

**Minutes**  
**Labor-Management Advisory Council**  
**September 22, 2015**  
**Hilton Garden Inn Missoula, MT**

**Advisory Council and Subcommittee members present:** Chris Cavazos, Marv Jordan, Don Judge, Al Smith, Bob Worthington, Kevin Braun, Bill Dahlgren, Jean Branscum, Annette Hoffman, Doug Buman, and Bonnie Lyytinen-Hale.

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

**Others present:** Peter VanNice, Christina Cox, Jason Swant, Dave Elenbaas, Teresa Graham, Erin Weisgerber, Barb Gullickson, Kristina Ediger, Jerry Laughery, Karen Wiles, and Billy Chilton, ERD; Michael Marsh Midland Claims Service; Mike Weigel, Rada Lorenz and Sheri Fritz, Montana Health Network; Tom Kanan. MT Insurance Guaranty Assoc.; Matt Chanbus and Stephanie Grover, WCMB/Dept. of Administration; Rep. Vince Ricci, House District 55; Glenn Oppel, Montana Chamber; Nancy Butler, and Ethan Heverly, Montana State Fund; Ann Komac and Alan Hulse MMIA; Oliver Goe, Browning, Kaleczyc, Berry, & Hoven; Shawn Bubb, MSGIA; Gary Wiens, Metspool; Jamie Haliai, Rosauers; Norm Newhall, FairClaim; Jessica Epley and Mike Taylor NCCI.

**I. Welcome and Introductions**

In the absence of Lt. Governor Angela McLean, Don Judge chaired the meeting and greeted those present. Doug Buman was a proxy for Jim Larson and Bob Worthington for Lance Zanto

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

The agenda and minutes from the June 17, 2015 meeting were approved.

**III. LMAC Charter Update – Diana Ferriter**

Diana advised the previous charter was updated at the end of June with the recommendation from Commissioner Pam Bucy that LMAC continue. With the Governor's veto of Senate Bill 288 he referred the subrogation/experience modification issue to LMAC for discussion. Today's meeting provided information on subrogation and how experience modifications are calculated to be discussed at the next LMAC meeting.

**IV. Subrogation Perspectives – Oliver Goe and Norm Newhall**

Oliver Goe provided the self-insured employer's perspective providing background on why Senate Bill 288 was a good option for employers as it was limited to medical benefits, was equitable, and prevented double recovery of medical benefits. He also described the Supreme Court's definition of "made whole" and discussed the statute

regarding waiver of 50% if the insurer does not participate in subrogation. He suggested one alternative is to allow the insurer to recover 3<sup>rd</sup> party payments of medical benefits over a certain dollar amount.

Norm Newhall provided the claimant's perspective with emphasis on four points: 1) SB288 was trying to solve a negligible problem. He stated a small percentage of claims result in 3<sup>rd</sup> party settlements. 2) SB288 is unconstitutional. 3) Workers' compensation is a "no fault" system and intended to spread the risk among the policyholders so no one employer pays for an entire injury. 4) The Governor's veto letter directed the LMAC to consider alternatives to subrogation and deal with the impact on experience modifications. He suggested a law be passed that modification factors shouldn't be increased until the third party liability is made clear.

#### **V. NCCI Experience Modification – Mike Taylor**

NCCI provided an overview of the purpose and benefits of experience ratings (ER), the basics of ER, subrogation, claim limitations and ER worksheets.

#### **VI. Variation on NCCI Experience Modification – John Altop, Bickmore, RM**

The issues presented were risk pool funding, experience modifiers and allocations. The focus on was self –insurers and risk pools. The points made were insurance companies versus pools; pool funding; allocation basis for funding components; characteristics of an experience modifier plan. Primary concerns are the balance of risk sharing and risk bearing; stability versus responsiveness and a secondary concern is a "charge for" frequency or severity.

#### **VII. Safety Update – Bryan Page and Jerry Laughery, Safety Bureau**

Bryan advised the SafetyFest in Butte had approximately 300 attendees. Billings Safetyfest will be in November and 600 to 700 attendees are expected. Safetyfest in Missoula will be in February, 2016. He stated the Student Outreach is doing well and this year they have issued OSHA 10 hr. cards to an additional thousand students. The Safety Bureau held its first 10 hour OSHA class for State Safety employees and it was well attended. The Safety Bureau is, for the first time, fully staffed with Safety Consultants. Bryan introduced Jerry Laughery, Public Employer Compliance Supervisor. Jerry advised there have been visits to 26 public entities, as well as inspections at five State and 11 counties or cities and towns. All resulted in recommendations to improve safety with no penalties for now. Jerry advised Compliance staff will also be visiting public entities based on complaints and fatalities.

#### **VIII. 2014 Workers' Compensation Annual Report – Bill Wheeler**

Bill advised the Annual Report has been published and hard copies of the report were provided to the LMAC members. He advised the NIOSH grant applied for last year has been approved and he thanked LMAC for their letter of support for the grant.

**IX. HB 334 Work Comp Reform Monitoring – Five Year Closure**

Bill advised of his presentation at the conference at 1:00 pm, Wednesday September 23, 2015 regarding the five year closure of and reopening of medical benefits and he would be requesting feedback from the audience

**X. Public Comment**

No public comment

**XI. Next steps – Anne Wolfinger**

Next steps were reviewed with an updated work plan. The topic of drug formulary dovetailing with physician dispensing was added as information only.

The meeting was adjourned.