

Workers' Compensation Division
Advisory committee meeting agenda
March 8, 2022, 9 a.m. (virtual)

Streamlining of required correspondence to workers and employers

Committee members attending:

- Kevin Anderson, SBH Legal
- David Barenberg, SAIF Corporation
- Kevin Barrett, SAIF Corporation
- Teresa Bergan, Streimer Sheet Metal
- Karen Betka, Farmers Insurance
- Tammy Bowers, May Trucking; MLAC
- Elizabeth Brandenburg, City of Portland
- Caitlin Breitbach, Small Business Ombudsman Office
- Joy Chand, Takacs Clinic
- Margarita Contreras
- Rinda Dewhirst, New Mexico Workers' Compensation Administration
- Jessica Elsass, Cincinnati Insurance
- Danielle Erb MD, Brain Rehabilitation Medicine
- Jason Falquist, Liberty Mutual Insurance
- Jennifer Flood, Ombudsman for Oregon Workers
- Jaye Fraser, SAIF Corporation
- Olivia Geidl, Gallagher Bassett
- Kathy Gover-Shaw, Marvin
- Brooke Griffin, Pilot Company
- Jaylee Hlad-Mosgrove, Ombuds for Oregon Workers Office
- Diana Johnson, Gallagher Bassett
- Tricia Jones, Clackamas County Risk and Benefits
- Jeanette Kaufman, City of Portland
- Andrea Knight, Edmunson Barnhart Knight PC
- Linda LaMonte, Kaiser Permanente
- John Maitland, New Seasons Market
- Heidi Lively Melton, Oregon State University
- Shawn Miller, ICW Group Insurance Companies
- Erin Nielsen, City of Portland
- Dawne Novinger, Providence Health & Services
- Marie Page, Sedgwick CMS

- Jovanna Patrick, Hollander Lebenbaum & Gannicott
- John Powell, John Powell and Associates
- Jon Propst, Sedgwick CMS
- Sue Quinones, City of Portland
- Mike Reilly, Clackamas K-12
- Leslie Rodgers, Cincinnati Insurance
- Vern Saboe, DC, Oregon Chiropractic Association
- Greg Schaefer, Gallagher Bassett
- Dan Schmelling, SAIF Corporation
- Elaine Schooler, SAIF Corporation
- Catherine Shaw, Sedgwick
- Coe Sherrard, CapTech
- Julia Smiley, Pride Disposal & Recycling Company
- Arthur Stevens, Black Chapman Petersen Stevens
- Jennifer Volz, PeaceHealth
- David Waki, Small Business Ombudsman
- James Washburn, Kaiser Permanente
- Mike Watters, SAIF Corporation
- Nancy White, BBSI
- Ashley Willard, Travelers

Department of Consumer and Business Services staff connected:

- Aaron Fellman
- Carrie Van Handel
- Fred Bruyns
- Greig Lowell
- Heather Williamson
- Jenni Bertels
- Juerg Kunz
- Matt West
- Myra Aichlmayr
- Sally Coen
- Scott Alto
- Steve Passantino
- Summer Tucker

Workers' Compensation Division
Advisory committee meeting agenda
March 8, 2022, 9 a.m. (virtual)

Streamlining of required correspondence to workers and employers

Heather Williamson, Modernization Program manager, provided background for this project.

In 2020 the division contracted with a professional services vendor to make solution architecture recommendations for the program. As part of their engagement, they held 65 stakeholder workshops and received feedback that injured workers and employers were overwhelmed at times by the volume and readability of required notice language under agency rules, as well as required forms and other publications that insurers and service companies must send. The division received similar feedback in an industry meeting, and also concerns that the average American is reading at an eighth grade level, and possibly some of the required notice language is difficult to understand. We created a process improvement project to evaluate the notice language, forms, and publications required by our rules to be sent by the insurer or service company to the worker or the employer. This is a large effort, and this is just the first step. We identified 53 requirements in the rules, including required forms and publications.

We grouped the requirements into categories around events of the claim:

- Claim initiation, accept/deny, reclassification
- Suspensions
- Medical
- Return to work programs
- Claim closure; reconsideration

The purpose of today's meeting is to hear your input, where the pain points are, where issues are occurring. We know this has to drive our project. Is the problem mainly the volume or redundancy or readability or something else?

While we are happy to get all feedback, we are concentrating today on language in notices and publications – not on the communication method or on communications the division sends out. Some of the required language refers to statute, which makes it more challenging to make changes, so we know we have some limitations. We now need your input to drive the direction of this project.

Fred Bruyns facilitated discussion and explained that we are just starting to review and haven't provided a lot of structure because we first need stakeholders' advice. This is the brainstorming phase of the project. The meeting will be very informal. We want to know what is not working well or is not timely. Fred added that with any change there is some risk of harm, so we will be watchful for that possibility. However, changes to rules that affect the timing and frequency of notices would first be subject to review by rulemaking advisory committees and to public testimony and hearing, so those additional steps should help minimize the risk of inadvertent harm.

Workers' Compensation Division
Advisory committee meeting agenda
March 8, 2022, 9 a.m. (virtual)

Streamlining of required correspondence to workers and employers

Claim initiation, accept/deny, reclassification

- Jovanna Patrick, claimant attorney, said the Oregon State Bar's Access to Justice Committee has some suggested changes to denial language in OAR 436-060-0140(8), which is at a 13th grade level, and it is unclear when 60 days start. The committee put together model language at a 5th or 6th grade level, and it is under review at the Bar now. Denial language is very unclear for workers based on how it's written, and no dates are listed in the letter; workers are confused about the 60 days, and it would be clearer if the appeal date was actually listed on the letter.
- Fred Bruyns noted that some denial requirements are in OAR chapter 438, under the Workers' Compensation Board's purview, but there is someone from the board on the streamlining committee.
- Ashley Willard, Travelers Insurance, said there's a lot of information that must be included; the rule is in all caps, and it's like you're shouting at them. It needs to be more readable and maybe bulleted for readability. Ashley agreed with adding an actual appeal date to the letter and added that most people can't read at a college level.
- Dan Schmelling, SAIF Corporation, agree with Jovanna; the verbatim language that the division requires is hard for workers to read, and the structure of the paragraph is too difficult to follow. We need to stick to key elements, and mandatory notices need to be more user friendly.
- Art Stevens, claimant attorney, agrees. It is a forest of words that overwhelms. Bulleting or paragraphing the information would be helpful.
- Jason Falquist, Liberty Mutual Insurance, agrees. The publication for workers who are hurt on the job, the easy one pager, not the booklet ["Guide for Workers Recently Injured on the Job"] is very good, easy to read and should be used as model for other injured worker communications. Most injured workers would want the "Cliff Notes" version and then links to more information, but put important stuff in a one-pager that's easy to read.
- Danielle Erb, MD, said she sees patients further down the road, 30 to 90 days after the injury. Most workers say they haven't gotten the brochure ["What happens if I'm hurt on the job?"], though might have overlooked it. Dr. Erb added that she gives the brochure to her patients and points them to the glossary to learn the terms. It is unclear when workers get the brochure in the process or when they should get it.
- Tammy Bowers, May Trucking Company and MLAC said that sometimes employers don't understand they can't direct care. Tammy said we could add QR codes to access the website if people want more information, such as short training videos for employers and workers.
- Ashley Willard, Travelers Insurance, said she likes the QR code idea too.

Workers' Compensation Division
Advisory committee meeting agenda
March 8, 2022, 9 a.m. (virtual)

Streamlining of required correspondence to workers and employers

- Elizabeth Brandenburg, City of Portland, said she loves the QR code idea; at least they can access the documents when they have time. Access could include multilingual versions of documents (really liked the multilingual insert [Form 5377]).
- Dr. Erb said that doctors who treat injured workers also would need to know about the QR code.
- Art Stevens agreed that the QR code is an excellent idea. The federal government based their entire Social Security hearing policy on studies that showed that the worker demographic does have phones for the most part. Even though many may not have computers, they do have phones. If our largest federal agency can base national policy on accessibility to workers by phone, so can Oregon. It can be an elegant response as long as the content is also clear, and bullet pointed.
- Vern Saboe, DC said that some employers continue to push their workers to a specific nearby clinic. It is not clear to workers that they have a choice of provider. Employers and workers should sign an agreement of sorts that this understanding is clear; instead workers are getting subpar treatment and don't know their rights. The employers don't know this is not okay, and workers aren't given Form 801 at the beginning.
- Tammy noted that the compliance poster is required to be posted—could the QR code be added to that poster?
- Dr. Erb said patients are most confused when assigned to an MCO [managed care organization]. They are very confused about MCO [provider] panels and wording that is super confusing. This is a pain point for workers.
- Ashley Willard noted that Dr. Sabo addressed direction of care. The 2nd page of the 827 has a notice that should be given to the worker. The right to choose a provider should be included in this document and it is not currently.
- David Barenberg (SAIF) said he agrees with putting a QR code on the compliance poster, and the poster should also be in Spanish.
- Ashley Willard explained that many employers are going fully remote, so workers aren't going to see the Notice of Compliance posters, so we need a plan to get the information to remote workers.
- Jovanna Patrick agreed that the MCO information is very confusing for workers. Enrollment letters from Providence MCO are issued before the claim is accepted. These should come at acceptance and not before (because the claim could be denied). The notice says the worker can choose from a list of doctors, but doesn't provide the list, and the worker only has 14 days or they lose time-loss benefits. Given common mailing delays, timely action may be impossible.
- Dr. Erb added that doctors schedules are often full, and they don't have available slots, so if a worker asks on the 12th day, the doctor cannot see them within two days.

Suspensions

Workers' Compensation Division
Advisory committee meeting agenda
March 8, 2022, 9 a.m. (virtual)

Streamlining of required correspondence to workers and employers

- Jovanna Patrick said it is difficult to understand what the suspension notice means; even attorneys can't figure it out. There are two cases at the Court of Appeals (COA) about this. The notice only gives five days, which is impossible and unrealistic (unless worker opts in for text or electronic notice). Also, necessary actions must be clear and up front and not buried on page four. Claimants need more time to respond, especially with delayed mail issues – would recommend a timeframe of at least 14 days.
- Art Stevens asked if Jovanna could perhaps leave the COA citations so the entire group can see what the Court had to say.
- Jovanna Patrick replied that the case cited is: *Hilton v. Yauger, 295 Or App 330 (2018)*.
- Ashley Willard said workers need detailed information with bullets, saying what they need to know and what they need to do, especially with short timeframes and mail delays and mailings from out of state. Out-of-state mail has extra delays and will not make it to the worker within five days. If all documents were a standard timeframe (like 14 days) for everything or most things, this would be easier than 5 days, 10 days, 14 days, 30 days, etc.

Medical

- Dr. Erb explained that workers have told her that their IMEs (independent medical exams) were shorter than the IME reports indicated. One took 14 minutes; one took 32 minutes, but the IME report said it was 90 minutes. Dr. Erb asks workers to keep track of when the exam starts and ends. Workers have very negative experiences with IMEs (or medical arbiter exams): providers are not prepared; too little time between (separate) panel exams; and some intimidating behavior (yelling, slamming fist on desk). It would be helpful if IME letters were clearer for workers.
- Elizabeth Brandenburg, City of Portland, explained that they use Form 2476 for release of medical records. When medical records are saved in another state, providers there don't care about Oregon law, and they want to use their own medical release form. Elizabeth said they are confused about whether they should be sending out the Form 2476 or not, and she added that it is helpful if one form can serve multiple purposes, so we have fewer redundant forms.
- Fred Bruyns replied that he thinks Form 2476 is meant for times when there is no 801 or 827 release, so it might not need to be sent to all workers, but we will look into it and get back to her.
- Art Stevens said surgery approval is confusing for workers. There is no standard way of getting written approvals. Providers may get verbal denials and are very confused. We need clarity around how surgery is requested and how the response is made.
- Jovanna Patrick said Washington empowers and informs workers. [In Oregon] workers don't know that surgeries are denied, because the worker doesn't understand to specifically request the condition. Workers aren't told why they aren't being approved; this is not just about surgeries but also preauthorization in general.

Workers' Compensation Division
Advisory committee meeting agenda
March 8, 2022, 9 a.m. (virtual)

Streamlining of required correspondence to workers and employers

- Tammy Bowers said workers are confused about denial of a surgery versus deferral of surgery, because insurers have 60 days to accept the claim.

Return to work programs

- Ashley Willard referred to required notices to employer and worker within five days after restriction or release back to full days; some required notices aren't applicable when the worker is put on permanent work restrictions and are very confusing for workers. The five-day timeframe is very tight.
- Jovanna Patrick said the release to regular or modified work form is one size fits all and doesn't always apply. Jovanna added that she doesn't know if it's a SAIF-specific form or a state standard form. Jovanna continued that workers don't understand the Preferred Worker form.

Claim closure; reconsideration

- Ashley Willard said, regarding the Notice of Closure [Form 1644], if the worker disagrees they don't know what to do next. There is no clear language on how to appeal; it is buried on page two. There needs to be clear timeframes with the date for what they need to do.
- Jovanna Patrick said she agrees with Ashley. There is much confusion.
- Art Stevens agrees with having the date listed in the letter for clarity. Information needs to be in a bold, clear form for people. Spell it out in ABCs, because this is like a foreign language for workers. It is an editing issue mostly, with bulleting and bold structure.

Heather: Better to cut/paste specific prescribed language or better to have your own language with a list of things required to include?

- Jason Falquist said that, in general, boilerplate language is better from a process standpoint. However, people don't read standard language. If prescriptive language is required, make it seem like it's not canned language.
- Dan Schmelling said SAIF puts a lot of thought into the letters that they can word. However, including that wording with the boilerplate language looks like a jumbled mess.
- Ashley Willard said Washington did a modernization project a couple of years ago and redid 20+ letters. Now, standard letters are good across all insurance companies. That standardization has helped – especially when workers may have more than one claim over the years. Washington letters are similar to what California does (when any change in benefit occurs, you must notify the worker). There is a standard letter for start/stop/suspend/reduce, including explanation of average weekly wage and how it was calculated.
 - [Samples of these letters: <https://lni.wa.gov/insurance/self-insurance/claims-management/claims-management-tools#forms-and-templates>]

Workers' Compensation Division
Advisory committee meeting agenda
March 8, 2022, 9 a.m. (virtual)

Streamlining of required correspondence to workers and employers

- [This is helpful for state forms that aren't being used, the self-insured employer must use substantially similar forms.

<https://lni.wa.gov/insurance/docs/substantially%20similar%20forms.pdf>

Other thoughts

- David Barenberg said it is important to include injured workers' perspectives in this. Workers want more electronic communications and it would be good to consider this going forward.

Closing

Heather and Fred thanked the committee and said that additional advice may be sent in at any time. The Workers' Compensation Division will keep everyone informed – when we post the audio recording, minutes, etc.