

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
NEWPORT, RI
JULY 14, 2011
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Marriott Newport in Newport, Rhode Island, on Thursday, July 14, at 8:00 a.m.

Rep. William Sandifer of South Carolina, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK	Sen. Carroll Leavell, NM
Rep. Barry Hyde, AR	Assem. Nancy Calhoun, NY
Rep. Matt Lehman, IN	Rep. Charles Curtiss, TN
Sen. Ruth Teichman, KS	Rep. Charles Sargent, TN
Rep. Steve Riggs, KY	Del. Harvey Morgan, VA
Rep. George Keiser, ND	Rep. William Botzow, VT
Sen. Jerry Klein, ND	Rep. Kathleen Keenan, VT
Rep. Don Flanders, NH	Sen. Mike Hall, WV

Other legislators present were:

Rep. Greg Wren, AL
Sen. Travis Holdman, IN
Rep. Ron Crimm, KY
Sen. David O'Connell, ND

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 March 4, 2011, meeting in Washington, DC.

CROSS-BORDER RULES FOR WORKERS

Bill Tattan of the Massachusetts Department of Industrial Accidents—the state's workers' compensation enforcement office—said that out-of-state workers who lack coverage or have incorrect coverage can file claims with a trust fund maintained by Massachusetts-based employers. He said that employers and the state are thus both burdened when out-of-state workers aren't properly covered and that his office works to protect the state's fund against would-be violators.

Mr. Tattan said the Department had 15 staff investigators that enforce Massachusetts workers' compensation laws. He said that, like in some other states, his staff can issue stop-work-orders when violators were discovered, which—in cross-border cases—has strained relations with border states New Hampshire and Rhode Island.

Mr. Tattan then described common insurance coverage provided under Sections 3(A) and 3(C) of a workers' compensation policy. He said that employers under Section 3(A) are approved for coverage in states where known business will be conducted. He said that 3(C) provides coverage for "any other states," and dictates how the policy will respond if an employee is injured while temporarily working in these jurisdictions.

Mr. Tattan said that, to ensure compliance with state law, his department in 2009 notified employers and insurers that out-of-state businesses with Massachusetts listed under Section 3(A) were clear to work, while those with 3(C) coverage must first check with insurance carriers before doing business. He said the Department rule was updated in October 2010 and that—after working with interested parties—a form was approved for out-of-state employers to use for purposes of verifying proper coverage. He said the new rule required employers, at the request of the Department, to have their insurance carrier fill out and submit the coverage verification form.

Mr. Tattan said that Massachusetts approach wasn't perfect, but was the best they had come up with to ensure coverage of out-of-state, temporary workers.

In response to a question from Rep. Riggs, Mr. Tattan said that the Department would accept a form from an agent only if they could certify an ability to bind coverage on behalf of the insurer. He said, though, that they had seen problems with bad actors in this area before.

Mona Carter with the National Council on Compensation Insurance (NCCI) said that:

- Northeastern states, because of strains on uninsured trust funds, were struggling with cross-border coverage.
- Coastal states, such as Louisiana and Florida, had difficulty enforcing out-of-state worker coverage in natural disaster clean-ups.
- Professional football players had been filing claims in states in which they work for one day.
- Interstate commerce, such as the trucking industry, lacked consistent rules, and that it was unclear if drivers—as they pass through a state—would be considered "working" under many state laws.

Ms. Carter said that statutory timeframes to define when work is considered "temporary" for purposes of workers' compensation would be helpful, and thought states should look at this. She said that this language would help employers, carriers, and agents know their coverage requirements when employees work out of state.

Ms. Carter said that most employers have 3(C) coverage under their policy and that insurance carrier contracts usually only omit or limit this coverage to monopolistic states like North Dakota or Ohio.

Rep. Keiser said that North Dakota had already defined a temporary worker by statute and entered into reciprocity agreements with adjacent states, but that bad actors will always find a way around the system. He said that there had to be a better solution.

Rep. Curtiss agreed and said that—as with independent contractors—problems arise after injuries when there is dispute over payment responsibility. Like Mr. Tattan had noted, he said, cash-strapped states pay the bills when employers aren't insured or are improperly insured. He said this is a problem for all states and urged NCOIL to continue a review of the issue.

Upon a motion made and seconded, the Committee unanimously voted to further review the issue at the Annual Meeting in Santa Fe, New Mexico.

PROOF-OF-COVERAGE DATA CONFIDENTIALITY

Ms. Carter reminded Committee members that state workers' compensation laws require carriers and employers to submit insurance information to verify that they have insurance, as required by state law. She said that third-parties were using freedom of information laws to gain access to this data, which often contains employee names and relevant insurance dates, etc. Insurance agents, she said, were concerned that this information was being accessed to sell business leads and that it, to a certain extent, should be kept private.

Rep. Sandifer said that South Carolina had, in a related area, formed an office to collect and share public utilities information with the state but keeps it private. He said that third parties shouldn't use public information laws to salvage business leads.

Rep. Sandifer asked staff—after working with interested parties—to come up with some policy proposal that could be discussed in greater detail at the Annual Meeting in Santa Fe. Upon a motion made and seconded, the Committee unanimously supported Rep. Sandifer's request.

SUNSET MODEL REVIEW

CROSS-BORDER RECIPROCITY AGREEMENT

Mr. Estey said that NCOIL Bylaws required review of adopted model laws every five years. He said that the Workers' Compensation Insurance Committee had two model laws up for review, a *Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage* and a *Model State Structured Settlements Protection Act*.

Mr. Estey said that NCOIL in 2006 had supported the model agreement, which was developed in 2005 by the International Association of Industrial Accident Boards and Commissions (IAIABC) and later adopted by the National Council on Compensation Insurance (NCCI). He said that the agreement would establish a reciprocal workers' comp agreement between two states and that the agreement would streamline cross-border claims processes if an employee is injured while "temporarily" working in either state, including options for defining temporary employment.

Upon a motion made and seconded, the Committee unanimously voted to renew NCOIL support of the model agreement.

STRUCTURED SETTLEMENTS MODEL ACT

Mr. Estey said that NCOIL had also supported a *Model State Structured Settlements Protection Act*—which is language agreed to by the National Structured Settlements Trade Association (NSSTA) and National Association of Settlement Purchasers (NASP)—in 2004 and again in 2006. He said that it would protect structured settlement recipients involved in the transfer of payment rights and would establish disclosure requirements, standards for assignment, and court approval.

Upon a motion made and seconded, the Committee unanimously voted to renew NCOIL support of the model act.

FEDERAL ACTIVITY

Julie Gackenbach of Confrere Strategies updated Committee members on federal activity relating to workers' compensation insurance. She said that President Obama's 2011 budget provisions directed Social Security Administrators to develop a new system to report workers' compensation payments. She said that federal regulators wanted to better track Social Security disability insurance payments in instances when both Social Security and workers' compensation are involved.

Ms. Gackenbach said that the President's budget also called for reform to the federal workers' compensation system. She said that the Administration had acknowledged the success of certain recent state reforms and would study individual state efforts and weigh their possible implementation for federal workers.

Ms. Gackenbach then reported on a June 2011 U.S. House Energy and Commerce Committee hearing on Medicare secondary payer reporting requirements. She said these requirements try to protect Medicare as a secondary payer in situations where a primary payer exists for medical payments, such as workers' compensation or personal injury protection. She noted that the requirements had posed significant problems for the insurance industry and cited the fact that non-group health plans had submitted over 400,000 reports to CMS and then received 74,000 demands for recovery.

Ms. Gackenbach said that during the June hearing, the Centers for Medicaid and Medicare Services (CMS) had received harsh criticism from both political parties on their management and implementation of the new requirements. She said that Congress would likely seek legislative changes to hopefully streamline the program.

Lastly, Ms. Gackenbach said that the U.S. Government Accountability Office (GAO) was studying:

- inefficient CMS reviews of Medicare Set-Aside (MSA) arrangements, where CMS pre-approves a portion of a lump-sum settlement—as is common in workers' compensation—as sufficient to cover any future payments to ensure that Medicare isn't on the hook as a secondary payer
- the impact of state workers' compensation reforms on Social Security disability payments, which some Members of Congress believe has shifted costs to Social Security

OTHER BUSINESS

In response to a question from Rep. Keiser, Ms. Carter said that the NCCI Chief Actuary had reviewed workers' compensation market trends and saw "deterioration." She said that experts felt the market would harden and that, among other trends, claims frequency was declining and payrolls were being reduced. She said that ever-increasing medical costs were also a significant problem for workers' compensation.

ADJOURNMENT

There being no other business, the Committee adjourned at 9:15 a.m.