

November 7, 2024

Testimony regarding LC draft 1072 for the Management Labor Advisory Committee for Workers Compensation

LC 1072 2025 Regular Session 10/17/24 (ASD/ps) D R A F T

Chairs and members of the committee, my name is Lon Holston and I will speak for myself today.

I rise in opposition to LC draft 1072. As an injured worker, I have had delays in medical treatment due to the lack of providers within the workers compensation system. These delays were not because of my medical provider, but through actions or inactions a by managed care organizations. I've been before you in the past, testifying to what those issues.

MCO's by their very nature are to manage medical costs and save the insurer money on their claims.

The Oregon Worker's Compensation system continues to lose medical providers. This is seen across the board in the private sector as well as nationally. Delays in treatment are common.

Creating another MCO is not going to solve our problem of the lack of medical providers in the workers compensation system. SAIF Corporation would have you believe that the MCO system in Oregon is in jeopardy. It is true that we had the loss of one (1) MCO in the state last year. The system could truly come into jeopardy through SAIF Corporation and with its deep pockets, establishing or acquireing one or more of the existing MCO's currently in operation in Oregon.

The Claim of establishing occupational health centers and staffing becomes thin when you take a look at the demographics in the state. In Eastern Oregon whether you're in Lakeview or Joseph still creates a long-distance travel for injured workers.

Then you would have to staff these locations. Would they be able to staff these full-time? Where are they going to get the medical providers?

SAIF Corporation insures 51.6% of the market share in Oregon for Worker's Compensation. The rest of the market share, consists of other workers compensation insurers. With SAIF's financial weight, Oregon's Worker's Compensation department, The Management Labor Advisory Committee, the Medical Advisory Committee has not been able to correct this long-standing problem to date. I am suspect there is no silver bullet to take care of this issue easily.

Medical providers seeing injured workers is critical to the workers compensation system. MCO's are a collection of medical providers serving the workers comp constituency.

Having said that, let's walk through some of the issues that I see in the LC draft.

In existing statute, we have time tested language that seems to work well for establishing MCO's. we have the wholesale deletions of language in the LC Draft. The new language replacements seem to be a billboard announcing **State Accident Insurance Fund Corporation**. This opens up the possibility of every workers' compensation insurer who would like to have their name in the statute come forward looking to be included.

(4) The State Accident Insurance Fund Corporation **may form or acquire a subsidiary corporation** to perform any function of the State Accident Insurance Fund Corporation that **may be delegated** to the subsidiary under any provision of this chapter.

The language of this section is confusing. It looks to me that would perform any function of the State Accident Insurance Fund Corporation may be delegated to the subsidiary under any provision of this chapter. Please explain to me what this means.

The section in the draft of the bill clearly allows a reduction in MCO's in the state. If SAIF decides to acquire MCO or other entity.

The Word "may," is not a very strong word, If the intent of the language to comply with the intent of the LC draft.

The draft consistently uses the word subsidiary in the draft. Let's look at the definition of subsidiary.

- What Is a Subsidiary? In the corporate world, a subsidiary is a company that belongs to another company, which is usually referred to as the parent company or holding company. The parent holds a controlling interest in the subsidiary company, meaning it owns or controls more than half of its stock.

[(4)] (5) *The State Accident Insurance Fund Corporation [may authorize self-insured employers or other insurers to use any physical rehabilitation center operated by the State Accident Insurance Fund Corporation on such terms as the State Accident Insurance Fund Corporation deems reasonable.] or a subsidiary may:*

(a) Provide managed care services to injured workers under ORS 656.260;

(b) Authorize self-insured employers or other insurers to use such managed care services on such terms as the **State Accident Insurance Fund Corporation deems reasonable;** and

Here we go again with the word may, what they may or may not do seems to be in question.

The Word **reasonable** is vague and ambiguous is reasonable to one person is not reasonable to another. This could be misleading at best on what is reasonable or not reasonable.

(c) Solicit and coordinate with medical service providers to provide medical services to injured workers. [(5)] (6) The State Accident Insurance Fund Corporation or a subsidiary, [2] LC 1072 10/17/24 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 in its own name, may:

Page 3 /Line 10[(6)] (7) Any real property acquired and owned by the State Accident Insurance Fund Corporation **or a subsidiary** under this section shall be subject to ad valorem taxation.

Page 4 Line 6

(2) No member of the board of directors of a subsidiary shall have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of appointment to the board, in any corporation or other business entity doing business in the workers' compensation insurance industry.

The LC Draft seems to want to assure us that there will be no conflicts of interest regarding board members and their positions on the board of the MCO or subsidiary.

Initially or not intentionally, This language does not preclude the acquiring of stock or other assets within the board's direction, after they are appointed therefore creating a possible conflict of interest after they are appointed.

There is no exclusion for receiving stock as part of the compensation package.

There is no disclosure once a board member does acquire any assets under their charge.

Page 5 Starting line 26 through Page 6 Line 28

(A) "Contract review" means the methods and processes whereby the managed care organization monitors and enforces its contracts with participating providers for matters other than matters enumerated in subparagraphs (D), (F) and (G) of this paragraph.

(B) "Dispute resolution" includes the resolution of disputes arising under peer review, service utilization review and quality assurance [5] LC 1072 10/17/24 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 activities between insurers, self-insured employers, workers and medical and health care service providers, as required under the certified plan.

(C) "Managed care applicant" means the State Accident Insurance Fund Corporation, a health care provider or group of medical service providers that apply for certification under this section.

This definition of managed care applicant is clearly defined as The State Accident Insurance Fund Corporation. This becomes problematic. On page 7 line 16 in the LC draft when it states;

Page 7 Line 16

(4) The director shall certify a [health care provider or group of medical service providers] managed care applicant to provide managed care under a plan if the director finds that the plan:

The word "shall," does not give the Director of Worker's Compensation any room to not certify, if the plan is not in compliance in totality. The State Accident Insurance Fund Corporation is named specifically and is defined.

(d) As used in this section and ORS 656.245, 656.248 and 656.327, "medical service provider" means a person duly licensed to practice one or more of the healing arts in any country or in any state or territory or possession of the United States.

This clause in my opinion, opens up medical service provider to be anyone practicing the healing arts worldwide. That would mean the guy I met in the jungle in the Congo, who was a witch doctor would qualify as he is licensed in the country he resides. He applies healing arts to his tribal members. Maybe we can recruit medical providers in Indiana.

Or maybe this just opens up telehealth worldwide.

While telehealth can be advantageous in some rural areas for follow-up visits, it should not be mainstream MCO policy for treating injured workers. In person visits and diagnostics through the physician and other medical providers is essential in bringing injured workers back to health.

Page 15 Line 1

ORS 656.740.

SECTION 4. (1) Individuals employed by the State Accident Insurance Fund Corporation or a subsidiary who receive and process claims may not provide managed care services to injured workers.

(2) The Director of the Department of Consumer and Business Services shall conduct an annual audit of the State Accident Insurance Fund Corporation or a subsidiary that provides managed care services to injured workers under ORS 656.260 to ensure that the corporation or subsidiary has sufficient separation between claims processing operations and the provision of managed care services to injured workers.

This language is designed to give us the illusion of protection that claims examiners may not provide managed care services to injured workers.

In December 2, 2004, The Workers compensation Insurer Medical Examination Study was published. This study consisted of 40 hours of testimony over 2 years. It delved into the inner workings between independent medical examinations and their interactions with injured workers and claims examiners. Before this study came out there was plenty of deniability about interactions between claims examiners and insurance exams.

The embarrassing details came out that there was coaching between claims examiners and the IME doctors. There were plenty of embarrassing facts that came out of this study that I won't get into today. The point is where mischief and mayhem can exist no matter how many safeguards you put in it. Firewalls, are not as secure as one would think. It's just a matter of creativity and how you look at it.

This particular clause also elicits another job for the Director of Worker's Compensation. The director is plenty busy with his normal job duties. Why are we adding this one to the mix?

It is my opinion that we should not have insurance carriers, owning, associated authority over managed care organizations. If the existing managed care organization haven't solved the problem of a lack of

physicians. I would suspect it will be many more years before we get a handle on the lack of medical providers for everyone statewide.

I am open for any questions, and will try to answer them.

Sincerely,

Lon Holston