

# MONTANA LMAC 7/30/2010 REFORM PROPOSAL

NCCI Analysis

Presented by: Mike Taylor  
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August 16, 2010

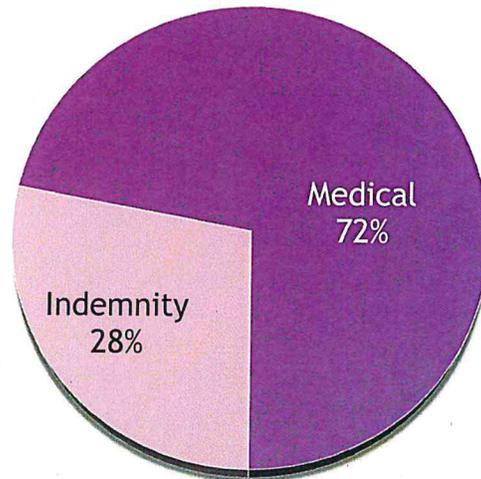
## Summary

- ⊙ The following sections would be expected to have an immediate, quantifiable impact

Section(s)	Description	\$ Impact	% Impact
1-13	Stay At Work Return to Work	-\$6M to -\$1M	-1.3% to -0.3%
16, 21, 25	Termination of Temporary Total Benefits	-\$5M to -\$1M	-1.1% to -0.3%
22-24	Attorney Fees	+\$1M to +\$2M	+0.2% to +0.5%
27	Permanent Partial Disability Awards	+\$4M to +\$19M	+0.9% to +4.2%
32	Introduction of Retroactive Period	+\$1M to +\$2M	+0.3% to +0.5%
	<b>Overall Cost Impact</b>	<b>-\$5M to +\$21M</b>	<b>-1.0% to +4.6%</b>

- ⊙ Medical fee schedules are adopted by rule. NCCI will estimate the cost impact of changes to the schedules when the rules become available, subject to data availability.
- ⊙ Other provisions may have either an unknown impact or no significant impact.
- ⊙ Cost impact for provisions effective in 2013 has not been estimated

# Distribution of Montana Indemnity/Medical Costs Expected for 2011



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## Sections 1-13: Stay at Work / Return to Work

- Current percentage of lost-time claims with Vocational Rehabilitation (VR) benefits 25% to 30%
- Estimated percentage of claims with SAW/RTW benefits 10% to 17%

	Low	High
Change in VR costs	-66%	-31%
Percent of VR Benefits to Total Indemnity Benefits	7.0%	4.0%
Impact to Indemnity Benefits	-4.6%	-1.2%
Percent of Indemnity Benefits to Total Benefits	28.0%	28.0%
<b>Impact on Montana WC system costs</b>	<b>-1.3%</b>	<b>-0.3%</b>

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## Sections 16, 21, 25:

### Termination of Temporary Total Benefits

- Terminate TTD benefits 21 days after maximum medical improvement (MMI), but not before permanent partial impairment rating has been issued
- Range of average termination assumed from 21 days to 6 weeks after MMI

	Low	High
Impact on TTD claims	-4.2%	-13.9%
TTD % of Indemnity Benefits	10.9%	
Indemnity % of Total Benefits	28.0%	
<i>Impact on Montana WC system costs</i>	<i>-0.1%</i>	<i>-0.4%</i>

	Low	High
Impact on PPD claims	-1.0%	-3.4%
PPD % of Indemnity Benefits	69.7%	
Indemnity % of Total Benefits	28.0%	
<i>Impact on Montana WC system costs</i>	<i>-0.2%</i>	<i>-0.7%</i>

- System savings from sections affecting termination of TTD benefits would be between 0.3% and 1.1%.

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## Sections 22-24:

### Attorney Fees

- Require attorney fees be additionally paid for denial or termination of medical benefits that are subsequently deemed compensable
- Estimates based on 50% (low) and 100% (high) of recent experience for attorney fees

	Low	High
Average claimant attorney fees FY 2005-07	\$726,796	\$1,453,592
<i>Impact on Montana WC system costs</i>	<i>+0.2%</i>	<i>+0.5%</i>

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## Section 27:

### Permanent Partial Impairment & Disability Awards

- Changes conditions under which injured worker receives impairment award and disability award
- Eliminates wage loss modifier
- Increases cap on weekly benefit from 50% to 75% of SAWW
- Results in an increase of roughly 30% on impairment awards
- Increase in proportion of claimants receiving disability award from 33% to possibly 55%

	Low	High
Impact on permanent partial (PP) awards	+7.7%	+37.3%
PP awards % of PP claim costs	57.5%	
PP claim costs % of Indemnity Benefits	69.7%	
Indemnity % of Total Benefits	28.0%	
<b>Impact on Montana WC system costs</b>	<b>+0.9%</b>	<b>4.2%</b>

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## Section 32:

### Introduction of Retroactive Date

- Introduces a 21-day retroactive period - injured worker is paid for the first 4 days of incapacity if total incapacity extends to 21 days or beyond
- Increases benefits paid and provides behavioral incentives for TTD claims

	Low	High
Impact on TTD claims	+4.0%	+10.3%
TTD % of Indemnity Benefits	10.9%	
Indemnity % of Total Benefits	28.0%	
<b>Impact on Montana WC system costs</b>	<b>+0.1%</b>	<b>+0.3%</b>

	Low	High
Impact on PPD claims	+0.9%	+0.9%
PPD % of Indemnity Benefits	69.7%	
Indemnity % of Total Benefits	28.0%	
<b>Impact on Montana WC system costs</b>	<b>+0.2%</b>	<b>+0.2%</b>

- System cost increase from introducing a retroactive period would be between 0.3% and 0.5%.

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# Section 28:

## Payment of Medical, Hospital, and Related Services

- ⊙ Medical fee schedules are adopted by rule
  - NCCI will estimate the immediate cost impact of changes to the schedules when the rules become available, subject to data availability.
- ⊙ Utilization & Treatment Guidelines (per DLI draft rule) adopt Colorado guidelines, supplemented by ACOEM guidelines
- ⊙ Savings from Utilization & Treatment Guidelines will depend on
  - Implementation - transition to mandatory use
  - Interpretation of presumption of correctness
  - Extent of reliance by physicians
  - Extent of use by insurers & employers
  - How current practice compares to the guidelines
- ⊙ Savings from Utilization & Treatment Guidelines will evolve over time, and be reflected in subsequent experience and filings

## Other Sections

- ⊙ The following sections would have a cost impact that is unknown or not quantifiable

Section(s)	Description
14	Claim closure
17 & 19	Definition of course and scope
20	Timing of insurer decisions to accept or deny a claim
28	Medical Services Maximums, Utilization and Treatment Guidelines
30	Require 5 <sup>th</sup> Edition of America Medical Association Guide to Impairment Ratings
34 & 38	Settlements

- ⊙ The following sections are administrative in nature, or deemed to have a minimal cost impact: 15, 18, 26, 29, 31, 33, 35-37, and 39-42.
- ⊙ Any impact on system costs from all these sections would be realized in future loss experience and reflected in subsequent Montana loss cost filings.
- ⊙ Cost impact for provisions effective in 2013 has not been estimated



October 27, 2014

TO: LMAC Members  
FROM: Diana Ferriter  
RE: HB87 Provisions – Not included in HB334

As you requested, we're providing you with the provisions in HB87 from 2011 that were not addressed in some manner in HB334:

**Increase maximum weekly PPD rates to 75% of SAWW (now at 50%) and then increase to 100% of SAWW.**

*(6) (a) ~~The~~ For the dates from July 1, 2011, through June 30, 2013, the weekly benefit rate for an impairment award or a permanent partial disability award is 66 2/3% of the wages received at the time of injury, but the rate may not exceed ~~one-half~~ 75% the state's average weekly wage.*

*(b) Beginning July 1, 2013, the weekly benefit rate for an impairment award or a permanent partial disability award is 66 2/3% of the wages received at the time of injury, but the rate may not exceed the state's average weekly wage.*

**Address payment of attorney fees in medical only disputes.**

**Section 9.** Section 39-71-611, MCA, is amended to read:

**"39-71-611. Costs and attorney fees payable on denial of claim or termination of benefits later found compensable -- barring of attorney fees under common fund and other doctrines.** (1) ~~The~~ For benefits other than medical benefits, the insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

*(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;*

*(b) the claim is later adjudged compensable by the workers' compensation court; and*

*(c) in the case of attorney fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.*

*(2) A finding of unreasonableness against an insurer made under ~~this section~~ subsection (1) does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.*

(3) For medical benefits, the insurer shall pay reasonable costs and attorney fees if the insurer denies liability for a claim for medical benefits or terminates medical benefits and the medical benefits are later adjudged compensable by the workers' compensation court.

(4) The fees under subsection (3) must be calculated using the attorney's contract of employment filed and approved by the department under 39-71-613.

(5) An insurer may not seek reimbursement or contribution from a health care provider for any costs or fees awarded pursuant to this section.

~~(3)~~(6) Attorney fees may be awarded only under the provisions of subsections (1) and (3) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.

(7) For the purposes of subsection (3), "medical benefits" means those benefits furnished pursuant to 39-71-704."

**Section 10.** Section 39-71-612, MCA, is amended to read:

**"39-71-612. Costs and attorney fees that may be assessed against insurer by workers' compensation judge -- barring of attorney fees under common fund or other doctrines.** (1) If an insurer pays or submits a written offer of payment of compensation under this chapter but controversy relates to the amount of compensation due, if the case is brought before the workers' compensation judge for adjudication of the controversy, and if the award granted by the judge is greater than the amount paid or offered by the insurer, reasonable attorney fees and costs as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) ~~An~~ Except as provided in subsection (4), an award of attorney fees under subsection (1) may be made only if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under ~~this section~~ subsection (2) does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(4) (a) For medical benefits, the insurer shall pay reasonable costs and attorney fees as established and ordered by the workers' compensation court if:

(i) the insurer pays or submits a written offer of payment of medical benefits under Title 39, chapter 71, but there is controversy related to the amount of benefits due. A written offer of payment made 30 days or

more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(ii) the case is brought before the workers' compensation judge for adjudication of the controversy; and

(iii) the award granted by the judge is greater than the amount paid or offered by the insurer.

(b) If the insurer denies liability for a claim for medical benefits or terminates medical benefits and the insurer subsequently accepts or settles the claim for medical benefits less than 30 days before the date of hearing, the insurer shall pay reasonable costs and attorney fees.

(5) The fees under subsection (4) must be calculated using the attorney's contract of employment filed and approved by the department under 39-71-613.

(6) An insurer may not seek reimbursement or contribution from a health care provider for any costs or fees awarded pursuant to this section.

(4)(7) Attorney fees may be awarded only under the provisions of subsections (1) and (2) and (4) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.

(8) For the purposes of subsection (4), "medical benefits" means those benefits furnished pursuant to 39-71-704."

**Section 11.** Section 39-71-614, MCA, is amended to read:

**"39-71-614. Calculation of attorney fees -- limitation.** (1) The amount of an attorney's fee assessed against an insurer under 39-71-611 or 39-71-612, when the actions of the insurer were unreasonable, must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought to hearing. The attorney must document the time spent, but the judge is not bound by the documentation submitted. The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, subject to a maximum established by the department.

(2) The judge shall determine a reasonable attorney fee and assess costs. The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, subject to a maximum established by the department. The amount of attorney fees assessed against an insurer under 39-71-611 or 39-71-612 for payment of medical benefits when the actions of the insurer were not determined to be unreasonable must be based exclusively on the fee agreement approved by the department under 39-71-613.

(3) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments

received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement."

**Reduce time frame for insurers' acceptance of a claim to 21 days from 30 days.**

**Section 7.** Section 39-71-606, MCA, is amended to read:

**"39-71-606. Insurer to accept or deny Acceptance or denial of claim within thirty days of receipt -- notice of benefits and entitlements to claimants -- notice of denial -- notice of reopening -- notice to employer.** (1) Each insurer under any plan for the payment of workers' compensation benefits shall, within ~~30~~ 21 days of receipt of a claim for compensation signed by the claimant or the claimant's representative, either accept or deny the claim and, if denied, shall inform the claimant and the department in writing of the denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

(4) Upon the request of an employer that it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

(5) Failure of an insurer to comply with the time limitations required in this section does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-608 or this section may be assessed a penalty under 39-71-2907 if a claim is determined to be compensable by the workers' compensation court."

**Increase auxiliary benefits each year based on increase in SAWW.**

**Section 32.** Section 39-71-1025, MCA, is amended to read:

**"39-71-1025. Auxiliary ~~rehabilitation~~ benefits.** (1) In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of \$4,000, adjusted as provided in subsection (2), may be paid by the insurer for specialized job modification, reasonable travel, and relocation expenses used ~~to~~ for any of the following:

~~(1)(a)~~ a search for new employment;

~~(2)(b)~~ a return to work but in a new location;

~~(3)(c)~~ implement a rehabilitation ~~the implementation of a stay-at-work/return-to-work plan or a retraining plan that has been filed with the department;~~ ~~and~~ or

~~(4)(d)~~ attend attendance at an on-the-job training program.

(2) The separate benefit may be adjusted by an amount that is the percentage increase, if any, in the state's average weekly wage over the state's average weekly wage adopted for the previous year."

HOUSE BILL 87  
KEY ELEMENTS IN CONSENSUS COMPREHENSIVE PACKAGE  
RECOMMENDED TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE  
BY THE LABOR-MANAGEMENT ADVISORY COUNCIL ON WORKER' COMPENSATION  
REVISED FOR 1/21/2011 HEARING

PROVISIONS REQUIRING LEGISLATIVE CHANGES

**Statutory closure of claims after 3 years with limited reopening provision**

Section 1 (pgs. 1-2) and Section 3 (pg. 6 – Def. of Indemnity Benefits)

**Course and scope language on breaks and recreational activities**

Section 4 (pgs. 9-14) and Section 6 (pgs. 15-17)

**Set a 21-day time frame for insurer to accept or deny a claim**

Section 7 (pgs. 17-18)

**Limited payment of attorney fees in medical only disputes**

Section 9, 10, and 11 (pgs. 19-22)

**Set medical fee schedule 165% of Medicare**

Section 15 (pgs. 27-31)

**Require adoption of utilization and treatment guidelines for treatment of injured workers**

Section 15 (pgs. 27-31)

**Codify the use of the 5<sup>th</sup> Edition of the AMA Guides to Impairment Ratings**

Section 17 (pg. 32)

**Clarify “actual wage loss” for temporary partial disability benefits - housekeeping**

Section 18 (pgs. 32-34)

**Renumbering due to other changes**

Section 19 (pgs. 34-35) and Section 20 (pg. 35)

**Provide retroactive payments for waiting period after 21 days of disability**

Section 21 (pgs. 35-36)

**Implement early Stay at Work/Return to Work program**

**Provide for Return to Work Assistance upon request of claimant**

Section 22 (pg. 36)

Section 25 (pgs. 39-40)

Sections 26 (pgs. 40-41)

Section 28 (pgs. 41-43)

Section 30 (pgs. 44-45)

Section 32 (pg. 47)

Section 33 (pgs. 47-48)

Section 34 (pg. 48)

Section 35 (pgs. 48-49)

Section 36 (pgs. 49-51)

Section 37 (pg. 51)

Section 39 (pg. 51)

Some amendments are needed to coordinate saw/rtw with current voc rehab

**Allow settlement of future medical benefits**

Section 23 (pgs. 36-39)

OTHER RECOMMENDATIONS

**Continue support for WorkSafeMT Foundation to reduce frequency and duration**

**Provide long term private and public funding to support WorkSafeMT efforts**

LMAC DECISION TO REVERT TO CURRENT TTD, PPD, PTD, AND VOC REHAB DUE TO PPD ADEQUACY STUDY

**End TTD benefits at maximum healing & impairment rating**

**Begin PPD wage loss payment based on whether or not employee is back to work at full wage**

**Remove need for employability assessment to determine PPD wage loss payments**

**Use impairment rating as a component for calculation of future wage loss payments**

**Use employability assessment for determinations of requests for permanent total disability benefits**

**Increase maximum weekly PPD rates to 75% of SAWW (now at 50%)**

**Effective 7/1/2013 increase maximum weekly PPD rates to 100% of SAWW**

**Effective 7/1/2013 increase # of weeks for PPD benefits to 400 (now at 375)**

Section 2 (pgs. 3-4)

Section 3 (pg. 4 and pg. 7) Leave in current definition of actual wage loss and delete change to definition of PPD

Section 5 (pgs. 14-15)

Section 8 (pgs. 18-19)

Sections 12, 13, and 14 (pgs. 22-27)

Section 16 (pg. 31)

Section 24 (pg. 39)

Section 25 (pgs. 39 – 40) Leave in current definition of disabled worker, rehabilitation benefits, rehabilitation plan, rehabilitation provider and rehabilitation services

Section 27 (pg. 41)

Section 29 (pgs. 43-44)

Section 31 (pgs. 45-47)

Section 38 (pg. 51)

## HB 334 – REVISING WORKERS’ COMPENSATION LAWS- MAJOR COMPONENTS

Prepared by the Employment Relations Division

April 12, 2011

### STATE AGENCY/STATE FUND PREMIUM (Section 7-39-71-403–Page 18, Section 27–39-71-2361–Pages 45-46) Passage and approval:

- Any reduction in a state agency’s premium compared to a previous year must also reduce the appropriation and the difference must be returned to the original funding source.
- Requires the insurance commissioner to perform an annual review of the State Fund’s audit and rates and provide a report and recommendations.

### COURSE & SCOPE (Section 8–39-71-407–Pages 20-21) 7/1/2011:

- Limits the employer’s liability for injuries occurring off the employer’s premises while performing personal business on a break or while engaged in a social or recreational activity paid by the employer.

### IMPAIRMENT RATINGS & PPD AWARDS (Section 9–39-71-703–Pages 23-25 and Section 11-39-71-711–Pages 30-31):

- Requires doctors to use the 6<sup>th</sup> Edition of the AMA Guides to Evaluation of Permanent Impairment for determining an impairment rating. **Retroactive to 1/1/2008.**
- Awards a permanent partial disability (PPD) payment only to injured workers who suffer a whole person impairment rating greater than zero **and** a wage loss **or** to injured workers with a Class 2 or greater impairment rating converted to a whole person **and** no wage loss. **Injuries/ODs on or after 7/1/2011.**
- Increases the number of weeks included in the calculation of the award from 375 to 400 weeks. **Injuries/ODs on or after 7/1/2011.**

### MEDICAL BENEFITS & TERMINATION/REOPENING (Section 10–39-71-704–Pages 25-30 and Section 29–New–Pages 46-48):

- Terminates medical benefits on permanent partial claims 60 months from the date of injury or occupational disease (OD) and provides for reopening of terminated medical benefits within 5 years of termination through a request to and recommendation from the Department’s Medical Director plus two other physicians chosen by the Department to review the request. **Injuries/ODs on or after 7/1/2011.**
- Payments for medical services are based on the fee schedule **in effect on the date of service.**
- **From 7/1/2011 through 6/30/2013**, medical fee schedules are frozen at the rates in effect on **December 31, 2010.**
- The Department must adopt Utilization and Treatment Guidelines that establish compensable medical treatment for injured workers and shall review the Guidelines each year in consultation with health care providers. **Injuries/ODs on or after 7/1/2011.**
- The Department must hire a Medical Director and may establish by rule an independent review of treatments denied by insurers. **Injuries/ODs on or after 7/1/2011.**

### WAITING PERIOD (Section 13–39-71-736–Page 32) 7/1/2011:

- Provides retroactive payment of the waiting period if disability exceeds 21 days.

### SETTLEMENT OF MEDICAL BENEFITS (Section 14–39-71-741–Pages 32-34):

- Provides for mutual agreement to settle future medical benefits on accepted claims. Requires rationale for settlement, statement of best interest of parties, and signed acknowledgment of worker. **Retroactive to claims for Injuries/ODs not yet settled.**

### STAY-AT-WORK/RETURN-TO-WORK (Sections 15-23 and 30–New and Amended Sections –Pages 34-42 and 48) 7/1/2012:

- Provides for early Stay-At-Work/Return-To-Work assistance from the Department or Insurer and provides an assessment to fund Department assistance.

### CHOICE OF TREATING PHYSICIAN (Sections 24-26 and 28–39-71-1101, 39-71-1102, 39-71-1106–New–Pages 42-46) 7/1/2011:

- Allows injured worker to choose initial health care provider and allows insurer to approve workers’ choice as treating physician or designate a different treating physician to manage and coordinate medical treatment.
- Clarifies insurer referrals to MCOs or PPOs.
- Details treating physician requirements and explains fee schedule reimbursement rates for medical treatment.