

WORKERS' COMPENSATION  
MEDICAL ADVISORY COMMITTEE

November 18, 2021

9 a.m. – 11:00 a.m.

**MAC Committee Members Present:**; Brad Lorber, MD; Lon Holston (Worker Representative); Constantine Gean, MD (Insurer Representative); Eric C. Hubbs, DC, FCBP, CCST, CIA; Ryan Weeks (Employer Representative)

**DCBS Staff Present:** Sara Kessler, Juerg Kunz

**MAC Committee Members Absent:** Ronald Bowman, MD; Gary Rischitelli, MD; Tom Williams, PT; Julio Ordonez, MD; Jennifer Lawlor, MD

<b>Agenda Item</b>	<b>Discussion</b>
<b>Welcome, Introductions</b> (0:00:00)*	Dr. Lorber called the meeting to order at 9:00 a.m.
<b>Administrative discussion</b> (0:01:00)	<b>Review and approve minutes for August 19, 2021 MAC Meeting</b>  Dr. Lorber motions to accept meeting minutes. The committee agrees and minutes are accepted.
<b>Staff Updates</b> (0:01:45)	Sara Kessler discusses the meeting schedule for 2023. It was hoped that meetings could resume at the Clackamas Community College location in Wilsonville, however, they are closed on Fridays. An option would be to use the DCBS office in Durham. Juerg Kunz proposed that we shift the fall meeting from November to October because the advisory committee meetings for the medical rules and fee schedule rules is held in November. Often times there are issues they'd like to discuss with MAC before the advisory committee meeting. It would be beneficial to have the MAC meeting in October so that we can take their input to the rules advisory committee meeting in November. It was also proposed that we could either move all meetings up a month, or just the November meeting.
(0:06:00)	Dr. Lorber states that he thinks it makes the most sense to move all of the meetings up by one month. It was also discussed that it could be beneficial, especially for the October meeting, to meet earlier in the month. Sara Kessler asks if the committee would prefer to move the meetings from the third Friday of each month to the second Friday of each month. Dr. Lorber agrees.
(0:08:55)	Juerg Kunz states that Dr. Rischitelli has informed us that he is resigning from the MAC committee. He is semi-retired and would like to open the space for someone else.

**Open Ended TL  
Authorization  
Review**

(0:09:40)

Elaine Schooler with SAIF Corporation started by introducing herself as a member of a subcommittee with the Management Labor Advisory Committee (MLAC.) The subcommittee is working through a problem statement that reads: “The purpose of the subcommittee is to recommend solutions so that all workers, specifically workers with open ended time loss authorizations and those who are not seeking treatment, remain connected with their provider and minimize gaps or delays in treatment when they are off work or return to modified work.” The subcommittee is a continuation of a broader discussion that has been occurring at MLAC regarding open ended time loss authorizations and keeping workers connected to care.

Elaine Schooler continues with stating that the subcommittee is coming forward with some proposed solutions and are here today to solicit the MAC members thoughts and ideas surrounding three proposed solutions. The first one is to simply require the provider to include an end date in order for the work release to be valid. Secondly, tying it to the billing process so that if the end date is missing the medical service is not payable until the end date is provided. The third idea is to obtain a best practices statement from the MAC members that address this concern of open-ended releases and if MAC members are in agreement, supports medical providers incorporating an end date into any work release that is being provided in the care of an injured worker.

(0:13:00)

Dr. Lorber questions the issues, stating that in discussions with Dr. Bowman neither of them realized this as a problem. He goes on to state that most of the doctors he deals with and most of the reports he sees do have an end date. It might be a month out if they’re supposed to follow back up in a month, or three months out if it’s post-op, etc. Dr. Lorber asks if not having an end date listed is a common occurrence.

Elaine Schooler responds that it does happen. She confirms that through this subcommittee process they have learned that a lot of the providers do include an end date. When they don’t, whether it’s a specific provider or just an oversight, it can cause issues in the claim that does lead to breakdown in the relationship with the worker and provider. The subcommittee is looking for a way to fill the gap when those releases aren’t being standardized for all providers.

(0:14:15)

Dr. Lorber states that both him and Dr. Bowman do believe that all releases should include an end date. Their understanding is that open cases are required to be seen every month and that patients do get letters if they haven’t been seen within those 30 days. Dr. Lorber continues that there are other factors that may

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prevent a worker from going in every 30 days with the recent Covid pandemic, most providers will not allow patients in if they are sick, whether it's Covid or not. This could also be the case when providers are sick. However, it's not hard to re-write a new release stating that it needs to be extended to the next visit. Dr. Lorber believes that is part of doing business in Workers' Comp that most providers do so. He also stated that he thinks it would be a bad idea to tie this to not getting paid and thinks there could be several providers who would stop treating workers' comp if that happens.

(0:15:30)

Elaine Schooler asks Dr. Lorber that when it is a common practice for most of the providers and should be a best practice for all, should providers be require some education to remain as a provider who is helping a workers on their path recovery?

Dr. Lorber believes that it could potentially be as easy as a phone call as often times leaving off an end date is just simply an oversight.

Dr. Gean states that he agrees that sometimes there might be a condition that won't resolve in a month so a provider would put a return to work date that coincides with their next visit date that is typically a month out. The real problem is after a case gets to 3-6 months there is very little strategic thought on a quick 15 minute check in visit. Dr. Gean believes that's where things can go astray, especially in the case of chronic conditions.

Dr. Hubbs adds that, for him, putting an end date on a release is standard care. He reviews each case prior to said end date and if they can return to work he leaves it as it is. If they can't he amends the end date. He states that he assumed that was standard practice and is surprised this is an issue. He feels that the solution resides with the practitioners and not necessarily through legislative changes.

(0:19:15)

Kristin Adams with Associated General Contractors speaks from the employer perspective. She states their interest is making sure workers get the care they need in a timely manner so they can return to work faster and get better quicker. She appreciates MAC's input from a medical perspective on how adding that an end date will help workers stay engaged in their care.

Dr. Gean adds that the advantage of the return to work date is basically a check-in and agrees it is standard care. He questions if the legislature wants to interfere with practice and goes back to the original question, what is the scope of the problem? How many times does this happen? How often do cases drift because there is no defined return to work date?

Dr. Lorber asks if there is an OAR requiring patients to be seen every 30 days in an open claim. Elaine Schooler responds that MCOs may require certain treatment processes that workers should be seen every 30 days, but that isn't

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the case in every situation. A lot of that rests on the doctor and their treatment of their patient and what they feel is appropriate.

Elaine Schooler addresses the data question and states that when it happens it can be impactful on that particular claim. She states that they don't have a way to track it specifically at SAIF Corporation, but it does not appear to happen on a majority of their claims. What they do see is that when workers have open-ended releases and there is that disconnect where follow-up isn't happening it can really frustrate their recovery, their engagement with their provider, and the employers ability to get them back to a modified position or regular work.

Elaine Schooler adds that what they are really looking to do is to standardize what should be, and what was believed to be, a standard process but isn't happening for all. She clarifies the piece linking it to payment of compensable services, that isn't to be said that the bill would never be paid but it would warrant a phone call to the provider that there was an oversight and that they need to provide an end date. Once provided the bill would be processed.

Keith Semple adds that he agrees that it seems to be an infrequent occurrence and has always been their position that this is something that can be resolved with a phone call or letter. He goes on to state that he certainly wouldn't want to see it tied to payment of providers because there are problems with getting providers and keeping providers in the system.

(0:24:30)

Dr. Lorber asks about next steps. He asks if they need to put out a best practices statement but didn't feel like there were enough medical members in attendance to do so. He states that we can continue this discussion at the next meeting with the other medical members and call for a statement. He also reiterates that everyone seems to have thought this was already the standard of care. And that a gentle reminder might be the best thing.

Dr. Gean asks what the strength of a position statement would be. Specifically, is it something that could ever go to court? Dr. Lorber also wonders if a position statement is something that would have any legal power. He doesn't believe it would. Ms. Schooler confirms that it wouldn't hold any legal force.

Dr. Gene reiterates the three proposed solutions where solution one is to make it a requirement and solution two is to tie it to the billing process. Ms. Schooler confirms that solution three is the best practices statement that could be used in tandem with solutions one and two and be used as an education tool.

Dustin Carson with Washington County shares that he feels like if this issue were to progress to legislative change he thinks it would carry more weight if there was a formalized best practices statement supported by MAC members.

Dr. Lorber asks Elaine Schooler if she thinks this is something that will go legislative. She responds that this is a discussion that is still happening and believes that the discussion at MAC was helpful.

Dr. Lorber proposes that we have another discussion at the next MAC meeting when Dr. Bowman and Dr. Lawler are present and when the MLAC subcommittee has more feedback on if they think this will go legislative.

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**Update on  
Pharmaceutical  
Clinical  
Justification  
Form**

(0:30:45)

Dr. Lorber starts this conversation by stating that he read the information from the last meeting and noted that Dr. Bowman wanted his input on the topic. Dr. Lorber noted that one question brought up was if it even makes sense to have this form anymore. He stated that he saw the form the first year it came out and then it went by the wayside. While it's a fluid form he believes that it's not impactful.

Dr. Gean noted that the form doesn't capture the variations of dose where price may vary. The generalizations are difficult to keep current and they change all the time. He concurs with Dr. Lorber's opinion that this form is probably less useful than we think. He thinks it would be a great general information bulletin as opposed to having practitioners fill this out every time they prescribe a drug.

Dr. Lorber proposes that we don't revise the form.

Juerg asks if we can take to the rules advisory committee that MAC recommends that we get rid of this form? Dr. Lorber moves that we eliminate the Pharmaceutical Clinical Justification Workers' Compensation Form 4909. All members present agree.

(0:36:05)

Juerg clarifies that the motion doesn't mean it will happen. The rules advisory committee will provide input to the division that will need to be considered. MAC's opinion will be presented to the rules advisory committee and when the rule is made, MAC's input will be taken into consideration.

**Platelet Rich  
Plasma (PRP)  
Injections  
Subcommittee**

(0:36:35)

Dr. Lorber provides some background in that a subcommittee was formed back in 2017-2018 where they reviewed articles and data and at the time deemed PRP not compensable. The only area that looked like there was a trend toward

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response was osteoarthritis of the knee, which is rarely a workers' compensation accepted condition. One of the problems with PRP research is that there is so much variability. It was proposed to look at this again in the future when there would be more research available over time. There is now more information and it is still a highly discussed topic in the industry.

Dr. Gean states that Official Disability Guidelines (ODG) used in Texas and elsewhere, has now allowed the treatment as a last ditch effort prior to surgery for Lateral Epicondylitis and knee osteoarthritis with certain limitations and guidelines. Dr. Gean continues that he has also seen the literature evolve and speculates we will continue to see that evolution of information over the next several years.

Dr. Lorber states that him and Dr. Bowman would like to be on the committee again and would like Dr. Gean to be on the committee as well. Dr. Hubbs would also like to be part of the subcommittee. Dr. Lorber states that he would like to see statements from all other states as to if PRP is compensable or not and the reasoning why.

(0:43:40)

Juerg has been tasked with collecting randomized control trial articles. And getting the information from as many states as we can get. Juerg asks about meta-analyses. Dr. Hubbs interjects that he thinks those would be useful. Dr. Gean agrees that they should be included.

**Recap of  
COVID-19  
Claim Data**  
(0:47:33)

Dr. Lorber asks if Covid-19 claims are still being accepted. WCD Deputy Director Matt West confirms that while Covid related claims have slowed, the division is still seeing them come in. Dr. Lorber asks about the burden of proof. Matt West states that it's the same burden as any other claim where it would be tied back if it happened at work. He continues that during the pandemic the rules were updated regarding reasonable investigation of a claim so that there was some added criteria before denying a Covid related claim that needed to be met to ensure there was due diligence during the investigation piece.

Matt West reviews statistical data stating that the earliest Covid claim report has a date of injury of Feb 20, 2020. Since then, 8,048 claims have been reported. These are all accepted disabling claims or denied claims. Accepted non-disabling claims are not reported. Of all the reported claims one third were for exposure, two thirds were for actual disease claims, and less than once percent were fatal claims. The largest share of the claims came from workers in hospitals, assisted living, and other types of health care. Other public and safety state agencies were next like corrections facilities. Something that also stood out were the number of claims reported under support activities for

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forestry which was mainly due to the 2020 wildfire season and outbreaks in the wildfire camps.

Matt West provides clarification that a disabling claim generally means three or more missed days of work.

For disabling claims the acceptance rate for exposure claims was 78 percent and 85 percent acceptance rate for Covid disease claims. There was a 46 percent acceptance rate for fatality claims. The most common denial reasons were: the injury or exposure was not compensably related to employment, the condition did not arise out of the course and scope of employment, and the worker tested negative for Covid.

Dr. Lorber asks if there are accepted cases for Influenza or other viruses. Matt West responds that yes, most likely, but those are less common. Dr. Gean asks if there is any information on “long Covid.” Matt West responds that those specific claims haven’t been pulled out in the current data.

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Dr. Lorber adjourned the meeting.

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\*The audio files for the meeting minutes and public testimony (both written and audio) can be found here: <http://wcd.oregon.gov/medical/mac/Pages/mac-meetings.aspx>