

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
WASHINGTON, D.C.
FEBRUARY 28, 2008
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Hyatt Regency on Capitol Hill in Washington, D.C. on Thursday, February 28, 2008, at 9:30 a.m.

Rep. Kurt Olson of Alaska, co-chair of the Committee, presided.

Other members of the Committee present were:

Assem. Nancy Calhoun, NY
Assem. Ivan Lafayette, NY
Sen. William J. Larkin, Jr., NY
Rep. Frank Wald, ND

Other legislators present were:

Sen. Bill Brady, IL
Rep. Joseph Hardy, NV
Rep. Dan Foley, NM
Rep. Tony Melio, PA
Rep. Warren Kitzmiller, VT
Rep. Judy Livingston, VT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Mike Humphreys, NCOIL Director of State-Federal Relations
Jordan Estey, NCOIL Director of Legislative Affairs & Education

MINUTES

The Committee voted unanimously to approve the minutes of its November 15, 2007, meeting in Las Vegas, Nevada.

REPORT ON THE D.C. WORKERS' COMPENSATION SYSTEM

Director Mohammad M. Sheikh of the District of Columbia Department of Employment Services (DOES), Labor Standards Bureau, said the D.C. Department processes claims and monitors the payment of benefits to injured private-sector employees in the District of Columbia. He said the office mediates disputes between claimants, employers and carriers, and ensures employer compliance with insurance coverage requirements.

Mr. Sheikh said the program administers a special second injury fund, which provides benefits to workers injured in cases where an employer is uninsured. He said the fund also provides benefits to workers who sustained an injury on top of a pre-existing disability. He said that the program approves lump-sum settlements, assesses penalties and fines for non-compliance, and monitors vocational rehabilitation.

He said the Department's objectives are to lower overall costs associated with indemnity, medical and legal payments and to explore methods of expediting claims resolution, among other things.

Mr. Sheikh said that the DOES seeks to render timely and efficient decisions that are in compliance with D.C. law, rules, regulations and procedures. He said the Department works to resolve most claims disputes within 180 working days, while the final administrative appeals process is usually processed within 30 to 45 days.

He said that the National Council on Compensation Insurance (NCCI) has ranked the DOES 7th in medical cost containment and 10th in overall indemnity costs nationally. He said that current reform efforts sought to reduce the longevity of the claim and to make D.C. competitive with neighboring jurisdictions.

DISCUSSION OF UPDATED GUIDES FOR RATING PERMANENT IMPAIRMENT

Dr. Marjorie Eskay-Auerbach of the American Medical Association (AMA) said that new *AMA Guides for the Evaluation of Permanent Impairment*, 6th edition, were released on December 31, 2007. She said the *Guides* are an objective and comprehensive physician reference for rating permanent impairment.

Dr. Eskay-Auerbach said the *Guides* are the principal tool used in the United States to determine the degree of permanent impairment among injured workers. She said that 26 states employed the 5th edition of the *Guides* in their workers' compensation systems, while others used older or state-specific versions. She said many states had statutory requirements regarding use of the new 2008 version, while others do not have specific mandates.

Dr. Eskay-Auerbach informed legislators that impairment ratings are not intended to be a full measure of disability. She said that an impairment rating is a physician's best assessment of a patient's injury and loss of function in a body part after he or she has reached maximum medical improvement (MMI). She said that impairment ratings are a numerical percentage of a patient's loss of function in a given body part.

Dr. Eskay-Auerbach said that impairment ratings are used to help determine the disability ratings incorporated in benefit payments. She said that disability ratings, in general, are contentious because they include social criteria—such as loss of earning capacity—as a means of determining payments to injured workers.

Dr. Eskay-Auerbach said that the new *Guides* incorporate recommended changes from earlier versions—including measures of functional loss in the impairment rating scales. She said that the new 6th edition was a paradigm shift from earlier versions and that it adopts a more contemporary model of impairment. She said that the new *Guides* are simplified, functionally based, and internally consistent to the fullest extent possible.

Dr. Eskay-Auerbach said that the new *Guides* were more diagnosis-based and would allow physicians and lawmakers to shift future ratings from consensus to evidence-based measurements, which could establish more consistent ratings in a given jurisdiction.

Rep. Wald asked Dr. Eskay-Auerbach to explain what she meant by functional assessment.

Dr. Eskay-Auerbach said that functional assessment is based on a physician's findings and a patient's own experience. She said that a patient who notices certain limitations in activities of daily living can share that information with the physician. The physician, she said, can then incorporate these experiences into his or her diagnosis when calculating the impairment rating.

Rep. Hardy asked if the new edition of the *Guides* could be used retroactively to alter the impairment ratings used in earlier claims.

Dr. Eskay-Auerbach said that they were not intended to be retroactive in that way, but that a rating based on earlier editions of the *Guides* could be converted into a modernized rating.

Mona Carter of NCCI said that state regulators and legislators would be hearing a lot about this particular issue in the coming year. She said that many states would automatically incorporate the new version of the *Guides* into law, while others would require legislation. She said that the NCCI would be doing impact statements to measure the effectiveness of the new *Guides* in controlling costs and promoting consistency in the rating process.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:30 a.m.

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