

Minutes

Labor-Management Advisory Council

December 4, 2008

10:00 a.m., Great Northern Hotel, Helena

Advisory Council members present: Lt. Governor John Bohlinger, Bill Dahlgren, Annette Hoffman, Don Judge, Doug Buman, Riley Johnson, Jacquie Helt, Jason Miller, Connie Welsh, Bob Worthington, Jerry Keck

Project team members present: George Kochman, David Elenbaas, Troy Thompson, Tyler Wiltgen, Diana Ferriter, Jeanne Johns, Keith Messmer, Judy Bovington, Mark Cadwallader, Wade Wilkison, Anne Wolfinger

Others present: Carl Kochman, Nancy Butler, Kevin Braun, Montana State Fund; Rob Virts, Montana Building Industry Association; Dustin de Yong, Lieutenant Governor's Office; Jon Bennion, Montana Chamber of Commerce; Mike Weigel, Putman & Associates; Leah Tietz, Montana University System; Al Smith, Montana Trial Attorneys Association; Lance Zanto, Montana Department of Administration

I. Welcoming & Introductions

Lieutenant Governor John Bohlinger greeted those present and reported he had just returned from Washington, D.C. where he attended the lighting of the nation's tree which this year came from Montana. All present introduced themselves.

II. Reauthorization of the Labor-Management Advisory Council on Workers' Compensation

Keith Kelly, Commissioner of the Department of Labor and Industry, read the order reauthorizing the members of the committee to serve for another two-year term. He thanked them for their service over the last two years and their willingness to continue being a part of the Council.

III. Results of Workers' Compensation Survey of Employers

Tyler Wiltgen, ERD workers' compensation analyst, introduced Ting Withers to the Council members. Ting is a new analyst with ERD and is assisting Tyler in analyzing the survey responses. Tyler reported that surveys have been conducted with injured workers, medical providers and employers and will soon be sent out to vocational rehabilitation consultants, claims examiners and attorneys. He cautioned that since the survey completion was voluntary, the results could be somewhat biased as you don't know the motivation of those that do respond.

The survey was sent to employers who had employees who suffered an injury that resulted in wage loss benefits being paid. Of the 3,750 surveys sent out, 1,299 were completed, giving a 97.6% confidence interval of the results. The survey focused on employer practices such as providing safety training to employees, having a written return to work policy and whether the employer found it cost effective for the employee to be able to recover on the job.

IV. 2009 Legislation Update

Jerry Keck reported that there have been no changes to the LMAC bill containing the statutory criteria for new exemptions, voluntary certification of claims examiners and the funding mechanism for WorkSafeMT. He reported that the Lt. Governor is working on getting a sponsor for the bill. The bill will need to initially be introduced in the House since it is an appropriation bill. Lt. Governor John

Bohlinger announced that he has been talking with Rep. Dennis Himmelberger and he has agreed to carry the bill. Jerry passed out a fact sheet that highlighted the main points of the bill.

Jerry provided a handout of other workers' compensation bills that he is tracking. He advised those who are looking for bills that affect workers' compensation issues on the State Laws system they need to look under not only Workers' Compensation category, but also at the bills in the Labor category. Bills of interest thus far are:

SB42: the Workers' Compensation Court judge substitution bill

LC522: the Department's workers' compensation bill

LC523: the Safety and Health bill

After some discussion, the Council members agreed to discuss bills each week during the legislative session at 1:15 on Friday afternoons. Those who are not at the Capital can call in and those who are there can meet in the Lt. Governor's office to participate in the phone call.

V. Oregon Premium Study for 2008

Jerry reported that the new Oregon rate ranking study has been published and Montana is now number 2. He said there was some good news in the study in that the index rate for Montana fell to \$3.50 per \$100 of payroll from \$3.69. It's just that other states decreased more rapidly. Montana is 55% above the median rate of Rhode Island.

Jerry pointed out that the 2004 rankings placed Montana at number 8 and is one of the reasons the Council was formed. In 2006 we fell to number 5 and now are number 2.

VI. LMAC Work plan for 2009 – 2010

Anne Wolfinger shared the draft charter that she has developed to cover the next two years of the Council's existence. She explained the purpose of the charter is to capture what is within the scope and goals of the Council to work on during this next period. The charter for the first two years contained four major items; safety, medical, return to work and settlements. She stated that the purpose statement in the charter will be updated to make recommendations to the 2011 legislative session for necessary changes; make recommendations to the commissioner regarding bills that come up during the 2009 session; and provide direction to and approve initiatives of WorkSafeMT.

Anne provided a handout to the Council members summarizing the work and achievements of the committee during the past two years. She then reviewed responses she received to the survey she had given to the Council members.

Riley Johnson asked that for the next two years the project scope include tracking the results of the efforts in the four medical areas: prescription, facility and non-facility fee schedules, and utilization and treatment guidelines. Anne said she will add these items. Jerry suggested that other issues to include in the charter were the AMA impairment guides, course and scope, and an analysis of the benefit structure in Montana compared to other study states.

Bob Worthington stated he knew the legislative auditors were looking at the Subsequent Injury Fund program and suggested the Council look at the audit results. Don Judge suggested holding off on placing things on the agenda until after the session, since everyone will be very busy during the session.

Jerry passed out a memo done by Larry Jones of Liberty Mutual Insurance regarding course and scope and stated that Representative Gary Perry has a place holder for a bill on this topic at the request of Riley Johnson. He asked that council members review the memo and be prepared to discuss it at one of the upcoming conference calls. It was suggested and agreed that the Council hold a conference call the week

of December 22nd and one during the first days of the session to review bills that members are aware of at that point.

Anne Wolfinger reminded Council members that they are eligible for \$50 per meeting and reimbursement for their travel expenses and should let her know if they want those payments.

VII. AMA Guides to Permanent Impairment, 6th Edition

Tom Murphy of the Murphy Law Firm reported on his concerns regarding the change in December 2007 from the 5th to the 6th edition of the AMA Guides to Permanent Impairment. He stated that 15 states, six countries and some federal systems are all required to move to the newest edition of the Guide. Many states are now challenging its use since there have been significant reductions in the impairment ratings. He reported that these ratings affect billions of dollars of payments. He believes the ratings are down an average of 35% from the previous edition. He stated he believes that the authors of the Guide are biased, defense-oriented doctors. He reviewed specific cases he has seen in his practice and noted that he believes an argument before the Supreme Court would be successful on the grounds that it is an unlawful delegation of legislative authority to automatically adopt newer versions of the Guide. If the Supreme Court were to adopt that viewpoint, they could make the change retroactive to the last Guide that was actually adopted by the legislature, causing all kinds of problems for insurers. He asked the Council to advise the 2009 legislature to go back to the 5th edition of the Guide, and create a study commission to evaluate the 6th edition similar to what the State of Iowa did.

After some discussion, Don Judge made a motion that the LMAC support legislation to retain the 5th edition as the edition used and study the 6th edition. This motion died for lack of a second as many members commented that they needed to hear from those with opposing viewpoints before agreeing that the Council should make such a recommendation. Don Judge ultimately withdrew his motion. Lt. Governor Bohlinger asked Anne to study the issue and bring the results back to a later meeting.

VIII. Proposed Legislation to Establish a National Committee on Workers' Compensation

Diana provided members of the Council a copy of draft federal legislation that would establish a national committee similar to the 1972 commission, to review states workers' compensation systems to see if they provide adequate benefits to injured workers. This is only a draft for discussion and is not pending legislative action in Congress at this point.

IX. WorkSafeMT

Carl Kochman who was elected chair of the WorkSafeMT Foundation Board reported on the meeting the Foundation had on December 3rd. He identified the Board members that were present at the meeting and introduced Jason Swant who is a new hire to the transitional employment specialist position in ERD. Carl reported that the safety specialist position and a webmaster position still need to be filled. He stressed the importance of having a strong web presence to promote the safety culture shift.

Carl reported that the meeting focused on preparation for the strategic planning meeting that will take place on January 22, 2009. There was a "data dump" on the reality of workers' compensation expenditures with presentations by Tyler Wiltgen and Jerry Keck. Peg Shea from the Montana Meth Campaign also talked to the group about what it took to get their project going. Carl then handed out the logo that was developed by the Board and asked for the Council's approval. Riley Johnson moved that the logo be approved and the motion was seconded and passed unanimously on a voice vote. Carl briefly reviewed the bylaws and asked the Council to adopt them. Riley Johnson motioned for adoption; the motion was seconded and passed unanimously on a voice vote. Carl mentioned that the speed of the approval process for Board decisions could become an issue and they are exploring ways to address this problem such as using phone conferences to get approval.

Carl also reported on the work of the transitional employment committee. The committee has been focusing on co-branding and a standardized assessment form. The assessment forms are used at the first medical visit to determine what an injured worker is capable of doing in order to get them back to work. The forms already exist, but every insurer and provider is using a different one making it more time consuming for the providers to complete.

X. Medical Committee Update

Keith Messmer reported that the facility fee schedule went into effect on December 1st and the focus will now shift to monitoring to make sure that the system is functioning as intended. He also reported that a hearing on the non-facility fee schedule was held as the statute requires that the Department adopt a fee schedule annually using the average of the conversion factors used by the top five disability carriers who use the resource-based relative value system. The proposal is to continue to set the conversion factors at 10% above this average which will result in a 2.88% increase in the general conversion factor and an 8.3% increase in the anesthesia conversion factor beginning on January 1, 2009. Keith also reported that the prescription drug language was amended in LC0522 to allow insurers to approve 90-day prescriptions. He asked that Council members review this language to see if it meets the intent of the suggestion raised by Danny Lee at a previous LMAC meeting.

XI. Workers' Compensation Educational Conference

Jerry reported that an educational conference, similar to the one that the Department hosted at the beginning of the 2007 Legislative, will be held on January 13th at the Great Northern Hotel. There will be three keynote speakers. Dr Bill Nemuth from Texas will provide an overview of the use of utilization and treatment guidelines for workers' compensation injuries. Dr. Teryl Nuckols, who works with the Rand Corporation and also the UCLA Medical School, will discuss what criteria should be used to select guidelines and also how the quality of care can be improved. Dr. Stephen Levin, co-director of the Mt. Sinai-Irving J. Selikoff Clinic for Occupational and Environmental Medicine in New York, will discuss how the guidelines improve the quality of care of injured workers. There will also be a jurisdictional panel of five doctors discussing their state's experience with guidelines. Jerry will be talking with the two business committee chairs next week about dismissing their committee members in order to allow them to attend the morning part of the conference.

XII. Public Comment

Public comment was solicited. None was offered.

XIII. Next Steps

Anne reviewed the next steps with the Council. These included everyone marking their calendars for the Friday 1:15 conference calls during the session. Anne will set up conference calls for the week of December 22 and January 6. Jerry will send out a link to the Oregon premium ranking report. ERD staff will evaluate what it will take to analyze the 6th edition of the AMA impairment guides.