

A Bicycle Built for Two

Parallel Examinations of Montana's Workers' Compensation System:

A review of the work of the Economic Affairs Committee and Activities of the Labor-Management Advisory Council, 2009-2010

Outline for Economic Affairs Committee's Final Report for the 2009-2010 Interim:

Introduction	Explanation of the parallel activities of both the Labor-Management Advisory Council (LMAC) and the Economic Affairs Committee. <ul style="list-style-type: none">• Goals --addressing workers' compensation system cost drivers• Ability of the Economic Affairs Committee to benefit from Department of Labor and Industry consultants• Ability of the Economic Affairs Committee to look at system's insurance structure (not done by LMAC)
Findings	Proposed Economic Affairs Committee Findings/Suggested Legislation (and how these parallel or differ from the LMAC suggestions)
Cost Drivers EAIC/LMAC	Review cost drivers of frequency, duration, and medical costs. Summarize targeted actions intended to influence each. For example: <ul style="list-style-type: none">• Review efforts of WorkSafeMT to address safety and accident prevention (incorporate OSHA's accident figures for Montana and frequency of claims filing in Montana. Note that recessions appear to impact claim filings)• Review Stay at Work/Return to Work efforts to limit claim duration• Review past work on medical fee schedules• Review efforts of the Medical Panel on Utilization and Treatment Guidelines, including adoption of Colorado guidelines and timeline for implementation.• Review discussion of medical panels or a medical director to help arbitrate disagreements about medical treatments.
Complications	Review concerns about: <ul style="list-style-type: none">• Length of open claims• Medical availability• Lockhart Liens that offset medical providers' income to pay attorneys who have helped gain the coverage for the injured worker• Fraud• Composition of benefits, resulting in potentially skewed incentives to either return to work or find a job that accommodates a disability• Use of vocational rehabilitation specialists under the current system -- at end of process to determine injured worker's options for work rather than at the beginning of the process to promote return to work (the proposed method).• Exemptions - how they impact the system, the worker, the employer• Presumptive illness and its costs
Structural Issues	Review Three-Tiered System of Self-Insurers, Private Insurers, and

Montana State Fund

- Describe similarities and differences in operations, including assessments, premium tax, rate review, solvency concerns, rate setting activities, and competition
- Review workers' compensation claims paid as a percentage of payroll (costs) for each plan and the interaction of health insurance
- Review regulation, oversight, and monitoring

Meeting Summaries Brief review of each of the EAIC's meetings over the interim (either as related to totality of meetings or only to SJR 30 -- committee choice).

Sample Findings:

Early Return to Work:

- All parties to a workers' compensation claim are responsible for helping a worker return to work as soon as the worker is able. Communication among all parties is important and must be designed to protect the worker from further harm and protect the worker's privacy, but also keep the worker's employer and insurer informed, and the medical provider comfortable with the flow of appropriate information to the worker, the employer, and the insurer.

Claim Closure and Settlements

- The Committee recognizes that there are many types of workers' compensation claims, ranging from the small and brief to the consequential with permanent impairment. The Committee encourages claim closures and settlements, when appropriate, to help workers move forward.
- The Committee also recognizes that a worker who has suffered a permanent impairment because of an injury on the job has given up the right to go to court to receive damages in exchange for wage loss and medical benefits. The wage loss benefits "are not intended to make an injured worker whole but are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease". (39-71-105, MCA) In cases where both the employer and the injured worker want certainty and the opportunity to move forward, both can benefit from claim closure or from settlements and state laws should be designed to facilitate both parties equitably receiving closure.

Course and Scope of Employment

- The Committee believes that a clearer delineation of work-required activities is important so that workers' compensation insurance covers only those injuries experienced while a worker is engaged in work for an employer. The Committee recognizes that the exclusive remedy of workers' compensation is intended to benefit the injured worker and the employer, by getting an injured worker back to work without the need to go to court and protecting the employer from million-dollar settlements for potential employer negligence.

SENATE JOINT RESOLUTION NO. 30

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA: That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to conduct a review of Montana's workers' compensation premium cost drivers as compared to premium cost drivers in other Western states with similar industries. The review is to include:

(1) the frequency of claims by types of claims;	Reviewed in March meeting and part of initial overview)
(2) medical costs, in particular: (a) duration and availability of and access to medical treatments; (b) use of utilization and treatment guidelines and their effectiveness in other jurisdictions; and (c) evaluation of the impact on cost containment and access to medical treatment resulting from changes to medical fee schedules implemented by the department of labor and industry in 2007 and 2008;	-Part of September, November, January, and March meetings. ✓ -Duration - Jan. discussion ✓ -UT Guides developed with help from a medical panel. Reviews in September, November, and March -Report on DOLI evaluation - possibly May or July/August (full year data for all schedules by then)
(3) research and analysis on whether Montana should include presumptions regarding occupational diseases associated with specific occupations;	LMAC has reviewed -- EAIC heard comments from firefighters in March
(4) recommendations on the appropriate payment of attorney fees in cases involving medical benefits;	LMAC studying. EAIC heard in March.
(5) evaluation of and recommendations on exemptions in workers' compensation;	LMAC to discuss in March. EAIC may review in August.
(6) structural issues in Montana, particularly as they relate to the three-tiered system involving self-insurers, private carriers, and the Montana State Fund.	Part of January agenda. ✓
BE IT FURTHER RESOLVED, that the study identify any additional areas that impact premium cost drivers and request the Labor-Management Advisory Council on Workers' Compensation to research these areas and the interaction between workers and employers that may affect the premium cost drivers.	This has included return-to-work, safety, and medical issues (September/November meetings) LMAC also looking at course and scope, claim closure, other benefit issues. Suggestions may be available for May EAIC meeting. ✓
BE IT FURTHER RESOLVED, that the study incorporate reports from the Labor-Management Advisory Council and stakeholders involved in workers' compensation insurance, including injured workers, attorneys or other representatives for injured workers, insurers, and employers, and that the material from the study be compiled into a report and draft legislation for consideration by the 62nd Legislature.	All meetings have had public comment opportunities. Special effort to get employers and employees from Billings for November meeting. Employees also urged to attend in May. LMAC schedule in sync with EAIC schedule. ✓
BE IT FURTHER RESOLVED, that the study examine the operation and structure of the Montana State Fund, the Montana State Fund's relationship with state government and other insurers, and state oversight of the Montana State Fund.	January agenda ✓