

**Minutes**  
**Labor-Management Advisory Council**  
**March 13, 2014**  
**Best Western Great Northern Hotel, Helena**

**Advisory Council and Subcommittee members present:** Bob Worthington, Annette Hoffman, Don Judge, Bill Dahlgren, Jim Larson, Doug Buman, Al Ekblad, Al Smith, Lance Zanto, Jean Branscum, Kevin Braun, Jacqueline Lenmark, Bonnie Lyytinen-Hale

**Project Core Team members present:** Diana Ferriter, Bryan Page, Peter Van Nice, Anne Wolfinger, Bill Wheeler, Mark Cadwallader

**Others present:** Mike Taylor John Deacon, NCCI; Thom Danenhower, Ann Komac MMIA; Anni Druce, Barb Gullickson, Maralyn Lytle, Teresa Graham, Karen Wiles, Erin Weisgerber, Kristine Shields, Bryan Page, Jason Swant, George Gulden, ERD; Joe Hamilton DOA-WCMB; Richard Martin, Fair Claim; Tim Fitzpatrick, MTSBA; Tana Wilcox, Northwestern Energy; Pat Murdo, Legislative Services; Robyn Morrison WorkSafe MT; Brian Reed, MSCPFF; Glenn Wright, Coventry Work Comp Services; Leah Tietz, MUS.

**I. Welcome and Introductions**

Bob Worthington was chairman in the absence of Lt. Governor Angela McLean and greeted those present.

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

The agenda was approved. The minutes of the January 16, 2014 minutes were amended and approved.

**III. Economic Affairs Interim Committee Report – Pat Murdo. Legislative Services**

Pat advised of a meeting for March 27, 2014 to discuss HJR 25. Judge Jeremiah Shea will be present. She advised there is a need for representatives of Plan 2 and injured workers to discuss how the designation of a treating physician is working. The meeting will also discuss restructuring of the Montana State Fund.

**IV. Overview of Recent Workers' Compensation Benefit Changes – Diana Ferriter**

Diana gave a presentation on recent workers' compensation benefit changes; including course and scope, choice of treating physician, medical care, wage loss after 21 days of disability, permanent partial disability benefits, stay at work/return to work assistance benefits, and compromise settlements and lump sum payments.

## **V. NCCI Data Presentation**

Mike Taylor introduced John Deacon who presented a preliminary review of an NCCI report on the cost impacts of HB 334. The presentation consisted of quantified provisions and impacts on: PPD and impairment awards; termination of medical benefits at 60 months after injury and the timeline of impact; the introduction of a retroactive of 21 days; and choice of healthcare provider.

Mike Taylor also advised NCCI had filed its Loss Cost Filing with the MT Insurance Commissioner's office. Loss Costs have decreased 3.6%.

## **VI. Proposed Draft Legislation – Diana Ferriter**

Diana presented the Department's proposed draft Legislation. Prior to doing so she informed the LMAC of the funding problem with the administration assessment. She advised that since the assessment is based on benefits paid by insurers in the preceding calendar year and is capped at 3% of those benefits, the declining benefits which are at 2008 levels has resulted in insufficient funding to cover the current level of services provided by the department. She explained that the Governor's office is hesitant to support an increase in the current 3% assessment or allow the assessment to be applied to medical in excess of \$200,000. She said the Governor's Office and Commissioner Pam Bucy will be looking at other options to address the funding issue.

The proposed draft legislation includes limiting the medical fee schedule update to once per year, amend 39-71-116 (41) and 39-71-711 (2) to remove physician admitting privileges; amend 39-71-915 of the subsequent injury fund to change the time period used for the assessment; amend 39-71-736 regarding paid time off or personal leave; and amend 39-71-107 to require insurers provide notice to injured workers when there is a change of claims examiners.

## **VII. LMAC Safety Committee Report – Don Judge, Bryan Page, Glenn Oppel**

Don, Bryan and Glenn reported the Safety Committee has been researching and discussing having Montana develop its own OSHA plan and become a state-based OSHA state rather than continue to run under federal OSHA. There are currently 22 states with their own plan. Michigan for example has had their own plan since 1974. The positives of a state-based include granting the state authority to direct and control the plan based on state-specific needs and eliminating travel to a federal office for an appeals process, which, for Montana, is Denver. Negatives include the cost of running a state plan although some grants are available. Glenn Oppel of the Montana Chamber will obtain information on how other states implement a rule making process when their plan standards exceed Federal OSHA. Don suggested getting speakers from OSHPA, the national organization for state OSHA plans. He also reported a Safety Committee working group was focusing on education and the possibility of developing a series of brochures for students, parents, teachers, school administrators and employers to encourage students to take the OSHA 10-hour safety classes.

### **VIII. Stay at Work/Return to Work Update – Jason Swant**

Jason talked about areas of improvement to the Stay at Work/Return to Work program. The areas include effectiveness of the post card to injured workers, program participation, SAW/RTW outcome reporting and provider release to return to work. He suggested the current postcard notice to injured workers be replaced with a letter; direct mailing to Plan 2 insurers that the program requires a SAW/RTW policy and a single point of contact; and increase education to medical providers. He provided updated statistics on the number of calls for SAW/RTW assistance and the outcome of those calls.

### **IX. Medical Regulations Update – Bill Wheeler**

Bill reported the Medical Provider Group met on February 28, 2014 to review updated guidelines. The Project Team has completed review and evaluation of all comments and plans to have administrative rules posted by April 24, 2014. An April 1 update is being finalized for Medical Fee Schedules with updated and expanded codes. A July 1 update process is underway which will modify conversion factors for the Professional Fee Schedule and base rate for the Facility Fee Schedule. He has received necessary data and is currently doing data analysis. They are also editing fee schedule instruction sets and codes. Bill also said onsite training was conducted in four facilities in southwestern Montana in February. The Medical Director and SAW/RTW Program Director participated in the Montana State Fund medical provider group training on March 5, 2014 in Missoula.

### **X. TTD Retroactive Payment for Waiting Period Discussion – Bill Wheeler**

At an earlier LMAC meeting, the Department was asked to provide guidance on the correct calculation for paying the retroactive waiting period when disability results in 21 days of wage loss. Bill provided four draft examples of calculating TTD and the retroactive payment period. Each example had the injured worker earning \$10.00 per hour with the injury date of the Monday the first. The examples varied on which date of the week the worker worked and provided department guidance on calculating the benefit entitlement.

### **XI. WorkSafeMT Update – Diana Ferriter**

Diana advised the LMAC that the Board is exploring re-alignment with the Department. Some of the discussions at the LMAC Safety Task Force led to some actions that WorkSafeMT could provide to partner with the Department. Robyn Morrison, the executive director, touched on actions WorkSafeMT could contribute.

### **XII. Work Plan – Follow up – Diana Ferriter, Anne Wolfinger**

Diana talked about the notification letter to claimants and employers from the Lieutenant Governor. The public comment form has now been set up on the LMAC website. Anne went over the work plan spreadsheet and starting in May 2014, the council will meet monthly. If the OSHPA speaker can attend the May meeting, there will not be a meeting in April to allow time to obtain additional information on the funding issue with the Department and for the Department to make contact with a speaker to present to the council information on state run OSHA plans. The Safety Committee will continue to meet.

**XIII. Governor's Conference – Bill Wheeler**

Bill said the upcoming Governor's Conference is in Big Sky on September 10, 11, and 12, 2014. He announced the speakers scheduled to appear at the conference. LMAC members are being asked this year to make their own room reservations and they will be reimbursed. LMAC members will be notified when the room block is opened.

**XIV. Public Comment**

Dick Martin with FairClaim commented on the impacts of HB 334 and proposed legislation from the Department.

The meeting was adjourned.