

Minutes
Labor-Management Advisory Council
October 17, 2018
Employment Relations Division, Helena

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 via Skype
Bill Dahlgren – Sun Mountain Sports
Doug Buman, Laborers' International Union of North America

At 12:00 p.m Larry Jones became proxie for Annette Hoffman

Project Core Team members present:

Eric Strauss, ERD Administer
Mark Cadwallader, Department Legal Counsel
Jason Swant, Project Manager

Others present via Skype: Mike Bartow, Adrienne McLean, Tara Taylor, ERD
and attorney Tom Bulman

ERD: Karen Wiles, Bri Lake, Cindy Zimmerman, Peggy Coggeshall, Julia Brennan,
Emily Healy, Doug Roope, Ken Biskupiak, Kristine Ediger

Montana State Fund: Kevin Braun

I. Welcome and Introductions

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

II. Department Legislation – Eric Strauss

Eric advised there are two late editions to the department's proposed legislation. One is to amend 39-71-442 "Employer Option for Extraterritorial Coverage". Currently this statute sunsets June 30, 2019. The proposal is to eliminate the sunset provision as, although it is not utilized much, the Montana State Fund still gets a "handful". Mark Cadwallader outlined the relationship with North Dakota and he and Kevin Braun explained the need of this statute.

The second proposal is a requirement for insurers to notify injured workers 90 days before their medical benefits terminate 5 years from the date of their injury. Nothing specific has been drafted at this point. Comments included transient claims notification and what happens if notification is not provided.

III. Approval of Agenda and Minutes The agenda and the minutes from the August 21, 2018 meeting were approved. There was a comment that no “next steps” were included in the minutes. Next steps were included in the body of the minutes however, not outlined under a caption of Next Steps.

Eric Strauss advised the minutes from August 21, 2018 should have read “The EAIC met on July 9, 2018 with no direction from the committee. They voted to draft a bill for consideration that would allow the state to bid out its workers’ compensation coverage”.

IV. Legislative – Jason Swant

Jason recapped draft legislation regarding changing CE certification from voluntary to mandatory. He also provided updated statistics regarding the number of certifications. Discussion involved the burden of P & C licensing in conjunction with CE certification; language regarding examiners coming in from out of state missing in the draft language; newly hired or in-training adjusters; defining “process” and “function” in (3) (e) in the draft rules; the CE credit process requirements and conference crossover; PC licensing has penalty and mandatory CE has no teeth; comparison of the two statutes (33 & 39) to see how they can be aligned to make education easier. A motion to add language to establish a process by which a newly hired or in training claims examiner may perform specified claims functions prior to becoming certified. The council voted to put the proposed legislative change forward, 9 in favor and 2 not in favor.

Claims Examiner Certification							
Chairperson Lt. Cooney	Yes						
Labor		Yes	No	Management		Yes	No
Jim	Larson	X		Lance	Zanto	X	
Al	Smith	X		Larry	Jones		X
Doug	Buman	X		Bill	Dahlgren	X	
Adam	Haight	X		Annette	Hoffman		X
Don	Judge	X		Vicki	Evans	X	

Jason also presented draft legislation on treating physicians with the definition of treating physician in Montana and responses to outreach from hospitals regarding licensing and admitting privileges. Mark Cadwallader prepared an amendment to Section 39-71-711 (2) regarding reference to the admitting privileges language. A motion to adopt the amendment failed with 9 against and 1 for.

Treating Physician							
Chairperson Lt. Cooney							
Labor		Yes	No	Management		Yes	No
Jim	Larson		X	Lance	Zanto		X
Al	Smith		X	Larry	Jones		X
Doug	Buman		X	Bill	Dahlgren	X	
Adam	Haight		X	Annette	Hoffman		X
Don	Judge		X	Vicki	Evans		X

V. Safety Committee, Montana OSHA plan – Don Judge and Lance Zanto

Draft rules for the Montana private sector OSHA plan were presented. Several council members commented that language stating that the State of Montana cannot go above or below Federal OSHA standards of enforcement except for the subsection regarding the Montana Safety Culture Act needs to be added to address stakeholder group concerns. A motion to include this language passed. Discussion included the need of additional efforts for education opportunities and funding of the federal and regional offices and FTE's. A motion to move the proposed legislation forward passed with 9 for and 1 against.

Montana OSHA							
Chairperson Lt. Cooney	Yes						
Labor		Yes	No	Management		Yes	No
Jim	Larson	X		Lance	Zanto	X	
Al	Smith	X		Larry	Jones	X	
Doug	Buman	X		Bill	Dahlgren	X	
Adam	Haight		X	Annette	Hoffman	X	
Don	Judge	X		Vicki	Evans	X	

VI. Drug Formulary Update – Cindy Zimmerman

Cindy provided updated drug formulary rules outlining the changes from the August version. Changes include adding the definition of a claim; adding existing definitions from 24.29.1401A that apply to the formulary and U & T; cleaned up language for prior authorization and when prior authorization isn't needed; removal of the First Fill rule; addition of notification requirements for legacy claims and; removal of the word "business" from 14 days in new rule VI.

She also reviewed next steps providing dates toward implementation; public hearing on November 9th at the DPHHS Sanders building auditorium at 10 a.m., written comment period closes November 16th, rule filing December 11th, publish dates is December 21.

Discussion included late notice regarding legacy claims and claimants reverting to street drugs; the number of legacy claimants without legal representation and what recourses would be available; number of opportunities for claimants to seek rehab and what rehab resources would be accessible to them; clarification of New Rule IV (7) (a) (b) regarding 3 days from the date prescribed or receipt of claim and language of whether the claim is accepted or placed under 39-71-608 or 39-71-615; taking away 30 days to determine liability may pose constitutional issues; concern regarding the 5 year re-open – are legacy claims old enough?; what happens if the treating physician does not respond to the requirements of New Rule 5 (7)

Larry Jones stated a concern that the rule did not make clear when the three business days for prior authorization starts.

Al Smith, Don Judge, Doug Buman thought that there should be a part (f) added to new rule V (2) for the minimum requirements for the notification that include information about the appeal process for the injured worker.

Al Smith expressed concern about what happens to the injured worker if the treating physician does not respond to the requirement in V (7).

Al Smith and Doug Buman questioned if an insurer was required to pay for supportive services more than once. The keywords are "reasonable" and "medically necessary" and would/should be handled on a case-by-case basis

VII. Injured Worker Survey 60 Second Update – Bri Lake

Bri advised 3700 surveys were mailed on May 18, 2018 and the recipients were given 3 months to respond either by paper or online. Ninety percent responded by mail and 18% had incorrect addresses. She did receive the number of respondents needed with 370 or 10%. Analysis of the survey is in progress.

Other Matters

Eric advised of Bill Wheeler's addition to the Board of Directors to the International Association of Industrial Accident Boards and Commissions (IAIABC)

Next Steps

Labor Management Advisory Council comments for the drug formulary rules comment period. Department staff will summarize the council's questions and comments about the formulary and send to council members. Jim Larson & Lance Zanto will coordinate the council's response during the formulary rules comment period.

Comparison of title 33 insurance adjustor license and title 39 workers' compensation claims examiner certification.

DRAFT