

Minutes
Labor-Management Advisory Council
October 14, 2015
Best Western Great Northern, Helena MT

Advisory Council and Subcommittee members present: Chris Cavazos, Jim Larson, Bob Olson, Marv Jordan, Don Judge, Al Smith, Bob Worthington, Kevin Braun, Bill Dahlgren, Jean Branscum, Jacqueline Lenmark, and Bonnie Lyytinen-Hale.

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

Others present: Peter VanNice, Dave Elenbaas, Erin Weisgerber, Barb Gullickson, Anni Druce, Kristine Ediger, Karen Wiles, and Maralyn Lytle, ERD; Jessica Epley and Mike Taylor NCCI; Alex Swedlow CWCI; Michele Levine, FairClaim; Nancy Butler, and Ethan Heverly, Montana State Fund; Matt Chanbus, WCMB/Dept. of Administration; Kristie Griffin and Bruce Spencer Express Scripts; Mark Eichler MAHCP; and Pat Murdo Legislative Services

I. Welcome and Introductions

In the absence of Lt. Governor Angela McLean, Bob Worthington chaired the meeting and greeted those present. Doug Buman left at 2:00 p.m. and gave his proxy to Don Judge. Annette Hoffman gave her proxy to Bob Worthington.

II. Approval of Agenda and Previous Minutes

The minutes from the September 22, 2015 meeting were approved. The agenda was approved after Diana pointed out #5 on the agenda should read the Montana Experience on WC Drug Formulary/Physician Dispensing rather than the California Experience

III. Montana Medical Data Report Webinar – Susan Schulte Focus Lead NCCI

The webinar provided information on the breakdown of services and payments by category namely physician, hospital, ambulatory surgical centers, drugs, and durable medical equipment supplies and implants. The report compared Montana to the region and countrywide.

IV. Workers' Compensation Drug Formulary – Bob Worthington

Bob presented an overview of the drug formulary and physician dispensing subjects and explained that Lance Zanto had brought this to the attention of LMAC due to two bills presented at the legislature both of which failed. LMAC agreed to add these subjects to their workplan.

V. The Montana Experience; WC Drug Formulary/Physician Dispensing – Alex Swedlow

Mr. Swedlow provided a presentation including the background of the California Workers' Compensation Institute (CWCI); areas of CWCI prescription research; the national WC history of pharmacy controls; medical benefits on indemnity claims,

medical treatment, and pharmacy at 24 months post injury; a comparison of California and Montana on the average cost per prescription; issues on controlling pharmacy utilization and costs; and the Montana State Fund formulary study.

VI. WC Drug Formulary – Mark Eichler, Pharmacy Director Montana Association of Healthcare Purchasers

Mr. Eichler was an informational speaker. He provided his background as the pharmacy reviewer for the Montana State Fund and his work with Blue Cross Blue Shield on their formulary. He was questioned if Montana could use an existing formulary such as the one used by Medicare. He responded that since the Medicare formulary has tiers and co-pays, it wouldn't work for workers' compensation. He suggested a committee of physicians and pharmacists be created, along with labor and management to look at a workers' compensation formulary.

VII. WC Drug Formulary/Physician Dispensing – Dr. Beck

Dr. Beck, with the assistance of MMA, spoke via telephone conference. He stated there are many competing products and each physician prescribes medication based on their clinical experience and knowledge of what works for their patients. He gave an example of how different formularies used by physicians, hospitals, and payers negatively impact the patient and physician. The patient may be prescribed one medication by the physician, and if admitted to a hospital, the medication may change, and when discharged the medication may be changed again. This can be problematic when the patient is home and miles away from a pharmacy, along the highline for example, and certain narcotics cannot be prescribed over the phone by the physician. This can lead to deterioration of care and physician job dissatisfaction. With payers now in the picture they are entering the practice of medicine and making decisions on what prescriptions can be provided which erodes the physician's ability to prescribe the medications they want for the patient. His comments on physician dispensing is that it makes it easier for those patients in rural areas to obtain medication in a timely fashion.

VIII. HB 334 Workers' Compensation Reform Monitoring Five-Year Reopening Rules – Bill Wheeler

Bill advised the rules committee has been working on this for the past 10 ½ months putting together a business process and developing draft rules. The Department is also programming the process into the database and it will be ready by April of 2016. He advised of his presentation at the Governor's Conference and some of the feedback he received. One of the biggest concerns is the limit of only one petition per claim. He explained that if the one petition results in a reopening of benefits, then all benefits related to the injury would be reopened and managed by the treating physician using the Utilization and Treatment Guidelines rather than repetitive petitions filed to reopen specific treatments. Another concern is the time frame to submit a petition to reopen medical benefits and the time frame of 14 days for the insurer to provide medical records to the Department. The Department is reviewing all of the informal comments received and plans to notice and publish the preliminary rules by the end of November.

IX. LMAC Assessment Advisory Committee Update – Diana Ferriter

LMAC formed a subcommittee which met in Missoula at the Governor's Conference at which time Diana and Erin Weisgerber provided a presentation of how the budget process works and the formula for the assessment. Employers want a condensed version of this presentation put on the Department's website and a presentation to Self-Insured employers. The Department will prepare the condensed version to be posted on the website and will be available upon request to provide additional presentations. The subcommittee will explore what further steps will be taken.

X. Discussion of SB 288 Subrogation/Experience Modification – Diana Ferriter

Senate Bill 288 was vetoed by the Governor and referred to LMAC to discuss alternatives to the subrogation bill. Diana explained that this subject is the top priority on the LMAC's workplan. She advised the Department would provide a summary of information provided to LMAC to date and welcomed suggestions from LMAC members and stakeholders about any further information they want before the discussion on Nov. 18th. The Department will send a summary to LMAC and frame questions to be discussed to determine if LMAC will have a consensus at the November 18, 2015 meeting.

Diana advised the Insurance Code is the section of law requiring MSF and private carriers to use NCCI for experience modification formula. The Insurance Commissioner establishes the modification threshold. Self-Insureds are not subject to this law and if it's a group self-insurance pool, they establish their own premiums and mod factors. Discussion involved the purpose of the cap, rate setting, class codes, modification factors, collection of premium, claim frequency vs. catastrophic injury, and premium base. Jacqueline Lenmark proposed a presentation on these issues and will check with AIA for a suggested speaker. Don Judge feels there is a need for more information on employers who can't bid on contracts due to their modification factor. Marv Jordan advised he can get redacted modification work sheets for their information. Diana will send out data on some subrogation that has been paid and reported to the Department.

XI. NIOSH Grant – Dave Elenbaas

Dave advised that every five years, NIOSH solicits a grant to surveil occupational health information. The Department applied, and with a letter from LMAC received the grant which is a little over one half million dollars. The Department had to get this base grant to apply for larger grants and Dave advised the Department has performed some the base grant requirements. He will keep LMAC updated on the work paid for with the grant.

XII. Public Comment

Michele Levine from FairClaim commented on how a drug formulary will affect selection of a treating physician and encouraged LMAC to look to see if this would narrow the pool of treating physicians. She also commented a drug formulary will provide more tools to deny medications and she is concerned about delays and denials. She stated she heard a program on public radio regarding States opting out of workers' compensation, specifically Texas and Oklahoma and suggested this be looked at closely as it takes away exclusive remedy. She described a case in Texas with catastrophic

injuries and death. There was not enough liability insurance for the injured workers or their families to sue the employer and be compensated.

XIII. Next Steps – Anne Wolfinger

The next meeting is November 18, 2015. The tentative agenda will be a discussion on SB 288; more discussion on drug formulary and physician dispensing. The Assessment Advisory Committee will meet before the 11/18/15 LMAC meeting. Diana will have staff prepare information about how other states implement drug formularies. On December 10, 2015 there will be a webinar from WCRI on the Texas Experience on Formulary. Diana will discuss with Pam Bucy whether or not she plans to reappoint LMAC and provide that information to the LMAC members.

The meeting was adjourned.