

**LABOR MANAGEMENT ADVISORY COUNCIL  
HELENA MONTANA  
November 26, 2019**

**Council Members:**

Lt. Governor, Mike Cooney  
Don Judge, Injured Workers Resource Council  
Lance Zanto, Workers' Comp. Management Bureau  
Al Smith, Montana Trial Lawyers Association  
Bridger Mahlum, Montana Chamber of Commerce  
Jim Larson, Teamsters Local 190  
Adam Haight, AFL-CIO  
Doug Buman, Laborer's Int'l Union of N America  
Vicki Evans, MT Contractors Comp Fund

**Via Skype:**

Mike Marsh, Midland Claims  
Carissa Stahley, ERD  
Ken Biskupiak, ERD  
Mike Bartow, ERD  
Mona Hylton, ERD

**Other Attendees:**

**DOLI:** Mark Cadwallader

**ERD:** Eric Strauss, Bill Wheeler, Doug Roope, Cindy Zimmerman, Maggie Cook-Shimanek, Kristine Ediger, Bri Lake, Jason Swant, Celeste Ackerman and Karen Wiles.

**Montana Municipal Interlocal Authority:** Ann Komac

**Montana State Fund:** Kevin Braun

**Clarus IME:** Jere Kolstad

Mike Marsh proxy for Annette Hoffman

**Welcome and Introductions**

The agenda and minutes from the October 17, 2019 meeting were approved.

There was a question regarding the term of LMAC which ends at the end of the year. The Lt. Governor will request LMAC be extended another year.

**SAW/RTW Reporting - Cindy Zimmerman**

The committee met on 10/29/19 with 2 LMAC members and representatives from all three plans. The committee is still looking for an LMAC labor member and IW attorney to join. Discussions centered around statutory requirements for the Dept and the Medical Status Form. It was mentioned providers may be reluctant to complete the form thinking there might be liability if the worker is re-injured. The next meeting is Thursday 12/5/19 at ERD, 2:00 p.m.

**Safety Culture Act - Eric Strauss**

The Survey Monkey template has been completed and the Dept received a distribution list from the Insurance Commissioner's office of 700+ producers, agents and insurers. The survey will be sent first part of December by email blast.

A group of 30 contractors formed a council called Montana Tough and are focused on safety issues in the construction industry. They have an agreement starting in 2020 for a minimum standard for Personal Protection Equipment at each job site in Montana. In addition, they also agreed to start sharing work place incidents with each other.

They also discussed a minimum standard of education for all workers on job sites. Not necessarily OSHA 10 but conceptually similar - like Montana 4. They are expecting to meet again, and Dick Anderson is taking the lead. The group will tour a job site in Bozeman and have a luncheon meeting after the tour. They have included the Department in their conversations and have invited Don Judge and Lance Zanto to their meetings.

#### **Employee Misclassification – Eric Strauss**

The task force has been looking at wage integrity and misclassification in the construction industry, including cash payments and whether contractors are appropriately classified. At the November 12, 2019, meeting Dave Smith with the Montana Contractor's Association and Bill Pierce with the Montana Building Industry Association presented their perspective of the issues to the council.

The Department has several recommendations including inspections of work environments, education and outreach, and ensuring hiring agents and workers know their responsibilities and what they are sacrificing when classified as an independent contractor. The Dept is recommending a statutory change to increase fines for inappropriate classification. The Dept wants to provide education in place of a fine for a first offense, however second and third offenses would have higher fines.

The second piece discussed was accountability of the hiring agents for misclassifying independent contractors, as there is currently no direct means to issue penalties. Eric will send out the document of the recommendations to LMAC.

The task force will meet in December and draft a report which will be sent to the Governor. The report will also be sent to LMAC and it was pointed out there may be an impact in premium as it relates to fines. This will end the task force for now.

#### **Prosthetics & 5yr Closure – Maggie Cook-Shimanek**

Bill Wheeler provided a preface to the presentation to describe the history of the current definition of prosthesis which was established by the Industrial Accident Board in 1973. Changes specifically regarding hearing aids and the Department's receipt of petitions to reopen medical benefits, has prompted the change in the definition of prosthesis.

The rule change will be filed on December 17, 2019 and published on December 27, 2019. A hearing is scheduled for January 24, 2020, and the comment period will close one week later.

Maggie provided a recap of the October 17, 2019 meeting and how defining prosthesis arose in the medical context of the 60-month petition process. She also discussed the proposed prosthesis language and a summary of other state's definitions, as well as the definition in Montana's Department of Public Health and Human Services.

A motion was made and seconded for LMAC to support the rule change, but after much discussion the committee vote to support failed.

### **NCCI Medical Data Report – Kristine Ediger**

Kristine provided an overview of the 2019 NCCI Medical Data Report. In Montana, medical accounts for 68% of total benefits, the average cost of medical per lost-time claim is \$35,000 and 59% of medical is paid during the first five years from the accident. She reported costs are higher in workers compensation due to utilization.

The Department has a list of questions and has submitted a data request to NCCI. LMAC can submit additional questions to Bill Wheeler by December 10 for consideration.

### **SROI Reporting on Medical Only Claims – Doug Roope**

Doug's presentation included the question of whether a SROI should be required for all medical only claims. Currently the Department receives SROI's on indemnity claims only in 6-month intervals until the claim is closed. Indemnity claims account for roughly 18% of claims per year.

80% of total medical costs paid are included in the current SROI reporting and 20% of total medical costs are attributed to the medical only claims. The Department receives an annual Medical Data Report from NCCI which includes reporting for medical only claims.

### **Medical Records for Joint Petitions – Jason Swant**

A vote is required by the committee regarding changing the requirements for medical records submitted with a joint petition for the 5-year re-opening process. To change the process, a statutory and/or rule change is required.

The current timeframe to process joint petitions is 38 days vs 52 days for regular petitions. In addition, there is a 14-day time frame to request the medical records. Changing the process would eliminate sending records to our service provider and the petition would go straight to the medical director, saving time and money.

A motion was made and seconded by LMAC to support a change by rule or legislation to eliminate the requirement of medical records be provided under the joint petition process. The motion passed unanimously. The Department will create draft proposals for both options.

### **Public Comment**

No public comment

### **Next Steps**

1. Provide a copy of the recommendations from the employee misclassification task force
2. Cindy will send out the SAW/RTW meeting information to LMAC
3. Come back with a draft proposal for the joint petitions
4. Schedule next meeting if the council is re-appointed

**Meeting adjourned**