

Minutes  
**Labor-Management Advisory Council**  
June 25, 2009  
10:00 am, Colonial Hotel, Helena

**Advisory Council members present:** Lt. Governor John Bohlinger, Bill Dahlgren, Annette Hoffman, Don Judge, Jason Miller, Doug Buman, Bob Worthington, Riley Johnson, Jacquie Helt, Jerry Keck

**I. Welcoming & Opening Remarks**

Lt. Governor John Bohlinger opened the meeting by thanking those in attendance for coming. He had members of the advisory council and the audience introduce themselves.

**II. LMAC Executive Summary, 2006-present**

Jerry Keck presented a summary of the workers' compensation study project and the work of the LMAC to date. The presentation was a run through to get input from the Council in preparation for his presentation to the Economic Affairs Interim Committee on July 8th.

Jason asked since 90% of the businesses in Montana have fewer than 20 employees, is there a correlation, are 90% of the injuries occurring with these small businesses? Diana offered to see if she can answer the question using UI data, since workers' compensation data does not capture the size of the employer. Bill suggested that the presentation include a request for legislative and funding support for the WorkSafeMT efforts. Riley referenced page 19 of the report and asked that it be pointed out that WorkSafeMT is a public/private partnership and not a governmental operation. Don suggested that the full presentation be posted on the website.

**III. WorkSafeMT Status Report**

Carl Kochman provided an update on the WorkSafeMT activities. He first asked Judy Bovington to discuss what occurred with the approval of the strategic plan at the last LMAC meeting. Judy explained that the meeting originally had a quorum of members participating in person and on the phone. When callers started dropping off of the conference call the council no longer had a quorum. A minimum of three labor and three management representatives are needed to maintain the quorum. Even though the members were giving their proxy as they left the call, you still need this minimum number of representatives to hold a vote. Also, she had advised during the meeting that she thought the vote could be taken electronically, but Vivian Hammill (DLI Chief Legal) said that is not allowed by statute. She then asked that a vote be taken on the approval process (which essentially gives WorkSafeMT the ability to do any of the work contained in the strategic plan without coming back to the LMAC for approval) and the strategic plan developed by WorkSafeMT. Don moved that the approval process drafted by WorkSafeMT be approved. The motion was seconded by Bob and passed unanimously (Danny Lee and Connie Welsh voting yes by proxy). Don then moved that the strategic plan be adopted. The motion was seconded by Bob and passed unanimously (Danny Lee and Connie Welsh voting yes by proxy).

Carl reported that LMAC members had been assigned within the WorkSafeMT executive, communication, safety, return to work and fundraising committees. The Executive Committee is working on the operation plan, and has finished a RFP for public relations work, selecting Partners Creative. They have also contracted with ALPS to help with facilitation and the administrative work for the Board.

Carl further reported that Lance Zanto is chair of the Fund Raising Committee. The Committee met last week and is looking for legislative sources and business sources of funding. The Committee plans to rely on the LMAC for lobbying efforts for any legislative items. Riley asked why self-insureds would be interested in providing funding. Carl replied that as good corporate citizens these businesses can see the value and viability to the State as a whole for safety and lower workers' compensation costs.

Bob asked if WorkSafeMT would be making a presentation to the Interim Committee. Jerry thought this might be a good idea for the September meeting. Riley suggested that as many of the members of the Committee as possible should attend to show their presence and interest.

Carl pointed out that the number 1 issue selected for study by the interim committees was workers' compensation.

#### **IV. Overview of Workers' Compensation Reform Efforts**

Greg Krohm, Executive Director of the International Association of Industrial Accident Boards and Commissions, spoke of reform efforts across the country. He also mentioned that HB635 being considered in Congress proposed to have a Federal review, similar to the 1972 National Commission, to evaluate the adequacy of benefits in the State workers' compensation systems. Doug asked what is the major reason that states implement reforms. Greg responded that in general it is because of high rates in the state compared to neighboring states. Bob asked if the IAIABC has taken a position on HB635 and Greg reported that the organization has written a letter asking that the proposal go through the normal process to allow input because there are a number of issues to be considered, instead of being fast tracked as was taking place.

#### **V. 2009 Legislative Review.**

Jerry Keck reviewed the status of bills from the session:

HB204, the Independent Contractor bill - The Department will start scanning documents on 7/1/09 so that the documents submitted that don't expire or can be independently verified by the Department don't need to be resubmitted with the next application. The Department may have a work around that will allow documents that were submitted prior to 7/1/09 to also be used.

HB283, claims examiner licensing - Rules have been drafted and the stakeholders committee has reviewed forms and proposals. Six applications have already been received and are being held until the rule is in place. Don suggested that both of these updates be added to the slides for presentation to the Interim Legislative Committee

SB192 State Fund risk pools – Bryan Page has put together workshops on writing safety plans. Businesses can come to the training and leave with a self-created safety plan that will qualify them to participate in the State Fund risk pool. State Fund has links on their website for employers to use which is the same tool Brian is using.

SB 371 Course and Scope – The governor's veto was not overridden.

SJ30 workers compensation study – This bill was the top rated study for interim committees. Pat Murdo and Kris Wilkinson will be staffing the committee. Economic Advisory Interim Committee (EAIC) meetings are tentatively scheduled for July 8, September 8-9, January 19-20, March 31-April 1, and May 25.

#### **VI. LMAC Workplan**

Anne presented a workplan document that had been developed by the core team. She explained that this was a working document. The priority had been set at the last meeting for U& T Guidelines, evaluation of the fee schedules, and WorkSafeMT. All of these items are informational reports for the Council. July and August meetings are the only meetings the LMAC has before the September 9<sup>th</sup> EAIC meeting, so the core team suggested that LMAC work on presumptive illness, attorney fees and course and scope at these two meetings, so the LMAC can provide input to the EAIC at their September 9th meeting. Discussion among the LMAC members was that these items are more complex than the Council has time allotted and they did not want to be making decisions that quickly. Pat Murdo stated that if the LMAC would like to study something they only needed to let the EAIC know that and she felt the committee would give the group time. It was decided after discussion that the earliest the LMAC would need to bring something to the EAIC would be for their January meeting. A revised workplan will be drafted and brought to the next meeting.

Anne then asked the committee what additional information the LMAC needed staff to develop.

Presumptive Illness - Bob stated that the League of Cities and Towns has assimilated data and can give it to Anne. Don suggested that the firefighters be contacted as they have data from around the country and other states could be contacted to see what they have done. Bob thought this issue should be examined from a legal stand point, how do you legally have carve outs for one industry and not for others? It may be an equal protection issue. Riley suggested that a clear and concise description of the issue be drafted along with pro and con statements addressing both sides of the issue. Bill suggested using the format for analyzing legislation from the summary document found in the original charter.

Jason suggested that how the discussions are structured and how we make the discussions productive and workable should be considered. Don suggested setting up presentations for advocacy groups to present their sides of the issue.

Attorney Fees – Don suggested determining where the attorney numbers were 15 years ago compared to now. Also, have other states determined if there is a point where attorneys won't take the case? Bill suggested determining what are the triggers for attorney involvement? Doug suggested the LMAC hear from attorneys what triggers the disputes.

Course and Scope – Riley thought this was well framed during the session. Jason suggested analyzing how changes may affect or have an impact on the system. Bill suggested that staff look at whether there is model language on course and scope.

Bob suggested that a presentation on HB635 be given at the July meeting so that the Council understands it. He also suggested the 6<sup>th</sup> Edition of the AMA Guides to the Rating of Impairment be discussed in August.

Exemptions – Anne asked if we open up all the exemptions for review. Jason suggested since we have the tools now it would be interesting to apply the criteria to each of them.

Claim Closure – Annette stated that with the Medicare Secondary Payer Act there is a good chance that claims may never be able to be closed.

Fraud and Cost Shifting - Riley stated that on Main Street fraud and abuse are constantly brought up as the biggest issue in workers' compensation and this needs to be confirmed or debunked. Annette said she keeps stats on where she sees this as an issue. Riley suggested looking at what we are doing now compared to five years ago to prevent fraud. Bob stated that a definition of fraud is needed as there is provider fraud also. Don said CA did a study and found that contractor misclassification was a big issue.

Jerry suggested by the next meeting that the core team develop principals and goals that we are looking for in the re-engineering of the system. We have been looking at the pieces and not at the system comprehensively. What should the goals be for a workers' compensation system?

## **VII. Utilization and Treatment Guidelines**

Keith Messmer reported that a core planning team has been formed to move forward on the evaluation and adoption of utilization and treatment guidelines. A project charter and timeline have been developed. The timeline is to have a decision made by January 2010 on what guideline is to be adopted, and have the rules adopted and the process defined for implementation in place by July 1, 2010. An advisory panel of medical providers is being formed. Invitations to providers will be made using a list of representatives of each medical specialty area affected by guidelines. The list of providers has been developed from those who attended the 60Summits, the Educational Conference and the Governor's Conference and expressed interest in participating on a U&T committee. In addition, invitation letters will be sent to providers from a list of those doing the most workers' compensation treatment. The first meeting of the advisory group is planned for August 19<sup>th</sup>. Don Judge asked whether the group would follow the advice given by Dr. Levin (NY) and look at cost drivers and implement those pieces first. Keith responded that the process decisions have not been made yet.

## **VIII. Public Comment**

Lieutenant Governor Bohlinger opened up the meeting for public comment. None was received.

## **IX. Next Steps**

Anne will be redoing the workplan to incorporate today's discussion. She will also set the meetings dates through the end of the year. Subject to the Lieutenant Governor's availability, tentative dates of October 22<sup>nd</sup> and November 19<sup>th</sup> were selected.

The Core team will prepare for beginning discussions on presumptive illness, attorney fees and overall benefits. The next meeting of the Council was announced as July 23<sup>rd</sup> at the Great Northern.