

Labor Management Advisory Council

June 11, 2020

Attendees:

Lt. Governor, Mike Cooney
Don Judge, Injured Workers Resource Council
Compensation Fund
Lance Zanto, Workers' Comp Management Bureau
Eric Strauss, ERD
Jason Swant, ERD
Peter Van Nice, ERD
Jenny Harris, ERD

Via Zoom:

DOLI: Attorney Mark Cadwallader
Vicki Evans, Montana Contractors
Jim Larson, Teamsters Local 190
Adam Haight, AFL-CIO
Doug Bouman, Laborers' Int'l Union NA
Mike Marsh, Midland Claims
Bridger Mahlum, MT Chamber of Commerce
Bill Wheeler, ERD
Cindy Zimmerman, ERD
Maggie Cook-Shimanek, ERD
Bri Lake, ERD
Casey Kyler-West, ERD
Al Smith, Montana Trial Lawyers Assoc.
Peter Strauss

Agenda was approved

Discussion item: COVID Impact on ERD; Jason Swant

Jason outlined how telehealth is working well since the pandemic started and is authorized. There is now remote proctoring and extensions for Claim Examiner Certifications. Jason outlined the new workflows for teleworking related to settlements (must have actual signature, not electronic), attorney agreements and notaries for independent contractor and contractor registration.

Most staff have been reassigned to PUA/UI. Safety Fest zoom meeting with 250+ attendees in Miles City. 2 additional Safety Fests added: Great Falls (virtual) and Bozeman (not yet determined if it will be virtual) in November. Governor's Conference in Missoula, Sept 29-Oct 2, 2020. Contacted by the Montana Nurse's Association about presumption of COVID and worker's comp; will be addressed later in meeting.

Discussion item: Subsequent Injury Fund; Bill Wheeler

Raised the question **Is SIF still serving its original purpose?** 29 states still have a SIF. 18 states have gone away with SIF. FY2008- FY2019- 173 claims in 10 years paid out; of 173 claims, nine workers have 2 claims each. Notices sent out on claims has significantly decreased. Plan to draft legislation & discuss at the next LMAC meeting. Draft will present a sunset plan for the SIF program. Nothing will be done until this is discussed further. Any additional info brought forward will be shared prior to the next meeting.

Discussion item: Draft Language for Benefit Brochure & Non- Profits; Peter Van Nice, Jason Swant

Peter and Jason proposed we move the burden of sending brochures out from the insurer to our responsibility. Streamline the pamphlet process. Section 1, 39-71-606, "Insurers may separately provide a copy of the current benefits and entitlements to claimant, copy provided may include insurer's name and contact info, but insurer may not change text of document." Majority requested department reach out to insurers to go over language of this. Discuss more at next meeting.

New Section, Section 2 "The department may provide information to claimants of non-statutory programs or benefits offered to injured workers or the families of injured workers a not-for-profit organization." Motion carried to approve New Section, Section 2.

Discussion item: Plan 2 Security Deposits; Peter Van Nice

Peter outlined the history of Plan 2 Deposits. Eliminated in 1997, came back in 2007. Department received audit in 2019; 7 insurers had more than \$250,000 on deposit and required department to require the insurer lower their deposit; insurer elected to just leave in rather than go through process of cancelling security and reissuing a new one. Western Guaranty Fund, legally charged with absorbing the insolvent insurers resp. to pay claims.

Large deductible plan, insurance carrier goes out of business, it is covered by the Guaranty Association for plan 2. Guaranty fund is set to pay first dollar on work comp claims should a business go out of business. Pay into the fund to cover a share of losses in a proportionate share. Self-insurance guaranty fund for private self-insured that may go out of business. One Captive in Montana, no back stop to protect injured workers.

Guaranty fund is very solvent. No cap on work comp claims paid, except for businesses with a net worth of more than 50 million, Guaranty Fund can pursue that insured for payment in excess.

Just an informative discussion, no legislation being drafted.

Discussion item: Telemedicine; Maggie Cook-Shimanek

Maggie outlined difference between telemedicine and telehealth; telemedicine: live videoconference, remote patient monitoring; telehealth: phone calls, texts, emails, health portals, not a direct provision of care. Availability has expanded since COVID-19.

Medicare/Medicaid 1135 Waiver making telemedicine available in any geographic location to beneficiaries to access services from their homes. Waived enforcement for HIPAA violations against healthcare providers serving patients in good faith via telemedicine.

Possible future discussion topics: consider billing & payment, establish eligible & covered services, clarify documentation & record keeping requirements, patient privacy, quality of care ensured and technology access for Montanans.

Question raised: **Would LMAC be interested in having DLI ERD develop a working group to explore long-term parameters around the use of telemedicine in the Montana workers' compensation setting?** Maggie suggested we do a survey to see how telemedicine has been used for worker's compensation. Eric suggested we get a group together as there seems to be interest in this.

Discussion item: MT Work Comp & COVID Update; Bri Lake

Claim counts have dropped drastically; 45 FROI's related to COVID, 9 denied; Mainly frontline workers (exposure related); These are non-confirmed COVID cases. No claims have been paid for relating to COVID yet. Family First Coronavirus Act can help cover employees who are positive/exposed to COVID for 2 weeks of pay while in quarantine; expires December 31, 2020.

55,777 COVID tests administered in MT; 5-6% of MT population.

WC Compensability of COVID-19 enacted in 6 states; Proposed in 11 states. Some confusion with WC compensability; increase in work from home claims, decreases in payroll. Independent contractor registration has decreased.

Discussion item: Claims Examiner Certification; Jason Swant

Final Rule effective 12/1/2019; new definitions for certified claims examiner, hour, new hire, trainee; decisions that must be made by Examiner, New Hire/Trainee responsibility designation, reporting of employment status/change of address and lapse in certification.

Remote proctoring available for testing. Certification renewal/Continuing Education; Retake exam or request 6-month extension; Increase in virtual education opportunities.

Department will be presenting dates for Stakeholder's meetings in July. Opportunities for a couple credits.

Discussion item: 5 Year Reopening Process; Jason Swant

Medical benefits terminate 60 months from DOI or OD; Worker can request a reopening. Reopening terminated benefits- medical review; Guidelines: IW's medical condition is direct result of work injury/disease; IW requires medical treatment to continue working/return to work. Benefits closed by court or settlement not subject to reopen.

Can be reopened for 2 years with a review.

367 petitions received through May 28, 2020. 300 individual petitions, 67 joint petitions.

Discussion item: Wage Integrity & Misclassification in Construction Industry

Group is reconvening; Meetings will be public; 3 laws original group came up with: adding penalties for knowingly misclassifying employees, increase penalties for repeated non-compliance with Independent Contractors, add language around denied or revoked license to be treated same as suspended license.

Will present legislative bills to LMAC for input and endorsement.

No New Business

No Public Comment

Next meeting is July 15th, 2020