

**Minutes**  
**Labor-Management Advisory Council**  
August 16, 2010  
Great Northern Hotel, Helena

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

**Project Core Team members present:** Bryan Page, Keith Messmer, Anne Wolfinger, Judy Bovington, Georgiana Kochman, Dustin de Yong

**Others present:** Marv Jordan, MCCF; Thom Danenhower, Ann Komac, MMIA; Tim Fitzpatrick, MTSBA; Nancy Butler, Kevin Braun, Carl Kochman, Peter Strauss, MSF; Lance Zanto, DOA; Keith Allen, IBEW 233; Pat Murdo, Legislative Services; Andy Adamek, BKBH; Margaret Mortan, CRNAS; Larry Jones, Liberty Northwest; Trudy Winslow, MHS; Erin MacLean, MMA; Rick Clark, Plum Creek; Douglas Neil, PISFA; Jacqueline Lenmark, AIA; Jon Bennion, Montana Chamber; Bob Olsen, MHA; Aimee Grmolser, Billings Clinic; Steve Carey, Carey Law Firm; Dr. Carter Beck; Anni Druce, Teresa Graham, Kristine Shields, Barb Gullickson, Ryan Morton, ERD

**I. Welcoming & Introductions**

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

**II. Approval of Agenda and Minutes Activities**

The agenda and minutes were approved as written.

**III. LMAC Workplanning**

Jerry Keck reviewed the workplan and noted the issues where a decision still needed to be made by the LMAC. These included: exemptions, presumptive illness, fraud and cost shifting, and independent medical exams. Jerry led a discussion to determine what the Council wanted to do with each of these issues. The next steps were determined:

Exemptions: Will address after the session with the exception of speakers brought into schools which is still an issue from the last session. Domestic employees, firefighters, musicians and LLCs are being looked at by the Economic Affairs Interim Committee (EAIC). This will be on the agenda for the October meeting. Pat Murdo reported she has language to clarify that an alternative to the individual getting an independent contractor exemption or policy on themselves is for the contracting entity to add the individual to their policy. Don Judge asked that the Department clarify with the Montana University System how they are handling speakers. Don also suggested that newspaper carriers and musicians be discussed at a future meeting. Danny Lee suggested that the abuse of contractors shifting all labor to ICs be addressed. Jerry reported that Senator Keane has an interest in the manager managed LLCs using this structure to escape workers' compensation. Senator Keane has asked Bart Campbell to work with the Department to draft LLC changes in the construction industry. Bob Worthington said there is an issue with unfair competition by Hutterites in the construction industry as well.

Fraud: Anne Wolfinger will set up a panel similar to the one that addressed the EAIC consisting of representatives from the Montana State Fund, Attorney General's Office, Liberty Northwest, Montana Municipal Interlocal Authority (MMIA) and ERD for the September LMAC meeting at the Governor's Conference.

Presumptive Illness: Will address at the October LMAC meeting. Doug Neil reported that the firefighters will bring a bill to the next session adding six to seven cancers where there is evidence they are work-related. They plan on expanding this list in future sessions. He will have a draft for the LMAC of the legislation prior to the October meeting. Doug also said he would get links to studies that have been done that support the proposed legislation to the Council members.

Bob reported that MaCO and MMIA have met with the firefighters and agreed to disagree with them over adding presumptive illness to the statutes.

IM's: This topic will be added to the October meeting. Annette Hoffman reported that there are a limited number of doctors who will do IMEs and they can name their own rate. A significant portion of the doctors are asking for help because of their relationships with the patient and their families. Annette will prepare a report on what is currently being paid for IMEs by Saint Vincent's Healthcare.

#### **IV. LMAC in Statute**

Jerry reported that he has been working on getting the cost of supporting the LMAC members in preparation for getting the LMAC established in statute. Costs were \$2,500 in 2009 and \$6,000 in 2010. He is concerned that any bill with increased expenditures will die this session. He asked if members' employers would continue to support their expenses and participation. If placed in statute, members would be entitled to travel, meals and lodging and \$50/day for meetings and preparation.

Riley Johnson advised that this is not the session to place LMAC on the legislative radar. Other members agreed. Bob moved and Riley seconded not proposing legislation this session to place the LMAC in statute. The motion passed unanimously.

#### **V. & VI. Medical Fee Schedule Rules and Utilization and Treatment Guideline Project**

Keith Messmer reported that the Utilization and Treatment Guidelines rules will be noticed September 13, 2010 for hearing. The statement of work for the contract with ACOEM has been finalized and the contract negotiations have started.

Frank Neuhauser gave a presentation outlining his work on the fee schedule and discussing his recommendations. He reported that currently the non-facility fee schedule is paying providers 198% of Medicare and facilities are receiving 202% of Medicare. He stated that this is high relative to other payers and proposes that moving to 150% of Medicare for all payment schedules makes sense.

Annette said that Saint Vincent's will just break even at 150%. However, with the carve outs for outliers and implantables she thinks they will be ok. She said that the big medical centers end up getting the more expensive cases.

Bob Olsen, Montana Hospital Association, reported that the Montana wage index has now been adjusted to 1 for urban hospitals. He voiced concern that the Department has not visited with the hospitals about this proposal. The hospitals have not crunched the numbers yet and when they do

they will decide whether to support or not. He recommended adopting the Medicare system and setting the rate at a percentage above Medicare. Access will be an issue with providers and the care will end up being delivered in emergency rooms.

Connie Welsh asked if the hospitals would be willing to share their database and also asked what is fair.

Bob Olsen replied that the hospitals haven't been asked to share data and commented the current system may not be fair. Fairness is to work the payments out with the hospital. If there was a mechanism to ensure that the savings are rebated to the employers, the Montana Hospital Association would support the reductions.

Aimee Grmolser with the Billings Clinic voiced agreement with Bob. She reported that Dr. Petrisko asked who will end up treating patients when the physicians refuse to treat because they are not being adequately reimbursed. He feels that wait times will be increased.

Erin McLean, Montana Medical Association, also voiced agreement with Bob and stated you can't use national data, you need to work with Montana doctors.

Lt. Governor Bohlinger reported that Dr. Glenn Jarrett called him and said that 150% will be a huge impact on his group. He will be forced to reduce or eliminate services and would like payments to remain at the current level. He will be sending a letter.

Riley reported that he does not have an access problem with Medicare. Annette responded that she thinks there will be an access problem with the proposed Medicare cuts as physicians will quit seeing patients.

Jerry said that the Department has the authority to set the fee schedules by rule. He asked if 200% of Medicare is fair and reasonable or if 150% is fair and reasonable.

Don asked how much of this savings will be passed on to business. He has heard parties offer data and he would like to see that by the next meeting.

## **VII. Study on Adequacy of Montana work Comp Benefits**

Frank Neuhauser presented alternative charts to explain the affect of the permanent partial benefit changes in the LMAC bill. He stated that this was a fairer representation of the effect of the changes than the chart presented by Fair Claim at the last meeting. He said 56% of claimants will see an increase in benefits, 24% will see a decrease and 20% will stay the same according to his calculations. Overall benefits will increase because benefits will move from 50% to 75% of the state's average weekly wage.

Jerry commented that the question that should be analyzed is if everyone is getting closer to 66-2/3% of their wage at the time of injury.

Bill Dahlgren asked if Frank is anticipating vertical and horizontal equity improvement as a result of these changes. Frank's answer was yes as higher wage workers will get more and lower wage workers will not lose either.

Steve Carey, attorney in Missoula, addressed the Council about all of the cases that he sees falling in the red area (decrease in benefits) of the graph and how these changes will be harmful to workers and disruptive to everyone who adjusts claims and will drive attorneys out of the system.

Al Smith, Montana Trial Attorneys Association, asked what percentage of the increase is due to the AWW changes and the increase in weeks. Frank replied that nearly all of the increase is due to the AWW increase of the maximum amount that can be paid.

### **VIII. WorkSafe MT**

Carl said there was nothing new to report.

### **IX. NCCI Cost Estimates**

Mike Taylor and Raji Chadarevian presented an analysis of the impact of the various pieces of the LMAC bill. As they were not able to analyze the impact of the fee schedule changes or the adoption of Utilization and Treatment Guidelines their estimate was a savings of \$5 million ranging to an increased cost of \$21 million. The items making up the estimate were the stay at work/return to work changes, termination of TTD benefits, attorney fees, permanent partial awards and the introduction of a retroactive period. NCCI will continue to work on the medical estimates.

Don asked if NCCI has priced U&T Guidelines in other states. Raji responded that it is not possible to separate U&T guidelines from other changes that have been made at the same time.

Larry Jones, Liberty Northwest, asked if the current presumption of the treating physician correctness is overturned will there be additional savings. Raji said yes.

Bill asked if there is a net savings how do we ensure the cost savings is passed onto employers. Mike said they are included in the loss costs and carriers are required to build them into their loss costs. Nancy Butler replied that Montana State Fund does adopt the NCCI loss costs unless their experience tells them to do something different.

### **X. LMAC Comprehensive Package Draft Statutory Language**

Judy Bovington said that a great deal of work had been done between the meetings to finalize the draft. She said Erin MacLean had a concern if an employee wanted to give complete access to his or her medical information would the language allow it. Annette responded that with a HIPAA release you can do that. She also pointed out that in section 9, nurse case managers need to be added.

Danny moved that the Department's recommendation to move the fee schedules to 150% of Medicare be adopted. Bob seconded and the motion passed unanimously.

Riley said that with Connie changing jobs she now represents self insureds. He recommended keeping her on the Council through the session. Jerry said he had asked Connie to talk with her employer about continuing through the session and assumes she must have received permission since she was here earlier today.

### **XI. Public Comment**

Dr. Carter Beck, neurosurgeon with the Bone and Joint Clinic in Missoula commented on the guidelines and proposed cut in the fee schedules saying that the result will be a problem with access. He said it is necessary for workers' compensation to reimburse at a higher rate than Blue Cross and Medicare because the physician has to deal with increased paperwork and return to work issues. Workers' compensation is currently the best payer and that is why access is good. Montana is doing well currently in allowing early intervention by the medical providers. If he sees nothing but Medicare patients he will make \$1,600 a day and has expenses of \$1,750 a day. Medicare is hanging by a thread with everyone ready to drop those patients.

Lt. Governor Bohlinger asked if he drops Medicare patients and it is 50% of his income how can he make a living. Dr. Beck responded that he currently has to make it up on volume. He is working 50 to 60 hours a week. If 1/4 to 1/3 of Medicare patients agree to pay cash for their treatment, he will be ok.

Lt. Governor Bohlinger asked if he are losing money on Medicare, won't he make money on 150% of Medicare. Dr. Beck replied that he will, but it is a value judgment because of the extra time and hassle it takes to treat a workers' compensation patient.

Jason Miller read a letter supporting the adoption of the comprehensive package from the International Brotherhood of Carpenters, Local 112 of Butte.

Al Smith commented that most of the increase to workers in PPD benefits is because of the AWW change and not because of the change to an impairment-based system. We should be looking at everyone getting an increase, not some getting a decrease.

Nancy Butler thanked the LMAC for the opportunity to participate in the legislative bill drafting. Montana State Fund continues to have concerns over the move to the 5<sup>th</sup> Edition Impairment Guide, attorney fees and the fee schedules if they cause access problems. MSF also is concerned on the impact on small employers because of the difficulty they have in taking workers back. MSF also has pricing concerns and wants stable pricing.

John Benion thanked the LMAC members for their work. Looking at NCCI numbers will be very important in selling this package to the members of the EAIC. If the fee schedule doesn't go forward we will see rate increase and would like to prevent that.

### **XII Next Steps:**

Anne said that the next steps were already talked about in the work planning portion of the agenda. The Council agreed to meet on November 18 and December 15<sup>th</sup>.

### **Next Meeting**

The next LMAC meeting will be Tuesday, September 14<sup>th</sup> in Big Sky just prior to the Governor's Conference.