

Minutes
Labor-Management Advisory Council
November 14, 2018
Employment Relations Division, Helena

Advisory Council members present:

Lt. Governor Mike Cooney
Al Smith, Montana - Trial Lawyers Association
Vicki Evans – Montana Contractors Compensation Fund
Larry Jones - Montana Self-Insureds Association
Lance Zanto - Workers' Compensation Management Bureau
Don Judge - Injured Workers Resource Council
Doug Buman, Laborers' International Union of North America

Project Core Team members present:

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

Others present via Skype: Mike Bartow, Nikki Hartman, Bri Lake, Tera Taylor, Peggy Coggeshall ERD. Mike Marsh Midland Claims/Industrial Injury Claims. Attorney Spencer Bradford and Monica Sanchez with Health Systems

ERD: Karen Wiles, Cindy Zimmerman, Emily Healy, Doug Roope, Ken Biskupiak, Kristine Ediger, and Peter VanNice

Montana State Fund: Kevin Braun
MMIA: Tom Daunhauer
MSGIA: Kevin Bartsch
Montana Motor Carriers: Spook Stang

I. Welcome and Introductions

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

II. Minutes from the October 17,2018 meeting were approved. An addition to the agenda was Peggy Coggeshall. Lance Zanto was proxy to Bill Dahlgren; Don Judge to Jim Larson and; Vicki Evans to Annette Hoffman.

III. Department Legislation – CEC Voluntary / Required - Jason Swant

Jason's presentation included information regarding the differences between Title 33 Insurance Adjuster License and Title 39 Claims Examiner Certification. The information included the definition of an Insurance Adjuster under 33-17-102 and Claims Examiner under 39-71-116; the definition of an adjuster license and the description of claims examiner certification; adjuster license qualifications; adjuster license examination content; adjuster license/claims examiner certification costs and continuing education requirements.

Discussion:

- The department's role in the claims examiner certification process how CE hours are tracked, the renewal process and the grace period; the 24-hour CE are attainable within the 2-year period with the current level of credits available and attendance at the Governor's Conference. Additional opportunities include department's annual stakeholder meetings, ABC clinics, Safety Fest, increase in the number of presenters at the Governor's Conference and the department's medical conference.
- The bill agreed upon doesn't include any exemption for the adjuster in lieu of the examiner. We put the bill out and if the licensing adjusting community wants the consideration for that then that can happen either through the legislative and/or rule making processes. Through the rulemaking process the department has the ability to recognize the coursework that is also recognized by the insurance commissioner when it is subject appropriate so you could have dual credit in that situation so where something under the adjuster license has relevance to worker's compensation you could apply for dual recognition and that is something the department can do currently.
- Whether or not there is a need to display a license.
- Application of a grandfather clause to mandatory certification.

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IV. Safety Committee – Montana OSHA Plan – Don Judge and Lance Zanto

Lance reached out to Mike Manion, Chief Counsel for the Department of Administration, who met with the group with Lt. Governor and Eric and several interested folks. He is working on the language and will be finalizing it.

Don stated he has looked at the bill draft request for the upcoming legislature regarding general revision of worker's compensation. He has reached out to the building trade to see if we can get them to make an influence and the AFL to come on board with this and he encouraged others to reach out. Lance suggested they reach out with a Safety Committee meeting consisting of a statement LMAC is moving forward and try to get their involvement.

Jason had put together the legislative bill draft and explained that it is only what he found under the work comp search heading, so he is not sure if the OSHA proposal as gone so far that we would find it at this point.

Don Judge suggested they do the Safety Meeting as a full LMAC meeting and avoid bringing people back to two meetings.

Eric Strauss commented we would add to that the 90-day notice of medical benefit termination and extra-territorial coverage

Lance questioned if that would also be the time they set up a plan for meetings during the legislative session. Eric stated we would also discuss re-appointment of LMAC. He also stated a revised copy of the MT-OSHA handout which was provided at the last meeting that will address some of the other questions, will be emailed within the next couple weeks.

Don questioned if they had heard anything further from the grain miller's operations since we had taken their issues and said it is not going to impact them as they initially thought. Eric advised that yes, they had the one safety subcommittee meeting with Krista Evans and John Youngberg. Their questions seemed to be mostly addressed but they have not had another meeting to follow back up with them, so outreach needs to be made to them for the next meeting. They will be included in the outreach to be invited to the next LMAC meeting.

V. Department Legislation – Eric Strauss **Employer Option for Extra Territorial Coverage** **90 Day Notice**

During the last meeting it was discussed removal of the sunset language for those Montana employers who have employees working 100% in North Dakota to exempt that payroll from premium calculations which passed in 2015 with a sunset date of 2019 and it was recommended we remove the sunset date. Vicki commented she has become aware of difficulties with the State of Washington. Apparently if you are working in Washington and get hurt in Washington, you must be treated in Washington even if you are a Montana resident. Doug Buman did not know this was an issue and it was suggested there be open dialogue to make sure there is no misunderstanding. Vicki advised that in this scenario Montana State Fund was the carrier and ended up picking up the claim as a Montana State resident.

Also discussed at the last meeting a potential change to the legislation regarding the 90-day notification. Eric advised that about a quarter of the reopening petitions happened before the actual closure of the medical benefits and three quarters of them happen after the medical benefits have been closed. There might be some value in ensuring they have some notice prior to the closure so they can follow up on any remedies that are available to them for reopening of those medical benefits prior to the closure occurring. So, we asked insurers for any person receiving medical benefits in the last 12 months to be alerted their medical benefits will be closing and giving them notice of any potential remedies available to them. Don pointed out the draft shows 90 – 120 days.

Discussion:

- Intent of the legislation to continue the insurer's liability if it doesn't comply with statute
- Where the 12-month figure came from
- What happens if the notification comes back in the mail undeliverable
- Potential cost drivers for the insurer
- There is still a 5-year window to request re-opening
- The claimant's accountability to manage their affairs
- The intent of the legislation came from stakeholders
- Putting language in the benefit pamphlet
- How notification would be provided. In an MMI letter for example?
- Statistics are provided on page 87 of the annual report
- Provide a definition for medical benefits. Request for treatment? Pre-authorization for treatment?

VI. Drug Formulary Rules Hearing Update – Bill Wheeler

The hearing on the drug formulary was on November 9, 2018. There was 3 including Bill who spoke in favor of the drug formula rules and one who presented neither in favor nor opposed. Comments are due by November 16 which is this Friday at 5:00 p.m. We have received 5 written comments already including LMAC's written comments that were received by the department. The 5 written comments were from interested stakeholders, all in favor of the drug formulary rules. Our next working group meeting is going to be November 29th. Our plan is to continue to move and have the rules effective by year end so December 31st or January 1st. We have been keeping track of all our drug formulary outreach since we started the working group late in 2016. Including our ABC trainings, Safety Fest, LMAC, the Governor's Conference, and then our Spring stakeholder meetings, we have actually had 50 different opportunities where we have been in front of people talking about our drug formulary and we keep attendance at those know a lot of them are common attendees but we've had 1200 people essentially hear information that this drug formulary is coming. Moving forward in the next 30 days, Bill and our Medical Director Maggie Cook-Shimanek are going to be speaking for the 2nd time to the Montana Medical Association legislative committee on November 20th. We

have a webinar that ODG is sponsoring, and it is going to go out to their list nationally, and we are also sending it out to our big list that we have at ERD. ODG is going to have a presentation where they talk about utilizing the ODG formulary list. Maggie is going to talk about the coordination between the ODG formulary list and the Utilization and Treatment Guidelines. Bill is going to give the speech that is a little bit about the opioid crisis, how we got to where we are at today and the formulary rules. We have Dr. Greg Holzman with DPHHS who will be speaking about weaning and treatment plans for legacy claims. This will be on December 7th. The Montana State Fund has let us tag into several of their outreach plans they are doing. On December 12th, they are doing a webinar for eastern Montana stakeholders and we will be tagging in on that. We have an article that is going into the Montana Medical Association monthly newsletter that's going to the MMA's newsletter December 16. We are doing another lunch and learn with the Montana State Fund in Great Falls on the 18th and then on the 19th of December, we have that same article going into the Pharmacy Association's newsletter.

VII. Firefighters in Montana: Health & Safety Issues Report – Emily Healy

Emily advised this presentation was originally put together by Julia Brennan. The new report was just published and is on the website.

The report started because of a presumptive coverage bill for firefighters in the last session. She presented a map of the United States showing states that currently have coverage. She outlined what was expected and what was found. What was expected was lung issues and lung cancer but what was found was back sprains, a lot of back issues, mostly among emergency services workers who are categorized as firefighters when the data was pulled. The described data sources for the report came from workers' compensation claims, Bureau of Labor Statistics and death certificates. Some of the major takeaways from the data are 22% of all workers' compensation claims are from firefighters; August, May and July are the months with the highest percentage of firefighters claims; back strains was the most common specific injury at 9% from EMS services and firefighters age 35-44; top cancers diagnosed in firefighters in Montana were prostate, lung and bronchus but the most frequent cancers in firefighters were also among the top cancers for all men in all other occupations and; there were 5 deaths among firefighters in Montana from 2007-2017 which included a plane crash, helicopter crash, truck collision and 2 events involving being struck by trees falling.

Emily provided graphs of the workers' compensation claims data consisting of the total number of claims, wage loss and non-wage loss, filed by year of injury in Montana for 2007- 2017. The percentage of wage loss claims range from 11% to 27%; Percent of firefighter claims by assigned service type consisting of other services, emergency/EMS, structural firefighting, wildland firefighting, exercise/training and missing information. Percent of firefighter claims by employer based on hire date; percent of firefighters claims by age group; count of firefighter claims by assigned service type by month in Montana 2016-2017; top 5 natures of injury, percent of all firefighters claims Montana 2007-2017; top 5 body parts, percent of all firefighters claims Montana 2007-2017; top 5 causes of injury, percent of all firefighters claims Montana 2007-2017; injury spotlight,

back strains from lifting; back strains from lifting by age group all firefighters 2007-2017.

Other data sources are OSHA recordable injuries, Bureau of Labor Statistics Survey of Occupational Injuries & Illnesses. Emily advised the workers' compensation claims, 11% of the claims were from private employers, 88% were public and 1% state employees. Additional graphs included top 5 cancers for firefighters compared to other occupations in Montana 2011-2015. On July 9, 2017 President Trump signed the National Cancer Registry for firefighters, so it is optional people can report cancers to the registry. Emily also provided the resources for firefighters to look at to improve their safety; ergonomics, exposure to harmful substances, wildland firefighting, and other health and safety resources.

In response to a question, Emily advised the report has been sent to some local contacts, to DNRC, and a lobbyist for the presumptive coverage bill for 2017 for him to disseminate. She asked if anyone know of an association she could send the report to. It was suggested the Montana Firefighters Association, the association for volunteers, private companies who fight wildland fires and the tribes.

Discussion:

- Estimate of the percentage of firefighters for whom workers' compensation coverage exists which would include all paid firefighters and volunteer firefighters compared to the total population of all firefighters in the State
- The data is from the cancer registry and is not work comp data
- The purpose of the report presentation to LMAC
- The purpose of the NIOSH grant.

VIII. Other Matters – Peggy Coggeshall

Peggy advised the SOII press release went out November 14, 2018. It is on our ERD web page under the OSHS program, and the whole publication is out there. Our 2016 rate was 4.2, our 2017 rate was 4.3 for injuries of full time workers. There is statistical significant testing on the incident rates. What that does is it takes the rate, the standard error and figure out the differences where there is a significant difference between the 2 years. When running all the incident rates for this year there were 2 industries that had significant changes and those were the arts, entertainment and recreation industry and real estate, rental and leasing industry. We will look at those 2 industries and see if we can find the reason for this. She advised the statistical significant testing that comes into play because she ran them all through our testing spreadsheet and there was not a statically significant difference and that's not a clear thing. She and Kristine are working on a "statement" to clarify what that means. Basically, we had the number 10 and that represented the number of employees recovering in the State. We take injuries plus hours worked to come up with our injury rate. Last year if they had 6 in the injuries column and 4 in the employer's column and came up with 10. This year they have 7 in the injuries column and 3 in the employer's column, and still come up with 10.

Discussion:

- Mailings are taken from the list of unemployment insurance tax files, so the data is Montana specific data from employers who are registered with Montana UI tax
- Suggestions to improve the website.
- The occupations correlate with the NAICS codes

IX. Public Comment:

Comment from Mike Marsh: “We are against any mandatory notice of the running of the mandatory 5-year closure. It creates a large unfunded mandated process, that is honestly, unnecessary. A quick report of our statistics shows that 11,402 reported claims from 2011 to 2018 YTD we have had 7 requests for medical reopening. Creating a type of mandatory pre-notification is costly and at least in our experience, entirely unnecessary.”

Comment from Mike Marsh: “The insurance department already has in place a process for dual licensure tracking for producers and adjusters. The original proposal that was made in 2007 a CE reciprocity between ERD and DOI...acceptable CE for one could apply for both for those that have an adjuster and WC examiner certification. Display of licensure is not necessary in WC now, a majority of private (non State Fund) work from home now. Allowing for a grandfather application for existing adjusters or WC examiners is good...not automatic...application process.”

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Comment from Mike Marsh: Notice or lack of notice will not likely create benefits. The figures I am talking about (referenced by Mr. Judge) are those dates of loss that are impacted by the “hard closure” law. Which isn’t a hard closure.... those that apply and go through the process have their remedy and the Medical Director has shown fairness for reopening medical. The time frame is not helpful on the claims side, as notice will still need to be created and mailed long after claims being closed.