

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

Advisory Council and Subcommittee members present: Council Chair Lt. Governor Angela McLean, Doug Buman, Chris Cavazos, Annette Hoffman, Riley Johnson, Don Judge, Al Smith, Bob Worthington, Lance Zanto, Jean Branscum, Kevin Braun, and Jacqueline Lenmark.

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

Others present: Marv Jordan, MCCF; Alan Hulse, Thom Danenhauer, Ann Komac, MMIA; Jerry Laughery, Anni Druce, Barb Gullickson, Karen Wiles, Erin Weisgerber, Kristine Shields, Dave Elenbaas, Maralyn Lytle, Jason Swant, Chris Bradley, ERD; Dick Martin, FairClaim; Pat Murdo and Scott Conrady, Legislative Services; Robyn Morrison, WorkSafeMT; Nancy Butler, MSF; Pete Ropp, Liberty Mutual Vocational Rehab; and Errolyn Lantz, OBPP

I. Welcome and Introductions

Lt. Governor Angela McLean chaired the morning meeting and greeted those present.

II. Approval of Agenda and Previous Minutes

The agenda was approved. The minutes of the June 17, 2014 minutes were amended and approved.

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

Pat advised the EAIC met on July 14 and 15, 2014. Items discussed were the state-based OSHA program, subrogation and the structure of the Montana State Fund. On the issue of subrogation, Senator Tutvedt has requested a draft bill to prohibit a modification factor increase to an employer with a claim which is the fault of another party.

IV. Funding Task Force Recommendation – Diana Ferriter

The LMAC Funding Subcommittee recommended the statutory requirements of ERD continue to be funded with an administrative assessment and the authorized safety functions be funded with a separate safety assessment. A further recommendation was the current cap of 3% for the administrative assessment should be eliminated and both the administrative assessment and safety assessment be based on the legislative-approved budget needs of ERD. In addition, the recommendation included that the current medical cap be increased where all medical costs up to \$400,000 per claim are included in the amount available for assessment.

Discussion included how an average of the claims was computed and what outliers were omitted, separating the administrative assessment from the safety assessment, how rates would be calculated if they were separated, elimination of the 3% cap and the effect the

\$400,000 per claim would have on self-insured members, escalation to \$300,000 the first year and a five-year running average in the second year.

Don Judge moved and Doug Buman seconded that the 3% cap on the administrative assessment be removed. The motion passed unanimously.

Don moved and Doug seconded, that the assessments for administrative services and safety functions not be split. After discussion, the motion was withdrawn.

Don moved and Doug seconded, that the current medical cap be increased the first year to \$300,000 and the second year to \$400,000. After discussion, the motion was amended to increasing the cap to a running five-year average the third year and beyond. After further discussion, the motion was amended to increasing the cap to a running five-year average the second year and beyond. The motion was subsequently withdrawn.

Don moved and Doug seconded, that the current medical cap be increased the first year to \$300,000 and the second year to \$400,000. The motion passed unanimously.

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

Don asked Leah Tietz to report on education. She reported that 26 renewal credits are not available to teachers that take the OSHA instructor classes. She advised a kindergarten teacher took the OSHA class and paid for it at their own expense. She will follow up with how the teacher was motivated to take the class and they are looking at options to fund teachers taking the class. The safety committee is also trying to get credits toward a BA or MA for these classes. Also, she will work with OPI for more outreach to teachers at their conference in October. One prong is to attempt to reduce the cost of the class which is \$650 and does not include books, or travel and lodging expenses. The cost can be reduced if the Department provides the training and the Helena College will provide the classroom space. They are also looking at private scholarships. T.J Eyer from OPI continues to develop programs with monetary prize incentives for high school students to participate in social medial contests about safety. The Sidney, MT school district has added training and it is mandatory to graduate. Fred Miller and George Gulden from ERD continue to contact schools to try and get safety training as part of the curriculum and out of the 37-38 schools contacted there has been good response.

Lance reported they are continuing to look at State contracts to get language added regarding safety. The committee has discussed credit for a contractor having a mod factor of less than 1.1; 10% or less of the average industry injury rate; taking the 10-hour OSHA class or that they comply with the Montana Safety Culture Act.

VI. State-Based OSHA Program – Diana Ferriter

Diana reported the goal of a State-Based OSHA Program is to improve workers' safety and prevent workers' compensation injuries while lowering the cost of workers' compensation insurance and Montana could use State data to drive a State plan. She provided components of the startup plan and the method of operations. Discussion

included staffing, budget impacts, the time frame of implementation, and what would be involved with enabling legislation.

LMAC requested the Department draft enabling legislation and work with the Safety Committee for agreement on the language before taking it back to the LMAC at the August meeting.

VII. Employer Education on Transitional Employment – Lt. Governor Angela McLean

Lt. Governor advised of a discussion with LMAC member Jim Larson. In the absence of Jim, Al Smith advised he is concerned that employers need to be more involved and educated regarding SAW/RTW. No action was taken on this proposal and it was deferred to the August meeting to address Jim's concerns

VIII. Designated Treating Physician Task Force – Diana Ferriter, Al Smith

Following the discussion at the last LMAC meeting, the proposed language change has been sent to NCCI for pricing and will be available at the August meeting.

IX. Workers' Compensation Statute Review 39-71-1006, MCA, - Al Smith

Al advised there appears to be no reason this statute uses a 15% impairment rating to be eligible for vocational rehabilitation and suggested changing it due to the impact of the 6th Edition of the AMA Guide.

Al moved and Chris Cavazos seconded that the impairment rating be changed to 10% and submitted to NCCI for pricing prior to final approval. Discussion involved why use 10% if there is no basis for it. The motion passed unanimously.

X. Vocational Rehabilitation Proposal – Diana Ferriter

Diana provided a flowchart of vocational rehabilitation services proposed at the last meeting by Don Agan compared with current vocational rehabilitation services. Discussion included that some employers already implement VR services prior to MMI however smaller employers do not have the resources to do so therefore the insurer should be starting the process. Comments included there are those who do not universally embrace early VR intervention and the statute does not reference MMI resulting in non-cooperation with it in some cases. No action was taken on this proposal.

XI. LMAC/Lt. Governor Notification Letter Discussion

Discussion included that the Department reviewed the letters and categorized them according to issues. The Department will not be taking further action without some direction but the Lt. Governor may be contacting some of the responders. Anne Wolfinger has advised each respondent that their comments would be presented to the LMAC.

XII. WorkSafeMT Update – Robyn Morrison

Robyn advised WSMT has formed a Governor’s Safety Award task force and they will select a recipient for award at the August 13th Safety Fest in Havre. The deadline to submit applications is Friday July 25, 2014. They will review the applications and pattern them after the Montana Safety Culture Act.

XIII. Other – WC Court Judge -- Al Smith

Al Smith says legislation needs to be enacted to allow a temporary Workers’ Compensation Judge when the presiding judge is no longer in office because of the time frame involved in getting a new judge appointed. He suggested a panel of substitute judges to select from with appointment to the court coming from the Chief Justice of the Supreme Court. He will discuss this with the Governor and the Chief Justice and work with Kevin Braun and Jacque Lenmark to draft a proposal. The draft legislation will be put on the agenda for a decision at the August meeting.

The work plan was reviewed and amended. Next steps were reviewed and the meeting adjourned.

There was no further public comment presented.