

**LABOR MANAGEMENT ADVISORY COUNCIL  
HELENA MONTANA  
October17, 2019**

**Council Members:**

Mike Cooney, Lt. Governor  
Eric Strauss, Administrator ERD  
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

**Via Skype:**

Tara Taylor, ERD  
Mike Bartow, ERD  
Carissa Stahley, ERD  
Peggy Coggeshall, ERD  
Annette Hoffman, St. Vincent Healthcare  
Vicki Evans, MT Contractors Comp Fund

**Other Attendees:**

**DOLI:** Mark Cadwallader, Kathleen O'Leary

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

Mike Cooney acknowledged Deputy Administrator with the Dept. of Labor & Industry

Jim Larson was proxy for Doug Buman.

**Welcome and Introductions**

The agenda and minutes from the August 20, 2019, meeting was approved with the correction to the spelling of Bruce Spencer's name in the minutes.

**SAW/RTW Reporting - Cindy Zimmerman**

Cindy provided information on best practices from six states; Washington, Texas, Oregon, California, North Dakota, Ohio as well as Montana. She provided information specific to the Montana program outlining who can request assistance; possible assistance available and; Department provided SAW/RTW assistance. The SAW/RTW fund balance is approximately \$350,000.00.

Next, Cindy updated the committee regarding reporting requirements. Based on feedback from insurers and TPA's, they believe they are meeting reporting requirements as outlined in rule by using the RTW fields on the SROI report. However, the SROI reports do not provide the RTW detail needed to measure program effectiveness. SROI reporting is voluntary and does not indicate if the return to work employer is the time of injury employer or if the employer was unable to provide transitional employment. There are also issues related to full or partial release, or if there was a medical release but no return to work.

A request was made for one labor & one management LMAC member to sit on a subcommittee or be involved with the core team and additional stakeholders to review reporting requirements and determine potential opportunities for improvement. It was mentioned to include an IW representative as part of the stakeholder group. There is a meeting scheduled for the end of month and Cindy will send the meeting notice to LMAC members.

It was asked how other state's programs are funded and Mark stated Washington, Ohio and North Dakota are monopolistic states so funding for their programs would be built into their premium costs.

#### **Safety Culture Act - Eric Strauss**

- What are insurers are currently doing in terms of their participation in driving compliance with the MSCA.
- Eric presented a proposed survey for insurers to assess the steps/actions they would take to ensure compliance with the MSCA. The Department is working to find a way to include producers, brokers, and agents in the survey as well, as they are also involved in conversations with employers and have a role in driving compliance.
- Eric provided a draft introduction letter to be sent with the survey and asked for feedback and/or suggestions on the letter.
- Eric reported the Department has identified the top 10 work comp insurers by market share for inclusion in the survey and is working with the Insurance Commissioner to obtain WC brokers & agents for participation in the survey, as well. He explained the Department would probably send the survey electronically.
- Eric reported two primary pieces were pulled from the Act regarding producers & insurers working with their employers. He referenced 39-71-1506 MCA which is notification of safety consultation services available by insurer, and 39-71-1507 MCA which regards safety consultation services and the safety program as a provision of insurance contract or agreement.
- Potential Survey Questions 1) Are you aware of the above requirements; 2) In the last year how many employers have requested a safety consultation; 3) what is your mechanism for prioritizing these requests; 4) do your current contracts require the employer to implement a safety program and if so, how do you verify compliance and; 5) what is your company's method of recourse for your employers not in compliance. In addition, Eric requested feedback on other questions we should ask and how to approach these issues.
- Discussion included: MSCA applies to employers with 5 or more employees and differentiating for the purposes of the survey is not needed. The MSCA applies to all employers regardless of the number of employees and any employer can request a consultation. It was suggested that the Department has rule making authority and could by rule require insurers to report to confirm compliance. In addition, insurers could be asked to provide a copy of what is provided to employers and as a follow-up to question #3 of the survey, it may be appropriate to ask insurers if they have been unable to respond to a request from employers. The Department would like to send the survey the first part of November, depending on receiving the distribution list of participants. Bridger offered to assist with the distribution list of his members.

#### **Medical Records for Joint Petitions – Mark Cadwallader**

- Current statute under Section 39-71-717 MCA requires insurers to send medical records for joint petitions under the 5yr petition process.
- LMAC requested for the Department to look at streamlining this process with regards to insurers submitting medical records.

- It is proposed if the injured worker and insurer agree there is a need for medical benefits to continue beyond the 5-year closure (Joint Petition), there would be no need for the insurer to send medical records to the Department.
- Mark provided draft language to amend 39-71-717 MCA and stated the Department may, by rule, waive the requirement of the insurer to provide copies of the medical records when the insurer and injured worker agree to reopen medical benefits pursuant to a joint petition. This would give the Department the ability to waive the requirement to provide medical records when there is no dispute.
- If there is a dispute between either party at any future reopening, they would be required to send the medical records to the medical director for use when making a determination.
- Eric suggested the motion be delayed until the next LMAC meeting as it was not indicated on the agenda a decision would be made.
- More data requested from Department on # of Joint Petitions

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

- Dr. Maggie Cook-Shimanek presented on the prosthesis definition
- Discussed Wiard vs. Liberty Northwest and Mellinger vs. MSF
- Medical implications with respect to the 60-month petition process
- Draft language to amend 24.29.1407 ARM
- Discussion at next LMAC with decision making after

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

- In April of this year, the Governor issued an executive order focused on wage integrity and misclassification in the construction industry and a task force comprised of representatives from organized labor and construction was formed.
- Task Force started meeting in June 2019.
- They have already held a couple of meetings discussing the Department’s compliance efforts and what may be better in terms of compliance activities in the field.
- Proposed changes were discussed regarding interaction with the construction industry in the field and looking at independent contractor status as the next step. In addition, the Department has visited construction sites and discussed with individuals whether they have the independent contractor exemption.
- The next meeting is scheduled for Tuesday November 12, 2019, from 1:00p – 4:00p at ERD and it is hoped industry partners from the Montana Building Association and the Montana Contractors Association will attend and share their perspective and recommendations.

#### **WC Cost System Drivers – Average Weekly Wage – Bri Lake**

- AWW - Bri advised she has just started digging into this subject and a more appropriate title might be “The Relationship Between Pre-injury Wage and Benefit Adequacy.”
- Bri provided information on the average weekly wage to include: 1) gross wage vs. weekly benefit amount; 2) TTD benefits % of gross vs. net pay; 3) distribution of earnings; 4) average weekly wage by State; 5) cost of living vs. average weekly wage; 6) TTD benefit calculations; 7) distribution of injured workers by preinjury wage and; 8) industry/occupation variations

- Discussion included: A comment was made regarding reviewing legislation LMAC had introduced in 2011, as the committee had created a proposal regarding the state's average weekly wage and the percentage of benefits paid to an injured worker. The proposal was removed from the legislation passed in 2011, but Bri will look at the statistical data gathered from other states.
- Kristine stated in 2011 there was interest in increasing the percentage of the maximum, which is currently 100% of the state's average weekly wage. In addition, 18 of 50 states have a maximum of 100% of their state's average weekly wage, with Mississippi the lowest and Iowa the highest. LMAC had previously recommended increasing the percentage from 66 2/3% to 75% and then in another year or two, increase to 100% of the state's average weekly wage. The Department will find the original legislation proposed.
- Eric asked if additional information is needed on this issue and if the committee wanted to again propose changes for the next legislative session. Kristine mentioned the Department has all of this documented in terms of a mix of changing weeks and percentages, in addition to looking at the different options of changing the max benefit.
- Eric requested feedback on this presentation regarding whether this would be part of the work plan and it was decided to include. Lance stated we would need to know the tax-exempt status of what those wages would be if we were to move forward. Mike commented additional information would be helpful including by plan and overall system cost impacts involved with raising the TTD and PPD rates.

#### **Public Comment**

Lance Zanto advised the safety language for public sector contract is now in place.

#### **General Takeaways and Next Steps**

1. Include color hand-outs with larger font size in member packets
2. Ensure all meeting materials are posted to website before the meeting
3. All members are reminded to access the meeting via the Skype instructions on the agenda and website
4. What are the % for number and type (if possible) of injuries/diseases that might qualify under the proposed prosthesis definition
5. Continue with scheduled monthly meetings
6. Continue to work through the work plan and provide updates on items currently being discussed
7. Continue to bring additional cost driver information for consideration and input
8. Schedule November meeting

#### **Meeting adjourned**