

# Minutes

## Labor-Management Advisory Council

September 29, 2009

12:30 p.m., Hilton Garden Inn, Missoula

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

**Project team members present:** Diana Ferriter, Keith Messmer, Judy Bovington, Ann Clayton, Anne Wolfinger.

**Others present:** Marv Jordan, MCCF; Mike Sehestedt, Keith Stapley, Greg Jackson, MACo; John Cummings, Ann Komac, MMIA; Kevin Braun, Curtis Larson, MSF; Lance Zanto, Paige Tabor, Department of Administration; Dwight Easton, Farmers Insurance; John Gottbreht, BSAFEUS; Tim Fitzpatrick, MTSBA; Bonnie Lyytenen-Hale, HRC, Inc.; Marilyn Ryan, AFL-CIO; Mike Taylor, NCCI; Jon Bennion, Montana Chamber of Commerce

### I. Welcome & Introductions

Lieutenant Governor John Bohlinger greeted those present and had all in attendance introduce themselves.

### II. Overview of Workers' Compensation Research Activities

Ann Clayton reviewed with the Council the SJR 30 study questions she is researching and her progress thus far. She asked if the Council members had any additional question they would like her to attempt to answer. None were offered.

### III. Presumptive Illness - Panel Discussion

Jerry Keck introduced panel members Oliver Goe, attorney with Browning, Kaleczyc, Berry & Hoven, P.C. and Doug Neil, political director with the Montana State Firemens' Association, and gave some background information on the presumptive illness discussion. He stated that 43 states currently have some sort of presumption. The presumptions generally cover heart, lung, cancer and infectious diseases. Some states cover all of these areas, others cover one or multiple areas. Some of the states cover the presumptions through workers' compensations, some through disability insurance. Some states have iron clad presumptions and others have rebuttable presumptions.

Doug Neil outlined the firefighter's viewpoint and reason for introducing HB 408 during the last legislative session. He stated that the Association wanted the most comprehensive bill in the country so it wouldn't have to be adjusted each session. He presented some statistics from other states that have adopted presumptions to show that there have not been a lot of claims that surfaced in these areas.

Don asked what exposures distinguish firefighters from other workers. Doug explained that primarily it is breathing fumes of plastics, benzines, paints and varnishes while doing salvage and

overhaul work after the fire when breathing apparatuses are not being worn. Also, heart attacks are more common because of the lifestyle at the station, going from a resting heart beat to 180 in a short amount of time.

Riley stated that HB 408 contained certain limitations and asked Doug if he anticipated the same ones in the next bill. Doug explained that the bill contained a limitation of 60 months or 5 years after the exposure as the cut off and that the limitation had to start somewhere. Lt. Governor Bohlinger inquired as to the salient arguments that were made in the other states that have adopted presumptions. Doug replied that there have been lots of studies and he will get them to the Council.

Bob asked about the numbers of states that have gone with disability insurance versus workers' compensation insurance. Doug promised to provide those statistics. Jerry stated that there have been 20 states who went the workers' compensation route and 22 to 23 who went with placing the presumption into the pension retirement payments.

Oliver Goe presented the Montana Municipal Insurance Authority's perspective of the presumptions. He explained that MMIA covers the cities and towns and about 600 paid firefighters and 1900 volunteer firefighters. He stated that HB 408 cast a much bigger net of coverage than other states have adopted. Also, the bill required a physical exam at the beginning of employment and this piece needs to be carefully studied. Their evaluation is a pre-employment screening for cancer and other diseases could cost between \$2,000 to \$11,000. The League of Cities and Towns did a study that concluded that there is a lack of substantive scientific evidence to show there is an increased risk for firefighters. Oliver pointed out that any increased risk does not lead to a causal connection. He also stated that the American Lung Cancer Study showed that there are a host of occupations at an increased risk. For example: lumber, textile, agricultural, transportation and health care workers. This presumption could open the door for a whole lot of other presumptions. Oliver said NCCI predicted a greater than 15 percent rate impact on other states who have considered the presumption.

Riley stated that on the website, 20 states have heart and lung presumptions, but no cancer. Doug said in 2009 another 4 states have passed cancer presumptions and other are pending.

Lt. Governor Bohlinger asked if there would be hereditary or lifestyle exceptions in a bill. Doug said that HB 408 contained a provision that if the worker was a smoker the presumption did not apply.

Jason stated that if a working firefighter files a claim and it is denied, the health coverage pays. What does this cost do to the health insurance costs? Doug did not have an answer. Oliver pointed out that workers' compensation would also provide a wage loss benefit. Jason said he would like to know the cost difference to keep firefighters health under one system or the other. Don added that the cost would go to the employees in terms of copays if not on workers compensation.

Don asked if there have been equal protection arguments raised in other states. Oliver said he has seen three or four challenges in other states and the courts have determine there is not a problem, but MT courts chart their own path.

Bill asked if there were any statistics on OD claims filed for cancer and whether they were accepted or denied. Doug is working on this.

Jerry said he would like to see if the LMAC can come up with an agreement on a way to deal with presumptive illness.

Anne stated that the presumptive illness information has been put on the website.

#### **IV. Medical Cost Containment**

Ann Clayton gave a PowerPoint presentation on medical cost containment efforts across the nation. The percentage of benefit payments spent on medical varies significantly between states, from a low of about 35% in Washington to 65% in South Dakota during 2007 for our comparator states. Montana was shown in the middle at 55% during this time. Ann pointed out that the medical cost can be driven by both price and utilization. Most state efforts focus on fee schedules which only addresses the price. State efforts to limit utilization are focusing on such areas as the use of managed care organizations, limitations on provider choice and change, limitation on the number of treatments that certain providers may provide and utilization and treatment guidelines. States must perform a balancing act to reduce costs without affecting access or the quality of care. She summarized her presentation by saying that significant variations exists between states, establishing baselines and monitoring the affects of changes produces the best success, and cross state comparisons are necessary.

#### **V. Work Loss Data Institute: State Report Cards for Workers' Compensation, 2009**

Bruce Chamberlain reported that the Work Loss Data Institute published a State Report Card in July, 2009. The report used data from the OSHA 200 and 300 for the period of 2000 through 2006. The report card is an attempt to measure how effectively states manage to keep down incidents and lost workdays. Bruce walked the council through the various rankings contained in the report. Montana's overall ranking shows the state is improving with a C ranking.

#### **VI . Utilization and Treatment Guidelines Project Medical Provider Group**

Keith Messmer reported that the Utilization and Treatment Guidelines Medical Provider Group met on September 16<sup>th</sup>. Representatives from the American College of Occupational and Environmental Medicine (ACOEM) gave an overview of their practice guidelines. They then walked the committee through the treatment and diagnostic tests that would be recommended for seven different injury scenarios. The injury scenarios represented common workers' compensation injuries that Dr. Carpenter developed with input from the committee members. At the next meeting in October, the Occupational Disability Guideline representatives will present an overview and also address the same injury scenarios. This will be followed in November by a presentation of the State of Washington's guidelines.

Keith also handed out some work that was done by Ann Clayton to develop outcome measures that could be used to evaluate the effectiveness of guidelines once they are adopted. This ground work was handed out to the Medical Provider Group and will be discussed at their next meeting. Keith asked that if the council members had any thoughts on possible outcome measures that they share those with Jerry, Anne or himself and they would share them with the U & T Group.

## **VII. WorkSafe MT**

Carl Kochman reported on the efforts of the WorkSafeMT Board and subcommittees. He reported that the strategic plan is done, the operational plan is being worked on and the fundraising committee is getting going. He said that the awareness of the need for safety is raising, but folks may not be doing anything about it yet. State Fund did a survey of 500 of their smallest policyholders. When asked about the safety culture act, 87% of these said that they don't know, don't want to know and don't want to be bothered. He pointed out that this will need to be a never ending effort. British Columbia's effort has been going on for 17 years and they are continuing to increase their efforts.

Lt. Governor Bohlinger asked where the committee is at in obtaining private resources and what level of payments are anticipated. Carl reported that the official requests will start tonight. There are about a dozen businesses that are lined up to give and he anticipates receiving 1 to 1.5 million dollars at this point. He added that they do have in-kind donations with commitment of people's time on the board of directors. State Fund donated the development costs for the logo. Riley asked how the budget was doing? Carl replied that it is going well, the ad agency is doing all it can to make the dollars work as far as possible. He commented that with advertising you have to hit them as often as you can and have a unique message. The general rule is you need to be hit at least 10 times before it starts to sink in.

## **VIII. Public Comment**

Public comment was solicited.

Kevin Braun, Montana State Fund, urged great caution before supporting presumptive disease proposals. He stated that there are big constitutional issues that can result from adopting these presumptions.

Mike Taylor, NCCI, stated that the presumptions adopted by the State of Oregon for firefighters were priced at a 3% increase in premiums for those workers.

## **IX. Next Steps**

Anne Wolfinger reported that Mike Marsh from Midland Claims submitted a list of items that he feels the council should review. The council needs to continue to collaborate with the EAIC.

## **X. Next Meeting**

After some discussion it was decided that a meeting will be held in October with the date yet to be determined.