

Minutes  
**Labor-Management Advisory Council**  
January 19, 2010  
10:00 a.m., Great Northern Hotel, Helena

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

**Project Team members present:** Diana Ferriter, Keith Messmer, Dustin de Yong, Judy Bovington, Anne Wolfinger

**Others present:** Ann Clayton, Ann Clayton & Associates; Frank Neuhauser, Nancy Butler, MSF; Ann Komac, MMIA; Tim Fitzpatrick, MTSBA; Al Smith, MTLA; Larry Jones, Liberty Northwest; Jon Bennion, Montana Chamber; Pat Murdo, Legislative Services; Andy Adamek, BKBH; Erin Maclean, MMA; Rick Clark, Plum Creek; Lance Zanto, DOA; Mark Hurlbut, Anni Druce, Teresa Graham, Barb Gullickson, Donna Kamany, ERD

Meeting agenda, handouts and PowerPoint presentations available online at:  
<http://erd.dli.mt.gov/wcstudyproject/labormngmntadvisorycouncilmeetinginfo.asp>

**I. Welcome and Opening Remarks – Lt. Governor John Bohlinger**

Lt. Governor John Bohlinger opened the meeting by thanking those in attendance for coming. He had members of the LMAC and the audience introduce themselves.

**II. Approval of Agenda and Minutes-** Don moved, Riley seconded, to adopt the agenda and minutes. Motion was passed.

**III. LMAC Workplan and Summary - Jerry Keck**

Jerry gave a review of the progress of the LMAC and reviewed the 2009-2010 workplan. Riley suggested a two-day meeting in March as well as February to allow the LMAC time to work on the remaining issues.

**IV. Overview of Workers' Compensation Benefits – Ann Clayton and Diana Ferriter**

Ann gave an overview of workers' compensation benefits and how Montana compares with other states. Diana Ferriter introduced two proposals for LMAC's consideration and discussion. The first dealt with the duration and return to work cost driver on the workplan. One of the 60 Summits Montana recommendations was to assist injured workers with timely and efficient ways to return to work. Early intervention from a vocational rehabilitation provider would assist small employers who don't have human resource or risk managers to coordinate return to work efforts between the employer, injured worker, and medical provider. The proposal recommended creation of a pool of vocational rehabilitation providers to work with the injured worker as soon as they are taken off work status due to their workers' compensation injury. It was recommended to pay for the services from the Subsequent Injury Fund (SIF). If the claim was later accepted, the insurer would pick up the costs. If the claim were to be denied, the vocational rehabilitation services would be discontinued.

Secondly, there was a proposal to make a statute change: If at the time of injury, the employer had no work available, the injured worker could go to another company to work temporarily and the time-of-injury employer would continue to be liable for the claim and the temporary employer would be protected under the exclusive remedy provision.

**V. WorkSafeMT – Jason Swant**

Jason reported WorkSafeMT team is having a Safety Fest Montana Conference at the end of March targeted to employers and employees. Over 75 participants have already registered for the conference and there is enough space for 200. The Lt. Governor asked Jason if the conference could be given more than once. Jason believes that the conference could be replicated throughout the state, maybe three or four times a year.

**VI. Utilization & Treatment Guidelines Medical Provider Group Update – Keith Messmer**

Keith reported Dr. Kathryn Mueller will be coming the week of February 22<sup>nd</sup> to review the Colorado Guidelines for the Utilization and Treatment Medical Provider Group at the group's request. The group will then make a recommendation. In addition, the MPG has formed a subcommittee to discuss medical outcomes.

**VII. Recommendations of Subcommittee – Bob Worthington and Jason Miller**

The LMAC subcommittee was tasked with discussing three topics: course and scope, claims closure and settlements, and attorney fees. Doug moved, Connie seconded a motion to approve the modified, proposed statutory language for course and scope. After further discussion, Doug and Connie withdrew the first motion until the complete package has been established. The LMAC agreed they had reached a tentative agreement on the issue.

The LMAC requested that the Department ask NCCI to price separately the proposals that were discussed on claim closure and settlement. NCCI would be asked to assume that the percentage of cases that would result in full and final settlement of future medical benefits would increase from the current approximate 4% to a rate of 25%. NCCI was also to assume a threshold that would require the claimant to create a "Medicare-like" set-aside trust for any settlement that included \$100,000 or more to pay future medical costs.

Regarding attorney fees, the LMAC asked for more information on analysis of points of law, how many cases deal with medical issues and in how many has the injured worker prevailed. NCCI pricing, presented to the LMAC, made basic assumptions in these areas.

The LMAC briefly discussed Ann Clayton's presentation on fraud for the Economic Affairs Interim Committee. It was agreed to revisit the topic in June. Jerry was asked to report to the committee that the LMAC was looking into it.

**VIII. LMAC Work Planning – Jerry Keck and Anne Wolfinger**

The LMAC reviewed their workplan topic by topic and made modifications to the schedule. Don moved, Danny seconded, that the discussion on benefits be referred to a subcommittee. The following subcommittees were designated:

Claim Closure Committee: Bob, Annette, Jason, Don

Attorney Fees: Bob, Bill, Jason, Don

Benefits: Doug, Dan, Connie, Riley

The LMAC determined they would hold two-day meetings for the next several months, with the first day being set aside for committee meetings.

**IX. Public Comment – Lt. Governor Bohlinger**

Rick Clark, Plum Creek, and Pat Murdo, Legislative Services, addressed the LMAC.

**X. Next Steps – Anne Wolfinger**

LMAC meeting dates: February 17-18, March 18-19, April 15-16, May 20-21