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Economic Affairs Interim Committee

61st Montana Legislature

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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

MINUTES HIPAA SUBCOMMITTEE

June 24, 2010
Rm 102
4:00 to 5:00 p.m.

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)
JUDY BOVINGTON
NANCY BUTLER
ERIN MACLEAN

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 subcommittee approved the minutes from the May 24, 2010, meeting.
- The subcommittee directed Ms. Murdo and Mr. Campbell to put together the information heard in today's meeting, June 24, 2010, and present to the Labor Management Advisory Council (LMAC) from the Department of Labor and Industry (DLI), to find a solution to solve the employee/employer and insurer communication issues.

CALL TO ORDER AND ROLL CALL

00:04:59 Rep. Hunter called the meeting to order at 4:00 p.m. The secretary called the roll. Attachment #3.

Motion

00:05:29 Ms. MacLean and Rep. Hunter discussed a changes to the minutes of the May 24 meeting. Ms. Butler made the motion to approve the minutes with the change from time release to signed release. The motion **passed**.

AGENDA

Review of Labor-Management Advisory Council language on information exchange, LCwcwc, and LCwc#2

- 00:07:50 Rep. Hunter provided an update of the two draft bills from the subcommittee and the presentation that he and Rep. Roberts had given to the full EAI Committee. He said the LMAC is working on the issues, and the EAI Committee has deferred the work to LMAC.
- 00:08:19 Ms. Bovington presented information about the proposed language from LMAC - DLI. She said that part of the wording had come from this subcommittee regarding the draft bill LCwcwc, and said that it clarified language in regard to the language of early return to work-stay at work efforts. Ms. Bovington had a handout explaining the language from LMAC and the information provided by Ms. Murdo. **(Exhibit 1)** Ms. Bovington said that LMAC will be meeting before the next EAIC meeting on June 29.
- 00:15:06 Rep. Hunter said the subcommittee's alternatives to present to the full EAI Committee include recommending one or two of the drafts that are currently written or waiting until LMAC has its next meeting to see its proposed language.
- 00:16:47 Rep. Roberts talked about the need of a paper trail in the health care system, and he encouraged LMAC to provide more direction for employees/employers regarding permission to share information.
- 00:18:26 Ms. Butler said she had some concerns regarding the LMAC draft's elimination of language saying that a signed claim form provides authorization for the release

of information to the employer. She also questioned elimination of language allowing other reasonably necessary information to be disclosed, since the constitution's balancing test for right to know and right to privacy provides protection. She asked if it is the intent that the employer receive only specific information about the employee.

- 00:20:18 Mr. Campbell said as the draft is written the language states "only the following information", which does make it limited.
- 00:21:30 Rep. Hunter summarized that the issue of the "first report of injury" and the constitutionality question is not the job of the committee to determine.
- 00:22:27 Mr. Campbell suggested separating LMAC language regarding the first report of injury so the rest of the bill will not be done away with. Rep. Hunter and Mr. Campbell discussed including a severability clause. Also discussed were the release of information and early return to work.
- 00:25:43 Ms. Bovington said that the LMAC was formed to come to a consensus. She said they may not come to a compromise, and they intend to solve problems. Rep. Hunter said that LMAC is still working on compromise language.
- 00:26:55 Ms. MacLean addressed how workers can "sign" an electronic first report of injury and noted that a contingent release statement could be included.
- 00:33:16 Rep. Hunter talked about the stay at work-return to work program and having a signed release. He commented about allowing the process play out with LMAC's efforts.
- 00:35:50 The committee discussed various options about who communicates with whom.

Public Comment

- 00:40:06 Diana Ferriter, Department of Labor and Industry (DLI), clarified language that is currently on the first report of injury form and how the form has a statement that authorizes release of certain information.
- 00:40:58 Larry Jones, Liberty Northwest, reviewed post claim filing and what information can be released and who can release it. He asked for language clarification regarding preclaim filing. He would like to see explicit language and information of how it can be done, because preclaim filing and postclaim filing will offer challenges unless there is segregation on who can receive information. He suggested that the wording be changed to "preclaim filing only" and said other language will be needed to release health care information to the employer after a claim has been filed by an injured worker. He recommended not to change the form, but amend the current section that will allow the release of information to the employer.
- 00:46:04 Al Smith, Montana Trial Lawyers Association, said to make the statute clear regarding its application to stay at work-return to work efforts. He said that

LMAC is working on a standardized form for employers and employees.

00:48:19 Kevin Braun, Montana State Fund, suggested the committee stick with First Report of Injury (FROI) being the release of information form, which is what State Fund uses. He stated that if a separate release is used there is no requirement that a claimant sign off on it, which will restrict State Fund from sharing information they currently give out.

Committee comments and questions

00:49:59 The committee discussed sharing information and how the HIPAA law still permits sharing of information from the provider to the insurer and back for payment purposes. Ms. MacLean questioned if the insurer is removed from the proposed language, would it affect the insurance representatives or the trial lawyers. Mr. Smith responded that the insurers do not need to be removed from the language because they still have interest in the information of the early return to work-stay at work process.

00:57:14 Rep. Hunter asked Al Smith about workers sitting in with their employer sharing information, and if Mr. Smith is comfortable with this. Mr. Smith said in most cases it could be, and a few cases it wouldn't be. Rep. Hunter said the subcommittee was charged on the subject of sharing information, and it is his recommendation to allow LMAC to pursue their course with feedback from the subcommittee. He said one idea is to take the insurer out of the equation and only address the provider/employer communication on return to work. The committee agreed to wait and see what the outcome is from the next LMAC meeting.

01:04:11 Rep. Roberts said that LMAC has certain goals that are required to make everything work. He said to allow LMAC do what it needs to do instead of the subcommittee imposing something they cannot do. He stated that LMAC can determine what they need to do that they will be comfortable with from the employer and employee point of view. He said the full committee will determine if anything needs to be done at the last meeting.

01:05:02 Rep. Hunter wanted to know what points need to be put together that Ms. Murdo and Mr. Campbell can present to the LMAC regarding what the EAI committee is interested in. Rep. Roberts said that the two parties should agree that information should transfer from medical practitioner to the boss to get the client back to work. Rep. Hunter said it has been discussed about removing the insurer from this and making it clear that it is between the medical provider and an employer. He suggested that one option be that the worker be included in the communication.

01:05:36 Rep. Hunter on direction from the committee asked that Ms. Murdo and Mr. Campbell submit this information to LMAC. The committee agreed.

01:05:57 Rep. Hunter adjourned the HIPAA committee at 5:03 p.m.

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