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ECONOMIC AFFAIRS IC
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Impact and Expectations of Organizations Providing Workers' Compensation Coverage in Montana Under Plan One, Self-Insured

Background

Midland Claims Service, Inc ("MCSi") has provided claims services in Montana since the late 1940's. Headquartered in Billings, MCSi has worked with a variety of organizations for their claims, loss control and underwriting needs including insurance companies, self-insured organizations and government. In 2001, MCSi purchased Industrial Injury Claims ("IIC"), a workers' compensation claims specialty company in Billings. Since that time, the company has been fortunate to have grown to be the leading provider of Third Party Claims Administration services in Montana.

Through its agreements as the Montana In-State adjusting company, MCSi is responsible for the investigation, handling and resolution of workers' compensation for three of the largest self-insured organizations operating in the state, as well as a number of "high deductible" programs. These organizations provide employment to tens of thousands of workers in Montana in occupations classically thought to be high frequency, high severity and long duration from an underwriting standpoint in workers' compensation. These include healthcare, mining and oil field workers. The company is responsible for the claim handling and, importantly, reserving and payment of nearly 21,500 claims in Montana amounting to $96,493,000 in incurred losses. The number of claims newly reported average 1,722 on an annual basis, typically about 25% of all self-insured (Plan One) claims in Montana. While the statistics offered in this presentation on behalf of self-insured organizations do not include all self-insureds' claims, the numbers are of sufficient size to offer a valid, statistically significant insight into trending for those companies that have chose to provide workers' compensation coverage in Montana by internally funding their claims rather than purchasing insurance.

Executive Summary

HB334 and other efforts by the State of Montana and the Department of Labor and Industry resulted in a number of areas in the Montana WC law to be addressed. The issues have been under study and review by many in the state for several years, including the Governor's Labor / Management Advisory Council. Attempts have been made to include most of the major stakeholders in the system revision discussions. It is clear that Montana's rate of injury, duration of time off work and overall costs have been primary concerns. It is also clear that changes to a complex system such as workers' compensation is filled with challenges, complexity and consequences, some intended and others unintended. Unfortunately, as has been the experience with many states struggling with the high cost of workers' compensation, unintended consequences are a common situation.

It is important to recognize that the Montana workers' compensation system is one of the most efficient, self-administering systems in the country. While the premium costs are high when compared to other states, the system is fundamentally sound. Other states have litigation rates as high as 30%, where nearly 1/3 of all claims have involvement of an attorney for the benefit delivery system to function. Our experience in Montana is significantly better than most states. For a decade, our litigation rate (claims involving an attorney for the injured worker or the employer) for self-insured organizations has held at approximately 1.7% on a population of over 21,000 claims.

The major items in this presentation resulting from legislative and DOL&I actions recently are:

Utilization and Treatment Guidelines
Choice of Treating Physician
60 Month Closure
Medical Fee Schedule
Indemnity Benefits –PPD Benefit Calculation; Waiting Period; 6th Edition
Settlement of Undisputed Claims including Medical
SAW/RTW Program
Course and Scope of Employment

Workers' compensation claims are long tail claims, meaning that the statistics that arise from any particular loss year take years to develop. In general, full impact of law changes and the related legal challenges and developing case law can be reliably determined after about three years following the loss year. Actuarial predictions are very accurate in a stable system. Where components of a system are changed, and importantly the legal challenges have yet to mature and reach conclusion, actuarial predictions tend to be less accurate. In the case of the 2011 changes, it appears after six months under the new rules that the initial predictions may have been overly optimistic.

Unlike predictions made about the potential costs savings from the standpoint of workers' compensation premium, the impact of the 2011 changes do not appear to have similar positive savings for Plan One self-insured organizations. In a similar presentation to the Montana Self-Insurance Association in September, 2011, this presenter concluded with the forecast that absent any other changes to the statutes or case law, the HB 334 and other 2011 changes to Montana workers' compensation would result in a moderate cost increase in claims costs.

Efforts to change the Montana workers' compensation system have been focused upon small, incremental changes, unfortunately to the exclusion of what some observers believe to be some of the highest impact drivers of premium rates in Montana. Several of these issues are addressed at the end of this presentation.

Utilization and Treatment Guidelines

Development of the Utilization and Treatment Guidelines ("U&T Guidelines) in Montana utilized physicians and other healthcare providers in Montana as well as the major U&T Guideline providers in the country. In general, U&T Guidelines are used in other contexts

of healthcare. But with a nearly 100 year history of not having U&T Guidelines applicable to Montana workers' compensation claims, implementation has met with some resistance. Combined with the medical status report, which is a necessary part of providing care under Montana workers' compensation, full implementation of the U&T Guidelines has been slow.

For most muscle and orthopedic injuries, the U&T Guidelines provide reasonable guidance to providers on the best in class treatments to be provided as well as the normally expected healing times. For the majority of claims, it has been our experience that most providers were following practices that closely followed the now in place guidelines prior to the implementation of the U&T Guidelines. Anomalous conditions and recovery, in some cases leading to high costs, have existed in the system for years. The new U&T Guidelines provide for handling of these situations, so we don't see significant cost reductions for self-insured organizations.

Of concern is the current handling of chronic pain under the U&T Guidelines. While chronic pain has always been an issue for a small population of some claims, the move to presumptive correctness of treatment under the U&T Guidelines may actually have the unintended consequence of classifying some injured workers as having chronic pain where they did not before, and an increase of costs for self-insured organizations. The previous population of injured workers classified as having chronic pain in our experience has been very small, statistically insignificant with respect to the total number of injured workers.

Choice of Treating Physician

Allowing the 'insurer' to choose treating physician for accepted claims appears to be a good move on the surface, allowing the insurer's experience with providers in the state to direct the injured worker to the best, most qualified and experienced healthcare provider to address the injury / condition of the injured worker. However, from the standpoint of the self-insured, inappropriate choice of the treating physician was not a frequent situation previously. There may be situations where the choice of treating physician will be utilized by self-insured organizations, but our experience in the first six months following implementation has been that these situations are fairly rare, or about 1 out of 200 reported claims.

Incentive was placed in the physician / healthcare provider reimbursement to allow for a physician to be paid 110% of fee schedule if they would serve as the treating physician. We have not seen a great deal of acceptance by the medical community outside of the major hospitals in Montana. Particularly in the more rural areas of Montana, the issues of U&T Guidelines and treating physician responsibilities were slow to find acceptance. Training and education of providers about workers' compensation are critical areas of need in the system. Further, the number of physicians available to provide care in Montana are less than optimal, exacerbated by the large distances from many injured workers' homes and medical facilities.

60 Month Closure

The 60 month closure rule for medical will have very little impact upon self-insured organizations. The closure rate of claims, including medical, in our experience shows that even if claims are presumed to be closed 60 months post injury, there will be no significant savings. Statistics for the past decade for the self-insured clients we work with, including catastrophic injuries:

Closure
Rate

Closure rate for self-insured organizations - Summary

Open after 12 months of date of injury	6%
Open after 24 months of date of injury	5%
Open after 36 months of date of injury	1%
Open after 60 months of date of injury	0.21%

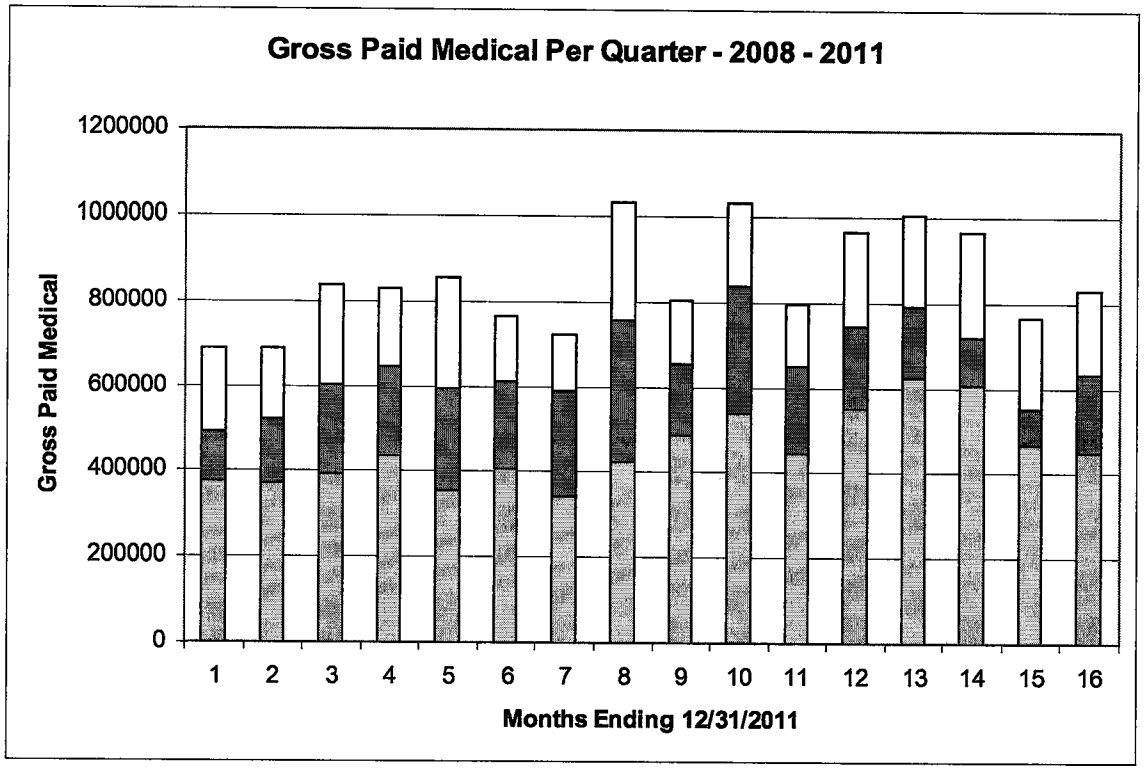
Medical Fee Schedule

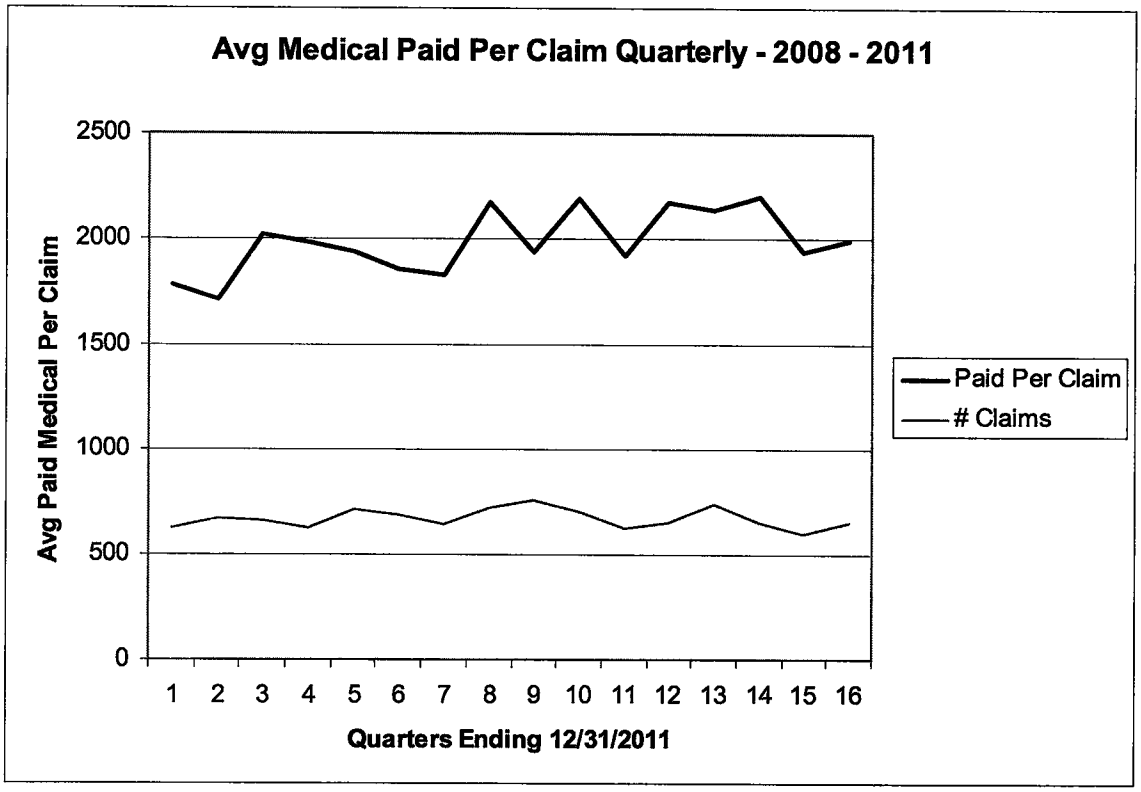
Fixing the medical fee reimbursement schedule to December 2010 rates will not result in any savings for self-insureds. It simply holds the reimbursement rate to rates paid in a prior year for several years.

There is concern that this situation for some healthcare providers may actually be a disincentive to accept workers' compensation patients. Costs of salaries, rent and professional liability insurance continue to rise for the providers, but reimbursement rates remain fixed through 2013. Secondarily, other jurisdictions have seen problems arise when dealing with fee schedules, managing reimbursement rates. Specifically, we have read that medical provider patient encounter numbers increase at times when rates are held steady or reduced. We were told that this is also an issue for Medicare.

It is difficult to predict what might take place in Montana when the U&T Guidelines are implemented and concurrently rates are held flat. From the perspective of self-insureds, we see little opportunity for actual savings of medical costs.

Overall, the impact projected cost savings of the changes upon the medical component were significant, perhaps the single greatest component of the overall cost savings which was projected to allow up to 23% premium savings. For self-insureds, we have not seen any such significant medical cost savings. The following graphs show the gross paid on medical and average per case paid on medical (source Quarterly Expenditure Reports).





It is clear that there is an upward trend in both gross paid and average medical per claim from 2008 through 2011. As stated earlier, however, it will take additional time to determine if there is a trend of any savings, or a slowing of the obvious yearly medical inflation demonstrated by the graphs.

Indemnity Benefits –PPD Benefit Calculation; Waiting Period

Two components of the HB334 changes lead directly to increased costs for self-insured organizations, the increase of weeks for the PPD calculation from 375 to 400 weeks and reimbursement of the 4 day waiting period.

The 4 day waiting period will be statistically insignificant for self-insureds. SAW/RTW programs have been in place for 5 – 10 years for most self-insureds, minimizing the time away from work during the healing period. We have seen very few situations leading to the triggering of the waiting period reimbursement because of these positive Stay At Work programs. Out of 1,722 claims reported in a year on average, we don't expect to see more than 30 claims where the waiting period reimbursement will be triggered.

Changing the PPD calculation from 375 to 400 weeks is necessarily a cost increase for self-insured organizations. However, it is difficult to predict at this time the magnitude of the increase, particularly with the concurrent change to PPD for Class 1 physical impairments.

Settlement of Undisputed Claims including Medical

It is unlikely that settlement of undisputed claims including medical will have any significant impact upon self-insured organizations. In many cases, there is such a close relationship between the injured worker and the employer, settlement of medical benefits that are expected to be used is not desired. This is because many of these same injured workers are insured under the employer's self-insured or high deductible health insurance plans. Such plans typically exclude from coverage any treatment that is related to a workplace injury. Settlement of such a situation would lead to an employee having to self fund for future treatment of the work-related injury when the settlement money runs out, whether used by the worker for future treatment or other non-treatment uses.

The same situation exists potentially for claims which fall under an insured plan (Plan Two or Plan Three). But because there is separation in the relationship between the injured worker and the claims payer, the situation may not be identified as early or with a high priority. In general, self-insured organizations do not follow processes which lead to cost shifting from workers' compensation to health insurance or to the injured worker. As such, no significant cost savings is expected.

SAW/RTW Program

The self-insured organizations with which we partner have had aggressive Stay At Work / Return To Work programs in place and functioning for 5 – 10 years. In a recent Workers Compensation Research Institute ("WCRI") publication, it was identified that the longer a workers is off work during the healing period, the higher the likelihood that the worker will never return to gainful employment. WCRI shows a graph which shows at one year of being off work, an injured worker has only a 18% chance to find a new job. This confirms studies done by Hartford Insurance and others over the past 10 years.

This information has been acknowledged and addressed by self-insured organizations, aggressively in the past decade. In fact, when Dr. Jennifer Christian hosted the 60 Summits meetings in Montana several years ago, promoting the concept of reducing "needless work-related disability" periods, the self-insured organizations with whom we work actually served as sponsors for the meetings. They believe in SAW/RTW and have worked to promote education and implementation of the concepts for other employers in Montana. While the SAW/RTW assistance program may provide support or assistance to some that are injured in Montana, it will most likely be limited to those whose claims are handled by Plan Two and Plan Three insurance companies. There will be no cost savings for Plan One self-insureds.

Course and Scope of Employment

The changes in HB334 for coverage changes for certain injuries taking place on breaks and during work-oriented recreational gatherings applies to a very small segment of reported claims. Our experience has shown that only approximately 1 in 500 reported claims have course and scope issues as addressed by HB334. Even if all the costs of these few claims is removed from the system coverage numbers, the cost savings are statistically insignificant for self-insured organizations.

Other Issues for Consideration

Montana's workers' compensation insurance marketplace is less competitive that other states. A school of thought says that if more companies compete for insurance business, the services they provide to injured workers and employers will be improved and rates will be more competitive. We have seen this operate effectively in other states, particularly California.

To make Montana a more attractive jurisdiction for insurance company competition, however, we must first recognize the realities. Montana has fewer residents in the entire state than live in San Jose, CA. The number of businesses that can be written is very small, and because of our large geographic area, difficult and costly to service for an insurance company. Also in Montana, the leading writer of workers' compensation has distinct market advantages that provide disincentive for others to enter the marketplace here. These include: the amount of premium tax paid, oversight and audit by the State Auditor's office, the process for appointing independent agents and responsibility for punitive damages in the context of a bad faith claims lawsuit.

In addition to the market advantage held by the leading writer of workers' compensation insurance in Montana, two other considerations impact upon incentive to enter the Montana marketplace. The Montana Supreme Court has been referred to as one of the most activist courts in the United States, perceived to be adverse to business interests by many. While this may or may not be the case, when it is stacked upon the legal environment for the workers' compensation system, many perceive the MT system to lack balance between injured workers and employers. In particular, the entire population of claims in Montana is subject to the jurisdiction of only one person, the Workers' Compensation judge, a political appointee. Having only one judge for all claims leads to an unbalanced system, which is

further disincentive for insurance companies to consider Montana as a jurisdiction in which they will compete.

Montana has a need for additional competition, and if the major issues can be address, it is a state with potential opportunity for insurers. With the explosive potential growth of employment on the Eastern side of the state, the time has never been more important to address these major systemic issues.

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Mr. Marsh is currently the President of both Underwriting Solutions, Inc. (USi) and Midland Claims Service, Inc., Montana corporations. He has a diverse insurance and technology skill set, unique in the insurance industry and is a licensed Adjuster and Agent in Montana.

Midland Claims Service, Inc., and its wholly owned subsidiary Industrial Injury Claims, is a leading provider of third party workers' compensation claims administration service to self-insured companies and organizations doing business in the state of Montana. The company's clients employ over 15,000 employees in Montana working in the healthcare, long term care and mining industries. Utilizing hyper-efficient computer data processing systems, team-based business management and best practices garnered over three decades in the claims industry, Mr. Marsh has reenergized the company since his return to Billings from California in 1999 and led the company through a period of significant growth. From deployment of internally developed actuarially sound financial reporting to extensive medical and litigation management, the company's clients have enjoyed significant reductions in total expenditures and average cost per case during a time of challenge in the Montana workers' compensation system. In the most recent fiscal year, MCSi was responsible for over 25% of all self-insured (Plan 1) claims filed in the state of Montana in addition to providing property/casualty claims service to the insurance industry.

Mr. Marsh was a founding member (2004) of Claims Professional Liability Insurance Company, a national risk retention group providing professional and general liability insurance to independent claim service companies in all 50 states. Michael was the author of the company's policy contracts and forms, assisted with creation of the rating and underwriting plans, and continues to serve on the Risk Management committee of CPLIC.

Michael provided consulting services to Ensera, Inc. (acquired by Mitchell International) and IAnet, Inc., internet-based automation companies serving the automobile insurance industry. He was the creator of the technology architecture to automate auto claims processing (patent pending). Michael was the lead implementation consultant for the startup of Esurance Inc. (www.esurance.com) in 1999 - 2000, a pioneering company offering automobile insurance exclusively over the Internet. He served as VP of Insurance Management Group West, CA from 1996 through 1998. Michael was the exclusive claims consultant for the California Earthquake Authority (www.earthquakeauthority.com), creating the CEA's claims processing procedures during its formation. He served as a private consultant to Sullivan & Sullivan General Agency, Sovereign General Agency, Automobile Club of Southern California and Western General Insurance Company. He has also worked as a software (beta) testing consultant for America On Line, Microsoft and Intuit.

Mr. Marsh served in 1994 through 1996 as the Vice President of Underwriting and Operations of Western Pioneer (Commerce West) Insurance Company, Pleasanton, CA, a leading writer of preferred private passenger automobile insurance. There he was responsible for the acquisition and implementation of automation systems, underwriting programs and procedures, customer and agency service and claims and support services. From 1992 through 1994, Mr. Marsh was the Vice President of Claims and Operations for Western Pioneer. He was also the national President of the Policy Management Systems Corporation "POINT" User Group.

From 1986 through 1992, Mr. Marsh was with National American Insurance Company of California, serving as its national Vice President of Claims. There he was responsible for home office and branch claims operations for the United States for the $75 Million book of Workers' Compensation, Commercial and Personal Lines business in the 11 western states. Claims included runoff business from Stuyvesant and Mission American Insurance Companies, where he handled or directed in excess of $1 Billion of liability and property claim exposures in all 50 states ranging from landslide and construction defects claims to ground water property and bodily injury pollution claims. He was instrumental in the design and roll-out of the NAICC "PAL" main frame insurance processing system.

Michael is a graduate of Billings West High School (1976), a member of the National Honor Society and several music performing groups. He received five years of secondary education, with concurrent majors in Architecture and Business Management, at Montana State University – Bozeman. Mr. Marsh, a strong proponent of continuing education, has attended over fifty educational seminars and classes; topics ranging from business management, insurance underwriting, claims, litigation management, personnel supervision and computer web site and SQL query/report programming.