

**LABOR MANAGEMENT ADVISORY COUNCIL  
HELENA MONTANA  
February 18, 2020**

**Council Members:**

Lt. Governor, Mike Cooney  
Don Judge, Injured Workers Resource Council  
Jim Larson, Teamsters Local 190  
Adam Haight, AFL-CIO  
Doug Buman, Laborers' International Union of North America  
Vicki Evans, Montana Contractors Compensation Fund

**Via Skype:**

Lance Zanto, Workers' Comp. Management Bureau  
Mike Marsh, Midland Claims  
Bridger Mahlum, Montana Chamber of Commerce  
Laurie McGuire  
Todd Johnson  
**ERD:** Mike Bartow, Mona Hylton, Adriane McLean, Lacey Silvan

**Other Attendees:**

**DOLI:** Attorney Mark Cadwallader

**ERD:** Eric Strauss, Bill Wheeler, Doug Roope, Cindy Zimmerman, Maggie Cook-Shimanek, Kristine Ediger, Bri Lake, Jason Swant, Celeste Ackerman, Peggy Coggeshall, Bryan Page, Peter Van Nice, Jerry Laughery and Karen Wiles.

**Workforce Services Division:** Nisan Burbridge

**Montana State Fund:** Attorney Nick Mazanec

**Montana Schools Group Insurance Authority:** Kevin Bartsch

**Other Guests:** Attorney Bruce Spencer

**Proxies:** Vicki Evans for Lance Zanto (Lance left the meeting at 11:05a)  
Mike Marsh for Annette Hoffman  
Don Judge for Al Smith

Welcome and Introductions

The agenda was approved

The minutes from the January 8, 2020, meeting were approved with amendments if corrections were made from the prior meeting's minutes, those corrections would be referenced in the minutes. Also, in reference January 8 minutes regarding mailing of the benefit brochure and SAW/RTW letter, it was clarified that rather than sending packets of brochures to the claims adjusters to send out, the Department will mail the brochure in conjunction with the SAW/RTW letter to the injured worker.

Lt. Governor Mike Cooney left the meeting shortly before 12:00pm to attend another meeting and returned at approximately 12:40pm. Jim Larson was acting chairperson.

#### **SAW/RTW Reporting – Cindy Zimmerman**

The committee met on January 17, 2020 and finished discussing the rules for the insurers and Department and minutes were sent to LMAC members who participated. The committee came away with some possible changes about not requiring the insurers report after each injury. The committee will be looking at ways to leverage the SROI to obtain the needed information. They are finished meeting with the stakeholders for now and the committee will discuss, internally, ways to improve the program based on the input of the stakeholders, and possibly ways to use the SAW/RTW fund.

#### **Subsequent Injury Fund - Bill Wheeler**

Bill's presentation included a correction to the January meeting to now indicate states that have sun set their subsequent injury funds. These states had previously been included as active; terminated SIF programs for states of Alabama, Alaska, Arkansas, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Kansas, Kentucky, Minnesota, Nebraska, New Mexico, New York, Rhode Island, South Carolina, Vermont (never had a fund) and Utah; many of the programs are tied specifically to PTD benefits; several were originally set up similar to Montana.

The Americans with Disabilities Act (ADA) was a factor in discontinuing their second injury funds. Most assess either the employer, insurers or self-insurers to replenish their funds. The state of Indiana pays for prosthetics and Utah and Arizona use their fund to partially back fill their uninsured employers fund.

He outlined the number of claims and reimbursement amounts; employers with SIF claims for FY 2008 – 2019; state agencies paid vs. premium benefit; SIF and self-insureds and; self-insureds paid vs. reimbursement. Discussion included the benefits of a fund for plans 2 & 3 vs. plan 1; distribution of costs; how it effects e-mod factors; is Montana's SIF really doing what it is supposed to do; continued responsibility for current claims and outstanding liability; funding of other state's SIF in preparation for sunsets; continue assessments in Montana until sunset if sunseting will be a possibility; claims that may be affected by the 5-year closure of medical benefits and; department staff dedicated to servicing SIF, budgeting etc.

It was pointed out the initial injury resulting in SIF certification does not have to be a workers' compensation injury, the worker just needs to have a permanent medical impairment. Also, the Department will look at data regarding repeat SIF injured workers and try to determine a reserve balance based on current claims from the specific insurers and whether they have any claims in the next 24 months that might qualify for reimbursement from SIF.

#### **Draft Language for Joint Petition – Jason Swant**

Jason provided draft rule language to allow the joint petition to move forward without the medical records by adding additional language to ARM 24.29.3114. The biggest change is where there is not a joint petition as the parties do not agree to re-opening the benefits and, provides a 14-day time frame for the parties to submit records and information. The rule changes are contingent upon legislative statutory changes to 39-71-717, MCA which was provided to LMAC in the January meeting and agreed upon. A motion was approved to move forward with the concept of the proposed rule changes with the understanding some language may be additionally clarified.

### **Status Update on Notices, Required Notice Automation – Doug Roope**

Doug's presentation brought the LMAC up to date on the automation process for required notices which include claim denials, placing the claim under a reservation of rights pursuant to 39-71-615 and 39-71-608, MCA, and 14-day notice of benefit termination. His presentation included required notice reporting; notice reporting percentages; process for submitting notices one of which is a shared email account, and another is by way of hard copy via postal mail; process re-engineering and; automation of notices.

Currently, the Department does not receive notices when there isn't a claim. That is in design for the future which will be a reconciliation process that runs nightly in the background and put in a holding table until the claim comes in. He provided screenshots of the data entry dashboard of a denial, a reservation of rights letter under 39-71-615, and a 14-day notice of benefit termination.

Discussion included compliments to the Department regarding for a smooth roll out. A suggestion was made that the Department take this opportunity to educate claims administrators on a better way to write and format letters which Department staff have trouble sorting. Another comment was to continue to work on the receipt of a notice without a claim, as some claims adjusters provide notice on a simple medical only claim, yet their data system does not batch the claim form until that night.

### **WC & Liability Myths – Bill Wheeler, ERD and Nisan Burbridge, Workforce Services Division**

Nisan advised that during the last legislative session she heard a lot of confusion regarding child labor laws, workers' compensation and liability resulting in creation of the "Work-Based Learning, Liability and Workers' Compensation Considerations and, Work-Based Learning, Myth vs. Fact" documents to address basic information. They are intended for businesses and they have also been used in schools and those out in the field to answer quick questions regarding working with young people.

Bill advised Kristine Ediger, Amber Carpenter and Tracy Gonzales helped to put together the informational documents to outline some of the common questions about workers' compensation that employers assume are correct and, when they need insurance coverage. The Liability and Worker's Compensation Consideration document took a broad range of ideas and condensed it into a table. Nisan advised they work with the Office of Public Instruction, schools and businesses who are implementing these types of programs.

The Myths & Facts is designed to differentiate the terms of child labor laws and workers' compensation and will be useful at the Assistance to Business Clinics. A suggestion was made to possibly have reference to unions if they are in place, as there can be some violations that may occur when a person may be doing a job and the union says they cannot. Another suggestion was to have the definition of wages included.

### **Draft Language for Benefit Brochure & Non-Profits – Peter Van Nice and Jason Swant**

Draft language to Section 39-71-606 changes and adds language to allow the insurer to include the insurer's name and contact information but may not otherwise change the text of the document. A new section was added to this statute stating the Department shall prepare a document describing current benefits and entitlements and upon receiving notice of a claim, provide a copy of the document to the claimant. Included in the new section the Department shall provide information to claimants of non-

statutory programs or benefits offered to injured workers or the families of injured workers by a not-for-profit organization. Discussion included non-profit hospitals and competition between hospitals being a potential issue. When the Department drafts rules for amendment of this section, it would be articulated when and what information will be provided. Other discussion involved the pros and cons of distributing the documents electronically and the access to the internet in rural areas of Montana.

### **WC System Cost Drivers SOII & CFOI – Peggy Coggeshall**

Peggy provided the results of the annual employer survey of Occupational Injuries and Illnesses and the CFOI Census of Fatal Occupational Injuries. For the SOII, she provided 2018 incidence rates; incident rates Montana vs. United States private industry; incident rates by major industry; number of injuries and illnesses by worker occupation, nature of injury, part of body source of injury, event or exposure, length of service, race, age, day of week incident occurred, and time of incident. Discussion included an explanation regarding source of injury coding structures.

In July 2019, the Department of Labor changed the record keeping requirements and Montana adopted the OSHA requirements for record keeping including the requests from the Bureau of Labor Statistics for data, making the change mandatory in Montana. Peggy showed a Government chart for 2017 and 2018 of recordable cases by industry. These are incident rates per 100 full time workers.

The information in the CFOI census for fatal occupational injuries include the CFOI criteria; types of worker, incidents, worker activities, travel status, location, fatal occupational injuries in Montana 2009-2018, fatalities per year, industry, occupational group, occupation, nature, body part, event, source, secondary source, worker status, age at the time of death, day of the week, time of the incident, month, and fatal injury rate. Illnesses are not included because it is hard to pinpoint the date of injury and if it is work-related, so the statistics are traumatic injuries only - the incident must have occurred in the U.S. Discussion included opioid overdose occurring in the workplace. This would be taken to National along with all components to decide. Components would consist of the newspaper article, death certificate, workers' compensation forms, NTSB forms, FACA forms, hospital records, and coroner reports.

Incidents do not have to be tied to workers' compensation, just anyone who dies at work. Safety information regarding use of PPE or other standards are not gathered for this census. Articles in this regard can be found on the BLS website. If the fatality involved transportation, these are investigated by local police or highway patrol, unless it is on a construction site which are then investigated by safety bureaus and OSHA. Approximately 3 years ago, the program began collecting additional information a lot of which has not yet been released, to include seat belt usage, whether alcohol or drugs were found in the decedent, and independent contractors.

### **Center for Health & Safety Culture Recap – Bryan Page**

Bryan advised they are still exploring having a relationship with the Center for Health & Safety Culture. They were one of the speakers at an MDT function and was thought there might be some overlap where we could help each other out with. There will be some training with DPHHS and Bryan will attend and see if what they are presenting would benefit Department.

Don Judge asked about the efforts of OSHA to agree to an on-line 10-hour training course and Bryan advised they didn't get as far as hoped. The closest OSHA regional outreach training center is Salt Lake City and last month had received permission to do some on-line webinars on a regular basis. Bryan has contacted them to see if they can do some testing with the Department. Nothing is firm at this point.

**Public Comment**

No public comment

**Next Steps**

1. For SIF, Bill will look at a data call on the time frame, repeat claims, and total number of claims.
2. Fine tune the rule language for the joint petition.

The next meeting is Thursday March 12, 2020 at 10:00

**Meeting adjourned**