

Minutes
Labor-Management Advisory Council
August 21, 2018
Big Sky, MT

Advisory Council members present:

Lt. Governor Mike Cooney
Al Smith, Montana - Trial Lawyers Association
Adam Haight – MT AFL-CIO
Vicki Evans – Montana Contractors Compensation Fund
Larry Jones - Montana Self-Insureds Association
Lance Zanto - Workers' Compensation Management Bureau
Don Judge - Injured Workers Resource Council
Jim Larson - Teamsters Local 190
Annette Hoffman - St. Vincent's Healthcare
Bill Dahlgren – Sun Mountain Sports

Project Core Team members present:

Eric Strauss, ERD Administer
Bill Wheeler, ERD Deputy Administrator
Mark Cadwallader, Department Legal Counsel
Jason Swant, Project Manager

Others present via Go to Meeting:

Bridger Mahlum – Montana Chamber

ERD

Karen Wiles, Bri Lake, Cindy Zimmerman, Peggy Coggeshall, Julia Brennan, Doug Roope, Ken Biskupiak, Celeste Ackerman, Peter VanNice and Adrienne McLean

Kevin Braun, Montana State Fund; Anne Komac and Amber Worman MMIA; Todd Johnson and Bruce Spencer NCCI; Matt Chambus Dept of Administration; Michael Marsh Midland Claims/Industrial Injury; Karen Allerdings Northwestern Energy and; Dick Martin FairClaim.

I. Welcome and Introductions

Lt. Governor Mike Cooney chaired the meeting and greeted those present.

II. Approval of Agenda and Minutes The agenda and the minutes from the August 21, 2018 and July 12 meetings were approved.

III. Drug Formulary Update – Bill Wheeler

Bill provided an update on the drug formulary with draft rules for definitions, applicability, update by reference (ODG), prior authorization, first fill, legacy claims, expedited dispute resolution and the integration of the draft rules with existing rules. Informal feedback on the rules is due by September 15, 2018, formal by December 31, 2018 and applicable April 1, 2019.

He also described the outreach plan to include timeline and venues; understanding the ODG formulary list; coordination with the Montana U & T Guidelines; administrative rules and how they impact different stakeholders; new claims and; legacy claims and transitioning treatment. He responded “yes” to the question if there will be monthly updates of the formulary.

It was noted the fact the drug must be medically appropriate is in the new rules.

Discussion included 3 days to respond to prior authorization as opposed to 14 days for medical authorizations which is currently in rule, and prior authorization is required if an “N” drug or not in the formulary list if the physicians prescribes 8 days after the date of injury.

Larry Jones commented, that in his opinion, the first fill is inconsistent with current statute of having to accept or deny a claim within 30 days and Sections 39-71-608 and 615. Bill responded “no” to his question if the department has considered the effects on Medicare Set Asides. Larry also expressed his concern that the medical director’s opinion in the expedited dispute resolution process can be considered evidence in the courts.

Other discussion involved notification letters to the medical providers and claimants on legacy claims.

IV. Safety Committee – Don Judge and Lance Zanto

Don advised a State of Washington representative presented the Washington plan at their last safety subcommittee meeting in July. The questions and answers on this presentation are in the July 12, 2018 minutes.

The draft legislative proposal of an act to provide for the Montana private sector occupational safety and health act was presented. New sections 2, 11, 12, 17, 18, 21 and 22 were reviewed.

Montana priorities will be directed toward accident and injuries such as in hospitals.

Discussion included working with additional states that are not a monopoly as Washington but have similar plans as Montana; getting feedback from employers; the draft allows a conversation with OSHA but is not a session bill and it may take two sessions; and the intention is to reduce accidents. There are only 7 OSHA employees in Billings and it is difficult for them to manage complaints. Don does not want to postpone any longer with the understanding just putting the foot in the door may not get OSHA approval but may by the next session. Adam will support a study bill but does not feel his membership is ready to support legislation by this upcoming session.

Eric responded to the question of an anticipated budget for FTE’s that currently there are 6 for the public sector and this would add 6. The department would need to add more hearing examiners

Lance advised a meeting was held with State Procurement on August 20, 2018. They are moving toward language for contract bidding. Once language for contracts is complete there will be a push for language in goods and services.

V. Economic Affairs Interim Committee – Eric Strauss

The EAIC met on July 9, 2018 with no direction from the committee. They voted for a committee bill that would allow the state to bid out its workers' compensation coverage to a private insurer, or self-insure, or continue with the Montana State Fund as its work comp insurer. The next meeting is scheduled for September 6, 2018 at which time the committee will hear the final reports and receive proposed legislation.

VI. Legislative

- **CEC Voluntary/Required – Jason Swant**

Jason provided the draft bill of “An act to require certification of workers’ compensation claims examiners” changing Section 39-71-320 by deleting the reference to voluntary; deleting (3) (e) and; adding (f) “a grace period of 12 months in which to take the examination, for all non-certified individuals who were working as a claims examiners as of January 1, 2019”. He responded “yes” to the question if this is separate from property and casualty.

- **Treating physician Admitting Privileges – Bill Wheeler**

Bill presented the “Act to revise the definition of treating physician for workers’ compensation purposes” which amends Section 39-71-116 to delete “and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located”. Bill stated it is not intended to bring in out of state doctors when questioned on this. They still need to be licensed in Montana and the relationship between doctors and hospitals have changed over the last 15 years with doctors removed from hospital settings.

VII. Injured Worker Survey – Bri Lake, Research Analyst

Due to time restraints, Bri will present this at the next LMAC meeting.

VIII. MT Worker Health Fatality Report – Julia Brennan, Epidemiologist

Julia’s presentation included statistics for transportation related incidents and fatalities; types of incidents resulting in fatalities; industries of construction, agriculture, forestry, fishing and hunting involved in fatalities and; older worker fatalities. Actions to prevent fatalities include the use of seat belts, driving for the road conditions, ATV safety and; distracted driving.

IX. Other Matters -

X. Public Comment

Kevin Braun with the Montana State Fund echoed Larry Jones’ concern with first fill of the Drug Formulary. His comments regarding CE certification is some examiners jump from job to job and he is concerned regarding out of state new hires and giving them time. He commented on amending 39-71-711 (2) (a) as it references a physician having hospital admitting privileges.

Bridger Mahlum with the Montana Chamber agreed to hold his comments regarding the Montana OSHA plan until the next LMAC meeting. He likes a lot of the bill however the chamber can't be on board yet with concerns regarding rule making authority.

XI. Next Steps -

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