

Minutes
Labor-Management Advisory Council
May 22, 2014
Best Western Great Northern Hotel, Helena

Advisory Council and Subcommittee members present: Lt. Governor Angela McLean, Bob Worthington, Don Judge, Bill Dahlgren, Doug Buman, Chris Cavazos, Al Smith, Lance Zanto, Jean Branscum, Kevin Braun, Jacqueline Lenmark, Bonnie Lyytinen-Hale, Bob Olsen.

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

Others present: Commissioner Pam Bucy, Department of Labor and Industry; Dwight Easton, Farmers Insurance; Richard Martin, Fair Claim; Tim Fitzpatrick, MTSBA; Marv Jordan, MCCF; Alan Hulse, MMIA; Pat Murdo, Legislative Services; Glen Oppel, Montana Chamber of Commerce; Robyn Morrison WorkSafe MT; Leah Tietz, MUS; Chuck Hunter, House of Representatives; Glenn Wright, Coventry Work Comp Services; Stephanie Grover, DOA/WCMB; Scot Conrady, LFC; Anni Druce, Barb Gullickson, Teresa Graham, Karen Wiles, Erin Weisgerber, Kristine Shields, Bryan Page, Chris Bradley, Maralyn Lytle, Dr. Carla Huitt, ERD.

I. Welcome and Introductions

Lt. Governor Angela McLean greeted those present.

II. Approval of Agenda and Previous Minutes

The agenda was approved. The minutes of the March 13, 2014 minutes were amended and approved.

III. Workers' Compensation Assessment Deficit – Diana Ferriter

Diana provided a presentation with graphs explaining the decreases in revenue from the work comp assessment and the reasons for increases in expenditures. The power point is available on the LMAC website. Discussion among the LMAC members included the assessment based on payroll vs. premium vs. paid losses. Commissioner Pam Bucy was present and advised the Governor requested the LMAC make recommendations for consideration. Diana asked for directions from LMAC. A task force was formed to provide recommendations to full LMAC. The task force consists of Don Judge, Bob Worthington, Bonnie Lyytinen-Hale, and Doug Buman.

IV. LMAC Safety Committee Report – Don Judge, Lance Zanto

Don advised T.J. Eyer has replaced Karen Billings on the committee. He stated there is excitement about getting education including the OSHA 10-hour training for youth up and going. They are working on getting the 10-hour training after graduation. They are trying to encourage schools to do the 10-hour safety training, however the argument they encountered is that it is offered in colleges. They are encouraging teachers to get the

training, however there is no incentive to spend two weeks and their own money. He also discussed the student competition to encourage students to develop ways to reach out and encourage students to attend. T.J. will meet with school officials to develop ideas for the competition. Don also advised of an upcoming Ready for Work Safety & Career Fair in June in Billings for youth.

V. State-Based OSHA Program – Michael Wood, Chair OSHPA

Prior to the meeting, Michael Wood was presented a list of questions from the LMAC members which he answered in his presentation. The questions included staffing, the certification process, Consultation and Enforcement Grants, development of a state-based program, funding, other states' programs, coordination with the federal program, and reduction of fatalities. Representative Chuck Hunter said he fully supports increased safety efforts for Montana and would sponsor a bill draft effort. Lt. Governor Angela Mclean entertained a motion to begin the state-based application process. Doug moved, Lance seconded, a motion directing ERD to begin collecting the information necessary to start completing the application process. In clarifying the motion, LMAC agreed a decision to take a position whether or not to pursue a state-based program would happen at a future meeting and this preliminary information would be useful for that decision. The motion carried.

VI. Economic Affairs Interim Committee Report – Pat Murdo

Pat advised the EAIC met on May 12th and 13th. She stated there was a presentation recommending mandatory vocational rehabilitation services be implemented before an injured worker reaches maximum medical improvement. The committee referred this recommendation to the LMAC for review and recommendations. There was also dialog on the designation of treating physicians which included discussion with a member of the insurance industry and an injured worker's attorney. In addition, two doctors were in attendance. The claimant's attorney stated the designation of a treating physician allowed the insurer to doctor shop. The insurance industry reported there have been few cases of conflict. One physician stated it does not work for him due to the graduated payment schedule of 90%, 100% and 110%. Pat stated the July 14th and 15th meeting will include subrogation as there are two bills the self-insureds have recommended. There will be a panel discussion to vet the bills and the EAIC will decide whether or not to support them. The July meeting will be the last for general discussion and the meeting of September 12th will involve final adoption of legislation.

VII. Designated Treating Physician Panel Discussion – Dick Martin, David Lighthall, Jacqueline Lenmark, Kevin Braun and Tim Fitzpatrick

Attorneys Dick Martin and David Lighthall represented injured workers. Attorneys Jacqueline Lenmark and Kevin Braun represented the Plan II and III insurers and Tim Fitzpatrick represented Plan I self-insureds. The insurer representatives stated there has been no indication of problems with the insurer designation of treating physicians. The claimant attorneys, although acknowledging the instances are rare, said they feel it is unconstitutional and interferes with the right to privacy. Discussion also involved difficulty in tracking data on the number of occurrences of adjusters designating treating physicians. Diana Ferriter stated the Department does not collect data on change of

treating physicians, however the mediation unit does capture information by subject code. Kevin Braun provided statistics from July 1, 2011 through March 31, 2014 of the number of claims filed, the type of claim and how many involved designation of a treating physician. Dick Martin feels there should be “sideboards” to the statute as there are no parameters and the adjuster can simply designate a treating physician with no basis to do so. A subcommittee was formed to pursue this issue further. Those on the subcommittee are Al Smith, Bonnie Lyytinen-Hale, Chris Cavazos, Bob Worthington, Kevin Braun and David Lighthall.

VIII. Workers’ Compensation Statute Review – LMAC Members

Discussion involved MCA Section 39-71-1006, vocational rehabilitation benefits and the entitlement to the benefits if the claimant is issued a 15% impairment. This was implemented when the 4th Edition of the Guide was in place. There was discussion regarding researching the legislative history and that it would be difficult for a 15% impairment rating to be issued from the 6th Edition of the Guide. The members agreed to pursue the issue further and requested ERD staff bring back information or data about changes in the 4th, 5th and 6th editions of the guide.

IX. Medical Regulations Update – Bill Wheeler

The rules hearing regarding the fee schedule combined with U & T Guidelines was scheduled for May 19, 2014, however an error was discovered regarding the Facility Inpatient fee schedule. The hearing was vacated and rescheduled for June 11, 2014.

X. WorkSafe MT Update – Diana Ferriter, Robyn Morrison

Robyn advised the January meeting scaled back administrative and overhead costs to direct the funds to smaller projects. She stated the brand value is now associated with DOLI. She advised the WorkSafeMT Governor’s Safety Award will be presented at the SafetyFest in Havre. She also advised WorkSafeMT would work with T. J. Eyer from OPI on the high school social media safety competition and had authorized \$5,000 to pay for prizes.

XI. LMAC Workplan and Follow-up – Diana Ferriter, Anne Wolfinger

Anne and Diana reviewed the work of the LMAC to-date and the plan moving forward, as indicated in the LMAC workplan.

XII. Public Comment

There was no further public comment.

XIII. Next Steps – Anne Wolfinger

Anne summarized the next steps LMAC members and staff would complete before the next meeting.

The meeting was adjourned.