



Economic Affairs Interim Committee
61st Montana Legislature

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DON ROBERTS

COMMITTEE STAFF

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

HIPAA SUBCOMMITTEE MINUTES

May 24, 2010
Rm 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.

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SUBCOMMITTEE 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 committee agreed to go forward and present bill drafts LCcwc and LCwc#2 to the full committee.

CALL TO ORDER AND ROLL CALL

Rep. Chuck Hunter opened the HIPAA subcommittee at 2:03 p.m. The Secretary called the roll. Attachment #3.

AGENDA

Review of drafts 1, 2, and 3

- **Bart Campbell, Staff Attorney**

- 00:00:01 Mr. Campbell distributed and explained two new bill drafts and a revision of the previously discussed draft, LCwccw.
- LCwccw#2 - **Exhibit 1**
 - LCwccw#3 - **Exhibit 2**
 - LCwccw - **Exhibit 3**
- 00:02:31 Rep. Hunter began with a review of LCwccw#3. He sees this as similar to what currently exists. There was consensus to dismiss this version.
- 00:06:03 Rep. Hunter turned to LCwccw#2. Erin MacLean reviewed HIPAA, the Health Insurance Portability and Accountability Act. She suggested this version was not necessary because all providers currently can provide information pursuant to a signed release. Nancy Butler agreed. Judy Bovington asked for guidance on the subcommittee's task. Rep. Hunter responded that the effort was to help clarify what information providers could release and employers could obtain for return to work efforts. Ms. MacLean noted that if there is a signed authorization, the provider can give information out based on that authorization. She noted that a statute allowing for disclosures other than through a signed authorization would expand what providers could give to employers. She discussed how other statutes regulate information insurers provide.
- 00:10:41 Rep. Hunter said there are two things LCwccw#2 would do: 1) outlines specifically what is acceptable for sharing with an employer directly or through an insurer regarding return to work, and 2) provides an avenue for employers to have contact with an insurer or provider regarding information for an employee's return to work. He suggested both are beneficial. Rep. Roberts said LCwccw#2 is good and is comfortable for providers.
- 00:12:12 Rep. Hunter said LCwccw#2 had two downsides: it adds an element of time and it doesn't address the need for people to work together to share information to have a good return to work plan. He suggested whereas clauses or a purpose statement may be helpful Ms. Butler said that it requires another step and questioned "if it gets us where we need to go." Rep. Hunter asked Ms. Butler to explain how State Fund handles this information. She described the confidentiality of the process and the need to share certain critical information with employers, who are paying the premiums. She said the unofficial bill draft copy of May 17th, LCwccw, is what State Fund is currently doing. She said the draft codifies the activity. She said LCwccw#2 adds a layer to what they are currently doing.

- 00:15:34 Ms. Murdo said that LCwc#2 would need to include Title 50. Ms. Bovington asked if there had been efforts to look at other state laws. There was discussion about what other states were doing, and Ms. Murdo responded that Mike Taylor from NCCI had checked and couldn't find anything.
- 00:18:36 Rep. Hunter turned to the May 17th version of LCwcwc and asked for comments. Ms. Butler complimented Mr. Campbell and stated this is a good draft. Ms. MacLean agreed. Rep. Roberts found this version more accommodating than the other drafts. Ms. Bovington stated that the questions from the last meeting are addressed in this draft. The committee discussed language changes for LCwcwc, Exhibit 3.
- Public Comments**
- 00:31:08 Al Smith, Montana Trial Lawyers Association, addressed Exhibit 3, LCwcwc. He discussed why it wouldn't work and the Thompson constitutional challenge to the existing law. He said that physicians currently have a form for signing off for restriction purposes. He questioned why physicians need to talk to the insurer. He said that sections A through D are currently being provided. He said section E creates a wide-open issue and he questioned who will limit that information. He said currently there isn't a problem.
- 00:37:15 Larry Jones, Liberty Northwest, stated that law currently in place is presumed constitutional. He addressed the three drafts and said that the Labor Management Advisory Council (LMAC) has an aggressive stay at work/return to work component for proposed legislation. He said this is the kind of statute that will assist and make this legislation successful. He suggested new language to address when an employee is injured and cannot return to work because that position cannot be held open for that injured worker, recommending it read "time of injury and subsequent employer". Mr. Jones discussed:
- pre-existing conditions;
 - including a discussion of reserves and the relation to medical treatment;
 - safety in the workplace;
 - releasing information in the work place; and
 - that an employer does not need to accommodate the use of medical marijuana for an injured worker.
- Mr. Jones talked about inserting a provision that would require the injured worker to submit to a recorded interview during the initial investigation or the employer could suspend benefits if an injured worker unreasonably refuses.
- 00:45:03 Mark Cadwallader, staff attorney for the Department of Labor and Industry (DLI), suggested language in new subsection 4, page 3, instead of using the word "including" health care information, to use the word "constitutes" health care information.
- 00:45:47 Kevin Braun, an attorney for State Fund, noted that LCwc#2's permissive language may indicate that if the claimant refuses to sign a release there is a negative implication that the information is not shareable.
- 00:46:32 Jerry Keck, Administrator, DLI, commented about the underlying goal being

safety and getting the employee back to work. He noted the injured worker needs to be part of the discussion. He said that LMAC has a proposal regarding return to work and that LMAC will be addressing the issue.

- 00:51:20 Rep. Hunter asked about the need for an employer to keep the information confidential. Mr. Smith replied it would be important. They discussed parts A through D of LCwawc. Rep. Hunter asked for suggested next steps. Ms. Butler said there are a few areas that could be modified in LCwawc. She cautioned about clarifying language related to "in the workplace". She stated that other potential employers could be involved but time of injury employer may be easier.
- 00:52:28 Ms. MacLean addressed the language on page 8, sub (i) regarding return to work and specific claims. Rep. Hunter expressed concerns about expanding the scope, as suggested by Mr. Jones, and whether the language concerns the claim instead of overall return to work, which may include pre-existing conditions.
- 00:56:07 Rep. Hunter said the committee charge is for return to work and that the committee will not be addressing medical marijuana.

BREAK

- 01:05:07 Rep. Hunter in discussion with the committee asked "how do we move forward". He said what comes out of this committee will go before the full committee.
- 01:06:28 Ms. Butler suggested going forward with LCwawc, and include the language that Mr. Cadwallader suggested. Ms. MacLean and Ms. Bovington also agreed. Rep. Roberts also stated his support in going forward with bill draft LCwawc.
- 01:11:49 Rep. Hunter talked about moving forward with LCwawc#2. He talked about the content regarding an employer's limitations and protecting confidentiality.
- 01:12:41 Mr. Campbell said that the word "may" is in the draft. Rep. Hunter said he is ready to foster a dialogue to get workers back to work early.
- 01:14:33 Ms. MacLean said she is comfortable with LCwawc. She is not in agreement with the release of information in LCwawc#2 that would need a signature. She said that anything that is a signed release will set the committee back.
- 01:16:27 Rep. Hunter and the committee talked about sharing information between employers and providers. He doesn't want to leave the release of information behind. Rep. Roberts said that a signed consent is the best way to go.
- 01:18:01 Rep. Hunter suggested presenting LCwawc#2 to the full committee. The committee agreed to take LCwawc and LCwawc#2 to the full committee

Adjourn

- 01:21:01 Rep. Hunter adjourned the committee at 3:26 P.M.

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