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Economic Affairs Interim Committee

61st Montana Legislature

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ROY BROWN
KEN (KIM) HANSEN
RYAN ZINKE

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CHUCK HUNTER
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DON ROBERTS

COMMITTEE STAFF

PAT MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

HIPAA Subcommittee Minutes

May 10, 2010
Room 137

Capitol Bldg
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. CHUCK HUNTER
REP. DON ROBERTS (by phone)
ERIN MACLEAN (by phone)
NANCY BUTLER
JUDY BOVINGTON

STAFF PRESENT

PAT MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

Visitors/Agenda

Visitors' list, Attachment #1.
Agenda, Attachment #2.

COMMITTEE ACTION

- The HIPAA subcommittee approved the minutes from March 30, 2010.

CALL TO ORDER AND ROLL CALL

- 00:04:27 Rep. Hunter opened the HIPAA subcommittee at 2:22 p.m. The secretary called the roll. Attachment #3.
- 00:05:13 Nancy Butler made the motion to approve the minutes from the meeting held on March 30, 2010. The motion **passed**.
- 00:05:28 Rep. Hunter asked Mr. Campbell to review the draft language and the comments that have been received.

AGENDA

Review of draft

- 00:06:04 Bart Campbell, Staff Attorney, gave an overview of the comments he has received. He distributed and gave an overview of the bill draft. **(Exhibit 1)** He explained language that has been inserted per comments from committee members, agencies, and the public.

Discussion

- 00:12:47 Mr. Campbell, Ms. Murdo and the committee members discussed and reviewed the language of the draft bill. There was discussion how the draft bill should read, such as specific language to be added, or deleted, or reworded.
- 00:20:44 Rep. Hunter asked the committee to comment on the language.
- 00:21:21 Rep. Roberts asked about Section 1 (4)(a), and Section 2 (4)(a), regarding the meaning of the word restricted. Rep. Hunter said to him it means the employee's restriction in terms of what she or he could or could not do in performing work.
- 00:22:01 Diana Ferriter, Department of Labor and Industry, said it means work restrictions resulting from the injury or occupational disease. She said that Rep. Robert's question indicates the word could have a different meaning to medical providers.
- 00:22:54 The committee discussed how the language should be clarified and the proper term for restricted be identified. They talked about adding the word "work" before restrictions and add "related to or from the injury or occupational disease". Mr. Campbell suggested to use the word "claims". It will read "work restrictions related to the claims." The committee agreed. Rep. Hunter informed the committee that the main emphasis here is to get the employee back to work and sharing information.

Public Comment

- 00:23:39 Kim Schulke, Fair Claim, Great Falls, talked about the committee's comments in limiting the applicability of return to work. She said the return to work issues go through the claim until the claimant goes back to work. Ms. Schulke addressed

some of her concerns regarding the language being unconstitutional without the additional language of allowing the doctor to call or talk with the employer about the health care information.

- 00:24:54 Ms. Ferriter and Ms. Bovington discussed their concerns about how litigation in court could affect the language being discussed.
- 00:28:25 Rep. Hunter reiterated the language the committee is trying to come up with is to be specific on return to work.
- 00:30:31 Mr. Campbell asked Ms. Bovington where to insert language about helping a person return to work. There was discussion about placement, and Mr. Campbell said he will get the new language inserted and will have a new draft bill ready to distribute at the end of the week.
- 00:32:28 Ms. MacLean commented about "whereas" clauses, stating there will be problems with medical providers. She said there is confusion. Mr. Campbell responded to her comments about compensation and return to work.
- 00:34:41 The committee discussed adding a new section that deals with disclosure, rather than amending current statutes.
- 00:35:53 Rep. Hunter talked about trial attorneys' concern about the language.
- 00:38:08 Rep. Hunter and Ms. Butler talked about the language being more administrative and procedural.
- 00:39:32 Ms. Bovington said that currently employers cannot speak directly with medical providers.
- 00:44:20 Kim Schulke, Fair Claim, Great Falls, talked about the applicability for return to work. She read her comments. She explained how access to medical information could compromise privileged patient/doctor medical information. Ms. Schulke addressed the language of the draft bill. She asked the committee to do away with the anticipated date and referenced complications regarding an injured worker going to work in a different office with a different boss (from time-of-injury).
- 00:59:10 Dick Martin, Fair Claim, Great Falls, said allowing employers into the claim adjustment process is a "mischief waiting to happen". He said the employers have a different agenda than professional adjustment of a Workers' Compensation claim. He said there is no remedy in this draft bill that addresses if the employer misuses medical information. He said the committee is overreaching.
- 01:01:21 Rep. Hunter discussed an example from his business. He asked Ms. Schulke to tell the committee where the insurer goes to get information. Ms. Schulke said the information can go through the insurer. Rep. Hunter talked about the various jobs within his business where an injured worker could move around. Ms.

Schulke commented that the insurer can ask the doctor those questions.

- 01:06:32 Ms. Butler referred to a comment made by Erin MacLean at the last HIPAA meeting regarding the "balancing test". The committee discussed what information should be shared between the employee and the employer.
- 01:10:24 Rep. Hunter discussed a new release form related to return to work mainly for the employer and employee to share information related to the return-to-work medical condition. Ms. Butler said it would be mainly for logistics.
- 01:11:32 Ms. Bovington, Mr. Campbell, and Rep. Hunter talked about applicability and disclosure to the claimant.
- 01:16:07 Mr. Campbell will re-work the language for the committee to review at the next meeting.
- 01:17:31 Rep. Hunter said the discussion stresses more clarification for those involved in the process. Rep. Hunter asked about the need for a specific section to be added to the bill draft regarding return to work. The committee suggested leaving it where it is. Rep. Hunter asked Mr. Campbell to do a third section that will take the employer discussion out of the equation and clarifies for the provider what information should be shared. He said that the subcommittee would be making a recommendation to the full committee, which would then decide whether to vote.
- 01:18:44 Rep. Hunter said that the subcommittee will need to take action via telephone or another way to forward the recommendation to the full committee. Ms. Murdo informed the committee there is time on May 24 to meet before the full committee meets on May 25 & 26.
- 01:19:33 Rep. Hunter closed and adjourned the HIPAA subcommittee at 3:35 p.m.