

Workers' Compensation Division
Rulemaking advisory committee meeting summary
April 30, 2020

Members attending:

Amy Tam, Sedgwick Risk Management
Catherine (Cat) Shaw, Sedgwick Risk Management
David Waki, Small Business Ombudsman
Dustin Karstetter, S | D | A | O
Elaine Schooler, SAIF Corporation
Halley Moore DC, Moore Chiropractic Clinic | Medical Advisory Committee
Jaye Fraser, SAIF Corporation
Jeanette Kaufman, City of Portland
Jennifer Flood, Ombudsman for Injured Workers
Jenny Bates, SAIF Corporation
Karen Betka, Farmers Insurance
Rob Wallace, SAIF Corporation
Siobhan Harris, McCauley Potter Fain Associates
Susan Potter, McCauley Potter Fain Associates

Agency staff attending:

Barbra Hall
Cara Filsinger
Daneka Karma
Donita White
Fred Bruyns
Katie Bruns
Kelli Borushko
Matt West

Summary minutes – all comments are paraphrased unless quotation marks are used:

Fred welcomed the committee and explained that this was the division's first all-digital meeting, that advisory committees are informal, and are a way for the division to get advice that can be used to prepare proposed rules. Proposed rules will be subject to testimony and a public hearing. Fred asked for advice about fiscal impacts to assist the division with its fiscal impact estimate it will file with the Secretary of State. He also asked the members to consider background noises that may be picked up on the call.

**Rulemaking advisory committee meeting, April 30, 2020
OAR 436-105, Employer-at-Injury Program**

Agenda item:

ISSUE No. 1: Employer-at-Injury Program administrative fee increase

Rule: 436-105-0540(2)

Issue: The administrative fee, currently \$120, may be insufficient to cover the insurer's cost for administering the Employer-at-Injury Program (EAIP).

Background: The EAIP encourages the early return to work of injured workers by providing incentives from the Workers' Benefit Fund to employers, such as wage subsidies and the purchase of items necessary for transitional work. The \$120 administrative fee is paid to the insurer for administering the EAIP for each worker and is intended to cover some of the cost the insurer incurs for the administering EAIP.

A sufficient fee may promote use of the EAIP and its purposes, including earlier return to work and improved outcomes for eligible workers.

The current administrative fee of \$120 has been in place since 2007, when it was increased from \$60 to the current amount. In 2007, the division based the rate increase on cost analyses submitted by insurers.

The stakeholder who raised the issue suggested an increase to \$200, to account for the average time it takes to prepare, review, and submit a reimbursement request. This stakeholder stated on average an EAIP reimbursement can take two hours to prepare, but can take less or be in excess of three hours. The division welcomes input regarding whether an increase is warranted, and if so, what an appropriate increase would be.

Options:

- Increase the fee
- Make no change
- Other?

Fiscal Impacts, including cost of compliance for small business: Increasing the administrative fee would have a fiscal impact on the WBF.

Summary minutes – all comments are paraphrased unless quotation marks are used:

Susan explained that they provided information to the department about this. They have been submitting EAIP reimbursement requests almost since the beginning of the program – for all types of clients: insurers, TPAs, self-insured employers. They became aware that the fee had not been increased since 2007. With all of the digital files and reviewing of claims online, they became aware that it takes more time to review the payroll and other data. It is a lot more complex. That is why they proposed an increase.

Fred thanked Susan and explained to the committee that she had submitted testimony on this late last year, but the rules had not included a proposed change to the administrative fee, and the division did not think we could make a change without going through a rulemaking process.

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Karen said we should also consider annual EAIP audits and associated costs of preparation for audits that would warrant an increase in the fee.

Cat asked if the \$200 was based on what the Workers' Benefit Fund (WBF) could bear and if it could be higher than that.

Susan responded that they were trying to look at the amount of time and increased time requirements. That was their best estimate.

Cat said that makes sense.

Dustin asked if a fiscal impact study has been done on what an increase would look like on the WBF moving forward. Dustin asked if the WBF balance has grown or declined since the last increase in the administrative fee or if the Fund has been relatively static.

Fred said, regarding the last part of the question, that to his knowledge the WBF has been increasing over time, though that could change because the assessment is dependent on the number of hours worked in the state of Oregon.

Matt added that due to the fact that the WBF has been growing, the cents-per-hour assessment has also been decreasing.

Fred said, regarding the question about fiscal impact studies, the division did look at what ordinary CPI has done over time, but said that may not be reflective of an insurer's costs to administer the EAIP. He asked for input about administrative costs and noted that Susan Potter said it is more complicated to review the records than it used to be.

Jaye agreed that it has been a very long time since the fee was adjusted and that they would support an increase, being mindful of the current situation we are all living through. We would not want to see the fee increased in a way that would jeopardize the WBF. Jaye also agrees that it is more complex than it used to be, and recent rule changes have added to that, plus the general cost of living has contributed to the costs.

Dustin said that they support an increase, with the amount possibly dependent on a fiscal impact study to determine what an appropriate increase would be and to ensure there would not be an adverse impact on the health of the WBF moving forward.

Jeanette said she agrees with the last two speakers regarding the cost of living effects since 2007. She noted the complexity and that she could sometimes work three hours on one reimbursement. Not all do, but some require up to three hours, and Jeanette said that the City of Portland supports an increase.

Fred said the division would welcome additional input regarding administrative costs.

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Jeanette said the \$200 fee sounds fair but she noted that the previous change was a doubling from \$60 to \$120. Jeanette asked when the \$60 fee started and how long the EAIP has been in place.

Fred said he knew the program started in the 1990s but is not sure if there was an administrative cost factor initially.

Daneka said she thinks the program started in 1993, and the \$60 fee was established in 1996.

Fred said it took about 11 years for the fee to double. He added that he did not know what the rate of inflation was during that time.

Susan said she supposed it could be argued it would not be unreasonable to double it – looking at it that way.

Speaker (unidentified): “I like that.”

Katie said that she did ask for a fiscal impact estimate, based on an increase to \$150, so the division could see what impact that would have. She added that she understands no one has recommended a \$30 increase, but to give us some idea of the impact, such an increase applied to FY 2019 would have resulted in an additional \$218,000 drawn from the WBF.

Jaye asked to know the total reserves in the WBF for comparison with the \$218,000.

Katie said she didn't have the total for the WBF, but did have total EAIP costs – for 2019, \$18.9 million. The administrative costs were \$872,000. If the administrative fee had been \$150 instead of \$120, the total for the administrative costs would have been \$1.09 million, if that puts anything into perspective. It is pretty small. The administrative fee is 4.6 percent of everything paid out for EAIP. If it were increased (to \$150), it would be 5.7 percent.

Jaye said she thinks the administrative fee is supposed to be enough so insurers will happily participate, and people do not have an excuse not to participate as much as they should. That can be an issue. She mentioned Lou Savage (former division administrator) saying there are insurers that do not even know they are supposed to participate in the program. If insurers do not feel they are losing money on the program, that would be a good thing. Jaye added that whoever made the comment about the expense of the audit – that was a good point. It is an expense that is incurred as part of administering the program.

Katie replied that the division does want to encourage use of the program and ensure that insurers are not actually losing money. That is why we are meeting and to find out from the members what is an appropriate fee.

Fred said that for fiscal year 2019, the ending balance for the WBF was about \$155, 260,000, so there is quite a lot of money in the Fund. It was expected to drawn down somewhat over time, since the agency is only supposed to maintain a certain number of quarters as a balance.

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Matt said the division chose to study the fiscal impact of increasing the administrative fee to \$150, because \$120 in 2007 is equal to \$150 in 2020, based on CPI.

Fred added that this seems like a small amount, but there was not a lot of inflation during that period.

Susan said you could argue that the cost of operating, payroll, health benefits, etc. for individuals that do the work has gone up more than that.

Jaye said she concurs with that.

Matt replied that he was not advocating for changing the fee to that (\$150), just explaining where the division came up with the \$150 for the fiscal impact estimate.

Jaye said SAIF is reluctant to land on a dollar amount right now due to the current economic chaos and the potential drawdown of the WBF. Jaye added that wherever we land on a fee, we should consider indexing the fee to something to adjust for inflation.

Fred responded that this opens another avenue of discussion and asked for advice about some type of indexing mechanism to maintain an appropriate level of reimbursement. Fred added that the division does not know if the state average weekly wage (SAWW) is a good indicator of costs to administer the program, but that the committee members will know best.

Daneka said her concern with the SAWW, or something to consider, is that it went down in two (recent) years. So, it might not adjust for inflation at times.

Fred confirmed that in two years out of the last ten years (roughly), the SAWW declined. It is based on the last quarter of the year and the numbers come from the Employment Department. Some benefits and fees cannot go down. Temporary total disability rates are frozen during years when the SAWW declines. Attorney fees are similar. The wording of the statute does not contemplate a decrease. However, the vocational fee schedule is indexed to the SAWW and does rise and fall with SAWW. That is something to keep in mind.

Fred asked the members to send any additional thoughts by early next week. Members may also phone in advice, and Fred can record and send back in summary form if desired to be sure it is recorded correctly. The division must file proposed rules before the middle of May if the rules are to be effective by July 1 – a soft target date.

Cat asked if there will be a summary (of meeting).

Fred explained that the division always posts minutes, though the timing will depend on whether the division has the audio professionally transcribed. The division will post on its [“Meetings and hearings” webpage](#) under [“Laws and rules.”](#) Fred asked for feedback on the video/teleconference experience of the committee members.