

Priority List for SJR 30 study on workers' compensation:

The following Table is a compilation of comments from members of the Economic Affairs Interim Committee based on their responses in individual telephone calls to a request to prioritize issues outlined in a Workers Compensation Research Institute administrative study for the Department of Labor and Industry, delivered in 2007. Some of the issues raised in that study have been addressed in legislation either in 2007 or in 2009. The priority list below has been streamlined for use in developing the work plan for the Senate Joint Resolution No. 30 study on workers' compensation. (If a legislator is not listed under the priority issue comment section, the reasons may either be: the legislator's response was in agreement with what others said, the issue was skipped over in the interview in the interest of time, or the issue was not of major importance to that legislator.) For the most part, legislators' names are listed alphabetically.

Notes: 1) LMAC stands for Labor Management Advisory Council
 2) DRAFT - legislators' comments, activity planned, and schedule may be revised.

High Priority Issues: Return-to-work programs, safety and frequency of injuries		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • Brown & Vance - Find out what other states are doing. • Hansen - Injury frequency is important issue. Return-to-work is close to top issue. • Hunter: Major attention on return-to-work. Get incident data/injuries by plans. • Hunter & Keane - Look at what other small business states do. • Keane - The real world experience of highway safety projects indicates sign-offs regarding safety happen more than education does. Suggests that accident rate has to improve (or not decline). • Reinhart - Wants perspectives of injured workers regarding barriers to getting back to work and data for younger worker injuries. Also wants to know what's being required for safety training and whether safety training is part of skill training. • Roberts - Do some states have mentoring person to help reacquaint injured person on the job. Also are there people to "job share" to help provide safety aspect? On return-to-work, asks if incentives such as bonus to return-to-work might be helpful. Professional judgment important for whether a person stays off work. • Zinke - Major attention on this issue. If want better rates then may have to have a return-to-work program. Also, look at skill enhancement options, a benefit to everyone. 	<ul style="list-style-type: none"> • Ask expert consultant to review best practices in other states, particularly states with similar levels of small businesses. • Staff provide incident data by plans, including types of injuries. 	<p>September 9 agenda:</p> <ul style="list-style-type: none"> • panel discussion on Return to Work barriers and safety programs. <p>November agenda?</p> <ul style="list-style-type: none"> • Followup on any requests from September. <p>March - Expert report</p>

High Priority Issues: Medical fee schedules and medical utilization and treatment guidelines		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • Brown - Would like this issue discussed early in schedule. • Hansen - Would like briefing paper on origins of fee schedules. • Hunter - Is it a valid assumption to pay more because it is worker's compensation? What does work comp pay vs. payment by Medicaid and the state health plan? • Keane - Requests other states' best practices information from expert consultant. Need to look at decision process between work comp & doctors on utilization and treatment. • Reinhart - Is interested in hearing from department about its medical panel and from LMAC. Doesn't want to duplicate efforts. Interested in medical review boards but doesn't want another layer of bureaucracy or more problems for injured workers. • Roberts - Would like to look at separately from LMAC. Would like to hear from an orthopedic surgeon regarding what goes into a work comp exam and what the surgeon would like to see changed or kept. Also - no group in Montana reviews or shares information on practices, which happens more often in states with medical schools. How does a system with outside payer eliminate extra tests that may be to avoid tort? • Vance - Where does fee schedule come from and why are we where we are. • Zinke - Look at all three fee schedules (Medicare, Blue Cross Blue Shield, work comp). • Zinke & Roberts - Interested in medical review boards. 	<ul style="list-style-type: none"> • Ask expert consultant for other states' best practices on medical fee schedules and medical utilization and treatment guidelines. • Staff report on origins of medical fee schedule. • Staff information on medical review boards • Ask medical review panel to look at apportionment of work and nonwork injuries 	<p>September 9 agenda:</p> <ul style="list-style-type: none"> • Update on LMAC activities regarding medical utilization and treatment guidelines. <p>November agenda?</p> <ul style="list-style-type: none"> • Information on medical review boards • Possible panel from injured workers and treating physicians on treatment concerns.

Medium Priority Issues: Claim Closure, Duration of Indemnity and Medical Claims		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • Brown - Suggests waiting for report from LMAC. • Reinhart - Would like perspectives of workers, of small businesses, and of treating physicians regarding claim closure, current system of wage/medical payments, including from perspective of whether healing is augmented or deterred. Is the difference between Montana and other states regarding claim closure making a difference in costs or impacts on healing? • Vance - Would like a parallel process to the activities of the LMAC. • Zinke - Would like a parallel process to the activities of the LMAC. Once report available, look at whether the committee agrees, disagrees, or wants more information. • Uncertain of origin: Flynn/Miller case being considered by Supreme Court regarding whether settled cases can have common fund application (if filed before 2003 amendment banning common fund attorney fees) 	<ul style="list-style-type: none"> • Reports on history of claims closure from department's mediation perspective. • Briefing paper on legislative and court history of 39-71-741, regarding claim closure and lump-sum payments 	<p>September 9 agenda:</p> <ul style="list-style-type: none"> • Presentation by former work comp judge Mike McCarter on philosophy of closing or keeping claims open • Report on history of mediation related to claim closure by DOLI <p>March agenda:</p> <ul style="list-style-type: none"> • LMAC report and further steps
Medium Priority Issues: Course and Scope Definitions		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • Keane - Not interested in veto explanation. • Reinhart - Would like a briefing paper or presentation from department regarding the 4-part test currently used to determine if an injury occurs in the course-and-scope of work and perhaps related court cases. Doesn't want to rehear SB 371 during interim. • Vance - Would like to see what other states are doing and what their rates are. • Zinke - Would like to know more about why SB 371 was vetoed. Suggested possibility of a subcommittee addressing course and scope. 	<ul style="list-style-type: none"> • Ask expert consultant for review of course and scope definitions and related states' rates • Provide EAC with background material given to LMAC • LMAC discussion in Nov., decision in Jan.? • Briefing paper on 4-part test and development of course-and-scope case history. 	<p>September mailing:</p> <ul style="list-style-type: none"> • Include material given to LMAC on course and scope • Discussion at September meeting of whether to address later

Medium Priority Issues:**Structural Issues, including Montana State Fund, review of exclusive fund states, competition**

Comments	Activity	Schedule
<ul style="list-style-type: none">• Reinhart - Carried a bill in the 2009 session (HB 507) to shift oversight to the State Auditor for State Fund. Concerned about accountability and oversight, bonuses, new State Fund building, board's relationship to staff. Her constituents have commented on concerns about how premium rates are determined.• Other comments varied from "not a big proponent of looking at this" to "important" to "not as important as other" issues.• Work group suggested but little support for it.	<ul style="list-style-type: none">• Ask expert consultant to review exclusive fund states' pros and cons.• Briefing paper on states that require only hazardous employment to have work comp - and what other workers do.• Staff to try to find out what railroads pay to injured workers (as a case study of what a tort system is vs. a work comp system.)• Briefing paper on states with just private insurers• Briefing paper on competition in Montana	January 2010 <ul style="list-style-type: none">• panel discussions on advantage of assigned risk pool vs. insurer of last resort (State Fund)• presentations on status quo vs. putting State Fund under State Auditor• review competition• rate setting review• report on HB 126 implementation allowing state to combine policies

Medium to Low Priority Issues: Fraud and Cost-Shifting		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • Hansen - Wants briefing paper on what states have regarding reciprocity (cost-shifting) and which states don't. Doesn't hear a lot about fraud but wants to know whether lack of reciprocity between states results in an uneven playing field. • Hunter - Wants to know if someone other than insurer should be getting after fraud cases, including employers for misclassification. Could there be a required periodic audit of employer's classifications. • Keane - Need to police companies to see if they are classifying appropriately. Review whether there is a need for an enforcer. • Reinhart - Hasn't heard much from constituents about this. OK with activity levels. Lower priority. • Roberts - Concerned about allegations of fraud as applied to doctors, who are pressured by insurers to get workers back to work while workers may not feel ready • Vance - Would like information on best practices used elsewhere to combat fraud • Zinke - Sees this as an issue for review at "half-time". 	<ul style="list-style-type: none"> • Briefing paper on reciprocity among states and what happens to injured MT worker operating in states w/ or w/o reciprocity. • Ask expert consultant how other states handle fraud (by workers and misclassification by employers) • LMAC: March - May 	<p>March agenda for reciprocity issues and whether states cost-shift so that workers fall through loophole.</p> <p>Each meeting take public comments.</p> <p>EAC May agenda?</p>
Medium Priority Issues: Presumptive Illnesses		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • General agreement to wait for LMAC to report 	<ul style="list-style-type: none"> • LMAC to recommend by January 2010 	<p>March agenda?</p>
Medium Priority Issues: Benefit issues, including voc rehab, ways person moves from temporary to permanent disability		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • General agreement to wait until either January or March for discussion. • Work group possible on vocational rehabilitation. • One comment was that the issue would take care of itself and if not...review later. • Consider whether waivers possible for tuition for post-injury education. 	<ul style="list-style-type: none"> • LMAC will be reviewing through November various benefit issues • Possible briefing paper. 	<p>March agenda?</p> <ul style="list-style-type: none"> • Panel discussion with workers and treating physicians.

Medium Priority Issues: Exemptions		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • Hunter - OK with letting LMAC review. • Keane - Not interested in looking at exemptions. • Reinhart - OK with letting LMAC handle with report. • Vance - Would like to look at exemptions, in particular why an independent contractor exemption costs so much. • Zinke - Committee should be more liberal in approach to exemptions. Sees this as a work group or subcommittee activity. 	<ul style="list-style-type: none"> • Obtain explanation from Department about costs associated with IC exemption. 	March agenda: <ul style="list-style-type: none"> • Hear LMAC report
Low Priority Issues: Proportion of claims involving indemnity		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • Hunter - Look at policy (regarding incurred total and indemnity claim frequencies) • Reinhart - OK with expert reporting on best practices elsewhere. • Vance - Reasonable to request a best practices examination. 	<ul style="list-style-type: none"> • Request expert consultant to provide best practices elsewhere to determine why rate of incurred total & indemnity claim frequencies by NCCI class code is higher in MT than other states • Briefing paper 	March agenda?
Low Priority Issues: Access to primary care physicians		
Comments	Activity	Schedule
<ul style="list-style-type: none"> • Reinhart - If the Children, Families, Health, and Human Services Committee is looking at this as part of a broader health care review, then no need for Economic Affairs to duplicate the review. • Vance - Where are there problems in access? 	<ul style="list-style-type: none"> • Staff briefing paper 	March
Low Priority Issues: Court cases		

Comments	Activity	Schedule
<ul style="list-style-type: none"> Hansen - Low on list. Hunter - Not critical unless a new precedent comes up. Keane - deal with court cases as they come up. Reinhart - Not critical unless a new precedent comes up. Zinke - Might look at defining "make whole" regarding Article II, Section 16 of Montana Constitution and related court cases. 	<ul style="list-style-type: none"> Staff monitor court cases and recommend review of suggested statutes LMAC studying Medicare as second payer January through March -- somewhat related to Satterlee court case. 	March agenda (or later)
Low Priority Issues: Attorney fees paid out of medical costs, access to attorneys		
Comments	Activity	Schedule
<ul style="list-style-type: none"> Reinhart - Interested in the topic, but is willing to let LMAC look at this first. General agreement to let LMAC look at this. 	<ul style="list-style-type: none"> Provide LMAC briefing papers to EAC LMAC to decide by January. 	March agenda?
Low Priority Issues: Shorter waiting period?		
Comments	Activity	Schedule
<ul style="list-style-type: none"> Reinhart - Interested in looking at the look-back option as well as the length of the waiting period. Generally low priority. 	<ul style="list-style-type: none"> Briefing paper on rates in states with shorter delay vs. states with longer delay and look back options. 	March?