Recommendations on Improving Montana’s Benefit Structure

Presented to the LMAC Subcommittee
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Recommendations Assume The Following Objectives For System Improvement

- Maintain or Improve benefit equity and adequacy
- Improve benefit predictability without decreasing efficiency
- Lower premiums for employers
System Assumptions Based on Best Available Information:

- Premium rates overall in Montana were second highest in the nation as of 2008
- Significant cost drivers are:
  - Medical costs
  - Higher than average frequency of injuries per 100,000 workers
  - Temporary total disability duration greater than many states
  - Higher than average PTD benefits paid
  - Compensability for injuries unrelated to work activities
  - Inability to close claims
  - Inability to settle benefits into the future
  - Cost of living escalator payment process increases premium rates
  - Inability for employers/insurers to recover significantly from third parties liable for workers’ injuries
System Conclusions:

- Montana’s benefit system is fairly easy to understand and the structure is sound, but it could be more equitable, adequate and predictable.

- Care should be taken to not decrease efficiency or access to medical care.

- The end result of revisions should also decrease rates for employers.
Strategies in Place and Additional Recommendations:

- **Contain medical costs but protect access:**
  - Medical fee schedules revised; additional revisions probably necessary;
  - Enact utilization and treatment guidelines
  - Enact provisions that requires the employer/insurer to pay the attorney fees (rather than the medical providers) when the workers prevails in a medical fee dispute
  - Allow future medicals to be settled but have mechanism to ensure worker is protected

- **Reduce frequency of injuries:**
  - Eliminate compensability for non-work related activities
  - WorkSafetMT

- **Reduce TTD duration and Increase RTW/SAW:**
  - End temporary benefits at maximum healing (MMI)
  - Begin payment of Impairment benefits or PPD with modifiers based on rtw at full wage or offer of suitable employment within 14 days after notice of MMI and rating
  - Enact review by rtw specialist immediately after injury to facilitate rtw in modified position or identify barriers to appropriate rtw
  - Allow exclusive remedy to apply to temporary employers
  - Consider additional preferred worker, assisted re-employment and/or support community based efforts for new employment
  - Educate physicians on research regarding outcomes of “healing on the job”
Strategies in Place and Additional Recommendations:

- **Decrease above average payments for PTD:**
  - Frequency seems to be falling – continue to monitor trend;
  - Incurred amounts for PTD should begin to decline now that constitutional challenge of retirement provision is resolved (Saterlee) – continue to monitor
  - Reduce friction between PPD and PTD by raising PPD rate for workers who are not back to work at full wage at MMI to a wage they can more easily live on while return to work efforts continue
  - Continue efforts to move rtw discussions and plans earlier in the course of a workers’ claim
  - Allow for the settlements of indemnity claims when both parties are willing
  - Consider an administrative alternative to having the employer and insurer pay the cost of living escalators for PTD benefits as a method to reduce rates but still provide the same level of benefits
Strategies in Place and Additional Recommendations:

- Increase the adequacy of benefits for those that need them the most (those who are off work longer than 4 weeks and those that have permanent physical limitations and have not returned to work at MMI) by:
  - Instituting a retroactive payment of the waiting period for those workers who are temporary totally disabled for 28 days or longer; and
  - Increasing the maximum benefit for PPD to 75% of the SAWW (from the current 50% of the SAWW) for those workers who have not returned to work by MMI.

- Pay for these benefit enhancements by statutorily adopting the 6th Edition AMA guides and increasing the waiting period to 7 days from the current 4 days.
Strategies in Place and Additional Recommendations:

- **Increase horizontal equity** by revising the compensation rates for TTD and PTD to a system like Washington’s that recognizes the number of dependents in injured worker has at the time of injury; design this to be revenue neutral.

- **Increase vertical equity** by implementing a retroactive payment of the 7 day waiting period after 28 days of disability and by increasing the PPD maximum for those workers who are not back to work (or have not refused a suitable job offer) by 14 days after MMI.

- **Improve predictability** of system costs with clear claim closure criteria and by allowing indemnity and medical costs to be settled with the agreement of both parties and some protection for workers.

- **Decrease a rtw disincentive** by revising the TPD rate to 80% of the difference between the wage at injury and the actual wages earned.

- Be aware that Montana’s benefit costs will be an estimated 1.4% higher than those of most other states due to your constitutional limitation on third party recoveries.
How Would These Changes Affect How the Montana System Works?
Current System Flow

Temporary Total Benefits Begin

- Before MMI, worker returns to work; if full time at full wage, TTD discontinued; if part time or at lower wage, TPD paid until MMI
- Medical provider determines worker has reached MMI and has some permanent physical impairment; is released to RTW in some capacity
- Medical provider determines worker has reached MMI and has no permanent physical impairment; employer/insurer give 14 day notice of discontinuance of TTD or TPD

- Medical provider determines impairment rating and permanent physical limitations for RTW if other than job at injury

- Medical provider determines the worker can return to a job to which they are suited considering their physical abilities, age, education and training; Worker notified in writing

- Worker has actual wage loss?
  - No
    - Worker agrees and impairment benefits are paid
  - Yes
    - Worker or ER/INS Disagrees and Dispute Resolution Process Begins
    - PPD benefits begin with modifiers and are paid

- If no permanent impairment; benefits end
- If no RTW in any capacity – PTD paid

Worker can make a claim for PTD at any time but ER/INS are likely to dispute

9/14/2012
How Would These Changes Affect How the Montana System Works?

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Medical provider determines impairment rating and permanent physical limitations for RTW if other than job at injury

If no permanent impairment; benefits end

Worker has returned to work with no wage loss or been offered a suitable job at full wage

Worker is paid impairment benefits

Worker or ER/INS Disagrees and Dispute Resolution Process Begins

PPD benefits with modifiers are paid

If no RTW in any capacity – PTD may be paid

Worker can make a claim for PTD at any time but ER/INS are likely to dispute
### Examples of How This Change Would Affect Workers

(Payments for PPD Under Current Structure)

<table>
<thead>
<tr>
<th>Injured Workers’ Situation (all were injured on 7/1/2008)</th>
<th>Type of Permanent Injury</th>
<th>Wage at Time of Injury</th>
<th>Impairment Benefits Calculation</th>
<th>Additional Vocational Modifiers Added</th>
<th>Resulting Rating</th>
<th>Resulting PPD Benefits Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 yr. old plumber with vocational school training who does medium labor activity and is back to work at MMI (no wage loss)</td>
<td>Back Injury; 10% impairment rating</td>
<td>$800/wk</td>
<td>$11,325 ($302* x 37.5 wks)</td>
<td>None, employee is back to work with no loss of earnings</td>
<td>10% rating</td>
<td>$11,325</td>
</tr>
<tr>
<td>53 yr. old construction worker with no HS diploma, does heavy labor activity and is not RTW (has actual wage loss)</td>
<td>Back Injury; 10% impairment rating</td>
<td>$800/wk</td>
<td>$11,325 ($302* x 37.5 wks)</td>
<td>Add 1% for age over 40; 1% for education less than 12 years; 20% for wage loss; and 5% for heavy labor that he can no longer do</td>
<td>37% rating</td>
<td>$41,902.50 ($302 x 138.75 wks)</td>
</tr>
<tr>
<td>59 yr. old admin. Assistant with college diploma who does light labor activity and is not RTW at MMI (May have actual wage loss – labor market survey produces conflicting results)</td>
<td>Back Injury; 10% impairment rating</td>
<td>$800/wk</td>
<td>$11,325 ($302* x 37.5 wks)</td>
<td>Add 1% for age and 20% for wage loss; and/or employer/ins. dispute they owe anything more than 10%</td>
<td>Dispute between 10% and 31%</td>
<td>Parties may settle or go to WC court where rating would be 10% or 31% ($11,325 or $35,107.50)</td>
</tr>
</tbody>
</table>

* Maximum PPD rate on 7/1/08 was $302 (50% of SAWW)
Examples of How This Change Would Affect Workers
(Payments for PPD Under Proposed Structure if it Was in Effect on 7/1/08)

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<tr>
<td>53 yr. old construction worker with no HS diploma, does heavy labor activity and is not RTW (No need to determine actual wage losses)</td>
<td>Back Injury; 10% impairment rating</td>
<td>$800/wk</td>
<td>$11,325 ($302* x 37.5 wks)</td>
<td>Add 1% for age over 40; 1% for education less than 12 years; 10% for wage loss; and 5% for heavy labor that he can no longer do</td>
<td>27% rating</td>
<td>$45,866.25 ($453 x 101.25 wks)</td>
</tr>
<tr>
<td>59 yr. old admin. Assistant with college diploma who does light labor activity and is not RTW at MMI (No need to determine actual wage losses)</td>
<td>Back Injury; 10% impairment rating</td>
<td>$800/wk</td>
<td>$11,325 ($302* x 37.5 wks)</td>
<td>Add 1% for age and 10% for wage loss</td>
<td>21% rating</td>
<td>$35,673.75 ($453 x 78.75)</td>
</tr>
</tbody>
</table>

* Maximum PPD rate would equal $302 for Impairment but $453 for PPD

9/14/2012
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Adequacy</th>
<th>Vertical Equity</th>
<th>Horizontal Equity</th>
<th>Predictability</th>
<th>Impact on Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enact utilization and treatment guidelines</td>
<td>No impact</td>
<td>No impact</td>
<td>No impact</td>
<td>↑</td>
<td>↓</td>
</tr>
<tr>
<td>Revise attorney fees for medical disputes</td>
<td>No impact</td>
<td>Designed to reduce negative impact of treatment guidelines on access to care</td>
<td>↑</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allow future medicals to be settled but have mechanism to ensure worker is protected</td>
<td>No impact</td>
<td>No impact</td>
<td>No impact</td>
<td>↑</td>
<td>↓</td>
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<td>Eliminate compensability for non-work related activities</td>
<td>No impact</td>
<td>No impact</td>
<td>No impact</td>
<td>↑</td>
<td>↓</td>
</tr>
<tr>
<td>Revise TTD and PTD rates to reflect impact of dependents</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>Will take a few years to return to predictability</td>
<td>Design to be revenue neutral</td>
</tr>
<tr>
<td>End temporary benefits at (MMI)</td>
<td>No impact</td>
<td>No impact</td>
<td>No impact</td>
<td>↓</td>
<td>↓</td>
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<td>↑</td>
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<td>↑ downward</td>
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<td>Consider additional preferred worker, assisted re-employment and/or support community based efforts for new employment</td>
<td>Handle thru WorkSafeMT</td>
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<td>Reduce friction between PPD and PTD by raising PPD rate for workers who are not back to work at full wage at MMI</td>
<td>↑</td>
<td>↑</td>
<td>↑</td>
<td>No change anticipated</td>
<td>↑</td>
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<td>Allow for the settlements of claims when both parties are willing</td>
<td>No change anticipated</td>
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<td>Consider an administrative alternative to having the employer and insurer pay the cost of living escalators for PTD benefits</td>
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<td>No change anticipated</td>
<td>No change anticipated</td>
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<td>Statutorily adopting the 6th Edition AMA guides</td>
<td>No applicable</td>
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<td>Bottom line benefit costs will have to be about 1.4% lower than those of other states due to limitation on third party recoveries</td>
<td>All cost or savings impact will need to be quantified once final</td>
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