

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
SANTA FE, NEW MEXICO
NOVEMBER 18, 2011
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Eldorado Hotel & Spa in Santa Fe, New Mexico, on Friday, November 18, at 1:30 p.m.

Rep. Steven Riggs of Kentucky, vice chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK	Sen. David Thomas, SC
Rep. Barry Hyde, AR	Rep. Charles Curtiss, TN
Rep. Matt Lehman, IN	Rep. Charles Sargent, TN
Sen. Vi Simpson, IN	Del. Harvey Morgan, VA
Sen. Ruth Teichman, KS	Rep. William Botzow, VT
Rep. George Keiser, ND	Sen. Ann Cummings, VT
Rep. Don Flanders, NH	Rep. Herb Russell, VT
Sen. Carroll Leavell, NM	Sen. Mike Hall, WV
Assem. Nancy Calhoun, NY	

Other legislators present were:

Rep. Greg Wren, AL	Sen. David O'Connell, ND
Rep. Nancy McLain, AZ	Rep. Michael Stinziano, OH
Rep. Jeff Greer, KY	Rep. Glen Mulready, OK
Rep. Andrea LaFontaine, MI	Sen. Jean Hunhoff, SD
Rep. Pete Lund, MI	Rep. Jim Dunnigan, UT
Sen. John Goedde, ID	Rep. Warren Kitzmiller, VT
Sen. Ralph Hise, NC	

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

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 14, 2011, meeting in Newport, Rhode Island.

PROOF OF COVERAGE REQUIREMENTS AND CONFIDENTIALITY

Rep. Riggs introduced a proposed *Resolution Regarding Workers' Compensation Proof of Coverage Requirements*, which was sponsored for discussion by Committee Chair Rep. William Sandifer III (SC). He said the resolution was in line with a 2011 Committee charge and responded to legislative interest at the July Meeting.

Wes Bissett on behalf of the Independent Insurance Agents and Brokers of America (IIABA) said that states have struggled to balance the confidentiality issues regarding open records laws with a need to collect insurance information from businesses to ensure they have coverage. He said that state laws mandating employer purchase of workers' compensation require that businesses and insurers must turn over detailed insurance policy information to state agencies.

Mr. Bissett said that third-party entities in many states, however, were using open records laws to access this information. He said that once accessed, the third parties repackage and sell the data as business leads to insurers and agents/brokers. He said that this practice financially harms the insurers and agents/brokers already servicing the employers.

Mr. Bissett said that some states believed this information was sensitive and should be kept confidential, while others thought open-records laws compelled its release. He said that the resolution under consideration urges state policymakers to ensure that truly sensitive information is protected when open-records requests are made. He said that states could be clear in their open records statutes, for example, that certain data cannot be publicized. He said that Michigan is among a handful of states that have such provisions. He noted that the IIABA supported the resolution.

In response to a request from Rep. Keiser for a state-specific example, Mr. Bissett said that open-records inquiries were made to a Rhode Island state agency, but that the agency didn't think it was legally able to protect the information.

Rep. Riggs then introduced two proposed amendments to the resolution. He said the amendments had been suggested by the International Association of Industrial Accident Boards and Commissions (IAIABC), an international organization of state workers' compensation regulators and administrators. He said that the first amendment would specify legitimate reasons to request employer information including when medical providers and general contractors look to verify coverage of injured workers and subcontractors. He said that the second amendment would specify the types of information that these entities could obtain.

Because the amendments were submitted after the 30-day deadline, Rep. Riggs said they would require a two-thirds vote for consideration, followed by a separate two-thirds vote to adopt. Upon a motion made and seconded, the Committee unanimously voted to suspend the 30-day rule.

Mr. Bissett said that the IIABA supported the amendments and agreed that there were legitimate public policy reasons for third parties to access the data. He said that he believed the amendments successfully recognized this.

Upon motions made and seconded, the Committee unanimously voted to approve the amendments and then to adopt the amended resolution.

VOLUNTEER FIREFIGHTERS

Mona Carter of the National Council on Compensation Insurance (NCCI) said that most state laws regarding workers' compensation insurance for volunteer firefighters hadn't been updated in decades. She said that because volunteer firefighters are vital in rural and other communities, legislators should ponder important public policy decisions on minimum payroll amounts for premium calculation, who should pay for volunteer firefighters' coverage, and if new reporting requirements should be required, among other things.

Speaking to state activity, Ms. Carter said that West Virginia in 2011 had appropriated money to help defray workers' compensation costs for local volunteer firefighters when municipalities couldn't fund the premiums. She said that most states are facing similar issues, including concerns that career firefighters are subsidizing the volunteers' insurance costs.

Ms. Carter said that the NCCI was drafting a white paper to look at the history of workers' compensation for volunteer firefighters and related state legislative and regulatory activity and cost and claim trends. She said the NCCI in 2007 had separated the job classification code used to set premium rates for firefighters into two codes to better track loss ratios and other data trends for career firefighters and volunteers. She said a National Association of Insurance Commissioners

(NAIC) working group was examining these issues—including how volunteers' premiums are determined and calculated—from a regulatory standpoint.

Rep. Riggs noted that Kentucky pays for volunteer firefighters' coverage through a state fund. Ms. Carter said that very few states do this and that the states vary widely in how they fund coverage.

Rep. Curtiss said that volunteer firefighters risk their families' financial stability by going into dangerous structural fires. He commended Kentucky for funding the volunteers' coverage and said that states should help protect these firefighters from significant financial harm because of injuries sustained while providing such a valuable service.

Ms. Carter said that most states assume they will subsidize a portion of the premium coverage for volunteer firefighters, but debate remains over cost-sharing between a state and its local municipalities, among other things.

Rep. Curtiss said that Tennessee assesses a tax on homeowners' insurance. He said that part of the fee is tied to fire safety and pays for firefighter education/training. He said that this could be an innovative way to fund workers' compensation for volunteers.

Ms. Carter said that most state laws regarding minimum payroll amounts used to determine workers' compensation premiums for volunteer firefighters hadn't been updated since the 1940s. She said that career firefighters' payroll calculations had evolved over the years in line with increasing average wages but that minimum payroll amounts for volunteers—which are often specific amounts established in state statute—were too low.

In response to a question from Sen. O'Connell about volunteer firefighter certification, Ms. Carter said that not all states require it. She said that NCCI had advised regulators to consider certification as part of any solution.

Ms. Carter said that states could also look to strengthen reporting requirements through mandated fire department rosters, among other things. She said insurers, for example, often can't prove that someone is on a fire department's roster of volunteers. She said that it is also difficult to define volunteer firefighter "work." She noted that most fire departments engage in several other community events that do not include actually fighting fires. She said that distinctions between these types of activities for workers' compensation may be appropriate.

PHYSICIAN DISPENSING/REPACKAGED RX DRUGS

Ms. Carter said that medical spending was driving workers' compensation costs up and that prescription drug costs, in particular, comprised a significant portion of total costs in 2011. She said that a 2011 NCCI study found that physician dispensing of repackaged drugs had triggered a sudden and significant growth in costs.

Ms. Carter said that some workers' compensation providers prescribe medication directly from their office, rather than through a pharmacy, in a practice known as physician dispensing. She said that many of these physicians were also prescribing repackaged drugs, where third-party vendors recode brand-name prescription drugs and charge upwards of 300 percent more. She said that repackaged drugs skirt state workers' comp fee schedules and increase claims costs because the insurer pays for all medical and drug costs of the injured workers.

Ms. Carter said these issues had first emerged in California and that Florida, Georgia, Hawaii, Maryland, New York, and Ohio had recently taken legislative and/or regulatory action. She said the state workers' compensation regulators at the IAIABC and other regional organizations also were looking at this as a major issue for 2012.

Del. Morgan said that Virginia law prohibits physician dispensing if a pharmacy is near the prescribing doctor's office and asked if other states have similar laws. Ms. Carter replied that most states don't require this and said that the NCCI had no position on the practice of physician dispensing, but wanted to make legislators aware of this emerging issue.

INDEPENDENT CONTRACTORS

Ms. Carter said that laws regarding independent contractors and employee misclassification remained hot issues in the states and the federal government. She said that 69 related state bills were proposed in 2011 and that, as of September 30, eleven of those bills had been enacted. She said that Congress was considering payroll fraud legislation and that the U.S. Department of Labor (DOL) and Internal Revenue Service (IRS) were looking to crack down on employee misclassification. She noted recent NCOIL work on independent contractors in the construction and trucking industries and urged legislators to keep an eye on the issue ongoing.

2012 COMMITTEE CHARGES

Rep. Riggs said that the proposed 2012 Committee charges had been amended prior to the meeting to include coverage for volunteer firefighters and physician dispensing of repackaged drugs. He asked that the Committee also add review of workers' compensation for temporary/seasonal migrant farm workers, which he saw as an emerging issue. He said the proposed charges, as amended, were:

- continue review of cross-border rules for workers/potential state reforms
- investigate medical cost trends and related state cost-containment strategies, including state efforts on physician dispensing and drug repackaging
- review coverage issues for volunteer firefighters and migrant farm workers

Upon a motion made and seconded, the Committee unanimously approved the amended 2012 Committee charges.

ADJOURNMENT

There being no other business, the Committee adjourned at 2:30 p.m.