

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
BILOXI, MISSISSIPPI
FEBRUARY 24, 2012
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Beau Rivage Hotel & Casino in Biloxi, Mississippi, on Friday, February 24, 2012, at 8:00 a.m.

Rep. Barry Hyde of Arkansas, vice chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK	Sen. David O'Connell, ND
Rep. Matt Lehman, IN	Sen. Carroll Leavell, NM
Rep. Steve Riggs, KY	Assem. Nancy Calhoun, NY
Sen. Dean Kirby, MS	Rep. Michael Stinziano, OH
Rep. George Keiser, ND	Rep. Charles Curtiss, TN
Sen. Jerry Klein, ND	

Other legislators present were:

Rep. Buddy Lovell, AR	Sen. William Larkin, Jr., NY
Sen. Dan Morrish, LA	Sen. Keith Faber, OH
Rep. Denise Garlick, MA	Rep. Brian Kennedy, RI
Sen. Timothy Green, MO	Rep. Cindy Ryu, WA
Rep. Jim Kasper, ND	Sen. Frank Lasee, WI

Also in attendance were:

Susan Nolan, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Michael Humphreys, NCOIL Director of State-Federal Relations

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 18, 2011, meeting in Santa Fe, New Mexico.

PHYSICIAN DISPENSING/REPACKAGED DRUGS

Chris Hackett of the Property Casualty Insurers Association of America (PCI) said that physician dispensing of repackaged drugs resulted in an estimated \$700 million in unnecessary workers' compensation medical costs. He reported that the price per pill for a repackaged drug was higher than for its pharmacy-dispensed, non-repackaged counterpart. After noting that repackaged drugs were primarily a workers' compensation concern, Mr. Hackett said that Massachusetts, New York, and Texas prohibited their use. He also reported, regarding cost containment, that some states had limited the price of a repackaged drug to the average wholesale price set forth by the original manufacturer.

Ray Farmer of the American Insurance Association (AIA) said that repackaged drugs first became an issue several years ago, when a workers' compensation commission in California found that repackaged drugs there averaged approximately 490 percent more than non-repackaged. He said that reforms in Georgia, South Carolina, and Tennessee were beginning to yield positive results and that repackaging was particularly problematic in states including Florida and Maryland, where controversial legislation was under consideration. Mr. Farmer urged the Committee to support

amending the drug fee schedule so that the price of a repackaged drug would be no more than the original manufacturer's average wholesale price. He said that high repackaged drug prices were the result of using the national drug code.

Greg Gilbert of Concentra offered a healthcare provider perspective. He asserted that physician dispensing of repackaged drugs was important but that controls were needed to eliminate "egregious pricing." However, he commented that some repackagers did sell their products at "fair and reasonable" prices. Mr. Gilbert supported model legislation that would allow physicians to continue to afford dispensing repackaged drugs.

Mona Carter of the National Council of Compensation Insurance (NCCI) explained that repackaged drugs were assigned a different drug code than originally packaged versions, which increased system costs. She said that physician dispensing fell outside typical workers' compensation fee schedules because those focused on pharmacy dispensing. She said that new cost controls were critical.

Rep. Hyde noted that a representative of the repackaged drug industry was unavailable to offer a repackager perspective.

Rep. Keiser stated that, in addition to repackaged drugs, overutilization of pharmaceuticals, particularly opioids, was increasing workers' compensation and health insurance costs. Rep. Kennedy agreed and asked that NCOIL look into what states were doing to address the issue.

Rep. Curtiss commented that people have different mindsets when they use workers' compensation versus health insurance. He said that repackaged drug costs could be contained by using the fee schedule figure as a maximum reimbursement rate. He also noted that Tennessee used a narcotics database to track overuse of pharmaceuticals.

VOLUNTEER FIREFIGHTER COVERAGE

Ms. Carter of NCCI reported that five years ago NCCI created separate risk classification categories, one each for volunteer and career firefighters, to assess reasons behind firefighter coverage cost increases. She said NCCI had discovered that risk calculations used for volunteer firefighters were sometimes inappropriate. She said, for instance, that use of a low annual minimum payroll amount, which was \$300 in many states, was leading to a disparity between what insurers were charging and what benefits they actually were paying out. She explained that volunteer firefighters were paid workers' comp benefits at the level of their non-firefighter employment, where they might earn generous salaries, even though the payroll amount used to determine the firefighter pricing was low.

Ms. Carter said that public policy solutions were needed. She said it was critical to:

- authorize insurer access to fire department rosters so that insurers could identify volunteers
- calculate how much time volunteer firefighters spend in their volunteer capacity
- establish appropriate risk classifications for firefighters and also for EMS workers
- establish more realistic annual minimum payroll amounts
- determine whether career firefighters should help subsidize costs for volunteer coverage
- decide who should pay for firefighter coverage (e.g., counties, the state, or some type of pooling mechanism)

Ms. Carter then encouraged the Committee to provide states with public policy guidance.

Eric Nordman of the National Association of Insurance Commissioners (NAIC) reported that regulators were identifying issues related to volunteer firefighter coverage, would soon receive

additional comments from NCCI and states, and aimed to explore various state and local approaches to providing coverage.

During Committee discussion that followed:

- Rep. Curtiss, a former fire chief, said NCOIL should weigh in because the issue would not resolve itself.
- Rep. Hyde, at the suggestion of Rep. Lehman, asked NCOIL staff to provide the Committee at the Summer Meeting with information on recent Oklahoma and Louisiana approaches.

MIGRANT FARM WORKERS

Rep. Riggs reported that migrant farm workers in 13 states were covered under workers' compensation law; that workers in 13 other states, including Florida and New York, were covered unless they were employed by small farms; and that migrant workers in the remaining states were not entitled to any workers' compensation. He said there were between 2.5 to 3 million migrant farm workers in the U.S. and that agriculture was third most hazardous industry. He then encouraged the Committee to hear from various stakeholders regarding ways to address coverage concerns.

During discussion that followed:

- Sen. Leavell said there seemed to be movement in New Mexico, where migrant workers were not allowed workers' comp, to require that all farm workers, including non-migrant, be covered.
- Rep. Curtiss said that the high-hazard logging and sawmill industries in Tennessee were "falling through the cracks" because the state only required workers' comp for companies with five or more employees.

STATE OF WORKERS' COMPENSATION MARKET

Ms. Carter reported that there had been a slight increase in claims frequency in 2011 and that, although NCCI had not analyzed all its 2011 data yet, the company foresaw an increased average combined ratio as well. She said the market was hardening, partially in response to lower insurer investment profits, and that assigned risk markets, therefore, were expanding.

ADJOURNMENT

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