

Minutes

Labor-Management Advisory Council

December 16, 2010
Great Northern Hotel

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

Project Core Team members present: Diana Ferriter, Keith Messmer, Anne Wolfinger, Judy Bovington, Bruce Chamberlain

Others present: Bill Murray, Trudy Winslow, MHS; Jon Bennion, MT Chamber; Bonnie Lyytinen-Hale, HRC.Inc.; Margaret Morgan, Morgan Consulting; Andy Adamek, BKBH; Lance Zanto, DOA; Al Smith, MTLA; Rick Clark, Plum Creek; Ann Komac, Thom Danenhower, MMIA; Doug Neil, MSFA; Joseph Sands, MSCOPFF; Greg Jackson, MaCO; Tim Fitzpatrick, MTSBA; Pat Schendel, RPM; Erin MacLean, Janet Whitmoyer, MMA; Raji Chadarevian, Mike Taylor, NCCI; Larry Jones, Liberty Northwest; Phil Drake, MT Watchdog; Karen Wiles, Teresa Graham, Lucy Jeffrey, Barb Gullickson, Anni Druce, Ryan Morton, Kristine Shields, Mark Hurlbut, Bill Wheeler, Dave Elenbaas, ERD; Andy Shirtliff, Lt. Governor's Office.

I. Welcoming & Introductions

Lt. Governor John Bohlinger greeted those present and asked everyone to introduce themselves. He commented that good public policy is made when people get together to discuss and solve problems like this group has done. He said that this would be the last Council meeting before the session and he urged everyone to support and defend the work that has been done by this Council. He said that the original strategy was to have Representative Hunter carry this bill as he is well versed in workers' compensation matters, but 68 legislators have decided that this bill is dead on arrival. He spoke with Representative Hunter who agreed that the LMAC bill is not likely to make it through the House. Rep. Hunter recommended starting the bill on the Senate side. The Lt. Governor contacted Senator Ryan Zinke who said he would be honored to carry the bill and Sen. Zinke recommended that Senator Keane be asked to join him in sponsorship. Lt. Governor Bohlinger has left a message for Senator Keane.

II. Approval of Agenda and Minutes

The agenda and minutes were approved as written.

III. LMAC Workplanning

Jerry Keck said that another meeting is needed to determine the mechanics of how to carry the bill forward and that the LMAC members need to decide on a time during the session to discuss bills.

IV. Medical Issues Updates

Jerry Keck gave a brief history of the fee schedule proposals to this point. The department has met with Representative Hunter and the MHA and MMA in three meetings in an attempt to better understand each other's numbers. He noted that Congress has recently given a bump in Medicare provider reimbursement by passage of the Frontier Factor. This change in Medicare fees resulted in slightly higher conversion factors than were originally proposed at 150% of Medicare. The conversion factors proposed are \$54 for anesthesiologists and \$59.89 for everyone else. Both groups continue to talk about what numbers can be agreed upon.

Keith Messmer reported on the testimony received at the fee schedule rule hearing. The MMA and MHA both opposed the rule saying that the conversion factors and base rates were too low and would result in providers refusing to treat workers' compensation patients. Dr. Philip Steele also spoke in opposition talking about the expenses of running his practice which continue to increase every year. Gary Lusin, a physical therapist, spoke in opposition saying that he thought with the adoption of the Utilization and Treatment Guidelines that the department should hold off and give the Guidelines a chance to work and then if needed reduce the fees.

Jerry reported that the MMA and MHA said they would challenge the department's ability to set the rates in rule and will propose legislation with upper and lower limits on the rates that can be set. The department is not going to adopt the rule on January 1st and Jerry sees three options: 1) Delay adoption until we have a read on what the legislature would like to see and adopt sometime in mid-March; 2) continue to work with the MMA and MHA to try and come to an agreement on numbers; or 3) freeze rates where they are until there is a demonstrated reduction in the WC premium rates. Jerry asked for a sense from the members on what is best for the system.

Don pointed out that the NCCI analysis is showing almost no cost saving. He questioned why there is such opposition as it doesn't appear to be a very harsh change. Jerry responded that the department has not had a chance to discuss this analysis with NCCI yet.

Bob suggested that the department continue to work with the medical community on the numbers and is hearing from the doctors "this won't work, we need more money." He said he needs the medical provider community to step forward and propose a solution.

Lt. Governor Bohlinger said that he has analyzed the conversion factor change from 65.28 to 59.81 as an 8.73% reduction and does not see this as unreasonable. He stated the Governor is preparing his budget proposal reduction of 5% across the board and has made additional reductions from there. Unless we go forward with reducing these costs, there will be no savings.

Bill commented that we can't be successful if we ignore 72 cents of every dollar. WC subsidizes cost shifting. A freeze will actually lose us ground rather than gain ground. Annette suggested that the discussion with MMA and MHA continue. She commented she would hate to see rates frozen. Don agreed that talks need to continue to agree on the base numbers and then the department needs to make the tough decision. Jason reminded everyone that the LMAC made a recommendation on May 17th to go to 150% of Medicare. He doesn't think LMAC has to do anything in addition to that.

Public comment was taken on this issue:

Erin MacLean stated that the MMA continues to be willing to work with the Department. When saying that 72 cents of every dollar goes to medical, she would like to see a breakdown of what percentage of that is going into reserves, prescriptions, etc. She believes a huge portion of that amount is not going to physicians.

Bonnie Lyytinen-Hale, Headwaters Rehabilitation, commented that she believes the rehabilitation counselor payments are included in medical as well as settlement amounts in lieu of vocational rehab. She commented that lowering the fee schedule amounts will result in cost shifting to other payers. Returning workers to work will lower medical costs.

Keith Messmer reported that the U&T rules will be reissued based on the comments to the previous notice that the actual Montana Guideline was not available for viewing previously. The

Guidelines are posted on the web now for viewing and the rules will be filed on January 3rd and published on January 13th. The plan, subject to comments received, is to still have the Guidelines be mandatory as of April 1st.

V. LMAC Workers' Compensation Bill

Don moved and Jason seconded the adoption of the subcommittee minutes as written. The minutes were approved.

Bob reviewed the work of the subcommittee and reported that the analysis of various formulas did not reach the results that were hoped. Therefore, the subcommittee is recommending that the PPD language reverts to its current statutory form. Jason said he was disappointed we didn't find a formula that gave us a more equitable result, but with limited time we need to revert back to the original PPD formula. Don added that Riley is concerned about the benefit increases that have been previously agreed upon. Bob commented that Riley had asked him to express this concern also and he shares the concerns about benefit increases going forward.

Bill said that LMAC has spent years negotiating this proposal and he has concerns about making decisions on which pieces to keep in a couple of hours. He suggested that another meeting be scheduled and the entire package be reviewed.

Mike Taylor, NCCI, was able to get the distribution of the medical costs that Erin MacLean asked for and reported:

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|----------------------------|-------|
| Physician | 37.3% |
| Hospital | 31.1% |
| Commodities | 18.5% |
| Eye care, dental and other | 13.2% |

Physician costs are further broken down to:

| | |
|------------|-------|
| Surgeon | 29.4% |
| Medicine | 23.5% |
| Radiology | 19.8% |
| E & M | 22.1 |
| Anesthesia | 5.1% |
| Pathology | .1% |

Jerry commented he would like Mike to prepare a narrative of the 72% explaining how much is reserves and how much is actual expenditures.

Judy Bovington reviewed the changes made to the draft bill to revert back to the original PPD language. Jerry reviewed the "Key Elements in Consensus Comprehensive Package" paper and the items that will remain and those removed as a result of reverting the PPD language back. Items 1 through 5, 9, 11 through 15 and 17 will remain. Items 11, 12 and 15 are benefit increases and will need to be discussed to determine if they are kept. The others will be stricken. He said Frank's projected savings and NCCI's numbers have discrepancies that need to be resolved. He reviewed the other projections and compared them to NCCI's numbers.

Jason commented that he understands NCCI can't price items like claim closure and U&T, but the legislature needs to understand these savings exist even though NCCI can't price them. He asked if we can give evidence from other states on how much they have saved. Jerry responded

that we have some of that. It will show up in the NCCI pricing in two to three years. The rate of saving for U&T was 65% in Ohio and 25% in CA. It is projected to be 36% in MT.

Doug proposed that LMAC set some triggers rather than eliminate benefit increases. Jerry said this would have to be a very objective number tied to NCCI's numbers. Don suggested getting pricing on delayed implementation and on a trigger mechanism. Jerry said ERD can research and bring a proposal back to the next meeting.

Bob suggested that instead of adding weeks or percentages, LMAC needs to look at vertical and horizontal equity and distribute any savings based on those criteria.

Public Comment:

Bonnie discussed a proposal from the Montana Rehabilitation Association. They would like to make sure workers are apprised of their ability to ask for rehabilitation services. She provided LMAC with proposed legislative language and asked that it be placed in the bill to require a brochure be given to every injured worker explaining what is available and whom to talk to. Annette commented that she distributes a roles and responsibilities explanation page to every injured worker. She will send it to Jerry. She further commented that doing mailings to every injured worker gets expensive and suggested it be incorporated in existing mailings.

Doug moved and Jason seconded a motion to incorporate Bonnie's proposal into the LMAC bill. The motion passed unanimously.

VI. WorkSafeMT

Carl Kochman reported that the Safety Fest in Missoula drew 530 people with 3,500 classroom hours. It was very successful and the comments were favorable. He thanked the sponsors, including Jerry for supplementing the budget, Danny Lee and the AFL/CIO for supplying the coffee and Bill Dahlgren for the door prizes.

Carl presented the Memo of Understanding and the Bylaws and asked for the Council's sign off. He said 13 of the largest corporations in the State are waiting for the decoupling to be finished so they can donate funds to WorkSafeMT. Danny brought up an issue he had with the Bylaws, section 3.4. He felt the language needs to be changed to allow a voting proxy to be given if one of the members is unable to make a meeting. Carl explained his opposition. He wants members to be at the meetings and fully engaged. He said absent members don't have the opportunity to hear the discussion prior to a vote. Don Judge motioned and Danny Lee seconded the motion that proxy voting be allowed. The motion passed with Annette and Bill voting no. Don then motioned and Doug seconded approval of the bylaws and articles with amended proxy language and a change to section 11 of the Bylaws to strike "members". The motion passed unanimously.

VII. Presumptive Illness

Doug Neil, MSFA, and Joe Sands, MSCOPFF, returned with the answers to questions raised previously by members of the LMAC. Joe handed out a letter from the General Counsel to the firefighter union stating that based on experience in California and Illinois you can expect to see one firefighter file a presumptive illness claim in Montana each year after passage of the coverage. This was verified by surveying 605 firefighter member's medical records in Montana for the past 10 years for cancers. The 10-year average was one cancer illness per year. They asked for the LMAC's support of their legislation.

Jason asked if a sponsor had been lined up to carry the bill. Doug said not yet as they were waiting to see if LMAC would support it first. Don stated that LMAC needs to see the bill before deciding to support it or not.

XI. Public Comment

Jon Bennion, Montana Chamber of Commerce, thanked the Council for their attention and work. He stated that fraud in its broadest sense will be an issue in this session.

Al Smith, MT Trial Lawyers' Association, said "we told you so" regarding the PPD formula and that he was glad the members kept an open mind and got it right. He said as an organization MTLA will support the package. He emphasized the need to decrease the number of workers injured or killed on the job.

XII Next Steps:

Anne Wolfinger reviewed the next steps: continuing discussion with the MMA and MHA; moving ahead with the LMAC bill; developing a one-page fraud fact sheet for legislators; and waiting for the firefighters bill.

Next Meeting

Anne will schedule the next meeting for January 4th, 5th or 6th. Conference calls during the session to discuss legislation will be held Fridays from 1:00 to 2:00 p.m.