

Minutes
Labor-Management Advisory Council
August 20, 2009
10:00 am, Great Northern Hotel, Helena

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

LMAC Core Team members present: Keith Messmer, Diana Ferriter, Judy Bovington, George Kochman, Anne Wolfinger

Others present: Rick Lyytinen, HRC, Inc.; Curtis Larsen, Montana State Fund; Mari Kindberg, State Auditor's Office; Mike Taylor, NCCI; Marv Jordan, MCCF; Tim Fitzpatrick, MTSBA; Jon Bennion, Montana Chamber of Commerce; Dwight Easton, Farmers Insurance; Al Smith, MTLA; Bruce Spencer, PCI; Andy Adamek, BKBH; Pat Murdo, Legislative Services; Kris Wilkinson, Legislative Fiscal Division; Erin Sexton, Medtronic; Lea Tietz, Montana University System; Jacqueline Lenmark, AIA; Larry Jones, Liberty Northwest; Connie Ferriter, Bruce Chamberlain, Barb Gullickson, Ting Withers, Xiaoshuo Wu.

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. SJ 30 Update: Priorities, Research Questions and Comparator States

Jerry Keck provided an update on the status of the SJ30 work that is being done. The Department has contracted with Ann Clayton through the 2011 legislative session to help address issues raised in this legislation and the work of the Economic Affairs Interim Committee (EAIC). Ann has done two recent studies that will provide her with the contacts to get information that will be needed from comparator states. She was an author of the Workers' Compensation Laws, 2nd Edition, published in June which was a joint project of the Workers' Compensation Research Institute (WCRI) and IAIABC. She also worked on the Medical Cost Containment Strategies in All Jurisdictions publication for WCRI.

Jerry passed out copies of SJ30 and walked the committee through the areas being studied. He also passed out a list of the research questions that Ann will be working to help address each of the areas being reviewed. Annette said that self-insureds do not have a way to address fraud that occurs and asked if Ann could look at methods other states utilize in this area.

Jerry reported that Ann had done a combined similarity score using demographics and industry mix to make a recommendation on what comparator states should be used by the EAIC. Alaska, Idaho, North Dakota, Oregon, South Dakota, Washington and Wyoming were the states that had the most similar ratings to Montana. Jerry said that similar regulatory structure was not used as one of the criteria in Ann's analysis and if it had been it would have resulted in different states being recommended.

Lt. Governor Bohlinger asked why New Mexico was not included as it had one of the most similar industry mixes, higher than many of the other states. Jerry replied that the demographics are very different as New Mexico has a high Hispanic population, but we may want to include it.

Don asked what makes Montana's regulatory structure so different. Jerry said that the difference is that there is no oversight over State Fund rates other than by their board. Every other state has an independent body reviewing the State Fund rates.

Jerry reported that by September 10th, Ann needs agreement on her work priorities, what the comparator states are, if there are any additional research questions and additional questions to cover with comparator states.

Riley said that he would like to see if there is a way to measure the use of workers' compensation as a substitute for a health insurance claim.

III. WorkSafeMT Status Report

George Kochman provided an update on the WorkSafeMT activities. The next board meeting will be on September 2, 2009, at the Red Lion Colonial Inn. The Board will be working on an operational plan. The operational plan will cover a one-year period spanning July through June. She reported that Partners Creative was awarded the contract to develop the web site and provide marketing services. The web site will provide educational material and resources. The videos "Safer Tomorrow" and "Safety Made Simple" will be posted on the site. The launch event for WorkSafeMT will be on September 29 in Missoula. The press and public will be invited to attend. The "Go Loud" event will feature all TV stations airing the Safer Tomorrow video during the 10:00 news on October 1st. Fund raising efforts will begin during the Go Loud event and will be kicked into high gear once the operational plan is completed.

George reported that the WorkSafeMT Conference will be September 29-30 in Missoula. Focus groups are also being formed to determine what safety message will resonate with them. A survey is also being developed that will go to 800 Montana workers to get their perspective.

IV. Attorney Fees

Diana Ferriter introduced the topic of attorney fees. She explained that this was on the work plan because it is included in SJ30 and there have been legislative bills for a number of sessions (SB285 this session) attempting to address this issue. The bills have mainly focused around the insurance carriers paying the claimant's attorney fees when the claimant prevails and is awarded medical benefits. Diana reviewed the advocate's position and the critic's position as the Department has heard them. She cited that two percent of all claims have attorney representation. Seventy to eighty percent of disputes are handled by attorneys. The presentation materials will be posted on the website.

After discussion it was decided that an advocate and a critic of insurers paying the claimant's attorney fees will be invited to present their positions on this topic to the LMAC. The Department will gather the statutory language from states where the insurer pays claimant's attorney fees. The Department's statistics will be updated.

The Lt. Governor asked for public input. Al Smith from the Montana Trial Lawyer's Association asked the LMAC to consider this issue not in isolation, but with the course and scope discussion. He believes that a deal can be reached through compromise on these issues. He asked that it be clarified that the medical benefits that the injured worker are entitled to have been denied by the insurer in these cases. Most cases have a very low fee for the attorney to claim. Marvin Jordan, MCCF, stated that Montana is on par with 38 other states. He questioned how many of those are reviewing their laws to make changes. He also asked the LMAC to consider that insurers can't recover back payments made through subrogation.

V. Presumptive Illness

Jerry Keck reviewed the topic of presumptive illness. He explained that this issue is addressed in SJ30 and was heard during the session as HB408. He stated that the LMAC has until March to make a recommendation to the EAIC on this area. He suggested that the LMAC invite a representative from the firefighters to give their argument for incorporating presumptive illness into the Act and Bob Worthington present the employer's perspective. He provided various handouts including a white paper from the National League of Cities assessing firefighters' risk of cancer and a paper from the International Union of Firefighters explaining their position on this issue. Jerry cited statistics that 43 states have adopted some form of presumption. The burden is on the employer in some of these states to prove that the illness is not related. In other states, no rebuttal is allowed and the claimant automatically gets benefits if he or she becomes ill with one of the covered diseases. Judy Bovington stated that she researched whether the equal protection issue has been raised regarding these presumptive illness statutes in other states and she did not find any. She said it is important to very carefully draw the distinction between classes if you want to include one and not another.

Jerry said that Ann Clayton will be researching what other states are doing in this area. Jason questioned whether there are statistics on the reduction of incidence resulting from these laws across the country. Don said that if costs have decreased for municipalities as a result of these laws that needs to be flushed out. Riley commented that during the session volunteers were included in the bill and it swayed some votes to know that they would be paid on the basis of their real job, not firefighters' wages.

VI. AMA Guide to Impairment, 6th Edition

Diana Ferriter reviewed the topic of the AMA Guide for Impairment, 6th edition. This issue is addressed in SJ30 and the issue was brought to the LMAC previously. Tom Murphy of Fair Claim had asked that the LMAC support remaining with the 5th edition. Diana said that the Department does not have enough cases in the database to measure the impact yet. She presented the advocate's and critic's positions as the Department has heard them thus far. She cited statistics that 12 states have mandated the sixth edition, eight states use the fourth edition and 10 use the fifth edition, and other states use their own. She presented examples of impairment ratings completed using the Fifth and Sixth editions. Some of these ratings went up and others saw decreases.

Don said that in speaking with Tom Murphy he is aware of three physicians that would be willing to talk to the LMAC. Bob stated that medical improvements in care may be one reason why the impairment numbers are decreasing. Jerry explained that the overall reduction in benefits is a financial consideration, not related to the science of determining impairment. Riley commented that this is a very technical issue and the Department should pick people carefully. He feels the decision will need to be based on trust and faith and he doesn't want to hear rhetoric. He would like to hear from an unbiased Montanan.

VII. Economic Affairs Interim Committee

Pat Murdo, staff for the Economic Affairs Interim Committee, reported on the status to the committee's work. The committee's draft workplan is posted on the website and they will still be finalizing the workplan at their next meeting on September 9th. The committee will study the premium cost and benefits issues and may study structure. She reviewed the priorities for the committee with return to work, safety, U&T guidelines, and fee schedules being a high priority. Two representatives are interested in having a medical review panel. Medium priorities include claim closure, duration, structural issues and course and scope. Medium to low priorities are setting premiums, fraud, cost shifting presumptive illness, vocational rehab, the transition from TTD to PPD and exemptions. Low priorities are the proportion of indemnity claims, subrogation, access to primary care physician and shorter waiting period. She emphasized that the legislature would like to see consensus of all stakeholders. She said the committee is leaning towards Wyoming, North Dakota, South Dakota and Idaho as the comparator states.

Don moved that New Mexico be included in the Ann Clayton's recommendation to go to the committee. The motion passed unanimously.

VIII. Utilization and Treatment Guidelines.

Keith Messmer reported that the first meeting of the Utilization and Treatment Guideline Medical Provider Group was held on August 19th. Dr. Alan Dacre, an orthopedic spine surgeon from Billing is the chair of the committee. During the meeting Jerry gave an update on the work of the LMAC. Ting Withers from the Department did a presentation on the highest cost workers' compensation injuries. The goal presented to the committee was to "Improve quality of care and patient outcomes while controlling costs". The core planning team selected 3 guidelines for the group to consider including ACOEM, ODG and the State of Washington's guidelines. A couple of members were interested in reviewing the North American Spine Society Guidelines for the spine. The committee was presented with 3 options for adoption; adopting a single comprehensive set of guidelines, adopting parts of multiple sets or adopting multiple guideline sets. A representative from each of the 3 guidelines will be explaining their guideline to the group along with addressing how various injury scenarios would fit within the guidelines. The scenarios are being drafted by Dr. Carpenter. The timeline is to have a decision reached by January, 2010. Several members of the committee voiced that they would like to see outcome measures identified prior to selecting a guideline(s).

IX. WorkSafeMT and Governor's Conferences

Diana reminded the LMAC that the WorkSafeMT conference was going to be September 29-30 at the Hilton Garden Inn in Missoula and the Governor's Conference on Workers' Compensation and Occupational Safety and Health was going to be September 30-October 2 at the same location.

X. Claims Examiner Certification and Continuing Education.

Diana reported that a hearing on the administrative rules adopting claims examiner certification and continuing education was set for hearing on August 21st. Delta Business Systems has been contracted to develop testing. They will develop 300 questions and 5 separate tests by the end of September.

XI. Public Comment

The Lt. Governor asked for public comment. None was received.

XII. Next Steps

The next meeting of the LMAC will take place in Missoula at the Hilton Garden Inn on September 29th in the afternoon in conjunction with the conferences.