

## **HB 334 – Comments of Al Smith From the Perspective of Attorneys Representing Claimants**

### **COURSE & SCOPE**

\* Limits the employer's liability for injuries occurring off the employer's premises while performing personal business on a break or while engaged in a social or recreational activity paid by the employer. **Was in consensus agreement that LMAC agreed to, not a major concern or subject of substantial numbers of claimants' claims.**

### **MEDICAL BENEFITS & TERMINATION/REOPENING**

- Terminates medical benefits on permanent partial claims 60 months from the date of injury or occupational disease (OD) and provides for reopening of terminated medical benefits within 5 years of termination through a request to and recommendation from the Department's Medical Director plus two other physicians chosen by the Department to review the request. **Was not in in this form in consensus agreement that LMAC arrived at. At this stage no one has been affected by this as it applies to claims that arose beginning July 1, 2013. The LMAC consensus provided for a shorter time period – 3 years – but a relatively easier process for maintaining or reopening medical claims for those few workers who would be affected by this provision.**

\* Department hiring of a Medical Director for independent review of treatments denied by insurers. **Still early in the implementation, but claimant appeals seem to be settling into a pattern of the majority of injured workers appeals being denied, and only 15% being recommended without conditions or other changes.**

**WAITING PERIOD** Provides retroactive payment of the waiting period if disability exceeds 21 days. **Was in consensus agreement that LMAC agreed to, and was one of the small increases in compensation for injured workers.**

### **SETTLEMENT OF MEDICAL BENEFITS**

\* Provides for mutual agreement to settle future medical benefits on accepted claims. Requires rationale for settlement, statement of best interest of parties, and signed acknowledgment of worker. **Was in consensus agreement that LMAC agreed to, and was one provision that benefits agreeable insurers and injured workers.**

## **STAY-AT-WORK/RETURN-TO-WORK**

\* Provides for early Stay-At-Work/Return-To-Work assistance from the Department or Insurer. **Was in consensus agreement that LMAC agreed to, but still too early in the implementation stage to assess impacts. Early experience has been same same as before statutory change - that good employers that wanted injured workers back provide meaningful work opportunities, those that just wanted to get rid of the employee use SAW/RTW as a means to do that.**

## **IMPAIRMENT RATINGS & PPD AWARDS**

\* Requires doctors to use the 6th Edition of the AMA Guides to Evaluation of Permanent Impairment for determining an impairment rating. **Was not in consensus agreement that LMAC arrived at, LMAC agreed to retain the 5<sup>th</sup> Edition. This has been a major concern with decreased compensation for injured workers under the 6<sup>th</sup> Edition. Substantial numbers of claimants' claims have been negatively impacted by this change.**

\* Awards a permanent partial disability (PPD) payment only to injured workers who suffer a whole person impairment rating greater than zero **and** a wage loss, or to injured workers with a Class 2 or greater impairment rating **and** no wage loss. **Was not in consensus agreement that LMAC arrived at. This has been a major concern with NO impairment compensation for injured workers with Class 1 impairments and no wage loss. Substantial numbers of claimants' claims have been negatively impacted by this change.**

\* Increases the number of weeks included in the calculation of the award from 375 to 400 weeks. **Was in consensus agreement that LMAC agreed to, and was one of the small increases in compensation for injured workers.**

## **CHOICE OF TREATING PHYSICIAN**

\* Allows injured worker to choose initial health care provider and allows insurer to approve workers' choice as treating physician or designate a different treating physician to manage and coordinate medical treatment. **Was not in consensus agreement that LMAC arrived at. This has been a major concern with choice of physician being overridden, decreased access to medical care, designation of treating physicians in distant towns and delays in receiving medical care for injured workers. Substantial numbers of claimants' claims have been negatively impacted by this change.**

**LMAC Consensus (as in HB 87) Other provisions that LMAC agreed to, but did not make it into HB 334.**

**\* Limited payment of attorney fees in medical only disputes**

**\* Effective 7/1/2011 - Increase maximum weekly PPD rates to 75% of SAWW (now at 50%) Impact on higher wage earners is significant when compensation rates are limited to 66 2/3% of weekly wage, and then capped at half of the average weekly wage. The 66 2/3% was instituted when taxes were higher, to approximate take home pay lost – probably closer to 75% or higher now.**

**\* Effective 7/1/2013 - Increase maximum weekly PPD rates to 100% of SAWW**