

**LABOR MANAGEMENT ADVISORY COUNCIL
EMPLOYMENT RELATIONS DIVISION
JUNE 25, 2019**

Attendees:

Lt. Governor, Mike Cooney
Eric Strauss, Administrator ERD
Don Judge, Injured Workers Resource Council
Lance Zanto, Workers' Comp. Management Bureau
Michael Marsh, Midland Claims Services Inc.
Vicki Evans, Montana Contractors Compensation Fund
Al Smith, Montana Trial Lawyers Association

Via Skype:

Jim Larson, Teamsters Local 190
Doug Buman, Laborer's Int'l. Union of N America
Ken Biskupiak, ERD
Mike Bartow, ERD
Adriane McLean, ERD
Carissa Stahly, ERD
Maggie Cook-Shimanek

Bridger Mahlum provided his proxy to Lance Zanto.

Other Attendees:

DOLI: Mark Cadwallader

ERD: Bill Wheeler, Emily Healy, Wendy Jackson, Doug Roope, Kristine Ediger, Karen Wiles, Cindy Zimmerman, Bri Lake, Peggy Coggeshall and Jerry Laughery

Montana State Fund: Kevin Braun

MMIA: Tom Danenhowe and Britani Laughery

The agenda was approved.

Drug Formulary Update: Cindy Zimmerman

Cindy outlined the outreach to stakeholders since 01/01/18 including LMAC; the Formulary Working Group; SafetyFest; ABC Clinics; Stakeholder Meetings; Formulary Medical Forums; ODG Webinars; cold calling providers with information packets; MMA committee meetings; 2018 Governor's Conference and; 2019 Medical Symposium for a total of 87 events and attendance of 2,591.

What is next: continuing with ABC Clinics and outreach to providers. The next part of the formulary to take effect are the legacy claims effective 04/01/20 or 90 days after the insurer gives notice, whichever is later.

Legislative Update: Bill Wheeler provided the 2019 Legislative update including HB 757 eliminating the sunset clause in Section 39-71-442 and mandating claims examiner certification; SB 160 provides workers' compensation for presumptive diseases of firefighters; Montana State Fund related bills of SB 351, SB 36 and SB 85; HB 86 generally revises prescription drug laws and a list of unsuccessful bills.

HB 732 – Provide workers’ compensation premium offset in certain learning programs:

Eric Strauss touched on the home inspector’s registration bill which requires home inspectors to either obtain the independent contractor exemption or purchase workers’ compensation. The Department is in the process of creating the rules and projected completion is January 1, 2020.

HB 732 allows for employers with certified work-based learning programs to apply for a subsidy on their workers’ compensation premium using funds from the administrative assessment. There were 3 or 4 different work-based learning bills that passed in the session and the Department is trying to figure out a way to coordinate all of those bills together to develop a rules package to meet the needs of everything.

Eric will have a role in the rules making process to see how it will affect our assessments. The rules won’t be implemented until the 1st of the year and we don’t know how long it will take for an employer to begin to use. He doesn’t imagine a huge impact on the administrative assessment in the first 2 years of the bill passage, but the Department will monitor closely. If there is a lot of interest in the bill and we start to see a significant impact to our funding, it would be appropriate for the Department to recommend an additional funding source in the next legislative session.

Discussion included whether the rules could include safety programs, and work site visits from Department staff. The Department is discussing mirroring what was done with the State procurement policy in terms of what is required for employers to participate.

Claims Examiner Certification – Jason Swant

Jason outlined HB 757 removing the voluntary aspect and requiring mandatory certification for claims examiners. The bill modifies 39-71-320 which provides the Department rule making authority. The Department is in the process of establishing a stakeholders group to help with the rules process and expects it to be in place by July, with rules to be in place by January 1, 2020.

Current rules include minimum qualifications, the CE examination, 2-year certification and renewal and; continuing education. The new rules will include a newly hired claims examiner training process; a 12-month grace period for non-certified claims examiners as there is no grandfather clause; the definition of trainee and claims examiner assistant and lapse of certification.

The grace period begins when the new law takes effect on July 1, 2019. Michael Marsh volunteered to be on the rules committee. Discussion included obtaining credits and if credits can be obtained on-line, as well as the definition of claims examiner, coordination of claims examiners and those with a P & C license.

If the credit for an adjuster license and the course is specific to worker’s compensation, the Department will approve the credits for CE certification. It may be an insurer using non-certified examiners is acting unreasonably for both the purposes of 20% attorney fees and a penalty, and potentially as an unfair claims practice. The Department would like to have an on-line portal for users to confirm certified claims examiners.

Independent Contractor Survey – Emily Healy

Emily's presentation included IC motivation; main research questions; data collection; survey response breakdown; caveats to the data; questions on the survey; number of IC occupations per person; occupations; industries; median job tenure; age; race/ethnicity; gender; health issues; number of health issues; where to obtain safety & health information related to occupation; safety at work; safety motivation by age group; reported injuries in the past two years; top five cause, nature and part of body; how to pay for medical expenses related to an IC injury; days of missed work; comments/feedback; and lessons learned.

Injured Worker Survey – Bri Lake

Bri presented the results of her survey on injured workers with dates of injury between calendar years 2013 through 2015 and receiving wage loss benefits. Outcomes of interest included access to care, satisfaction with care, recovery of health, financial impact and return to work.

Predictors of interest were worker characteristics, injury characteristics, employment characteristics and other characteristics. She provided numbers regarding the response to the survey. Other numbers included the population vs. respondents by claim costs; population vs. respondents by claimant characteristics; access to care and satisfaction with care; financial impacts; recovery of health; return to work; concern with being fired or laid off; perceived injury severity; whether the employer discussed a work plan; healthcare provider reassigned; worker satisfaction with DLI customer service and claims adjuster. Other correlations included impact in ability to afford essential payments by age and substantial return to work by tenure with employer.

If a second survey were to be sent, there would be an expansion on outcome questions, rewrite potentially unclear questions, remove unnecessary questions, seek to reduce/eliminate biases, account for a higher percentage of incorrect addresses and reduce the study period to 1 to 2 years.

Discussion included the injured worker's concern over being fired or laid off and it was agreed if a second survey were done, we would dig deeper into this topic to find out their concerns. LMAC provided feedback on what questions they would want added to the survey. Discussion also included the number of injuries a worker may have, the time of the injury due to seasonal employment and claim suppression by employers. Payment for the survey came from the administrative assessment and LMAC feels there is value in the information provided in the survey and future surveys will be useful.

Safety Committee- Don Judge

Don advised despite much effort, the Montana OSHA plan died. The opposition appears to be whether we really want State government in charge of the plan. At this point, it was decided the best we could do would be to strengthen the Montana Safety Culture Act to help move the safety issue down the road.

It was agreed not to put any more effort into it unless there is a request for it. It was suggested to reinstitute funding for WorkSafeMT and start the public service announcements – like the anti-smoking and anti-meth kinds of commercials on the safety side. These ads were run for several years and had a significant impact.

Vicki Evans mentioned there is a grass roots group called Montana Tough which Don and Lance have been involved with, along with the safety consultant for MCCF. The purpose is to participate and listen to those industries and determine areas of interest or how we could support their efforts, as opposed to dictating what will happen.

It was also suggested incorporating parts of what we want to accomplish under state OSHA as a stand-alone state policy. Also advocate for more state funding for people to go out and do the initial work place evaluation. Is there something we can salvage and still push from the state side regarding the safety aspect?

Discussion included what role the state of Montana can play in private sector enforcement when it comes to federal OSHA and their jurisdictions. If the Department has information they can provide, it would be important to look at frequency and incident rates by industry. Also, look at those problematic industries in our state and make a push to say “your industry is a bad actor and this is how can we help”. The roofers have started a movement to do some self-monitoring amongst themselves and we could encourage other industries to do the same.

Eric advised the Department has the data and the ability to focus on specific areas of opportunity. Other discussion included IC’s being exempt from regulation. The MCCF along with the roofer’s association, have had frequent open dialogs with Dallas Cox and Amber Carpenter in the ICCU unit regarding educating contractors and the public about liability when there is an injury and moving up the food chain to find the employer with coverage.

Work Plan Development – Jason Swant

Jason presented slides of baseline information for most of the topics on the proposed work plan. These were rated based on the importance to each LMAC member and how likely the LMAC would find consensus on the issue. The members used their cell phone to text their responses. Discussion included whether a topic was informational or should be added to the work plan. Also, if the topic was informational, it may impact decision making on behalf of LMAC and opportunities for improvement down the road.

The topics and polling results are ranked of importance:

1. Cindy Zimmerman - Joint Petitions for 5-yr reopening (88% agreed important)
2. Jason Swant - MT Safety Culture Act (71% agreed important)
3. Cindy Zimmerman - SAW/RTW (63% agreed important)
4. Kristine Ediger - Cost Drivers and possible legislation (57% agreed important)
5. Jason Swant, Maggie Cook-Shimanek - Broader definition of prosthetics (50% agreed important and 50% fairly important)
6. Bill Wheeler - Medical Marijuana and Telemedicine (tied at 38% important)
7. Peter Van Nice - Corporate Officers wages (63% agreed fairly important)
8. Mike Marsh - Insurer/Employer Broker Communication (50% agreed fairly important)
9. Bill Wheeler - Subsequent Injury Fund (43% agreed fairly important)

The topics considered not important were treating physician definition and 90-day closure notice.

Other topics of interest were EDI, independent contractors, mandatory final SROI reporting, and the state’s average weekly wage. Eric advised the Governor issued an Executive Order creating a task force focused on wage integrity and misclassification in the construction industry, primarily focused on the classification of independent contractors. The first meeting will be July 10th from 9:00 to 11:00 with the location still to be determined. Eric will report back to LMAC on the progress of the task force. Al Smith would like to see wage loss benefits looked at and how the taxes of today affect these benefits. The Department will investigate where info for the average weekly wage can be found and how it is calculated, which could be a starting point for discussion.

Next Steps – Jason Swant

Bri will send the injured worker survey and Kristine will send the polling results to LMAC members. The next meeting is August 20, 2019 in Big Sky at the Governor's Conference. Department staff has taken care of conference registration and hotel reservations for LMAC members.