

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
WASHINGTON, DC
FEBRUARY 27, 2009
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Hyatt Regency on Capitol Hill in Washington, DC, on Friday, February 27, 2009, at 9:15 a.m.

Rep. Susan Westrom of Kentucky, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK
Sen. Ralph Hudgens, GA
Sen. William Haine, IL
Assem. William Barclay, NY
Assem. Nancy Calhoun, NY
Sen. William Larkin, Jr., NY
Sen. Keith Faber, OH
Rep. Charles Curtiss, TN
Sen. Ann Cummings, VT
Sen. Frank Deem, WV

Other legislators present were:

Rep. Ronald Crimm, KY
Rep. Dan Dodd, OH
Rep. Robert Godshall, PA
Rep. Tony Melio, PA
Sen. David Thomas, SC

Also in attendance were:

Susan Nolan, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Michael 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 20, 2008, meeting in Duck Key, Florida.

FLORIDA EFFORTS TO RESTORE ATTORNEY FEE LIMITS

Mr. Estey briefly discussed the October 2008 Florida State Supreme Court decision in *Emma Murray vs. Mariner Healthcare*, which he said nullified a controversial cap on attorney fees in the state's 2003 workers' compensation reforms. He reminded Committee members that a representative of the Florida Department of Financial Services had said the reforms helped to

reduce overall costs by more than 60 percent at the 2008 NCOIL Annual Meeting in Duck Key, Florida.

Mr. Estey said the Court's decision found that the provision was unclear and that attorneys could charge a reasonable rate. He said the National Council on Compensation Insurance (NCCI) requested an 18.6 percent two-year rate increase because of the decision, and that the Florida Department of Insurance approved a 6.4 percent increase to offset projected cost increases. He said that several bills had been introduced in the Florida legislature to restore the cap and to clarify that the legislature's intent was to cap the fees in order to contain workers' compensation legal costs.

NATIONAL WORKERS' COMP COMMISSION BILL

Mona Carter on behalf of the National Council on Compensation Commission (NCCI) discussed federal bill H.R. 635, *The National Commission on State Workers' Compensation Laws Act*. She said Congressman Joe Baca (D – CA) had introduced the bill in January, 2009, to evaluate and determine if state workers' compensation laws were adequate, prompt, and equitable. She said the bill would establish a commission to review the varying aspects of state workers' compensation laws including, among other things, different benefit structures, medical guidelines, and fee schedules. She said the bill didn't seek to federalize the workers' compensation system, but would provide federal lawmakers an opportunity to study which state systems and innovations were functioning the best. She said a similar Commission was created in 1972 and that it made several recommendations that many states had phased into their laws.

MARYLAND WORKERS' COMPENSATION COMMISSION

Maryland Workers' Compensation Commission Chairman Karl Aumann briefly overviewed the state's workers' compensation system. He said that the state's workers' compensation system had been stable, and as such, hadn't advanced any major reforms for twenty years. He said the stakeholders in Maryland worked collaboratively on workers' compensation issues, which he believed helped the stability.

Chairman Aumann said one of the state's largest innovations was its development and introduction of a comprehensive electronic filing system in 2001 for claimant information and medical billing records. He said the paperless environment helped to increase efficiency in all areas of the system, including claimant disputes and settlements, among other things.

Chairman Aumann said Maryland used a fee schedule to reimburse medical providers at 109 percent of Medicare payment rates. He said certain specialty providers were paid more for their services, but that the fee schedule helped to rein in overall medical costs, which are the number one cost driver for most state workers' compensation systems. He said that the Commission had been concerned that a fee schedule would adversely lower claimant satisfaction. He said a survey conducted by the Commission found, however, that claimant satisfaction was around 80 percent, which was similar to other states with higher medical reimbursement structures.

Chairman Aumann said Maryland was an employee-choice state, which meant that injured workers could choose their own healthcare provider for medical services. Sen. Hudgens

asked if rental networks were an issue in Maryland because of this, and if providers participating in these networks could be reimbursed at amounts less than the state's fee schedule. He said that a State Supreme Court decision had found that providers participating in these rental networks could be reimbursed at a lower rate because the Maryland fee schedule was not "absolute."

In closing, Chairman Aumann talked about the impacts of the economic recession on the Maryland workers' compensation system. He said there were numerous self-insured companies in the state that could be vulnerable to the economic conditions. He said it was important for his department to ensure that these companies remained solvent during the difficult economic times.

INDEPENDENT CONTRACTOR STATUS MODEL LAW

Eric Nordman on behalf of the National Association of Insurance Commissioners (NAIC) reviewed several recommendations made by a joint NAIC/International Association of Industrial Accident Boards (IAIABC) Working Group in a white paper entitled *An Overview of Workers' Compensation Independent Contractor Regulatory Approaches*. He said that the white paper didn't support any specific solution, but outlined independent contractor workers' compensation problems and examined various state laws and approaches.

Mr. Nordman said most states allow certain classes of businesses to opt out of workers' compensation coverage. He said problems exist, however, when independent contractors seek employee classification after they are injured on the job, which creates uncertainty and added costs for workers' compensation systems.

Mr. Nordman said the white paper made several recommendations, including:

- Clarify the legal status of an independent contractor in statute.
- Promote vigorous employer education of the risks of independent contractors being deemed employees.
- Strengthen penalties for employer actions to incite or coerce employees to waive their rights to workers' compensation coverage through claims of independent contractor status.
- Increase education regarding insurance issues, especially the use and abuse of "if any" policies, policies under which an independent contractor can purchase coverage for unanticipated employees.
- Clarify audit procedures and standards.
- Coordinate workers' compensation benefits with unemployment insurance benefits.

Mr. Nordman said the first recommendation was of particular importance to NCOIL. He said a set of uniform and defined criteria to determine an independent contractor's status would benefit state workers' compensation systems.

Sen. Deem briefly discussed the problems West Virginia had experienced with independent contractors and workers' compensation insurance. He said NCOIL should be concerned about this issue and that legislators should work to prevent fraud and abuse in this area.

Rep. Curtiss said Tennessee passed a law in 2008 that required any businesses or entity working in the construction industry to have workers' compensation coverage. He said most

of the independent contractor workers' compensation issues were in the construction field because many individuals and small companies sought to avoid paying expensive coverage. He said that it was a tough decision, but felt a construction mandate was the best way to address the independent contractor problems.

Mona Carter of the NCCI told legislators that independent contractor status was the number one workers' compensation issue state legislators and regulators faced each year. She said there wasn't uniformity among the states and no clear process existed to determine when an independent contractor should be exempt from workers' compensation insurance coverage. Ms. Carter urged the Committee to consider a way in which standards could be set to make this determination. She said this was an opportunity for NCOIL to add clarity and assist the states by creating uniform model standards of developing a standard definition for state use.

DATA COLLECTION STANDARDS

Mark Skinner with the Workers' Compensation Research Institute (WCRI) discussed the need for workers' compensation data collection standards. He said that most states have good systems in place to collect data and track quality of their workers' compensation systems. He said data allows state officials to keep an eye on their system and provides a barometer for policy and regulatory changes, when necessary.

Mr. Skinner said that there was little uniformity, however, across states on how to best collect and analyze data, and that it was difficult to compare one state system to another. He urged lawmakers to work with some of the national workers' compensation groups, including the WCRI, the NCCI, the IAIABC, and the NAIC, to look at ways to effectively and consistently measure data across workers' compensation systems. He said clarity and uniformity in this area would benefit state workers' compensation regulation. He said NCOIL could look at state methods, what data is useful, and best practices.

OTHER BUSINESS

Wesley Bissett, on behalf of the Independent Insurance Agents & Brokers of America (IIABA), said at least one private-sector company was using state freedom of information laws to access workers' compensation proof-of-coverage information and then selling it to other insurance companies as potential leads. He said most states require employers to submit this information as part of their workers' compensation laws, which included expiration dates and policy terms. He said independent insurance agents felt the information was proprietary and that third parties were exploiting an unintended consequence of state laws.

In response to a question from Rep. Westrom regarding prevalence, Mr. Bissett said that it was happening in most, if not all of the states. He said there was uncertainty among the states in how to approach the issue.

Mr. Bissett said independent insurance agents believed it was important to submit the information as part of state workers' compensation laws, but felt the activities of the third parties were unintended consequences of the laws' intents. He said that information could be made publicly available on a case-by-case basis if need be, but that agents believed this information was their work product. In closing, he urged NCOIL to look at the issue ongoing

and provide guidance to the states in the form of a resolution or other acceptable policy communication.

ADJOURNMENT

There being no further business, the Committee adjourned at 10:00 a.m.

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