Montana Department of
LABOR & INDUSTRY

Steve Bullock, Governor
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WORKERS' COMPENSATION ADMINISTRATIVE ASSESSMENT HISTORY
NOVEMBER, 2014

PROBLEM STATEMENT:

The Administrative Assessment (39-71-201, MCA) is capped at 3% of paid losses in the preceding calendar year. Medical expenses in excess of $200,000 for each occurrence are exempt from the assessment. As paid losses decrease each year due to decreased injury rates, decreased duration of claims, and decreased benefit levels, the assessment does not adequately fund the increasing costs for the Department to administer the statutory services or the requested safety services provided to stakeholders. Estimate for 2014 Assessment – Capped at $6.4 million assessed – Estimated Department Costs will be $7.4 million – Insufficient funding of $1 million. The $1 million will be funded from the cash balance in the assessment fund and decrease the cash balance to approximately $2.5 million. At this same rate the cash balance could be depleted within 2 years.

HISTORY OF ASSESSMENT:

Prior to 7-1-99 – The assessment was based on the preceding calendar year's gross annual payroll of the Plan No. 1 (Self-Insured) employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers. Plan No. 3, the State Fund, was assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating Plan No. 3. The assessment had to be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. There was also a minimum assessment that increased over time and was at $500 prior to 7-1-99. This methodology was in effect from 1973 through June 30, 1999.

The methodology allowed the department to cover the costs for administering the provisions of the law and cover the salaries, benefits, and operation costs of the Department and Workers' Compensation Court. There was no cap on the amount that could be assessed so as salaries, benefits, and operating costs increased, the assessment could cover the costs. When new administrative procedures were added to the Department, the Department could estimate the costs, get approval through the budgetary and legislative process and carry out the responsibilities.

Effective 7-1-99 – The assessment was changed to be based on 2.6% of the benefits paid, except medical benefits over $200,000 per claim, during the preceding calendar year without regard to any deductible whether the employer or insurer paid the losses. There was still a $500 minimum assessment and each Plan No. 1 employer and Plan No. 2 insurer and the State Fund were required to begin sending to the Department reports of paid losses. The department, however, only assessed a percentage of benefits paid that were necessary to fund the expenses and did not automatically assess 2.6% of benefits paid. Benefits were increasing each year.

This change was initiated as a result of a Workers' Compensation Court decision regarding the assessment methodology – MSGIA v. Department. The self-insured schools group argued that the department did not

meet the statutory requirement of 39-71-201 because it did not accurately account for the direct costs allocated to each plan. The Court ruled in favor of the self-insured schools group.

It's my understanding that sometime during this litigation period, the stakeholders met with the Department and resolved the litigation by changing the statute to the language that became effective 7-1-99 and the new methodology based on paid losses rather than payroll and direct written premium.

This new methodology capped the amount of funding the department could obtain without any consideration of future decreases in benefits and increases in salaries, benefits, fixed costs, and inflationary costs.

Effective 7-1-2000 – A surcharge rate calculation was implemented that allowed Plan No. 2 and Plan No. 3 to pass the assessment through to their individual policy holders, collect the surcharge and submit it to the Department.

Effective 7-1-2001 – The assessment was changed to be based on 3% of benefits paid, an increase from 2.6%.

Effective 7-1-2009 – The assessment was changed to be based on up to 3% of benefits paid. This change addressed an audit issue. The auditor noted that the language of the statute did not allow the Department to assess less than 3%. The minimum assessment of $500 was also eliminated.

All of the changes made to the assessment after 7-1-99 assumed benefit levels would stay the same or increase sufficiently to cover expenses. The Department's salaries, benefits, operating and fixed costs have all increased and benefit levels have decreased. In addition, HB334 included new and additional responsibilities for the Department that increased expenses and administration of the law.

LC0533 2015 LMAC/Department PROPOSAL – Amend 39-71-201 to create two separate assessments. 1) A workers' compensation administration fund using current methodology to fund the work comp mandatory regulatory and administrative functions in Title 39, Chapter 71 and capping it at 5% of benefits paid in the preceding year. This assessment would provide additional revenue into the future as benefits continue to decline. 2) A separate occupational safety and health administration fund using current methodology to fund the authorized safety functions in Title 39, Chapter 72, Part 15 – Montana Safety Culture Act and Title 50, Chapters 71, 72, and 73 Occupational Safety and Health and Mine Safety in an amount sufficient to cover the legislative appropriated budget for these safety functions.