

Minutes
Labor-Management Advisory Council
September 14, 2010
Summit Hotel, Big Sky

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

Project Core Team members present: Bryan Page, Keith Messmer, Anne Wolfinger, Judy Bovington, Georgiana Kochman, Diana Ferriter

Others present: Greg Jackson, Emelia McEwen, MaCO/JPA; Jon Bennion, Montana Chamber of Commerce; Trudy Winslow, MHS; Pat Murdo, Legislative Services; Erin MacLean, MMA; Joseph Sands, MSCPFF; Lary Jones, Liberty Northwest; Michael Marsh, Midland Claims; Ann Koman, MMIA; Nancy Butler, Curtis Larsen, Kevin Braun, Montana State Fund; Rick Clark, Plum Creek; Roy Strong, Ben Phipps, Ortho Montana; Tim Fitzpatrick, Shawn Bubb, Harry Cheff, MTSBA; Deborah Butler, Attorney General's Office; Mark Hurlbut, Bill Wheeler, Misty Egeler, Dave Elenbaas, ERD; Lea Coles, DLI; Ann Clayton, Frank Neuhauser, WC consultants

I. Welcome & Introductions

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

II. Approval of Agenda and Minutes

The agenda and minutes were approved as written.

III. & IV. LMAC Workplanning and Comprehensive Package Update

Jerry Keck reviewed the workplan and noted the issues where a decision still needs to be made by the LMAC. These areas included: exemptions which are scheduled to be discussed in October and IME fees and presumptive illness scheduled to be discussed in November. Jerry reported that the LMAC comprehensive bill received unanimous support from the EAIC on August 19, 2010, to move the bill forward. The EAIC discussed the medical fee schedule portion of the bill at its September 3, 2010 meeting. Representative Chuck Hunter was appointed as the bill sponsor and was charged with getting the parties together to discuss the fee schedule issues. ERD staff met with Representative Hunter on September 13th and he plans to convene a meeting on October 4, 5, or 6th. He plans to invite 2 representatives from the MMA, 2 from the MHA, the 2 co-chairs from the LMAC, the Lt. Governor and Department staff. Jason said that his understanding of the motion by Senator Brown was that regardless of the outcome of the discussions that the bill needs to move forward.

V. NCCI Cost Estimates: Medical Fee Schedule

Raji Chadarevian reviewed NCCI's costing of the Medical Fee Schedule changes for physician costs and outpatient hospital and ASC costs. For these pieces the estimated range of savings is \$26 to 40 million dollars. These estimates are in line with those developed by Frank Neuhauser for the Department. He reported that the estimate breaks out the GPCI's from the estimate as the rule draft provided does not mention the GPCI's. Raji also presented the costing of the Permanent Partial Awards part of the bill. He indicated this will increase system costs between 2.3% to 3.8%.

VI. Study on Adequacy of Montana Work Comp Benefits

Frank Neuhauser gave a presentation outlining his ongoing analysis of benefit adequacy under Montana's workers compensation system. He is examining 17,000 permanent disability claims and 230,000 medical only claims that occurred between 1999 and 2007 and is comparing the earnings after injury using Unemployment Insurance wage data. He stated that the impairment ratings correlate directly with wage loss. The data reveals an average wage loss following a permanent disability claim of 25.4%. The next steps in the analysis is to measure the replacement of lost wages by the benefits received.

VII. Panel on Workers' Compensation Fraud

A panel consisting of Jerry Keck; Deborah Butler, Assistant Attorney General; Nancy Butler, Attorney, Montana State Fund ; Larry Jones, Attorney Liberty Northwest Insurance and Ann Komac, Claims Supervisor, Montana Municipal Interlocal Authority discussed workers' compensation fraud from each of their perspectives.

Nancy Butler reported that the 1992 legislation provided for a fraud program consisting of fraud detection and training. During FY10, 427 claims were investigated and 5,100 policy audits were conducted. The State Fund has documented \$49,245,637 in savings since 1992. The SF works with the Department of Justice and fully funds the work they do for them. They refer 10 to 15 cases per year.

Deborah Butler said that the Department of Justice receives the referrals from the State Fund after they have done an internal investigation. She can decline to prosecute, file charges or enter into a deferred prosecution agreement. From January 2007 to August 2010 she has charged 19 workers and 4 employers.

Larry Jones said that LNW has a special investigative unit. LNW tells the employers that they are their eyes and ears in the field. He commented that fraud is very rare, but very expensive. In 28 years he has prosecuted 2 individuals for fraud and 6 cases of malingering. He reported that county attorneys do not want the cases unless there is restitution. They have discovered no medical provider fraud. He has 2 suggestions to improve fraud detection. 1. Provide ability for the carrier to conduct an examination under oath and 2. Allow access to Unemployment Insurance data by private wc carriers.

Ann Komac said that fraud is not a big issue for the cities and towns. She noted that there is some abuse including exaggeration of symptoms, but no employer or medical fraud.

Jerry Keck reported on the work of the Uninsured Employers' Fund that does cross-matches with UI, monitors cancellations of insurance and follows up on reports by the public. He suggested that Plan I and II's be allowed to refer cases to the Attorney General's Office and pay directly.

Bob asked if we really have a problem. Do we need to stand up and tell EAIC there isn't a problem?

Bill asked if there are 30,000 claims per year and Larry said 10% of them are fraudulent, that is a large amount. He questioned whether the "knowing" requirement to prove fraud was the same in other states. He asked to see the statistics on the dollars per claim being spent on fraud investigation compared with what other states are doing. If we are not up with other states in cost effectiveness, someone needs to explain why. He asked for a comparison with other states of dollars spent and the return on investment.

Ann Clayton responded that in her presentation done months ago she reported on her survey of other states and had a number of fraud questions. Very few states are able to report fraud statistics. Washington reported a 7 to 1 return on investment, but it is not calculated the same way in all states. WA, CA and FL are the only states that could report.

Bob asked if we can combine the fraud pursuit numbers for all plans and then add the premium from misclassification and the additional billed premium. Mark Hurlbut, UEF Supervisor responded that UEF assesses 850 to 1,000 penalties each year and does 3 times that many investigations.

Riley suggested that State Fund should put together the numbers including all types of fraud and present it to the legislature. Bob suggested including the success of medical bill review in the statistics.

Jerry asked what the council wanted the staff to do. Riley wants to see the percent of return on investment, dollars as high as you can get. Don replied he does not want clearly misapplied medical billing codes included in fraud.

Connie summarized that the Dept put together a report on fraud including what is happening with State Fund, Plan I and II's and in other states, then talk about the UEF activities. Have an administrative discussion, include the effect of U&T guidelines on fraud and other tools to add to or strengthen the system.

Riley cautioned that if you are presenting to a committee of 20 this will work, but the other 130 won't take the time to read it, you need the cold hard figures in a couple of minutes. This is buzz word legislation. Connie agreed and said all of this needs to be on one page. Should include fraud, here is the definition, do you want to change it?

VIII. WorkSafe MT

George Kochman reported on the activities of WorkSafeMT since the last LMAC meeting. She reported the Communication and Fund Development Committee has received its first fundraising check of \$1,000 from Liberty Insurance. State Fund is also sending a \$50,000 donation. There are verbal commitments from 10 companies totaling \$700,000 per year for 3 years. These companies are holding off giving cash until the decoupling discussions are finalized. Carl is still working with 6 other companies, hoping to get to a 1 million dollars per year commitment.

The contract with Partners Creative is for \$500,000 per year. November will be WorkSafe commitment month, running an ad campaign tied to television season premiers which will be \$85,000 this fall and \$300,000 in the spring. Partners is developing 2 more employer spots on Miller Coors and the Ravalii County Road and Bridge Department. Also looking at doing an injured worker video. The Department's Main Street publication has offered to allow articles from WorkSaft two times a year. Looking at an article on Safety which will include the survey information that Partners did. The next publication focuses on Cascade County and she is looking for a business there with a compelling safety story. On March 28th, private dollars will be used by WorkSafe to host an educational event for legislators. Also, staff are working on a telephone research survey of 800 individuals to see if there is an increased level of safety knowledge since the efforts started.

The Safety committee is wrapping up the Safety Fest work and looking at its next project. The SAW/RTW committee is working on a work ability form and will be ready to present it to the

board at its next meeting. This material will be used in the U&T training. The committee wants to continue working on educational material for the medical providers.

The WorkSafeMT is being examined to determine whether it is a component unit of State Government. If it is found to be a component unit WorkSafe will be forced to follow state procurement, audit and other rules. To remove this concern the Department and LMAC oversight need to be removed. Looking at as much separation as possible, but still having the Department provided the same level of support. George is working with Kim McKelvey to look at other boards and foundations. She is also reviewing what WA does with Doug Buman. She is hoping to have a comprehensive proposal to the Board in January and then will bring to the LMAC.

Doug reported that WA was facing a similar issue and in the memorandum of understanding and bylaws it was made clear that employees do not have financial control. He will get the MOU's to use as a working model. Bill wondered if there are other State models as well where States have faced the same predicament. Jerry elaborated that in the articles we have now the Board cannot make final decisions without LMAC approval.

Bill congratulated WorkSafe acknowledging that it took a tremendous amount of effort to get where we are now.

IX. Public Comment

Erin MacLean from the Montana Medical Association commented on the U&T guidelines and the provider rate cuts. She said the EAIC believes that there was a consensus that everyone had a voice in this process. She said the MMA didn't mean to come in at the end of the process, but they came when they heard that there was an issue that affected providers. In section 28 of the bill you need the consensus of medical providers. She said there are 2 components of medical cost and injuries create the multiplier. She asked how the MMA can help to bring down the injury rates? She said that the U&T Guidelines will have a negative impact on access. Some providers won't learn them and will leave the system. The system has to be easy to use and access. The rate reductions will result in providers leaving in mass. There are lots of physicians saying they can't do it at that level of payment. She suggested that you don't want to tie rates to Medicare when it is set to be reduced by 24%. Instead, set the rates to what commercial is paying. She would like to be on the agenda for the October meeting to talk about the reaction and number of physicians they are hearing from.

Lt. Governor Bohlinger responded by saying all of the meetings have been open to the public. Eighteen states reimburse at Medicare to 154% of Medicare. He mentioned MA at 108%, FL 109%, CA 115%, Maryland 123% and NY 124%. He said that many of these are expensive states to do business in. If these medical providers have found a way to make it work, Montana providers should talk to these providers.

Mike Foster representing the Catholic Hospitals and speaking for the MHA today asked that Bob Olson be allowed to present to the committee in October as he has been gathering data and analyzing it. He said Bob has a problem with the data used as it is old and he would like to provide current data. Bob believes hospitals are really receiving 155 to 175% of Medicare and the Department was shooting for 165% when it converted schedules, which is about where you are at. Mike said he knows the Department is considering rule making and he asked that this be delayed until after the process with Representative Hunter is completed.

Lt. Governor Bohlinger stated it is his understanding that St. Vincent's can make costs at 130% of Medicare, is that true? Mike said he didn't know and that every hospital had a different level of profitability.

Connie said we are looking at cost based reimbursement. She asked that hospitals start with actual cost data and not take into account cost shifting, etc. She would like to see implantable and equipment invoices and allow some reasonable profit. She is not looking to solve all of the WC problems on the backs of hospitals.

Judy explained that the rule notice will have to be filed and the process is a way to continue discussion.

Several members of the Council expressed their desire to have the medical providers placed on the agenda for the next meeting unless it is worked out in the mean time with Rep. Hunter's meetings.

Joseph Sands, professional firefighter urged the council to support the firefighters presumptive illness bill. He provided a handout to the Council detailing their proposal. He explained that the presumption is based on a study from the Ohio Bureau of Workers' Compensation. He would like to be on the agenda for November to discuss the bill the firefighters hope to bring to the Session.

Bill asked for data to show how many claims are filed and are they being denied. Jason would like to see data showing if private insurance is picking these costs up, what is the cost and where it is distributed.

Al Smith, MT Trial Lawyers Association, responded to the comment that medical dollars are such a high percentage of the overall costs explaining that it is because wages are so low in Montana. He said that if the medical providers want to reduce the injury rates than they should donate to WorkSafeMT. He said that the LMAC still doesn't have the PPD numbers on the impairment based system he asked for. If you take out the increase in the AWW, every worker is a loser under this suggestion.

Jason commented that there is an increased interest in LMAC. He is hearing from the media and other interested groups. We don't have the ability to restrain comments. The Department staff should put together a communication plan and an outreach plan to answer questions.

X Next Steps:

Anne said that the MHA and MMA would be placed on the agenda for the October 28th meeting and she will determine how much time to allow them based on the other items on the agenda. Presumptive illness will be on the November agenda. Joseph Sands is invited along with the MMIA and MACO. The Department will develop a 1 page document summarizing fraud and also a communication plan for the next meeting.

Next Meeting

The next meeting will be October 28th at the MT State Fund building. The November meeting will be on the 16th and the December meeting on the 15th.