going to say, oh,
12 that's not suitable.

13 But what we have seen are people who have been working for a
14 company for 25 or 28 years, and all of a sudden they're a lousy employee because
15 they got injured, and so they get a suitable job--they get a job offer for other suitable
16 employment in bad faith. And that's really what we're--we have seen a lot of, and
17 that's kind of what the monitoring would be for. And bad faith--I mean, that's
18 obviously a vague term. But what we would be looking for is not just talking to a
19 worker and saying, hi, are you happy, are they doing everything you want for--you
20 know.

21 We would look at the job description itself. We would look at the
22 employer's history of returning its own employees to work--other suitable work. We
23 would look at a lot of factors. It wouldn't just be, yeah, you know, I made up this job
24 for this worker and they've been doing it, but now they want to move to Florida, and
25 so it's a lousy job for them. You know, there would be a lot of different things we

1 would look at.

2 43:01: So help me understand what you would do, because I'm really
3 struggling with-- Because I know what we do--

4 43:10: Uh-huh.

5 43:10: --to get people back to work, and the involvement of our return-
6 to-work people and our claims adjusters in making sure the work is suitable for a
7 worker to go back to work. And I'm--what I'm struggling with is-- I mean, I think
8 we're doing what we need to do. I think our employers are mostly doing what they
9 need to do. So I--what would you do? You come in and you say, this is not suitable
10 work. Then what?

11 43:39: Then they're out of the job totally or something,--

12 43:40: Well, like...

13 43:41: --and then they're back into voc?

14 43:41: Well, we do it already with the employer at injury use of the
15 Preferred Worker Program.

16 43:45: Well, right. I know that, but...

17 43:47: Well, that process is--we look at job descriptions, we talk to the
18 employer, we look at a job offer letter, we visually see the worksite to determine if it's
19 suitable. And if it's not, we offer ways for them to become suitable, be it modification
20 or-- You know, there's lots of ways to modify. It doesn't always involve spending
21 money also. It can be changing tasks, removing job duties, all of those sort of
22 things. And if it's not suitable, then they don't access the rest of the employer use
23 benefits until it is.

24 44:17: Okay. That's Preferred Worker.

25 44:18: That's Preferred Worker, right.

1 44:17: Would it not be that if you--if they were found ineligible because
2 they had suitable employment, and then you went in and there was a dispute and
3 you looked at it-- And I understand what you're saying. The good apples are still
4 going to be good apples.

5 44:31: Yeah. Yeah.

6 44:32: And probably a good portion of them will still be good apples,
7 and we'll have data then about all of the good apples. But those that--

8 44:38: Yes.

9 44:39: --end up being bad apples, wouldn't the worker then possibly
10 get their voc eligibility back--

11 44:45: Yes. Yes.

12 44:46: --and be able to...

13 44:47: Which is kind of what happens now, isn't it?

14 44:50: Not for a lot of...

15 44:51: Not for...

16 44:52: Not for a lot of workers--injured workers.

17 44:55: A lot.

18 44:56: So maybe I don't understand correctly. Maybe Jenny's just
19 trained too well. But--and again, I know there's clearly insurers out there doing
20 things differently. My understanding is if it's whatever time frame, you know, 90
21 days, 6 months, if the job doesn't stick then they're re-evaluated for voc. It's
22 automatic. It's not a maybe. If the--

23 45:24: Well...

24 45:24: --job isn't a real job, then it doesn't stick.

25 45:28: Okay.

1 45:29: And they get their...

2 45:29: Well, that's when the...

3 45:30: Who's verifying that?

4 45:31: Right. And that's verifying it. Because that's when at 30 days
5 or, you know, 60 days, whatever, the worker is suddenly fired because--fired for
6 cause, because they're--they just have a bad attitude or-- There are lots of times
7 that we have seen in disputes where the workers are let go at the end of the 60 days
8 for a variety of reasons, and then we have to look at those jobs and go, huh, well,
9 was that really a suitable job?

10 And if we look at the physical-- The wage is usually suitable because,
11 you know, that's a major criteria that the employer knows. But then when we start
12 looking at the job and talking to the employer and to the worker's supervisor and
13 whatever, we sometimes find out that that really had not been a suitable job. And
14 there are times when the physical part of it has not been suitable, when a job
15 analysis is sent to a doctor for approval, and then it turns out that's not really what
16 the worker is doing, so...

17 46:51: But I guess isn't that what the purpose of the dispute process is
18 for, though, to catch those situations where things aren't going the way they're
19 supposed to?

20 47:01: Yes, but not all workers know that they can do that. They just
21 don't-- They just figure, you know, if--this is what it said, I have, you know, 60 days.

22 47:09: So there isn't any bold language about their appeal rights or
23 being able to...

24 47:15: Well, yeah, there is. Yes. Yeah.

25 47:18: Okay. So that's out there. And is it because they're not

1 reading it that they don't know?

2 47:22: Well, if they'd been employed for 60 days--if they believe
3 they've been suitably employed for 60 days, and then they are let go, they just
4 automatically think, okay, well, you know, I don't have--or, you know, I don't have
5 voc assistance left to me. There are workers who are savvy enough to say, this
6 wasn't right, and I want a dispute, but there are a lot of workers that don't, so...

7 47:58: So I guess what--at what point in the process would I have to
8 notify you-- I'm just thinking out loud here, and I apologize if I'm playing the devil's
9 advocate. But I'm thinking Cathy writes me an eligibility evaluation, I agree with it,
10 and then I send it to you to either agree or disagree that the worker--that it's suitable,
11 that...

12 48:28: Versus after the fact if it ends somehow, because on the front
13 end it would delay everything.

14 48:33: Yes.

15 48:34: It would delay placing the worker.

16 48:35: And it wouldn't get to that issue.

17 48:36: It--

18 48:37: Correct.

19 48:37: --would fix that issue.

20 48:38: No. No.

21 48:49: I was taking the issue here as to basically--use of Preferred
22 Worker half of this year, and the other one for if we ever got to an eligibility
23 evaluation, return to employer at injury, the employer, a construction company, said
24 he was suitably employed. Down the road, he was terminated for substance abuse
25 issues. But then the worker came out and said, I was never suitably employed, I

1 was still working on a ladder, I was doing all of the same things I was doing before.
2 Can he do that? Well, you never said anything. Nobody ever knew. Why didn't you
3 tell anybody? Did you call the insurer? Did you talk to the adjuster? He didn't have
4 legal counsel, at his own choice. Well, no, because I was working, but now I'm not.

5 So here's the case where the individual is going, I don't need to
6 express this, because I'm out there every day still doing my job with these people,
7 but as soon as something happens he wasn't. But nobody was going to go in and
8 check that, because we hadn't even gotten to any point to where we were involved
9 for, you know, going out to check on the job. We wouldn't be involved.

10 But in another case where we use Preferred Worker where we have an
11 individual trying to say that they're not suitably employed anymore with their return-
12 to-work employer at injury because they're saying they're having to do tasks that are
13 outside their means, we are able to find out that that wasn't the case. The worker
14 was actually just pushing this because he really wanted a little bit more--he wanted
15 more money. He wanted a different deal. So ultimately, we were able to get
16 everybody together using one of the worksite modification consultants, getting the
17 employer and worker all together and have a good discussion about this. We put
18 something in writing that we made him sign, so we kept that from happening. But
19 that was only because there was a lot of entities involved. But in other cases,
20 nobody was involved. We wouldn't know.

21 50:25: I mean, one thing that I guess bothers me is that when we talk
22 about-- Some of this sounds like it's taking any responsibility from the worker, that
23 they have some responsibility to participate in this process. We--I feel like there are
24 so many times when we look at--what can we do? Well, I guess we don't have to
25 ask the workers to read the paperwork we send them. So what can we do to make it

1 easier for the worker so they don't have to read the paperwork that we send them,
2 because they don't open the-- But at some point in time, the workers also have to
3 be held accountable for participating in this process. If they--if at some point in time,
4 you know, they're saying that the work isn't suitable, then they need to be held
5 accountable to say something about it.

6 I mean, I agree that if there isn't currently a means for the workers to
7 be able to protest that then something needs to change, but we can't go through this
8 whole process changing everything to say that the worker has no responsibility to
9 participate in this. It happens too frequently where the workers just throw up their
10 hands and say, I got hurt on the job, it's all you, and I don't have to do anything. I
11 don't think that's fair to any employer or...

12 51:38: So can I ask that-- Like the example that you just gave, the
13 ladder guy.

14 51:42: Uh-huh.

15 51:43: So can that not end up in a dispute, then? Is it too late?

16 51:45: Well, because the reason he was terminated would have had
17 nothing to do with what he was doing before. The employer was already--we found
18 that legally, he was right for saying, you can't be here anymore, so...

19 51:58: Well, and I wonder if he would have heard from the worker if he
20 hadn't been terminated, or he would have continued to work.

21 52:04: He would have continued to work.

22 52:05: He would have continued to work.

23 52:06: He even told us. That was our honest--

24 52:07: Yeah.

25 52:07: --communication. I was just like, "Well, why didn't you say

1 anything before?" "Well, I was working." I was like, "So this is a little late, you know,
2 you did something, you knew that it wasn't right, so..."

3 52:16: So again, responsibility on the worker somewhat.

4 52:19: Right.

5 52:19: Yeah. I mean, they...

6 52:19: A lot of times they want to avoid confrontation, the worker...

7 52:22: They don't want to be fired.

8 52:23: They have a job.

9 52:24: I want to keep my job, but I want you to know that I'm put in this
10 compromised situation--

11 52:27: Right.

12 52:27: --and I don't like that, is there some sort of protocol so that it's
13 made aware of? I don't want to lose this. And if it's not suitably employed, what do
14 we do? So we've had workers ask us for some help (unintelligible).

15 52:39: I...

16 52:43: It can take a lot of courage to speak up and tell your employer
17 or the insurer, this isn't suitable.

18 52:49: Yeah. I guess I just struggle with the fact that the worker
19 knows their restrictions better than anyone else when it comes to that situation. And
20 they need to be able to say, if my employer is telling me I'm doing something
21 outside--I have a piece of paper from my doctor that says I have restrictions, and
22 you must follow them. I mean, I don't know--

23 53:11: Easier said...

24 53:11: --what the argument is there.

25 53:12: Easier said than done.

1 53:12: Well, yeah. I agree with that. And I mean, I think we all
2 recognize that most employees--workers have less power than their employer does.
3 I mean, that's-- And I think Kim mentioned this. I hate to see us creating more
4 process that potentially slows things down for the bad apples. And so can we find a
5 way to give you all what you need to deal with the bad apples, instead of sweeping
6 the people who are trying to do the right thing into the whole thing? And I don't think
7 it takes somebody third party to come in and make that determination every single
8 time that a job is suitable, because we send people back to work all the time
9 successfully. So anyway, that would be...

10 54:07: Thank you, Jaye. I appreciate it.

11 54:08: We got a lot of good advice on that. And obviously, you know,
12 there isn't really a consensus around this one. I think the best we can do is take it all
13 back and talk about it with our program managers. You know, we'll try to do the right
14 thing, but...

15 54:21: Well, and we'll think about it too in the meantime, if we can
16 come up with a way that gives you guys a little bit more of what you need without
17 restricting us so much.

18 54:31: Yeah, we're definitely open to creative ideas. Issue No. 16
19 then, employer-activated use of the Preferred Worker Program. This affects Rules 5
20 and 165. There are a number of issues related to employer-activated use of the
21 Preferred Worker Program. Some background. The bulk of the language in Rule
22 5(18)(f) seems more appropriately placed in Rule 165 than in the definition of
23 suitable employment.

24 One proposal that has been made is to modify Paragraphs (A) and (B)
25 as follows. It would be changing out 9 months to become 12 months from the

1 effective date of the premium exemption if there are no worksite modifications, or the
2 worker is terminated for cause, or the worker voluntarily resigns for a reason
3 unrelated to the work injury during the 12-month period.

4 Then or, Paragraph (B), 12 months from the date the Department
5 determines the worksite modification is complete, or the worker is terminated for
6 cause, or the worker voluntarily resigns for a reason unrelated to the work injury
7 during the 12-month period. That's one where you're going to need to look at the
8 rule to understand the context of all of that. Your thoughts?

9 55:49: I guess I wonder why the change from 9 months to 12 months.
10 What's the problem?

11 55:59: Basically, it's the--yeah, consistency. The 12 months for the
12 worksite mod. Why shouldn't it be 12 months from premium exemption also? I
13 mean, it's just consistency.

14 56:14: Would there be concerns about that change?

15 56:20: I don't necessarily have concerns about that change, but one of
16 the issues that we have is knowing when the Department determines that the
17 worksite mods are complete. So it would be nice to have something, because we
18 don't know when that timeline starts. It's sometimes difficult to get that information.

19 56:43: So the existing 12 months, you think, is too long, I mean, in
20 Paragraph (B) where it talks about 12 months from the date the Department
21 determines the worksite modification is complete?

22 56:53: No. I'm just saying that we don't know when the Department--
23 So we don't know--

24 56:57: Oh.

25 56:57: --when to start the clock.

1 56:59: When the 12 months starts.

2 57:00: Right.

3 57:00: Oh, I see.

4 57:01: So we have a process, and currently maybe it needs to be
5 tweaked, is-- If we know that if the counselor is involved, we email them. Like, I
6 know when I close my mod, if I do one today, I immediately email whoever the PRO
7 is and say, as of today, you know, whatever. And then it's entered into our system.
8 I don't know if this is not getting back to...

9 57:23: So you've had cases where that's happened.

10 57:27: Uh-huh.

11 57:28: But in a dispute, a year, a year and a half down the road it turns
12 out that the worksite mods were never complete, but you guys closed your case.
13 And so the PRO was notified that the Preferred Worker case was closed, and so we
14 started the year-long process.

15 57:50: We have a date-- I mean, that's-- We have an actual field in
16 our system that says mod completion date that we enter.

17 57:59: I don't think we have a closed...

18 58:01: Well, we close the claim.

19 58:01: We close at complete.

20 58:03: By complete.

21 58:03: And then we put, this is completion date.

22 58:04: Close--there isn't, like a close...

23 58:06: What happens when they're not complete?

24 58:08: When somebody hasn't verified that it's completed?

25 58:11: When it's actually not completed? If it's not completed, there's

1 no completion. Like if we're waiting for a piece of equipment. Because the mods
2 aren't complete until all of the equipment is in place and the worker is working within
3 their restrictions. So there are times where it gets delayed for a piece of equipment.
4 But then as soon as that equipment is in place, that's when the date the mod--
5 When we verify that it's in place, talking to the employer, worker. Did you get the
6 piece of equipment? And then we update our system, too. So if employment
7 ends...

8 58:37: You update your system?

9 58:38: Yeah, we update our system. We notify the counselor.

10 58:41: It used to be more vague, but then you guys had to come out
11 for the second (unintelligible) to make sure it was all in place.

12 58:46: We either follow the protocol or...

13 58:49: That's relatively...

14 58:50: Either/or.

15 58:52: But there's no other way to close it, other than to say it's
16 complete. Otherwise, it's still approved, and it is in our system.

17 58:59: There's been a couple of cases, and it doesn't come up all that
18 often, but where an employer is not being responsive to you guys, and so you send
19 a letter saying that you have until this date.

20 59:11: We inact--we can inactivate it.

21 59:12: Right.

22 59:13: Yes, before it's approved.

23 59:14: Yeah.

24 59:14: But once it's approved, yeah, it's-- So that's--I guess you could
25 consider it closed. It's not inactivated, but that's...

1 59:22: And I think--Brian, I think one of the things Jenny is talking
2 about, one of the examples, is where an employer said yes, all of the worksite mods
3 are completed, all--they're all in, and it was put in the system as completed. And
4 then when it was checked, the employer said, well, no, we didn't get this piece of
5 equipment, but we decided we didn't need it," and that has happened, and that...

6 59:44: To where it's showing complete, but it really wasn't complete?

7 59:47: Right.

8 59:47: And how would we know that?

9 59:48: Yeah.

10 59:49: And so we lost at dispute, we got an attorney fee. Only--we did
11 everything right in my mind, based on the information that we had.

12 60:00: I think that--I think for a while we weren't doing the follow-ups,
13 and we are again. It has been for at least a year or two. So I think that's...

14 60:09: Is there something besides alerting the counselor?

15 60:11: There's not always a counselor involved. It would be nice. And
16 in the situation that you just brought up, I mean, I had a date, and I had a date from
17 the Department, so I don't know. I guess I need a date that I can rely on.

18 60:32: Well, it sounds like that's the exception, not the norm. But I
19 guess it's clarification that complete means complete.

20 60:41: Well, we do make note of that date, and what we did to verify
21 that it's complete. So potentially, if you call, any of us could look that up and say,
22 oh, so and so said they followed up on this date on site, and all of the pieces were in
23 place. So I'm sure you could get that information. You could just call the main line
24 for Preferred Worker, and any of us could look that up.

25 61:01: Is there someone on the phone with a comment? Okay.

1 61:07: Or if we know-- Like, I've worked on a couple with Shane. I'll
2 just copy him on the email, that it's complete. If I know that there's someone at SAIF
3 that's working on it, or if there's, you know, another employer, insurer, and they have
4 a specific person, then we strive to notify all parties.

5 61:23: A phone call.

6 61:25: Okay.

7 61:25: But at any point, you could call in. It's--like I said, there's a field
8 in our system that says when it's complete. Anybody can look it up in the Preferred
9 Worker Program and give you that completion date.

10 61:36: Okay. Thank you very much for that advice. Iss--are we up to
11 Issue No. 17, under eligibility/end of eligibility? This is a placeholder. The following
12 may impact the rule for determining a suitable wage. And so are we just waiting for
13 the outcome of a litigation?

14 61:57: There's a case in the Court of Appeals about suitable wage for
15 a worker who had multiple jobs, was injured on the lower-paying job. We don't know
16 the outcome of that yet. But there's also some changes to the Division 60 rules,
17 that--because the Division 120 rule refers to how time loss is calculated under
18 Division 60. We just want to make sure that whatever changes happen there, review
19 them to make sure--to see how they impact, if at all, this rule.

20 62:24: All right.

21 62:24: And so I don't know that those changes are--

22 62:27: They're still...

23 62:27: --proposed yet.

24 62:28: They're still pending.

25 62:29: So...

1 62:29: There's nothing even filed as a proposed rule. But Rule 25 is
2 the one that had--drew the greatest interest, and that has to do with how to
3 determine the average weekly wage of a worker.

4 Okay. Then we're on to Issue No. 18, ending eligibility, affecting Rule
5 165(9). A stakeholder has suggested the rule be revised to clarify that the worker's
6 eligibility may be ended for failure to participate in a return-to-work plan. The
7 Division would like the committee's feedback on whether the change is needed. The
8 rule currently provides that eligibility ends when the worker fails to participate in the
9 development of im--or implementation of a return-to-work plan.

10 Rule 145(3) requires the worker to participate in the vocational
11 assistance process and provide relevant information. If the worker does not, the
12 insurer must issue a written warning before finding the worker ineligible. Rule 520(1)
13 provides, the worker must participate throughout plan development and as required
14 in the return-to-work plan. Also, a worker's benefits may be reduced for failure to
15 participate in or complete a vocational rehabilitation program prescribed under
16 Chapter 656.

17 So an alternative to discuss is amend the rule to clarify that a worker's
18 eligibility may be ended for failing to participate in a return-to-work plan. Or if the--if
19 you think existing rules are sufficient, we would make no change.

20 63:58: I think it's covered in the current rule.

21 64:02: Is there anything to address when the worker's attorney is not
22 cooperating?

23 64:08: That's an excellent question.

24 64:09: That's a good question.

25 64:12: We've had a couple cases where we've been hit with fees or

1 things like that because missed a deadline, and the issue was the vocational
2 counselor was trying to get a hold of--the worker has to go through the attorney, and
3 the attorney doesn't respond to them.

4 64:26: It's very unfortunate.

5 64:26: So the voc counselor has to go through the attorney as well?

6 64:28: Uh-huh.

7 64:29: Yeah.

8 64:32: It's very unfortunate in that situation, because what you
9 eventually have to do is hold the worker accountable for their attorney's behavior
10 through a warning letter--

11 64:41: Yeah.

12 64:42: --or something like that. But it is unfortunate.

13 64:48: Yeah. I don't know that we could...

14 64:49: Make the claimant's bar pay some attorney fees.

15 64:50: Yeah. What's that?

16 64:51: Make the claimant's bar pay some attorney fees.

17 64:54: I don't know that we'd have the authority to do that. Issue No.
18 19, ending eligibility, Rule 165(14). A stakeholder has suggested adding the
19 following two reasons for ending eligibility without prior written warning: The worker
20 assaults or is abusive to classmates, teachers, supervisors, or other involved--others
21 involved in the vocational assistance process. The worker is suspended or expelled
22 from training.

23 Some background. Under the current rule, the insurer must issue a
24 written warning before ending eligibility for harassing any participant in the
25 vocational assistance process. Classmates, teachers and supervisors, arguably, are

1 not participants in the process. If the worker is assaultive or abusive during training,
2 presumably the school's disciplinary process would be followed. It would be helpful
3 to hear some examples from insurers or counselors of cases in which the worker
4 was abusive, suspended or expelled, and reasons against issuing a written warning
5 prior to ending eligibility.

6 And then there's some alternatives presented there, including, you
7 know, defining abusive; add a section providing that if the worker is suspended or
8 expelled, then eligibility will end; provide criteria for when a written warning is or is
9 not required; or make no change to the rules if you think that it's already covered.

10 66:23: So is there anything in the initial notification of what behaviors
11 are? In the real world, anybody who crosses the line of being abusive or anything
12 like that, they don't get a written warning, do they? I know in my real world they
13 don't. I mean, there's--you know, there's--maybe abuse or whatever word you want
14 to use here needs to be defined better, but the-- So we give them a written warning
15 and--when they've done something they really shouldn't do in any workplace, much
16 less a training plan, anything like that?

17 66:59: Does any...

18 67:00: It seems that if I'm going to--through a program, and the
19 program that I'm participating in suspends me or says, you're out of here, because
20 of my behavior, that ought to be an automatic--your eligibility is done if you can't--if
21 you have--if your behavior has caused you to be tossed out of a program.

22 67:29: I agree.

23 67:31: It doesn't come up very often, thankfully, but it does come up.
24 We had a worker who was in an OST site at a machine shop who got into some kind
25 of verbal confrontation with his OST provider, so he took off his hardhat and threw it

1 at his employer, and then walked off the job. And the employer didn't want him back
2 after that, and it didn't seem really right to send a warning letter. Also, warning
3 letters require a date by which you have to comply. And so to warn a worker that
4 they must not physically assault any member or--

5 68:12: Yeah.

6 68:12: --anybody by the end of their training date or like-- I don't even
7 know how that would look.

8 68:19: That should be at the beginning. I think people shouldn't be
9 allowed to do that. I'm--

10 68:22: Right.

11 68:23: --very much in agreement with that, having a section that tells
12 them that they will automatically be deemed ineligible for ending their eligibility if
13 they behave in those kinds of ways. Then, you know--I mean, the concept where
14 you say add a section providing that the worker is suspend--is suspended or
15 expelled to end eligibility, and then providing criteria for other situations maybe when
16 prior written warning is or is not required-- I'm in support of that, and any further
17 definition if necessary, but I think we need to take this into the real world, and not
18 allow people to have additional opportunities that people in the general workforce
19 wouldn't necessarily have if you're going to have those behaviors.

20 69:10: Okay. Thank you very much. Issue No. 20. Failure to
21 maintain a grade point average or complete minimum credit hours, affecting Rule
22 448(2). A written warning should not necessarily be required at the first indication
23 the worker may not maintain a 2.0 grade point average or complete the minimum
24 credit hours.

25 A written warning should be required before training is ended, but if the

1 insurer or counselor and the worker are all aware of any issues and are already
2 working together on a plan to address them, the insurer should not be required to
3 issue a written warning. Rather, the rule should allow some discretion, depending
4 upon the circumstances.

5 So alternatives would be to amend the rule to provide that the insurer
6 may give the worker a written warning; amend the rule to provide that the written
7 warning be given before training has ended, rather than at the first indication; amend
8 the rule to provide circumstances when written warning would and would not be
9 appropriate; or make no change. Would you rather have the discretion not...

10 70:09: I love this suggestion.

11 70:10: What's that?

12 70:10: I love this suggestion. Forcing us to send a warning letter that
13 we haven't necessarily made a decision and we're not acting on anything yet, it's
14 unenforceable, it's--and it just creates disputes. So I think this would eliminate a lot
15 of that.

16 70:32: I agree. In fact, I have one of your disputes on exactly this
17 issue.

18 70:37: Uh-huh. I would say this is a highly disputed issue, yeah.

19 70:42: Would there be any concerns about providing that flexibility?
20 Okay. Issue No. 21 under rights and responsibilities, general category now; and
21 notices of eligibility, Rule 17. The rule does not specify what rights and
22 responsibilities must...

23 71:05: Did you skip 21?

24 71:07: Did I-- What?

25 71:08: We're on 21.

1 71:09: Oh, I'm sorry.
2 71:09: Oh. Sorry.
3 71:12: I think-- Did we do 20?
4 71:13: We did 20.
5 71:14: We did 20.
6 71:16: Well, it sounded like we were just doing 20. I guess I must
7 have missed it.
8 71:19: We're on 20.
9 71:20: You're right.
10 71:20: Okay. Twenty-one.
11 71:22: Page 18; right?
12 71:23: Yes.
13 71: 24: Yeah. I just thought that--
14 71:24: Okay.
15 71:25: --we were--we just finished 20 and...
16 71:27: We did. Did I say 20? Then if I said 20, I made a mistake. So
17 we're up on--
18 71:31: Sorry.
19 71:32: --Issue No. 21,--
20 71:33: Okay.
21 71:33: --notice of eligibility. Okay. The rule does not specify what
22 rights and responsibilities must be included in the Notice of Eligibility. Some
23 background. A stakeholder raised this issue. She has been including a copy of the
24 second page of the 1081. That's the return-to-work plan form. Another counselor
25 includes the appeal rights. Others may include something else entirely. The current

1 language leaves it to the counselor to decide, creating inconsistency in application.
2 Rights and responsibilities may differ, depending upon whether the worker is eligible
3 for training or direct employment services. Also see the next issue regarding Rule
4 520, Return-to-Work Plan: Responsibilities of the Eligible Worker and the Vocational
5 Assistance Provider.

6 So some alternatives would be to specify which rights and
7 responsibilities must be included with the Notice of Eligibility, for training and for
8 direct employment services; include the responsibilities listed on the back of either
9 Form 1081 for the Return-to-Work Plan, Training, or 1083, having to do with Direct
10 Employment; and refer to the responsibilities listed in Rule 520, see next issue; or to
11 make no change. Your thoughts?

12 72:46: I think it's important to be clear. I mean, if we're having--we're
13 running into inconsistencies, I think it's important for us to be clear what needs to be
14 included in what circumstance, then. I think consistency is important.

15 72:57: And I didn't bring copies of the forms, and I realize now maybe
16 I--that would have been a good thing to include here.

17 73:03: I have one.

18 73:03: Oh, great. Do you think that those are the right--the correct list
19 of rights and responsibilities that we have listed on the back of these two forms?
20 They've been around for years, and the rights and responsibilities have been listed
21 on the back. We hope that they're the right ones, because...

22 73:27: Well, and one--the issue--this particular issue is what should be
23 included at the--with the Notice of Eligibility, so that's before the plan is developed,
24 whereas the rights listed on the back of the form are with--at the time the plan is
25 developed. So is there a difference between the rights that we should be notifying

1 the worker of earlier in the process,--

2 73:44: That's true, yeah.

3 73:46: --and later in the process too? And that's where the next issue
4 comes in. So on the Return-to-Work Plan for training, the worker responsibilities are
5 to maintain regular contact with the counselor, notify the counselor if problems
6 develop and continue attending training during attempts to resolve the issue, advise
7 the counselor immediately if anything threatens to interfere with successful
8 completion of program, advise the counselor by the close of the next workday if the
9 worker stops attending training for any reason, maintain a 2.0 grade point average,
10 complete the courses outlined in the curriculum by the plan end date, consult with
11 counselor before adding or dropping courses, give a written training report to the
12 counselor by the fifth day of each month, give the counselor a copy of each grade or
13 progress report within 10 days, and meet any other responsibilities agreed to in this
14 plan. So I mean, they're very specific to training.

15 74:44: Right. When you first send a Notice of Eligibility, do you know
16 whether they're going to get training or direct employment services? I guess that's
17 also something to think about. And if--you know, if you have thoughts after the
18 meeting too, you could let us know in terms...

19 75:10: (Unintelligible), didn't we?

20 75:11: Uh-huh. We went over this.

21 75:15: Including those rights up front--

22 75:16: Yeah, uh-huh.

23 75:17: --or those responsibilities. Excuse me.

24 75:31: Issue No. 22 is very much related. Worker and counselor
25 responsibilities. This is Rule 520. The responsibilities listed in the rule do not match

1 the responsibilities listed on the back of the 1081, that's the training form, and the
2 1083 Return-to-Work Plan; Direct Employment. Stakeholders have suggested that
3 the rules require the worker to be an active participant in their job search, and all
4 aspects of their plan.

5 Some background. The rules require the worker to participate in plan
6 development, and provide that eligibility may be ended if the worker does not
7 participate in the development or implementation of a plan, but do not directly
8 require the worker to be an active participant in their job search. It is common for
9 counselors to specify a minimum number of job search context, such as--contacts,
10 such as 10 per week. While the requirement is written into the plan itself, it should
11 also be in the rules.

12 Rule 520(1) provides, "The worker must participate throughout plan
13 development and as required in the return-to-work plan." Also, a worker's benefits
14 may be reduced for failure to participate in or complete a vocational rehabilitation
15 program.

16 So some alternatives would be to list in rule the responsibilities of the
17 worker as listed on the 1081 and 1083, list in the rule the responsibilities of the
18 counselor as listed on the 1081 and 1083, revise the rule to require the worker to
19 actively participate in all aspects of their return-to-work plan, and revise the rule to
20 require the worker to be an active participant in their job search, or make no change.

21 77:07: And I support the different alternatives being suggested to list.
22 For clarity purposes, I think that's a good plan.

23 77:14: Uh-huh.

24 77:15: Yeah.

25 77:17: Any concerns about doing that? Okay. Thank you very much.

1 Under definitions, Issue No. 23, timeliness of documents; delivered, filed and mailed.
2 Affected rules are Rules 3 and 5. Three is the applicability rule. I think 5 is the
3 definitions. There is a lack of consistency throughout Chapter 436 in the rules
4 regarding timely submission of documents to the Division.

5 The Division is looking at making general rules throughout Chapter 436
6 consistent. Other definitions of these terms in Chapter 436 and 438 include-- And
7 Division 001 defines mailed as addressed to the last known address, with sufficient
8 postage and placed in the custody of the U. S. Postal Service. Divisions 001, 009,
9 010 and 030 define mailing date as the date a document is postmarked.

10 And a Workers' Compensation Board rule defines filing as physical
11 delivery or date of mailing, and provides, filing may be accomplished by mailing by
12 first class mail, postage prepaid. An attorney's certificate that a thing was deposited
13 in the mail on a stated date is proof of mailing on that date. If the thing is not
14 received within the prescribed time and no certificate of mailing is furnished, it shall
15 be presumed that the filing was untimely unless the filing party establishes that the
16 filing was timely.

17 The definition of mailed was raised in 2009, and the Stakeholder
18 Advisory Committee at that time preferred the definition in the 120 rules over the
19 definition in the Division 001 rules, so it was not changed. Would there be any
20 unintended consequences of making the 120 language consistent with the other
21 rules in Chapter 436? The Division also plans to remove unintended barriers to
22 electronic communication throughout Chapter 436.

23 So there's a number of options listed down here in terms of making the
24 timeliness language in 120 consistent with other rule divisions; combining timeliness
25 language with definitions of delivered, filed, and mailed, et cetera; and removing

1 barriers to electronic communication. So I would appreciate your thoughts on any or
2 all of those.

3 79:40: About consistency?

4 79:44: Consistency and clarity are...

5 79:45: And I think we've said any number of times that we like the idea
6 that electronic delivery could be included.

7 79:58: So Jaye, does that mean you would prefer not to say, placed in
8 the custody of the U.S. Post Office?

9 80:05: Well, you know, I don't think there's anything wrong with that
10 being there, but it can't be--it shouldn't be the only--

11 80:11: It can't be the only way.

12 80:11: --way to deliver--

13 80:12: Okay.

14 80:12: --something.

15 80:13: Okay.

16 80:13: I mean, I think there are places where delivering it--you know,
17 putting it in the mail is the appropriate thing to do, and that would become less and
18 less common. That's why the post office has had all of its budget issues, because
19 people aren't delivering things through the mail. But I think consistency is good, and
20 I think the flexibility is good as well.

21 80:39: I'd also say that I like the--to leave the concept of once it's been
22 placed into the custody of the U.S. Postal Service, because once it's been delivered
23 to them it's outside of the hands of anyone else, and if it doesn't get delivered then
24 the mailing entity receives the punishment for somebody not getting it because
25 something happened when it was in the custody of the Postal Service. So that

1 concerns me, if you're saying that it isn't effective--you know, whatever document
2 that might be isn't effective until it's been delivered. And if we can't--

3 81:13: Control the...

4 81:14: --control the delivery, and yet we receive the punishment for it,
5 that, I struggle with.

6 81:20: Yeah.

7 81:21: Okay. Noted.

8 81:22: Is the Division looking at something like the Board's portal for
9 uploading documents?

10 81:29: We actually have a portal of our own for some documents, but
11 we're not really as advanced as the Board yet in terms of their--what their process is.
12 But yeah, we would--we will be looking at things like that. And a lot of this is aimed
13 at insurer to worker communication, and that kind of communication as well. And we
14 had a meeting with a committee not too long ago to discuss, you know, any barriers
15 that might be in the rules, and there was general con--I think consensus that people
16 wanted new ways to be able to communicate, and they didn't want the rules to
17 restrict them. Any additional thoughts?

18 82:17: So I do have one additional thought on this, and this is maybe
19 something way in the future. But the concept of when a claim gets submitted, you
20 know, via notice, via 1502 or something like that, to the state, the potential of the
21 future--that the state has an email system that people can communicate together
22 jointly that are kind of behind--but are somewhat blind, so that, you know, an
23 employee isn't just writing to the adjuster. Because sometimes the adjusters don't
24 want the worker to have their per--their work email per se, because then a lot of
25 things get sent that's inappropriate and there's-- I don't know. Just having

1 something where the state might actually have an email system where everybody
2 has access to the things that are going on in that case in that respect might be
3 something to consider in the future, but...

4 83:11: Okay.

5 83:11: The state would know what's going on in the claim?

6 83:14: They, well, would have access then to the communications
7 between the two, so that if there were a dispute that it's all accessible in that respect.
8 It's imperfect of an idea, but...

9 83:29: It's an interesting idea. No, really. I hear what you're saying
10 for in the future. I struggle a little bit with total open access to all of the work product.

11 83:40: Yeah.

12 83:42: But ease of communication between parties,--

13 83:45: Uh-huh. Yeah.

14 83:46: --I'm not exactly sure what that would look like.

15 83:48: I don't either, but it's...

16 83:49: Yeah.

17 83:49: We'll complete it in the future.

18 83:52: We do encourage people to use secure email products if they
19 do email information back and forth. Typic--the Division has a policy where we do
20 not email claim information to people outside of our agency, because we understand
21 it's not secure. We do have a secure email product that we can use, but that's a--it
22 takes a little more time. People actually have to give themselves a password and
23 that kind of thing, so...

24 84:15: But having something like that from the--to help facilitate
25 communication amongst all of the parties involved might be beneficial someday

1 down the line.

2 84:24: Okay. Thank you.

3 84:25: Well, the other thing I'd like to kind of jump on-- And Kevin
4 mentioned the Board's portal. I think ultimately, that's--especially when you talk
5 about emailing documents that you need to be secure, having a portal that would be
6 available, I think would be really good.

7 84:49: Okay.

8 84:50: I would agree.

9 84:51: Thanks.

10 84:51: I think you addressed a couple of things we talked about;--

11 84:53: Yeah.

12 84:53: --knowing when something's complete, when we need to get
13 meds, that kind of stuff.

14 84:56: Yeah.

15 84:58: Terrific.

16 85:00: And I think that the Board is using their portal. I mean, that's
17 very slick. It's working really well.

18 85:07: Yeah. And ours will look very much like theirs. I mean, it's just
19 going to be added on. The same kind of functionality will be there.

20 85:16: Well, and they said they'd share their stuff, so...

21 85:19: But we're all the same agency, really, so-- Okay. I think then
22 we're up to Issue No. 24.

23 85:26: Uh-huh, definition of insurer. This affects Rule 5(9). Insurer is
24 defined in the statute. It's actually (14) of 005 in the statute. Some background.
25 The Division tries to--not to unnecessarily duplicate statutory language in the rule. If

1 the definition of insurer is removed from the rules, the last sentence could be moved
2 to Rule 12 in Division 120 under General Requirements for Notices and Warnings.
3 The rules may still need to clarify that when the term insurer is used, it includes a
4 self-insured employer, however.

5 So an alt--the alternatives include removing the definition of insurer,
6 moving the last sentence to Rule 12, clarify that insurer includes a self-insured
7 employer, or just leave things as they are. So I appreciate any thoughts or concerns
8 you might have about that.

9 86:22: I agree with clarifying that the insurer includes self-insured
10 employer.

11 86:30: Anything else? Okay. Issue No. 25, physical demand
12 characteristics of work strength ratings. This affects the definitions, Section (13).
13 The terms and concepts are defined, but are not used anywhere in the rules. The
14 terms and concepts are commonly used for substantial handicap analyses, job
15 analyses, and physical capacities evaluations. However, since they are not used
16 anywhere in the 120 rules, they should not be defined in Rule 5. The Division would
17 like the committee's input on whether the language should be kept in the rules but
18 moved to a different rule number, or whether it can be removed altogether. Do
19 parties refer to or rely on the 120 definitions of these terms? Physical demand
20 characteristics of work strength ratings, Rule 5(13).

21 87:29: It's a fairly lengthy section.

22 87:32: A very lengthy rule.

23 87:32: Sedentary work, light work, medium work, heavy work and very
24 heavy work.

25 87:36: Uh-huh.

1 87:37: And the way that it's in the rules right now, for purposes of
2 these rules, these definitions apply. But we don't actually use those terms in the 120
3 rule, so it's not--it doesn't make sense how it's referenced right now, but we don't
4 want to take it out if it's--

5 87:53: Being used.

6 87:53: --needed.

7 87:54: Being used

8 87:55: So is it...

9 87:56: It's good for training,--

10 87:57: Uh-huh.

11 87:58: --for us to train our people with, to understand (unintelligible)
12 learn about job analysis and stuff like that.

13 88:04: But do you look to the Division 120 rules for that information
14 or...

15 88:10: I mean, just because it's always--it's there, because--

16 88:12: Okay.

17 88:12: --are the rules we carry with us everywhere.

18 88:14: They're in your back pocket.

19 88:15: Right, they're in my back pocket. Yes. So I don't find any
20 problems with them. We use them.

21 88:22: So if they were removed, though, would that be a problem?

22 88:25: Well, we could still get them, yeah. It wouldn't be that big of a
23 problem. But I mean, I don't mind that they're there. That's one thing I was thinking
24 about. We wouldn't want to see them go, but if they weren't...

25 88:35: I'm just trying to remember now whether the Division 35 rules,

1 the disability rating standards, have the same...

2 88:40: They have determined in there, but it's different. It's a different
3 context. And I've looked at that, and I--

4 88:45: Okay.

5 88:45: --can't recall exactly.

6 88:46: I guess there are differences, then.

7 88:52: We don't really use it to-- I can take it or leave it. It doesn't...

8 88:57: And if it comes up in a dispute, what we refer to are the medical
9 documents.

10 89:02: Right.

11 89:02: We don't refer to...

12 89:03: Which is what we...

13 89:04: Yeah.

14 89:11: Thank you for your input on that. And we're right at the time
15 when we're supposed to take a short break. So if we can definitely start by a quarter
16 to 3:00? And I think we're now sort of on track to get through this document, or all of
17 the substantial portions. We're probably going to maybe skip over some
18 housekeeping items a little later, but...

19 89:38: Yeah.

20 89:39: I'll see you back in 15 minutes.

21

22 (off the record)

23

24 89:48: Okay. We're on. I show that we're up to Issue No. 26 on Page
25 23, having to do with reemployment and reinstatement rights. The affected rule is

1 Rule 14. The requirement for insurers to inform workers of their reinstatement rights
2 is a claims processing matter, not specific to the vocational assistance process.

3 Three sections of the statute require the insurer/self-insured employer
4 to notify the worker of the reemployment and reinstatement rights under ORS
5 Chapter 659A. That 656.262(6) requires the Notice of Acceptance to inform the
6 worker of reinstatement rights. 656.340(2) requires contact under 656.340(1) to
7 include information about reemployment rights. And that same statute, .340(3),
8 requires the insurer or self-insured employer to inform the worker about
9 reemployment and reinstatement rights within five days after the attending physician
10 or authorized nurse practitioner releases the worker to return to work.

11 While part of the requirement is stated in the section of the statute
12 dealing with vocational assistance, it is a function of claims processing, and is not
13 specific to the vocational assistance process. It is unlikely insurers will look to the
14 120 rules to find the requirement. So we recommend adding the requirement to
15 Division 60. That's the claims administration rules. Or we can keep the
16 requirements in the 120 rules, possibly moving them to the rule regarding notices, or
17 we could make no change. So we would appreciate your advice on that.

18 91:31: SAIF agrees with the idea that they belong in the 60s.

19 91:36: In the 60 rules?

20 91:37: (Unintelligible) agree.

21 91:42: Anyone think they should stay in the 120 rules? Okay. Thank
22 you very much. Issue No. 27 has to do with the list of vocational assistance
23 providers, and it affects Rule 17. The rule should allow the list to be provided
24 electronically. Some background. 656.340(10) provides in part, "The director shall
25 compile a list of organizations or agencies registered to provide vocational

1 assistance, a current list shall be distributed by the director to all insurers and self-
2 insured employers, the insurer shall send the list to each worker with the notice of
3 eligibility.” Rule 17(1)(e) provides that the list is published with Bulletin 151. The
4 bulletin provides the link where users can find the list on the Division’s website. The
5 list is approximately 40 pages long.

6 Insurers should be allowed to provide the worker with information
7 about how to access the list electronically, and be required to provide a paper copy
8 upon request. This would be similar to what the rules require regarding a list of
9 managed care organization providers. Division 10, Rule 270(4) requires the insurer
10 to provide the worker a written list of eligible attending physicians within the MCO’s
11 geographic service area, or provide a Web address to access the list. If the insurer
12 does not provide a written list, the insurer must provide a phone number the worker
13 can call to ask for a list and give the worker seven days to request the list.

14 So alternatives to discuss would be to amend the rule to specify how to
15 find the list on the Division’s website, allow insurers to provide the worker
16 information about how to access the list electronically, but require that a paper copy
17 be provided upon request, and--or make no change.

18 93:38: PPS likes both of the alternatives of amending the rule and
19 allowing insurers to provide the information--list electronically, with paper copy upon
20 request.

21 93:48: (Unintelligible.)

22 93:49: Okay. Would there be any objections to doing this? Okay.

23 93:57: In fact, we like it so much, thank you.

24 94:00: Yes.

25 94:01: Okay. Thanks.

1 94:03: Very environmentally friendly.

2 94:05: Okay. Yeah, it kind of goes along with the approach of trying to
3 remove those kinds of barriers to electronic communication, while recognizing that
4 some people still do not have internet access, et cetera.

5 Issue No. 28, affecting--or regarding multiple claims, and affecting Rule
6 135(7). A stakeholder has suggested the rule clarify how to determine which claim
7 has the most severe vocational impact. The rule provides that assistance be
8 provided for only one claim at a time, the claim with "the most severe vocational
9 impact," but does not provide guidance for how to make that determination.

10 Alternatives would be to revise the rule to clarify how to determine
11 severity of vocational impact. That might be a cost of plan to return worker to
12 suitable employment, earning capacity, physical restrictions, first claim, or again,
13 make no change. Is that something that you would like us to provide more guidance
14 or direction on?

15 95:08: We were fine with it.

16 95:11: Yeah, this just doesn't come up all that often. And usually, if a
17 worker has two claims going on at one time, they don't hit that likely eligibility piece
18 right at the same time. So usually, whatever claim gets there first, you have to start
19 in that claim. That makes sense.

20 95:34: Oh.

21 95:38: And I think if you decide to start, you know, giving things to look
22 at, listing items, it would kind of be one of those including, but not limited to--

23 95:47: Yes.

24 95:47: --this, this, this and this because they're-- And I mean, it's
25 just--for me, it's always a good way to go. We start to make a list of things. There

1 could be something that impacts one particular worker that we'd never dream of right
2 now.

3 96:02: But what Jenny just said. Would it always be the claim where
4 the worker was first likely eligible that you would provide vocational assistance
5 under?

6 96:13: Not necessarily, because a worker might not be eligible in that
7 first claim or--

8 96:19: Yeah.

9 96:20: --you know. It just depends. But--

10 96:21: Okay.

11 96:22: --unless--this doesn't even come to play unless two claims are
12 closing kind of right at the same time, or there's two voc eligibilities right at the same
13 time, and that's just...

14 96:35: That's rare.

15 96:35: Yeah, it's rare for it to line up like that in terms of the timing.

16 96:43: Is this seen as an appropriate change, then, or a needed
17 change?

18 96:50: What if there are two different insurers?

19 96:53: What?

20 96:53: Two different insurers. Two claims, they're different insurers.

21 96:59: I've only seen that happen once. And there was not like-- It
22 was us and Liberty, and the worker wasn't eligible because of a wage issue in one of
23 the claims, and so it was obvious.

24 97:25: Thanks very much for your input. Issue No. 29, employer-
25 activated preferred worker benefits affecting Rule 155. The language in (1)(a) and

1 then Paragraphs (A) and (E) regarding the start date is not clear, and may conflict.
2 The language in (1)(a) parallels the language in Division 110, Rule 290(4),
3 Employer-at-Injury Program, Use of the Preferred Worker Program, except that the
4 110 rule requires the job offer to include the start date, with the further provision that
5 if the job starts after the modifications are in place, so note. The start date cannot
6 be before the job is within the worker's restrictions. Also, Section (2) may need to be
7 clarified as to when the eligibility evaluation must be completed.

8 So the alternatives would be to amend the rule to clarify the start date
9 and when the job begins, amend the rule to clarify when the eligibility evaluation
10 must be completed, or make no change. Thoughts?

11 98:34: I do not challenge the concept of clarification. Clarification is
12 good.

13 98:44: Yeah. And again, it's usually appropriate to be consistent with
14 definitions.

15 99:02: Okay. Issue No. 30, redetermining eligibility, affecting Rule
16 175(6). The circumstances in Section (6) would not be a redetermination, but an
17 initial determination. A stakeholder raised this issue, saying this may allow a worker
18 who does not meet likely eligibility criteria to get an evaluation. So the alt--the
19 discussion item is to remove--revise or move the language in Section (6).

20 99:38: Section (6) is-- So if the worker has previously been
21 determined ineligible, or eligibility was ended, the rule provides that the insurer must
22 redetermine eligibility. But in this situation, the worker returned to work prior to
23 becoming medically stationary, and then informs the insurer that he or she is likely
24 eligible for vocational assistance and requests a determination within 60 days of the
25 mailing date of the Notice of Closure. But if they've already returned to work, would

1 they be turned--be determined--or their eligibility ended anyways? I mean, it would
2 just-- I might have not explained that correctly.

3 100:12: If they've already been determined ineligible, if they can't--
4 how can they be redetermined if it's never been determined?

5 100:25: Well, yeah.

6 100:37: Okay.

7 100:40: So we're okay with--

8 100:40: No arguments for--

9 100:41: --removing it?

10 100:41: --removing it.

11 100:43: So removing it or moving it?

12 100:44: Removing.

13 100:45: Removing it, I guess, unless there are any concerns.

14 100:53: What purpose does it serve?

15 100:58: Issue No. 31 for vocational evaluation, affecting Rule 410. The
16 rule describing vocational evaluations needs to be updated. The vocational
17 evaluation is done after the worker is determined eligible for assistance in order to
18 determine what type of assistance to provide. The list of activities in the rule is out
19 of date. For example, work evaluations, described in Section (2), are no longer
20 done. The Division would like to update the rule to outline what the eval--what the
21 vocational counselor would reasonably be expected to do as part of the vocational
22 evaluation. So we'd like to discuss whether to update the rule regarding vocational
23 evaluation or leave the rule as it is.

24 101:47: We don't really have...

25 101:50: I don't know when I last saw a voc eval.

1 101:52: They're--it's not done very often--

2 101:55: Yeah.

3 101:55: --at all anymore. I'm fine.

4 102:01: Is this list, in fact, out of date, this list of activities of a
5 vocational evaluation in Rule 410?

6 102:08: Uh-huh.

7 102:17: And are work evaluations, in fact, no longer provided?

8 102:27: So every once in a while we do on-the-job evaluations for voc
9 testing, but there used to be, like, a vocational evaluation. It would almost be like a
10 PCE or something like that, where somebody looked at the worker's transferrable
11 skills and did testing and kind of made recommendations as to what the worker
12 might have a good aptitude for, or the reverse. And we really don't--the rules don't
13 allow for that anymore. There used to be a separate budget for that, I think, a line
14 item for that. So it's just not something that's done anymore.

15 103:15: Do we need the rule? I know that wasn't actually on the
16 agenda, but do we need...

17 103:25: All of 410, it sounds like?

18 103:31: Well...

19 103:33: So are you saying that those aren't done?

20 103:37: No, they are.

21 103:38: Sorry.

22 103:40: That's what it sounded like to me.

23 103:42: No. I think it's an outdated phrase, like vocational evaluation.

24 I used to be a voc-- A voc evaluator is what they called it. It's a completely dying
25 field. The certification--they don't even have it anymore, so you can't get it. But voc

1 evaluation, it was--when I was doing it, it was five days or ten days. And the worker
2 would come for a five-day evaluation and we would look at all of these things, and
3 we would also physically test the worker to see if they had the physical capacities to
4 do the job that-- And we would do interest testing and academic testing, and then
5 make recommendations to the counselor. And so vocational evaluations like that
6 don't really happen anymore where it's, like, a five-day or a ten-day thing that you
7 send the worker to, where that used to happen on, I think, every single case.

8 104:40: But somebody is deciding what their aptitude is and what type
9 of assistance--

10 104:44: Oh. Right, right, right.

11 104:44: --would be best; right?

12 104:45: Yes, yes, yes.

13 104:46: Do we address that--

14 104:47: The counselors do that.

15 104:47: --somewhere else?

16 104:47: The counselors do that.

17 104:49: We do...

18 104:50: Oh, nice.

19 104:50: We do interest testing.

20 104:51: Nice.

21 104:52: On-the-job evaluations, yeah, but we don't really--I...

22 104:57: So you don't do 410?

23 104:59: The work evaluations, no.

24 105:01: But the stuff that's in 410, you do,--

25 105:03: On-the-job evaluations.

1 105:04: --just because that's just what you do?

2 105:05: Well, if we have a--if we have a place where we're unsure,
3 we're going to see how it's going to work out. Back to water treatment, for instance.
4 If we can put them with--before training ever starts, for two weeks, just to see if it's
5 something that's going to be suitable. If there's a question of, like, well, this
6 employer--whatever, the larger municipalities might have less physical tasks, but
7 then the smaller ones are going to be--more options. So we're going to say, we're
8 going to put you out there for two weeks. The insurers usually say, that's fine, go
9 ahead. We put them out there for two weeks to make sure that it's even going to be
10 a suitable option for them. We meet with the training--the employer...

11 105:40: So what makes you do that, other than you're a good guy? I
12 mean, do the rules say...

13 105:45: They only--no, they only-- What--yeah, we just do it if it looks
14 like there's a question about that specific site.

15 105:52: Oh.

16 105:53: Well, the Return-to-Work Plan support requires that you're
17 listing, like, their transferrable skills, their vocational interests, their educational
18 background.

19 106:00: Okay.

20 106:00: So it's all in the Return-to-Work Plan.

21 106:02: Okay.

22 106:03: So they are required to do that.

23 106:04: I just want to make sure if we go, oh, yeah, get rid of that, that
24 those things are still--

25 106:08: Being done.

1 106:09: --being done. I mean...

2 106:11: I guess that's what I'm-- Under--this is really not used as

3 much as the way you're-- It's already done.

4 106:18: So under (2) of 0410, the work evaluation, and it talks about

5 the certified vocational evaluation specialist, that no longer exists. They went

6 bankrupt in 2008.

7 106:30: We don't do anything...

8 106:33: And so unless people have grandfathered into that-- I have a

9 CVE, but it's now monitored by CRCC. And so that just isn't applicable at all

10 anymore. And some of these things--like situational assessment, work adjustment,

11 job analysis, labor market search, all of those things seem more like definitions to

12 me, and maybe they could just be moved into the definition section.

13 107:00: If we're using them in the rules at all.

14 107:03: Yeah.

15 107:04: Well, because I like, for example, job analysis. This is the

16 only place in the rules where it says that it's based on direct observation of the job.

17 So I wouldn't want to take that out of the rules, but it doesn't really fit in voc

18 evaluation. It's more definition, in my eyes.

19 107:23: If you've got a definition that's not used anyplace else in the

20 rules, there's no point in having the definition.

21 107:29: But it is used in the...

22 107:30: Oh, it is. Yeah.

23 107:31: Like in the Return-to-Work Plan support,--

24 107:31: Is it? Okay.

25 107:32: --it says a job analysis--

1 107:33: Okay. Okay.

2 107:34: --prepared by the voc-- Yeah, it's used.

3 107:35: Okay.

4 107:38: So other than job analysis, are you saying we can delete that
5 entire rule, 410?

6 107:47: I think there's a few in there that you said were definitions.

7 107:48: Well, labor market...

8 107:49: Labor market--

9 107:50: Labor market. Sorry.

10 107:50: --research, yeah.

11 107:51: Labor market research--

12 107:52: Sorry.

13 107:52: --evaluations, vocational testing.

14 107:54: Well, and I think labor market research is covered under...

15 108:15: So we need to look at that.

16 108:17: Yeah.

17 108:18: Otherwise, a lot of it's irrelevant.

18 108:23: Okay. Thank you very much for that input. Issue No. 32 on
19 training, affecting Rule 443(2). The rule does not explain what is meant by plan
20 monitoring. It may be helpful if the language is expanded to explain what is meant
21 by plan monitoring, and to add responsibilities that are listed on the 1081 form, the
22 Return-to-Work Plan for training. Your thoughts?

23 108:53: We already noted that in on the 1081 that we need
24 responsibilities. It's put on every 1081. It explains what the voc counselor's
25 responsibilities are, so that the worker himself sees it when they sign it. And it gives

1 a little (unintelligible) to their responsibilities also on the second page.

2 109:11: I guess my question would be, when you say that it doesn't
3 explain what's meant by plan monitoring, is that for the benefit of the worker or for
4 someone else?

5 109:20: Everyone. What is expected of the counselor, what's
6 expected of the insurer and the worker? And is it--is being on the form enough, I
7 guess, is my question.

8 109:33: It comes up a lot when we go to reviews. Even though we
9 have the worker there when we talk to them, a lot of times we're not saving that
10 document or reviewing it every couple months. I mean, once they get up and
11 running, it's kind of one of those things that you come back-- We--I like to personally
12 do it with a non-formal warning letter, which is just to say, hey, we're not slapping
13 you on the hand, but we're reminding you of what's going on, let's go back to that
14 1081 that you signed, remember, on that date, the second page? We go back over
15 it; here's my responsibilities, your responsibilities, you do this; before it ever goes to
16 the insurers to say, hey, we need a formal warning letter.

17 110:12: Does anyone think that we should actually amend the rule
18 itself to include what is meant by plan monitoring, or is the fact that the parties
19 signed the 1081, which has the responsibilities on it-- Is that--are you saying that's
20 sufficient? Do you think it's sufficient?

21 110:33: Well, because the 1081 is used for both kinds of training,
22 occupational skills or formal training, it changes a little bit of what the responsibilities
23 are for voc. You're an academic plan, we're going to check in with your instructors
24 and monitor that way. If you're with an OST, (unintelligible) check in with different
25 people. So it's a little bit different. Otherwise, I'd say you guys could just put the

1 same generic statement, what the voc counselor's responsibilities are, on that
2 responsibility section of the 1081, but it might be a little bit different, just depending
3 on the training plan, or an overall--like you do on the back of the 1081 already.

4 111:10: Yeah. So should it be in rule? Does anyone need it in rule,
5 instead of just on form?

6 111:17: Do you have a problem enforcing it?

7 111:18: Yeah, that was...

8 111:20: That's my--that's our question.

9 111:21: That's a good question.

10 111:28: Maybe you just put there in parentheses, see forms so and
11 so, see the form, instead of just listed on there.

12 111:38: We don't have an opinion on this.

13 111:40: Yeah. Yeah.

14 111:42: It's never been an issue. I think that's--

15 111:43: Yeah.

16 111:43: --what I'm hearing.

17 111:44: Okay.

18 111:45: And the fact that it's on the form and it's signed-- I like those
19 things that people have signed.

20 111:54: Yeah. Although we may not be able to enforce, like, a bulletin
21 or the language on a form, if there's a signed kind of a contract between the parties,
22 that--maybe that changes the legal nature of it.

23 112:04: That's why we've always done it on there. We put a little
24 caveat there.

25 112:08: Yeah.

1 112:10: Okay.

2 112:10: Okay. Thanks very much. Issue No. 33, time loss during
3 training, affecting Rule 443(13). The rule should clarify that the limit applies to each
4 individual training program. Some background. Intel Corp. vs. Batchler, which was
5 a Court of Appeals case, interpreted 656.268(10) and .340(12) and held that a
6 worker is eligible to receive a maximum of 16 months of time-loss benefits during
7 each period of eligibility for training, not the life of a claim.

8 So we would revise the rule as follows, "Temporary disability
9 compensation is limited," and then we would add new language, "for each eligibility
10 period," and then it goes back to the existing language, "to 16 months unless
11 extended to 21 months," et cetera, based upon that Court of Appeals decision. And
12 I'd like to know if you have any concerns about that particular language or...

13 113:11: I think that's already in the rule today; right?

14 113:13: I thought that was always the case myself, that if you had a
15 new--like, a new aggra--an aggravation or a new condition or whatever, at least an
16 aggravation, you would get a new start, basically.

17 113:27: Yeah. It's under 0003(3). So I think it's already covered.
18 That's always been the way that we've interpreted that rule.

19 113:48: That seems pretty clear.

20 113:49: Okay.

21 113:50: Okay. Thank you very much. Issue No. 34, direct worker
22 purchases, affecting Rule 700(7). A stakeholder has raised the issue of workers
23 signing ownership agreements. Insurers have requested that workers sign
24 ownership agreements. There is no rule requiring such agreements to be signed.
25 The stakeholder's concern is that with a signed agreement, if the worker refuses to

1 return property, the insurer can take a credit against future benefits and end
2 eligibility. So the discussion item is to amend the rule to address or clarify
3 ownership of direct worker purchases.

4 114:36: So we (unintelligible) property loan agreement. And almost
5 always at the end of training, we just sign off, saying that the worker can take the
6 computer and printer or whatever, the tools and equipment, whatever we've
7 purchased. But the purpose of the property loan agreement is just to say, you know,
8 you're not going to leave the laptop in the front seat of your car all night or, you
9 know, that if it's lost or damaged you're going to report it right away, or you're going
10 to pay for it if it's lost or stolen or whatever. And so to give the worker some rights
11 and responsibilities around the purchase of whatever we've purchased, it almost
12 always becomes property of the worker upon completion of the training.

13 115:27: So do you think the rules need to specify?

14 115:31: I like the idea that you guys to a property loan agreement in
15 regards to if it's lost or stolen, damaged kind of thing, that they're responsible for it.
16 And I don't know-- It--I think that there's some benefit in having that in the rules so
17 that something about that is enforceable.

18 115:48: Uh-huh.

19 115:52: You know, I'm not as concerned about the ownership aspect
20 of it. I was kind of under the impression that usually it goes for the worker, too. But I
21 think that to make the--make it clear somewhere in the rule that the property--you
22 know, if they should be the cause of its damage or loss or whatnot that they're
23 responsibility for--or responsible for the replacement or repair.

24 116:17: What about the concern that--with the signed agreement if the
25 worker refuses to return the property, the insurer can take a credit against future

1 benefits and can end eligibility? That was the concern that was brought to us with
2 this issue. Is that something that...

3 116:37: Is it considered compensation?

4 116:41: I don't--I mean, I...

5 116:41: Does it happen is, like, I guess, my question.

6 116:42: I don't know that by statute you'd be able to recover.

7 116:46: Yeah. I don't know that it could come out of future benefits,
8 whether you could do that by rule.

9 116:50: Well, it's under end of eligibility, 0165(12). The worker
10 refused after written warning to return property provided by the insurer, or to
11 reimburse the insurer as required. No vocational assistance will be provided under
12 subsequent openings of the claim until the worker returns the property or reimburses
13 the fund.

14 117:15: Jenny, which number is that?

15 117:17: 065(13).

16 117:23: (12).

17 117:24: (12).

18 117:24: (12).

19 117:24: Yeah.

20 117:25: Oh, I'm sorry. Yeah.

21 117:26: And that--so that would allow an ending of eligibility. So that's
22 there.

23 117:32: And it also says that no voc assistance will be provided under
24 multiple claims. So there is--the worker potentially would need to either repay or
25 give that back in order to--

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117:48: Right.

117:49: --reinstate benefits.

117:51: But it couldn't be taken out of, say, future--a PPD award or something like that?

117:58: I don't know.

118:02: Further discussion-- I don't know.

118:05: I think we're crossing into different lines now.

118:10: Right.

118:10: And so I'm not sure that that would work well.

118:23: Thank you very much. Issue No. 35, direct worker purchases, Rule 710. The worker's family income should not be a consideration. The rule requires the insurer to consider the worker's financial circumstances in determining whether purchases described in Sections (13) through (18) are necessary, and may require the worker to provide information about family income when the worker claims a financial hardship. Direct worker purchases should be provided if necessary for the worker to participate in assistance and to meet the requirements of a suitable job; the worker's and the worker's family's financial circumstances should not be a factor. So alternatives would include to remove family income as a consideration, remove the worker's net income as a consideration, or to make no change.

119:10: I agree with that.

119:12: What?

119:13: I agree.

119:14: I agree with that.

119:14: Okay. Any concerns about doing that? I think this might be

1 very old language that's been in the rule for a long, long time. Issue No. 36, fee
2 schedule, affecting Rule 720. A stakeholder has suggested that the spending limits
3 for direct worker purchases for training be significantly increased to reflect increased
4 costs for tuition and books, especially in community colleges. So we'd appreciate
5 your input on that.

6 119:49: Is there any kind of matrix that allows for increases with cost
7 of living and things like that?

8 119:53: There is an indexing feature now that--the fee schedule is
9 dis--is stated as a percentage of the state average weekly wage now. That's why
10 there's some fairly non-round numbers there when we first did it.

11 120:07: Yeah. That's--I think that's another discussion item that's
12 coming up. But yeah, there's an indexing function now.

13 120:18: So I guess I would want to know how many plans are going
14 over budget, because I just don't see that. It seems like, especially in a community
15 college, they're pretty cheap, so I think our bu-- It's, like you said, a weird number.
16 It's somewhere right around \$22,000. But I would say for direct worker purchases,
17 the majority of plans are probably \$15,000 or less. Do you find that?

18 120:48: Associate degrees pretty much are about \$13,500 right now.

19 120:51: Yeah.

20 120:53: And so everything over that's-- Mostly mileage
21 reimbursement is a big one for somebody (unintelligible) distance. If you've got
22 Florence going to Eugene, because they can't support a community college hear in
23 Florence, that's the stickler, is the mileage. But even then, it's time limits that I have
24 a problem with,--

25 121:09: So you're...

1 121:10: --more than even funding.

2 121:11: You're not bumping up against that cap very often?

3 121:13: Not very often, no. So you can do a two-year associate

4 program anywhere in the state of Oregon for under \$14,000.

5 121:24: Okay.

6 121:25: Is that just tuition, or is that books?

7 121:27: That's everything; tuition and books,--

8 121:28: That's everything.

9 121:28: --fees and late fees, everything. Any fee you can think of. I

10 don't even know--

11 121:32: Every fee, everything.

12 121:32: --where some of these fees come from. But I tell everybody--I

13 go, "You know, it's only going to cost this much." Because then you have people

14 also saying, "Hey, my (unintelligible) CBA, how much is school going to cost?"

15 "There you go, there's the school prices right there." And that's not living expenses,

16 but that's where I get into-- The only other higher expense would be--or substantial

17 expense is mileage reimbursement if it's a distance.

18 121:56: Okay. Thank you very much. Again, Issue No. 37 is about

19 the same rule, 720. The fee schedule needs to be reviewed for updates and to see

20 if it can be made more user-friendly. The director is required by 656.340(9) to adopt

21 a fee schedule. And I won't read all of that to you there, but fee schedules shall

22 reflect a reasonable rate for direct worker purchases and for all vocational

23 assistance providers, and shall be the same within suitable geographic areas.

24 The current method of publishing the fee schedule is to publish in rule

25 the limits as percentages of the state average weekly wage, and publish dollar

1 amounts in bulletin. Because the dollar amounts are adjusted annually, the rule
2 does not need to be amended every year. However, the percentages are not very
3 user-friendly. Also, a suggestion has been to shorten the time frame in Section (6)
4 for payment of the provider's bill from 60 days to 30 days.

5 So those are two kind of very different concepts, but-- So first, maybe
6 to look--if you look at the fee schedule itself, you'll see that the numbers are indeed
7 not very round. The eligibility determination, for instance, without substantial
8 handicap analysis is 54.7 percent of the state average weekly wage, and it goes
9 down the list like that. Combined direct employment and training, 2044.8 percent of
10 the state average weekly wage. And in the bulletin, do we actually provide the dollar
11 amounts?

12 123:26: Yes.

13 123:26: We do?

14 123:27: In the addendum.

15 123:28: In...

16 123:29: There's an addendum--

17 123:29: Yeah.

18 123:29: --every year.

19 123:29: Addendum to Bulletin 124 that we publish each--usually each
20 May or June after we get the data from the employment department as to the state
21 average weekly wage. We publish the actual dollar amounts in the bulletin, because
22 they're based on the formula that we provide in the rule, which allows us then to do it
23 by bulletin. But again, if someone were not using the bulletin, these numbers are not
24 very user-friendly. So I guess it's what kind of rounding you'd like to see, if we did
25 some rounding.

1 124:01: I think the standard...

2 124:02: Yes, the standard round up. See, and that's round up. What
3 is the standard? You round up if it's five,--

4 124:11: Right.

5 124:12: --round down if it's below.

6 124:15: But I'm definitely pro having it be in bulletin, instead of having
7 to update the rules.

8 124:21: The rules.

9 124:22: Yeah. We don't want to go back to having the dollar amounts
10 in the rule, because then we have to do--open the rules every year.

11 124:29: I'm also in support of changing the time frame to 30 from the
12 60.

13 124:37: Any other thoughts on the payment time frame? Any
14 concerns about shortening it to 30?

15 124:47: Thirty seems a little bit tight to me, although I would think that
16 the majority of the time-- Yeah. And the only reason we would ever take even six
17 weeks is that it might just take a while to get to us. But as soon as it hits our desk,
18 we pay it.

19 125:05: Thirty days from receipt?

20 125:07: Yes. But for us it hits the mailroom, and then it goes to our
21 medical audit section and the bill entry folks. And so it takes a couple of days for a
22 bill to reach my desk. And so sometimes when I get a bill, it might be already 12
23 days old, for example, or a couple weeks old, depending on how caught up or
24 behind other divisions are.

25 125:36: Is there a reason it takes long-- I mean, like, for worker

1 reimbursements, it's 30 days. For a medical provider, it's 45 days. Is there any
2 rhyme or reason why the voc bill is more complicated?

3 125:47: Sixty.

4 125:53: I would say the only change I would make, if you made it any
5 longer, would be 45 so that it mirrors the payment of medical bills.

6 125:59: Uh-huh.

7 126:01: Jenny, did you say it's processed by the same unit, the
8 medical audit unit or...

9 126:10: They look at them and audit if need be,--

10 126:13: Okay.

11 126:13: --before it gets to my desk. But I don't have any concerns
12 with 45 days, and we certainly want to pay our counselors timely. That's a goal for
13 us, and I think we do a good job.

14 126:30: Thank you very much. And otherwise, what I got from that
15 was standard rounding. You know, you're not-- Are you wanting us just to round to
16 the nearest whole number? Are you not wanting to round us--have us round to the
17 nearest, you know, 10 or, you know, that kind of thing, or just to the nearest 1?

18 126:52: I just have the bulletin up, so I think it's...

19 126:53: Okay. Issue No. 38, certification and renewal. The affected
20 rules are 810 and 840. The requirements for initial certification and renewal need to
21 be clarified and streamlined. A stakeholder asked whether teaching classes counts
22 as continuing education credit toward renewal of certification under 820. So those
23 are two different kind of concepts, but...

24 Some background. The director is required to certify individuals to
25 provide vocational assistance. A certified individual performs the eligibility

1 determination, substantial handicap evaluation and vocational evaluation; develops
2 return-to-work plans; provides direct employment services; and develops and
3 monitors training plans.

4 And then it goes on to kind of define the director's authority under
5 656.340(9). The director shall adopt rules providing standards for certifying
6 individuals, standards for registration of vocational assistance providers, conditions
7 and procedures under which the certification of an individual may be suspended or
8 revoked, or the registration of a vocational assistance provider may be suspended or
9 revoked. And 656.340(13) defines "vocational assistance provider" as a public or
10 private organization or agency that provides vocational assistance to injured
11 workers.

12 Some alternatives to consider would be to consolidate 810,
13 Certification of Individuals, and 830, Classification of Vocational Assistance Staff,
14 and remove redundant and unnecessary language.

15 128:33: And 820.

16 128:34: That should have been 820? Okay. And clarify that the
17 requirements for renewal of certification under Rule 820 also apply to initial
18 certification under 810, and state whether teaching classes count as continuing
19 education.

20 128:58: Should it count?

21 129:00: I think so.

22 129:01: Yeah. I do, too.

23 129:03: Right. But when we're working to prep for a class--

24 129:06: Uh-huh.

25 129:06: --(unintelligible) sitting and listening.

1 129:10: Any concerns about doing that?

2 129:11: I feel like-- When I was a dispute reviewer, I did a

3 presentation on ethics for work, and I'm pretty sure I got credit for that. So I think

4 we're already doing that.

5 129:30: Okay

6 129:30: In this particular case, the voc counselor was training their

7 new voc counselor.

8 129:36: Oh, so it's not a formalized...

9 129:38: And then he said that he could put together the formalized--if I

10 needed it.

11 129:45: Uh-huh.

12 129:46: You'd get a lot of credits for that.

13 129:47: Yeah.

14 129:48: Yeah.

15 129:51: I guess I was thinking when--

16 129:52: No.

17 129:52: --somebody...

18 129:53: I was, too, but I was also kind of expanding after you said,

19 that's okay, what do think about...

20 129:58: Yeah, that would be different to me. Then I would think that

21 the new employee should maybe get some credit, but not the trainer. If you're just

22 regurgitating things that you know off the top of your head,--

23 130:09: Okay.

24 130:09: --I wouldn't give myself credit for that, or ask for credit.

25 130:16: For whatever it's worth, on the legal continuing ed classes, if I

1 give an hour-long presentation on case law update, I get an hour of credit for that. If
2 the attorneys in our office meet for an hour to talk about legal case update, if we fill
3 out the form and do the paperwork, we all get the one credit for it. So not just my
4 boss coming in and asking me, hey, you know, what's the rule change on attorney
5 fees, but like actually having some sort of like group meeting, not just a one-on-one.
6 I don't know.

7 130:47: Semi-formalized.

8 130:48: Yeah.

9 130:48: Well, I think that's what you're referring to, aren't you? It isn't
10 formalized training, what they're talking about. It should be continuing ed
11 (unintelligible).

12 130:59: Good question.

13 131:00: There we go.

14 131:04: So how about clarifying the requirement--that the
15 requirements for renewal for certification under Rule 820 also apply to initial
16 certification under 810?

17 131:17: We thought that was fine (unintelligible) we'd like to see
18 language-- The devil's in the detail.

19 131:30: My thoughts were not changing it. It's just clarifying it and
20 streamlining it a little better so you're not having to go back and forth between the
21 rules.

22 131:40: So basically, providing documentation; what was done, what
23 was discussed. Curriculum, so to speak, like you would for any class.

24 131:51: Uh-huh.

25 131:56: Any additional thoughts?

1 131:57: And so...

2 131:58: Yeah.

3 131:58: So you were saying the renewal would also apply to initial
4 certification?

5 132:08: No. Again, it's just a matter of reorganizing the rules, that all
6 three of those subjects--tying it in so you're not having to go back and forth. Okay.
7 Now I'm a voc counselor. What am I going to need to do to renew, as well? I have
8 to have this and do this to renew. That's my vision, anyway,--

9 132:24: Okay.

10 132:24: --of organizing it. So it's not changing any of the
11 requirements. It's just structuring it so it's-- I'm spending a lot of time-- And others
12 will be explaining what the requirements are, because it's so confusing for a lot of
13 counselors.

14 132:48: Okay.

15 132:55: Thank you very much. And we're actually up to a part of the
16 document where it becomes a little more about streamlining and clarifying
17 organization. And so at this point--we don't know that we want to go through every
18 issue from this point forward in depth, but I don't know how many of you reviewed
19 the agenda beforehand, or if you brought particular, you know, discussion items.
20 Maybe you marked up the agenda, and you would like to discuss particular, you
21 know, areas. But we know we're looking at streamlining and clarifying, and that--
22 Again, like you said, the devil's in the details, and you don't get-- We didn't actually
23 draft all of the changes in. Of course, when we propose rules I'm sure that we'll get
24 some feedback on that.

25 But the intent with these issues is not to fundamentally change the

1 meaning of anything. It's just if we think something's kind of fuzzy, we'll try to clean
2 it up a little bit, you know, remove the run-on sentences, maybe sometimes produce
3 a list underneath--instead of a complicated paragraph, provide a list below, a smaller
4 paragraph.

5 134:14: In my notes--when we were meeting-- I think conceptually we
6 think that's a good thing to do. It's--what it really looks like and how it comes out,
7 you know-- I think I had the opportunity to review...

8 134:30: The proposed language.

9 134:31: Yeah, because that's always. When--I've discovered over the
10 years that one person's idea of, we're making it clearer, doesn't necessarily, and we
11 haven't substantive cha--substantively changed something, and we'll look at it and
12 think, oh, this seems substantive to us, so...

13 134:52: Right. So were there particular issues that you'd like to
14 discuss that you maybe brought comments on?

15 135:10: Well, on Issue 41, I would definitely agree that this is one of
16 the most confusing areas in the rules, and where I get the--a lot of question. So
17 nobody knows what reevaluating means, or what it requires, or if there's a
18 requirement. I think last time we changed the rules we've tried to make it clearer,
19 and it just--it's still not clear. So I would definitely be interested in looking at
20 consolidating those three rules and streamlining the language, but I would want to
21 see the language too.

22 136:02: We agree.

23 136:24: And we also have a couple of placeholder items on here just
24 regarding forms and bulletins to remind ourselves and to remind you that depending
25 upon what we do in the rules, we might need to revise some forms and bulletins to

1 be consistent with the rule changes. Again, they are just kind of placeholder items.
2 We do have a remaining very important issue, though, on Page 39.

3 136:50: Do we have different people here than last week?

4 136:52: Oh.

5 136:52: That's what I was wondering.

6 136:53: Okay.

7 136:54: Because I think this might be...

8 136:55: We did discuss this in the Division 105 and 110 meeting that
9 we had last week, but I don't know that we had exactly the same mix of people here.
10 We might have. I know, Kevin, you're new. So I think we ought to cover it again,
11 you know, especially since our focus then was on the EAIP and the Preferred
12 Worker Program, and now we're talking vocational assistance more. But this is
13 something that kind of came to our attention recently, and we added it as a separate
14 issue. But it does affect, potentially, all three divisions.

15 So there are no rules in Chapter 436 regarding how to determine
16 eligibility and calculate benefits for injured individuals covered under 656.033.
17 That's the participants in work experience or school directed professional training
18 programs. 656.046, that's persons in college work experience and professional
19 education programs. And 656.135, deaf school work experience trainees. And then
20 in 656.138, apprentices, trainees participating in related instruction classes.

21 Individuals covered under these sections who are injured while
22 participating in the training program are entitled to Workers' Compensation benefits
23 under Chapter 656. Individuals covered under 656.033 and .046 are not entitled to
24 time-loss benefits, but the individuals are otherwise entitled to medical services,
25 permanent disability, return to work and vocational assistance. The filing of a claim

1 for benefits is the exclusive remedy of the individual and any beneficiaries.

2 We do not know how many claims arise in these situations. However,
3 for these claims that are filed, there are no rules to provide guidance for determining
4 eligibility for, and the amount of benefits. The actual benefits provided to the
5 individuals may not be consistent. There may be some rules that inadvertently
6 present roadblocks to these individuals being found eligible for the benefits to which
7 they are otherwise entitled.

8 Issues specific to the 105, 110 and 120 rules include how to determine
9 wage at injury, employer at injury and job at injury. The rules related to claims
10 processing, Division 60, and PPD, Division 30 and 035, may also be affected; the
11 Division will seek input from future advisory committees specific to those rules.

12 So we would like your feedback related to this issue, including any
13 direct experience you have with claims covered under one of these sections; what
14 would be most helpful to provide guidance to the parties in these claims; should the
15 language in the rules for how to determine eligibility for the EAIP, Preferred Worker
16 Program, and vocational assistance benefits be--should there be language added to
17 these rules regarding these programs? If so, what elements should the rule include?
18 And are there obstacles in any of the rules to these individuals and their "employers"
19 being able to access the benefits to which they are entitled by statute?

20 So I know that's kind of a lot to address all at once, but these are--they
21 are the--It is the exclusive remedy for these particular people. And so they're eligible
22 for some of these benefits, but we're not sure in practice how it works. So getting to
23 the first one, do you--if you have any direct experience with people covered under
24 these programs who have been injured, you know, what was that experience, and is
25 there anything you could provide that might help us?

1 140:28: I was actually going to ask for some clarification from you
2 guys on one of those, because one of our clients is a federally funded organization
3 that takes workers with significant work restrictions and just finds some type of work
4 for them to do. It's a lot like Goodwill Industries, things like that. But we had a
5 worker who was at a manufacturer, had a significant job, found eligible for vocational
6 services, started the program, CDA'd out of that claim. Kept going, working with our
7 client in this retraining program, reinjured herself, and then we were asked to do a
8 voc eval. And we're trying to figure out-- The counselor is looking at whether they're
9 going to be able to go into the workforce and find a suitable job, when what she was
10 doing before she was injured was really a training program. It was not a true--

11 141:20: A job.

12 141:20: --job. We never really got to a resolution on that, because the
13 arguments were just going back and forth saying we needed to get her back to what
14 she was doing, and they were saying you need her to get back out into the, you
15 know, full global job market, and we ended up settling out of that claim too. But--we
16 don't get a lot of cases from them, but it's always that same--because they're
17 starting off with a worker who is significantly limited to begin with, and they're trying
18 to work with them to just develop workplace skills. And it's not guided by a
19 counselor or anything like that, but they just have a lot of those type of jobs
20 available.

21 141:59: But they're covered under the Workers' Comp system
22 (unintelligible)?

23 142:03: As far as we understood, yeah. But we didn't have a clear
24 idea of, you know, what did we need to get out of vocational services, or is it back to
25 that part-time minimum wage job where it was just getting them to do something, or

1 was it, you know, the ordinary job that anybody on the street could go pick up?

2 142:32: I'm not sure that we have the answer to that question.

3 142:34: If that's a question.

4 142:36: Yeah, that is the question.

5 142:38: Well, and I'll just-- There's folks in the room that know that
6 I've asked this question. So the community colleges, you know, police, firefighter
7 training in the school, injured badly and will not be able to finish up their schooling to
8 become that occupation. They're under Workers' Comp, but there's no wage,
9 there's no job as we were currently defining it, which is where we started digging
10 through this to say, well, is that right when it is their only exclusive remedy? And
11 would it be fair to say, well, the job that they were training in, those skill sets that
12 they were developing going through that training program, could be defined as the
13 duties of the job, and potentially the assumed wage that the premium is based-- I
14 don't know. Just some options that are there. It just doesn't seem right that a 27-
15 year-old kid that's going through a training program, getting close to the end, going
16 to graduate and be a cop, isn't eligible for any voc when he cannot do that anymore.

17 144:02: I think, Jenny, the last time that we talked about this, you said
18 you could only think of like maybe two cases in the last--in your tenure or whatever.

19 144:10: Uh-huh. And both of them were already receiving voc.

20 144:17: Both of them were receiving voc?

21 144:19: They were receiving voc.

22 144:19: They were injured during their...

23 144:20: They were injured during their voc training.

24 144:21: Oh, they were injured during their voc.

25 144:22: Oh, I see. Okay.

1 144:23: Yeah.

2 144:23: Oh, okay. Because I think that some of these folks that are,
3 you know, in these programs, they're zero wage. And it's like, oh, you're not going
4 to be--you're not likely eligible, because you don't even have a wage, so they don't
5 even get down that road. And I personally just don't feel that that's right for-- Of
6 course, the case that I have before me is an extreme case, but--

7 144:48: Yeah.

8 144:49: --it's still-- Luckily, there isn't a whole lot of them. But for
9 those that are falling into that situation, I don't think that our system should shut the
10 door on them regarding the benefits.

11 145:02: Well, and not-- They're not entitled to time loss. And so we
12 can't imagine a worker participating in a voc training program when they're not
13 getting time loss. I think that would be very difficult for a worker to do. Hopefully
14 they have the means to do it, but...

15 145:22: Well, if they don't have the ability of having an income
16 because they don't have any skills or anything to do--I mean they're not-- They were
17 in-- I'm not necessarily saying that they should be getting time loss, because
18 they're--

19 145:33: Right. Right.

20 145:33: --you know, they're not-- Well, actually, maybe they should be
21 getting...

22 145:41: I won't--I'll (unintelligible) back on that one, but...

23 145:45: The statute says they're not entitled to time loss.

24 145:46: Yeah.

25 145:47: Not entitled. Okay. Well, that's right, because it does say

1 specific. When we got to that point, it's like, oh, they're not entitled to time loss. But
2 it doesn't say they're not entitled to voc.

3 145:58: A preferred worker.

4 145:58: So it would be...

5 145:59: Or a preferred worker.

6 146:00: So would voc then pay for the classes, but not time loss
7 during training?

8 146:05: I think that that could be an argument--or a position, I should
9 say.

10 146:13: So on the professional training programs, is it that they've
11 been hired on with a fire district or a police district, or is it just something that all of
12 the...

13 146:21: That's not my understanding of it.

14 146:22: All of these districts require the same training program, and so
15 they just have to go do it and--

16 146:28: And Jenny, you might know a little...

17 146:28: --then go apply for a job.

18 146:29: This is the Chemeketa...

19 146:32: Fire department. Fire safety.

20 146:33: I keep wanting to say support enforcement, but that's a whole
21 nother ballgame. The fire safety, whatever it is, program, you know, that is covered
22 under Workers' Comp. But I don't think that they're hired yet with a district.

23 146:48: Because they have to complete it and get a certificate first.

24 146:51: Right. So they're in school, they're doing the training. They
25 fall under our statute of exclusive remedies, so they can't go and sue people for the

1 injuries. They don't get time loss, because our statute says they don't get time loss,
2 so they're getting the medical services. But in this particular case, my understanding
3 might be different. Sometimes a little bit different-- The person will never be able to
4 go back into that type of work. I mean, pretty limited with the type of work that they
5 can do, because of the injury obtained while going through the training program.

6 147:29: Well, I think this is a really big conversation, and very few
7 situations apply, but I think the parties that would be impacted should be--
8 conversation at the table on what--

9 147:42: Yeah.

10 147:43: --some type of program, if any, should be implemented. I'm
11 not saying it should or it shouldn't. It seems very unfair to me, and very bizarre. But
12 in the same breath, when somebody goes to college and gets hurt at college and
13 they haven't earned their degree yet...

14 148:01: Yeah.

15 148:02: But then there's not an exclusive remedy.

16 148:03: Then they can go sue those people.

17 148:04: Yeah. There's not the exclusive remedy, so it's a little bit
18 different. And it's partly because it's the volunteer services,--

19 148:13: Yes.

20 148:13: --you know, is where that falls in, you know, firefighting and
21 different things, so...

22 148:18: Well, and I was going to say, I mean, I think we've kind of
23 stumbled onto a policy question that's not clearly answered, and so we're staring at
24 the statutes. And you know, we're talking about situations where the legislature has
25 kind of stopped people who wouldn't necessarily--don't fit under the definitions of

1 subject worker, and so they created something less than a full subject worker. And I
2 just don't-- Well, we don't run into it, so I don't know how you would ru-- I guess my
3 question--or my an--my thought is-- Boy, end of the day. I don't know what problem
4 we're trying to solve. I hear it theoretically, and I--you've got a specific instance, but
5 as I've said multiple times over the last multiple rulemaking-- I hate to see us
6 creating a rule for one-offs when it's so...

7 149:26: Well, and I get what you're saying. I don't--I personally don't
8 view it as one-offs. I view it as these statutes.

9 149:32: Yeah.

10 149:32: It applies to all of these statutes. And we've already carved
11 them into our system, saying, you're going to be in our system. But then we say, but
12 you don't get the benefits. I mean,--

13 149:40: I'm not sure how to...

14 149:41: --the statute's clear that they don't get 210, 212.

15 149:42: Yeah.

16 149:44: If the statute was clear that they intended that to be they don't
17 get voc either...

18 149:48: We talk to lawyers too much.

19 149:50: Yeah.

20 149:53: Then that would be a different story, as well.

21 149:55: Yeah. Yeah.

22 149:56: But nothing in the statute says they're not entitled to voc.

23 150:00: Just (unintelligible) in there. I mean, I think Kevin's
24 comments about--so how do you put somebody into a program that fits in the way
25 we apply these rules, how do you stuff them into that?

1 150:15: Well, I'm not sure how if they don't get voc. How do you find
2 out what their transferrable skills are from the training they were just doing and how
3 they can apply it to the workforce if they could go out and get a job, even with the
4 limitations they currently have? So if you were injured in Chemeketa, you know,
5 firefighting training program, you're in your second year and you get injured out on
6 one of the practice runs or something and can't-- They go, "You're not going to be
7 physically able to be a firefighter now," and took that occupation off the table. But
8 what did they get in that first year, and how does it apply to other occupations?

9 150:42: Right.

10 150:42: So I think voc is necessary.

11 150:46: Yeah.

12 150:46: But I come from voc, so...

13 150:49: Well, at least the opportunity part. I'm not saying, oh, you
14 know, it's slam dunk, man, they get voc, but at least have the possibility of being
15 found eligible for it due their--due to their circumstances. And the fact that the
16 insurers are getting premium...

17 151:05: Not very--

18 151:06: I'm just saying...

19 151:07: --much.

20 151:07: I mean, it might be that those premiums would change if the
21 policy was changed. There's--

22 151:11: I know.

23 151:12: --not very many people that fall into this category, again, but...

24 151:15: Wages...

25 151:16: And the worker doesn't have the right to pursue any action

1 outside of the Workers' Comp system. But personally, I think that--I'm not an
2 attorney, but that we could, by rule, allow their job to be defined as the duties that
3 they were training in, or that-- You know, if it was week two of that, then their skills
4 are not too great there, but--and...

5 151:46: Or even day one.

6 151:47: Pardon?

7 151:48: Or even day one.

8 151:49: Right. But--and then the--to figure out the range of-- I don't
9 know voc, but the whole assumed wage, you know, the type of training that they
10 were going through, so it just seems like they're-- We should be able to do--put
11 something in the rule so these folks aren't completely thrown out there with no
12 options.

13 152:12: Right.

14 152:12: And they paid for this. So I mean, that's the thing we're
15 talking about. If you're talking about a program like that, they've already put a bunch
16 of finances into it.

17 152:18: Yeah.

18 152:20: Then you get injured and say, well, it's off the table now,
19 who's reimbursing the client?

20 152:24: Right.

21 152:25: The schools aren't responsible.

22 152:26: No. Their mom is.

23 152:26: Could they finish the program with modifications or anything?

24 152:31: No, they couldn't. Yeah.

25 152:32: Couldn't stay in the industry at all--

1 152:32: No.

2 152:32: --anywhere?

3 152:33: No.

4 152:34: No way.

5 152:35: No. Well, that's my understanding. I mean, I'm not...

6 152:36: In this case?

7 152:37: Yes.

8 152:38: In this case...

9 152:39: Well, maybe, because it may be the Preferred Worker

10 Program--you know, it might be, hey, you know what, you could do this or that. But

11 without it being defined as to--

12 152:47: Right.

13 152:47: --what the job is, or the wages, that makes it difficult.

14 152:51: Well, it's hard for us to even find them eligible for the

15 Preferred Worker Program without a job at injury.

16 152:57: The rule is fairly specific that the training has to be based on

17 the job duties of somebody employed in that position, so it does kind of at least lead

18 it down that way. It's fairly specific about that.

19 153:11: Except what if a worker trips and falls in their first semester of

20 general education and they haven't picked a major yet, you know?

21 153:21: That's not what it is. It's a school-directed professional

22 training program, so it's fairly specific to an occupation. And then the rule states that

23 the training program has to be based on job duties for a specific occupation. And

24 the school then chooses to get a policy to cover that direct training program. So it's

25 not general studies. It's specific to a job.

1 153:47: Because it's not like all of the students of Chemeketa--if they
2 fall, they're going to be on Workers' Comp?

3 153:50: No.

4 153:51: Right.

5 153:52: But this group of folks would be.

6 153:56: And I think last time we talked about this, we talked about the
7 assumed wage upon which premium is based, although that's pretty low; right?

8 154:03: It's really low.

9 154:05: So that would affect eligibility for voc, right, if you've got a
10 really low assumed wage?

11 154:09: It's very low. I want to say it's less than minimum wage.

12 154:15: Oh. So that would not be helpful to the worker, would it? I
13 mean, if you have a super low assumed wage, you're not likely to be eligible.

14 154:29: I don't know that policyholders would want us to be basing
15 their premiums on a higher rate, though, for something that so rarely comes up.

16 154:44: This is a tough one.

17 154:48: Yeah, there's no easy answers to this one, but I appreciate
18 you listening and providing, you know, feedback. If you have additional thoughts on
19 this, we'd really like to hear from you. Or if you ask around and you find that there--
20 maybe there are others who do have some even anecdotal information on how
21 these cases have been handled elsewhere, we appreciate hearing from you.

22 With that, I don't have anything more from--on our agenda. But if there
23 is anything outstanding that you would like us to talk about in our last few minutes
24 here, I'd be glad to cover it, go over it with you. Questions about any of the issues
25 we've already discussed? Additional thoughts on that?

1 155:44: I just have one. That is with the raise of the minimum wage
2 that's going to be happening. There's going to be discussion about the 80th
3 percentile suitable wage where we take the worker's wage, we knock 20 percent
4 away and say, any job within this is suitable. I still have a hard time with that one,
5 especially when you've got somebody who might be one week on the job and we're
6 rating them at that wage. They've never even really made a full paycheck. But you
7 got somebody--10, 20 years in the industry and we're still cutting them 20 percent.
8 That's really frustrating. And they say, why are you taking that away from me, it's
9 taken me 10 years to get here, and now you're cutting me back down. And when we
10 raise that minimum wage up, we change the game. It's going to knock a lot of those
11 people right out, because, well, everything is going to go up. So just the last little
12 piece I want to make sure that's brought in there (unintelligible) sometime.

13 156:36: Are we seeing--are we going to be seeing that more in terms
14 of an impact on eligibility?

15 156:40: Oh, yes.

16 156:42: How about the statutory issue?

17 156:44: Yes.

18 156:45: It's...

19 156:45: Yeah.

20 156:45: Yeah.

21 156:46: Is the 20 percent within 20 percent of statutory? Okay.

22 156:48: Yes.

23 156:51: But yeah, thanks for mentioning it, because it's imminent.

24 And it will vary by geographic region in the--

25 156:58: Yes.

1 156:59: --state; right? Yeah.

2 157:03: Any suggestions?

3 157:05: Yeah. If you base it on time on the job,--

4 157:08: Yeah.

5 157:08: --you take-- It's not just 20 percent for everybody. If you've
6 got X amount of years in a certain occupation, they may take none of it. 100 percent
7 is 100 percent. And maybe--after so much time on the job, you've got so much
8 experience. I mean, we already have it broken down to 10 percent out of
9 (unintelligible). We should do the same thing, I think, there. Just adapt those two
10 together.

11 157:36: Thanks, Ryan. Well, with that, then I will let you go. And if
12 you do have additional thoughts about any of the agenda items, anything that you'd
13 like to provide to me, either at--just an email is fine. It doesn't have to be anything
14 formal. Or you can just pick up the phone and call. But the sooner, the better you
15 can provide that kind of feedback. The better because we-- As you know, we don't
16 have draft rules yet, and so we want to take--we want to do a good job of drafting the
17 rules before we file with the Secretary of State.

18 So again, if you have thoughts on fiscal impacts, too. I know
19 some of the things that we talked about today--that there could be some fiscal
20 impacts. If you have to send additional reports to the director or, you know, if we
21 were to look at suitability of jobs, that kind of thing. There's obviously some fiscal
22 impacts there. So we'd really appreciate hearing from you about the impact on you
23 or the people that you represent, because that really does matter to us. So thank
24 you for taking all the ti--a lot of time. And so we'll keep in touch with you and let you
25 know what's happening as we go along: Thank you.

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158:46: Thank you.

158:46: Thank you.

158:47: Thank you, Fred.

(WHEREUPON, the proceedings were adjourned.)

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CERTIFICATION OF TRANSCRIPT

I, Amanda Knapp, as the transcriber of the oral proceedings at the 7/27/16 hearing before Administrative Law Judge Bruyns, certify this transcript to be true, accurate, and complete.

Dated this 19th day of August, 2016.

A handwritten signature in cursive script that reads "Amanda Knapp".

Transcriber

CERTIFICATION OF TRANSCRIPT

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I, Ashlee Kohan, as the proofreader of the oral proceedings at the 7/27/16 hearing before Administrative Law Judge Bruyns, certify this transcript to be true, accurate, and complete.

Dated this 19th day of August, 2016.



Proofreader