

MONTANA SELF INSURERS' ASSOCIATION

2023 MSIA Membership Business Meeting

Kimpton Armory Hotel, Bozeman MT

Sept 27, 2023 8:15a

2023 MSIA Annual Meeting

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Sept 27, 2023 10:00a

1 Introductions & Adoption of 9/28/2022 Business & Annual Meeting Minutes (membership vote)

Members Present: MT School Boards Group Insurance Authority (K. Bartsch), Brentwood (J. Carr), Clarus IME (J. Kolstad), Definiti Comp Solutions (S. Timmons), Forensic Nursing Inc (MJ Barrett), Brentwood (S. Kleinkopf), Logan Health (D. Wallcheck), Midland Claims Service (M. Marsh), Missoula County Work Comp (E. Grinde), MCCF (V. Evans), MHN (C. Hopkins), MMIA (A. Komac), MUS (L. Tietz), Rosauers Markets (C. Cude), Preferred Medical (A. Silvestri), MEC (B. Costanza), Logan Health (D. Walcheck & H. Catlett), Ventiv Technologies (J. Vandanacker), Ametros (D. Tiscareno), MSIA Executive Director, P. Strauss and AK Worman Associates (A. Worman). Members who provided proxies for quorum purposes are: FH Stole, Intermountain Claims, METS Pool, Providence Health, Intermountain Health, NorthWestern Corporation, Sibanye-Stillwater, Western Guaranty Fund Services, Health-e-Systems, and Prodigy Rx.

The meeting was called to order at 8:15a. Between live attendees and written proxies received prior to the meeting, a quorum of the 46 members was present. All members present introduced themselves. Strauss thanked Browning, Kaleczyc, Berry & Hoven and Definiti Comp Solutions/Definiti Rx for their sponsorship of the meetings.

A copy of all the materials for the meeting was provided to the membership on 9/12 and 9/25/2023 via email.

Evans (MCCF) moved and Cude (Rosauers) seconded a motion to accept the Business and Annual Meeting Minutes from 9/28/2022. Motion passed unanimously with no abstentions.

2 Financial Review

Among the documents provided to the membership for review via email on 9/12 and 9/25 was the Financial Statement identifying the results of FY 2021, FY 22 and the recently concluded FY 2023. Also provided was the calendar year to date results comparing 1/1 – 8/31 for the CY 2021, 22 and 23. Strauss highlighted the financial results and the improved financial position of the Association.

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Strauss reported our financial position is strong, with at least a year's operating revenue in reserve investment accounts and overall growth in our monies, whether looked at from f FY or CY position. We have increased membership again this year, with the addition of Ventiv Technologies, Western Guaranty Fund Services, Safety National, Preferred Medical, Cool Cat Technology, Craig Hospital and Western Building Center. WBC is an employer who is reviewing self insurance options and is expected to become an employer member once that occurs. .

3 FY 2024 Budget

The proposed budget was provided in the 9/12 and 9/25/2023 emails to members. Strauss reviewed the proposed budget presented to the membership and approved by the Board to permit operations from the beginning of the fiscal year through the Business & Annual Meeting. Overall, the budget contemplates some growth in membership, and therefore growth in income, as well as growth in expenses. Strauss pointed out that as a not-for-profit 501 (c)(6) organization, we can file a postcard tax return, as long as our revenues remain under \$50,000. While we are close, we will try to remain under that threshold and save significant time, effort and money in accounting fees. Other highlights included a reduction in travel for NCSI and WCRI and we are projecting a budget surplus, as opposed to a deficit. Regardless, our financial position is strong, and we have yet to spend as much as budgeted. Strauss concluded with the Board recommendation of adoption of the proposed budget.

Evans (MCCF) moved and Hopkins (MHN) seconded a motion to approve the budget as presented. The motion passed unanimously with no abstentions.

4 Issues Survey Review

Strauss reported the first thing he does when the Annual Issues Survey responses come in is to number them and save them based on the number and delete any reference to the individual or organization which provided the response as a way to preserve the anonymity of the response. He then deletes the email with the responses to maintain confidentiality.

Strauss reviewed the Member Survey Responses with the membership. These positions, as well as direction from the Board will make up our general positions on public policy issues for regulation and the next legislative session.

- A. 1. Should MSIA consider changing its' position in opposition to permitting any mental-mental injuries within our WC system? **No – if we do so, it will open a can of worms. Ultimately, if we do, it may create a constitutional equal protection issue. And, if we do, we will have a difficult time in discerning work relatedness in the claimed injury.**

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- A. 2. Should Montana consider a limited recognition for mental-mental injuries for first responders and others (like 911 dispatchers or in the field social workers)? **No, see above.**
- A. 3. Should Montana consider a limited recognition for mental-mental injuries for law enforcement only? **No, see above.**
- B. 1. Should self-insurers support proposals to eliminate the *Coles* criteria from 39-71-609 and create a new approach, which would terminate/require the conversion of Temporary benefits after 104 weeks of payments (regardless of how long it has taken to get to 104 weeks of payments)? **Simpler is better than the current system – And, we're not sure what benefit this would provide the current system. A change in the language will create new challenges.**
- B. 2. Is there another alternative to the process of converting temporary benefits to permanent benefits self-insurers should consider? **Nothing identified.**
- C. 1. Are you aware of any programs from other systems that seem to have effectively addressed the concern of unnecessary delays in benefit changes? **Look at the Alaska system approach of limitations on retaining attorneys. Also look at the Idaho or Arizona systems for lower level referees or judges to handle routine disputes like this, rather than going through as formal a system as we have.**
- C. 2. Are there statutory or regulatory steps that can be taken to address this issue in the Montana system? **See above.**
- D. **Litigation Reform**
- a. **Proposal: New Law** – Opinions of Treating Physicians are not entitled to deference:
- Not sure about this – new law would result in new challenges**
 - Highest level of medical training, education and experience should get deference. The current practice of providing the treating provider the benefit of the doubt is bad health care.**
 - Employers have the ability to assign treating physicians – therefore this change is not needed.**
- b. **Proposal: New Law** – Testimony of health care professionals must be weighted based on education, experience and expertise in the medical field in question:
- Yes – as well as the quality of the reports. Logically, this is an extension of the expert witness. Do you really have to ask?**
- c. **Proposal: New Law** – Discovery of an IME physician would be limited to their training, educational background, the # of IMEs conducted each year, the # of IMEs conducted for the individual respondent and how much they were paid by that respondent. In addition discovery of an IME physician's personal finances would be prohibited.

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- i. Completely agree – and we should limit the discovery of an IME physician to the same discovery of a treating physician. That's simple and fair. One law firm was identified as being the primary instigator of an expansive discovery and wasting time and resources as a result.
- d. **39-71-116** - - PA's would be permitted to be treating physicians
 - i. OK – The horse is already out of the barn.
 - ii. No – PA's do not have enough training. As an expert witness, can you imagine a treating PA being compared with a John Schumpfert, for example?
- e. **39-71-606** - - IMEs permitted every 90 days for changes in condition and new medical causation issues
 - i. Need more information on this before we can take a reasonable position.
 - ii. Yes – Observation changes behavior
 - iii. Not sure 90 days is an objective period of time – changes in treatment or results, certainly.
- f. **39-71-608** - - 608 payments would be reservation of rights payments only and eliminate the 30 day limitation.
 - i. Yes.
 - ii. Need more information on this before we can take a reasonable position.
- g. **39-71-609** - - Full duty releases would not require the 14 day notice (part of *Coles* above)
 - i. Need more information on this before we can take a reasonable position.
 - ii. No – the change in status is important to injured workers and they may need time to process it.
 - iii. Yes – but educate the physicians.
- h. **39-71-610** - - Limit what issues are ripe for DOLI emergency orders of continuation of benefit payments
 - i. Not sure, but not comfortable with what appears to be a rubber stamp from the Department.
- i. **39-71-615** - - Clarify that 615 payments do not include indemnity benefits.
 - i. Yes.
 - ii. Need more information on this before we can take a reasonable position.
- j. **39-71-703** - - Subsequent injuries to the same body part would not qualify for duplicate benefits.
 - i. Why not? Subsequent injuries can be just as traumatic.
 - ii. WC system should not encourage payment for the same thing more than once.
 - iii. Need more information on this before we can take a reasonable position.

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- k. **39-71-704** - - Injuries as a result of travel for treatment, or treatment, would not be covered by workers' comp.
 - i. **No**
 - ii. **Thought this was already law.**
- l. **39-71-1106** - - Failure to comply with the selection of a treating physician, or to cooperate with a nurse case manager, could result in termination of benefits.
 - i. **Yes.**
 - ii. **How is this different from current law when people do not attend appointments?**
- m. **39-71-407** - Under 39-71-407, if the employer furnishes transportation or reimburses for transportation when travel is required as part of the job duties, and the worker is injured during a non-work activity while in travel status, the employer is responsible for those injuries. Should MSIA seek to change this provision to exclude injuries which occur during travel status, if the worker was injured while engaging in a non-work activity and/or in a coming and going situation in a company provided vehicle?
 - i. **No.**
 - ii. **The sequencing of the law creates what may be unintended consequences providing for coverage where there would not otherwise be coverage.**

E.1. Should the Montana WC System specifically add Physician Assistants to the list of treatment providers who can be the "Treating Physicians"? **Repeat of an earlier question.**

E. 2. Should the Montana WC System allow for direct access of WC injured workers to Physical Therapists? **No, not as treating. Maybe.**

E. 3. Have you had any experience from regional states AZ, NM, ID, SD or ND regarding PT direct access? If so, what has been the experience? (Other states which according to the MPTA which allow direct access are (IA, WI, GA, WV, PA, MD, MA and VT). **No reported experience.**

E. 4 Are you aware of any programs/policies or rules that make a difference in dealing with medical billing processes? **Late bills should result in no required payment. (what are we defining as 'late'?). Poor performance is mostly due to out-of-state processors and they add friction costs and delays.**

E. 5 Do you have any suggestions to improve the medical MT WC billing process? **Require a DOLI Certification process for bill processors to confirm they are at least aware of Montana law.**

What are your top three "keep you up at night" issues in the Montana workers' compensation system?

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Lack of concern for health care in legal and judicial activities makes this more a legal system than a health care system and prevents the provision of real health care.

There is increased competition in the coverage marketplace.

NCCI needs to recognize the change in direction of utilization post pandemic. AWW and TTD rates are up. Settlement averages – particularly for medical are also up.

We need to somehow marry the science of the medical treatment guidelines with what is compensable under Montana law.

Need for improved claims management & better IME reports.

WC appears to be the answer to too many societal issues. It is not free and every expansion to cover things that are not necessarily workers' compensation add costs and has ripples throughout our society.

5 Bylaw Review

a. 2022-23 Board Amendments

Strauss reported on the Bylaw changes adopted by the Board during the past year and had provided written copies of the changes to the members via email on 9/12 and 9/25/2023. Functionally, the Board may approve Bylaw amendments and similarly to the budget, requests the membership to ratify the changes before they formally go into effect. The only time the Board would take action would be when, at the Membership Business Meeting, the members generate a proposed amendment, and the Board then completes acceptance, verbatim, of the change.

The Board during the past year adopted two amendments to our Bylaws and recommends membership approval (specific language, in context was provided to members in the 9/12 and 9/25/2023 emails):

- In Article VII, Administration, Section V Committees, to delete reference to an Executive Committee, which had the power of the Board between Board meetings. The Board operates as a Committee of the Whole, and meets often enough, and in case of an emergency, meets electronically, that this language was not necessary.
- In Article VI, Officers, Section 1 C, Secretary/Treasurer to reflect the operational role of the Secretary/Treasurer versus the language of the Bylaws. Prior to this change the Bylaws specifically required the Secretary/Treasurer to “preserve” an accurate record of the proceedings. The Board amended the language to reflect how the

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Association operates, by having the Secretary/Treasurer "confirm" the preservation of our records. Functionally and by contract, this is done by the Executive Director.

Evans (MCCF) moved and Tietz (MUS) seconded a motion to accept the Bylaw changes as adopted and proposed by the Board. The motion passed unanimously with no abstentions.

Strauss identified that with the retirement of J. Haun of Rosauers, almost found ourselves without the required minimum number of Board members. As a result of an email meeting on 8/10/2023, the full Board was able to appoint C. Cude of Rosauers to the Board. As a result, the membership discussed the value of having more than the minimum five members of the Board seated. Also, the Board discovered that while we have a minimum number of members referenced in the Bylaws, we do not have a maximum number.

The membership discussed the requirement that a Bylaw amendment be introduced and considered at one meeting, and adopted at a second, subsequent meeting.

b. Additional changes From the Floor?

Evans (MCCF) moved and Bartsch (MSBGA) seconded a motion to Amend Article V Board of Directors, Section II Composition, to reflect a maximum of seven (7) Directors (full text below). Motion passed unanimously with no abstentions.

The proposed Bylaw amendment, if approved by the Board would be effective after the next Board meeting, currently scheduled for October 19.

ARTICLE V

Board of Directors

Section I. Powers. The management and control of the Association shall be vested in the Board of Directors.

Section II. Composition. The Board of Directors shall be composed of a minimum of five (5) and a maximum of seven (7) Directors elected by the members at the Annual Meeting to serve staggered two year terms. One Board seat shall be filled by an Associate member to represent their interests in the Association. Any Board member may be elected as an Officer of the Association as identified in Article VI, Section I. A minimum of three Board seat terms shall end in the even years at the conclusion of the Annual Meeting, and a minimum of two Board seats shall end in the odd numbered years also at the conclusion of the Annual Meeting.

- a. The Executive Director of the Association shall serve as an ex-officio, non-voting member of the Board of Directors. The Executive Director may not serve in any elected officer position in the Association.

6 Old Business/New Business

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None.

7 Board Member and Officer Election (reflecting staggered terms – membership vote)

Strauss reported that the term of office for Chair Komac (MMIA), Cude (Rosauers - who was appointed by the Board to fill the remaining term of Haun) and Haeder (NorthWestern) was up with this Business and Annual Meeting. The Walcheck (Vice Chair) and Marsh (Secretary/Treasurer) seats term will end at the next Business and Annual Meeting in 2024 and are therefore not up for election this cycle.

Komac has announced her retirement from MMIA and will not be seeking re-election with her term expiring at this meeting. Haeder (NorthWestern) has agreed to run for the Chair position which provides a Board member with experience and knowledge of how the Association has run for some time. Cude (Rosauers), Bartsch (MSBGA) and Evans (MCCF) have agreed to run for at large seats. To maintain our staggered terms, Evans agreed to run for a one-year term seat.

There was discussion over the potential of an even numbered Board not being able to take action should the votes be evenly split, as well as the potential of the new Board appointing additional people to the Board. Strauss identified that we have rarely encountered a situation where the Board is so split that a consensus could not be reached. The Board make-up between individual self insureds, group programs and an Associate member has served us well.

According to the Bylaws, the membership elects the Board officers. Our current staggered terms are Chair and two at large seats in odd numbered years and the Vice Chair and Secretary/Treasurer are elected in even numbered years.

Hopkins (MHN) moved and Tietz (MUS) seconded a motion to elect Haeder of NorthWestern as Chair, Bartsch of MT School Boards Group Insurance Authority and Cude of Rosauers to two-year at large seats and Evans of the MT Contractors Compensation Fund to a one-year at large seat. There were no other motions from the floor for Board member election. Motion passed unanimously with no abstentions.

Strauss recognized Komac for her long service to MSIA and her leadership on the Board as Chair. The membership thanked Komac and Strauss provided a commemorative plaque recognizing her and thanking her for her service.

7 Adjourn

A motion to adjourn the 2023 MSIA Business Meeting was made from the floor at 8:55a and passed unanimously.

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Attendees: The members and guests noted above as attending the MSIA 2023 Business meeting remained in attendance and were joined by other attendees of the Governor's Conference on Workers' Compensation and Safety, Bill Wheeler, Celeste Ackerman, Jacquie Haney, Mike Bartow, Jason Swant and Andrew Mathiason of DLI and Justin Fosse of Liberty Mutual, Amber Worman of CorVel, Daneille Vukonich of Ritsema Law, Amanda Krissovich, Justin Harrison and Lisa LeDoux of MMIA, Jessica Baldwin of NorthWestern Corp, Connie Hoffman and Kendra Gray of Intermountain Claims, Jennifer Carr of Brentwood, Sam Schmidt of Alpine PT Gerry Stanley of Harvard MedTech and Mark Pew of WorkCompCollege.com.

Strauss welcomed the members and Conference guests to the MSIA 2023 Annual Meeting, sponsored by Browning, Kaleczyc, Berry & Hoven and Definiti Comp Solutions and Definiti Rx. Sherry Timmons of Definiti RX, as one of the sponsors of the meeting also greeted members and guests on behalf of Definiti. Strauss introduced Debbie Livingston, founder and CEO of ReEmployAbility as our featured guest speaker. Those who want the CE credit for this presentation must sign in for this part of the meeting. Livingston introduced Mary Bennet of ReEmployAbility and made a presentation on the impact the ReEmployAbility program has had on claim costs and the ability to turn around lives in the recovery process from a workers' compensation claim. The program is available in all 50 states and teams up with local area non-profits to provide a placement for injured workers when their employer does not have light duty opportunities available. The impact on the injured workers lives and healing process is nothing short of miraculous. And, it makes a tremendous difference for the non-profit as well. The workers go back on their employers payroll and remain their employee and are assigned to work at the non-profit. These are typically more seriously injured workers who are out for some time. The work they are assigned at the non-profit is not typically physical labor, so the risk or re-injury is relatively low. The average time for placement is about 60 days. In the 18 years ReEmployAbility has been active, only one person had a subsequent issue as a result of the work assignment. Injured workers heal faster and are in a much better mental state for having work to do and people to work with.

The 2023 MSIA Annual Meeting adjourned at 9:55a.