

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
WASHINGTON, DC
MARCH 9, 2013
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at The Hyatt Regency on Capitol Hill in Washington, DC, on Saturday, March 9, 2013, at 8:30 a.m.

Rep. Bill Botzow of Vermont, chair of the Committee, presided.

Other members of the Committee present were:

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| Rep. Greg Wren, AL | Sen. David O'Connell, ND |
| Rep. Matt Lehman, IN | Rep. Michael Stinizziano, OH |
| Rep. George Keiser, ND | Sen. Mike Hall, WV |

Other legislators present were:

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| Rep. Bryon Short, DE | Sen. James Seward, NY |
| Rep. Jane Pringle, ME | Rep. Bob Hackett, OH |
| Rep. Kevin Cotter, MI | Rep. Michael Henne, OH |
| Rep. Tom Leonard, MI | Sen. Jake Corman, PA |
| Rep. Pete Lund, MI | Rep. Marguerite Quinn, PA |
| Sen. Jim Marleau, MI | Rep. Brian Kennedy, RI |
| Rep. Margaret O'Brien, MI | Sen. Dale Schultz, WI |
| Sen. Norman Sanderson, NC | |

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Ed Stephenson, Nolan Associates, NCOIL Director of Legislative Affairs—DC
Eric Ewing, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 15, 2012, meeting in Point Clear, Alabama.

OPIOID ABUSE & STATE REFORMS

Rep. Botzow said the Committee had held a March 8 meeting with the NCOIL Health, Long-Term Care & Health Retirement Issues Committee in order to investigate state opioid-abuse reforms. He said the discussion had highlighted the importance of providing for sufficient program resources and for a way to gauge effectiveness. He then requested information on state-by-state approaches.

Rita Nowak of the Property Casualty Insurers Association of America (PCI) urged NCOIL development of best practices to address opioid abuse, combined with a compilation of state reforms. She said that model legislation would be less effective because states were in various stages of addressing the opioid epidemic. She said that PCI was working with the American Insurance Association (AIA) on opioid issues and could serve as a resource for NCOIL.

Rep. Botzow and Ms. Nowak agreed that any best practices should highlight efforts with proven records of success, such as Washington State pain guidelines and a Kentucky prescription drug monitoring program.

PHYSICIAN-DISPENSED REPACKAGED DRUG MODEL ACT

Mona Carter of the National Council on Compensation Insurance (NCCI) commented that a proposed *Model Act on Workers' Compensation Repackaged Pharmaceutical Reimbursement Rates*—which would tie reimbursement rates for repackaged drugs to an original manufacturer's average wholesale price (AWP)—would be helpful guidance for states.

Harry Monroe of Healthsystems agreed, saying that the Tennessee-based model would allow physicians to continue dispensing repackaged pharmaceuticals while addressing cost and other abuses. He said the model was a way to curb workers' compensation prices without impeding quality of care.

Ms. Nowak of PCI said that the model included many critical provisions—such as a requirement that pharmaceutical bills include an original manufacturer's National Drug Code (NDC) number—and stressed that the model did not ban physician dispensing. She said, though, that PCI and AIA wished to offer amendments prior to the Summer Meeting to expand on the model. She said the amendments would address what happens when a physician does not know the original manufacturer NDC number, as well as address repackaging of over-the-counter drugs.

Eric Goldberg of AIA said there are indirect costs associated with physician dispensing of repackaged pharmaceuticals. He said, for instance, that studies have linked provider dispensing with longer periods in which patients are out of work. Mr. Goldberg explained that repackaged drugs are a problem for workers' compensation coverage rather than group health because state laws require workers' comp insurers to provide 100 percent of necessary medical care. He said there are no co-pays in the workers' compensation system.

Rep. Botzow said that because the proposed PCI-AIA amendments would expand on the model rather than change existing provisions, the Committee might consider adopting the model while agreeing to review the suggested amendments at the Summer Meeting. He said an alternative would be to defer all action until the summer.

Upon a motion by Rep. Lehman, the Committee unanimously adopted the proposed model act, with the understanding that legislators would review the PCI-AIA amendments in July.

Ms. Thorson noted that repackager representatives had been asked to participate but had declined.

VOLUNTEER FIREFIGHTER COVERAGE MODEL ACT

Ms. Carter of NCCI described a proposed *Model Act on Workers' Compensation Coverage for Volunteer Firefighters* as a good “first step,” as it would establish a “public employment” definition to address when volunteer firefighters are eligible for workers' compensation. She said, though, that it was critical to establish an underlying definition of “volunteer firefighter.”

Rep. Botzow and Sen. Hall agreed that the proposed model should be more comprehensive. Sen. Hall said that in addition to trying to determine what “volunteer” means, West Virginia struggled to establish an appropriate system for wage replacement. He explained that workers' compensation paid injured volunteer firefighters based on the wages they earned from their paying jobs—meaning that a physician could be reimbursed based on a \$400,000 per year salary while a fast food worker in the same firehouse could receive benefits based on a \$20,000 income.

Ms. Carter agreed that wage replacement was a critical and difficult issue to address. She said also that subsidies could be a problem because the class code for volunteer firefighters limited how much loss could be recognized. As a result, Ms. Carter said, the premiums charged to paid firefighters may have to supplement the premiums charged to volunteers. She reported that in several

instances, states had chosen to pay for the volunteer firefighter coverage in order to eliminate subsidies and recognize the volunteers' importance.

Responding to a question from Sen. O'Connell, Ms. Carter said that states certified volunteer firefighters differently, based on things like required physical exams and hours of training, among other items.

Upon a motion by Sen. O'Connell, the Committee unanimously deferred consideration of the proposed model act until the Summer Meeting, at which time legislators would consider an expanded version of the proposal.

APPROACHES TO FARM WORKER COVERAGE

Rep. Botzow commented that with the advent of large commercial farms, the workers' compensation insurance exemptions for farm laborers may no longer be appropriate and that legislators may wish to revisit the issue. He noted that Rep. Steve Riggs (KY), who had brought the issue before the Committee, could not attend the Spring Meeting.

Virginia Ruiz, Director of Occupational and Environmental Health with Farmworker Justice, reported that most migrant and seasonal farm workers were employed by large commercial operations, which over the last 20 to 30 years had become more numerous than small family farms. She said that agricultural work was dangerous and that laborers, whose median annual income was between \$10,000 and \$13,000, were primarily male and foreign-born.

Ms. Ruiz said that approximately 12 states required farm laborers to have the same level of workers' compensation coverage as non-farm laborers and that Farmworker Justice supported such parity.

Rep. Botzow said it would be helpful to know more about farm worker demographics so that legislators could understand the potential impacts of their policy decisions. Ms. Ruiz said it was a difficult population to quantify but that a National Agricultural Workers Survey (NAWS) released annually by the U.S. Department of Labor could be of assistance.

Rep. Lehman said that in Indiana, liability riders to agricultural policies were available that covered both seasonal and non-seasonal laborers. He commented that a private-market fix was preferable to government involvement.

Ms. Carter of NCCI proposed, as per her discussions with Rep. Riggs, that the Committee focus on whether states with farm exemptions should update them so that commercial farms would not be captured.

In deference to Rep. Riggs, the Committee deferred further consideration of the issue until the Summer Meeting.

WCRI STUDY ON FEES SCHEDULES/OUTPATIENT HOSPITAL COSTS

Ms. Thorson reported that the Workers Compensation Research Institute (WCRI) had released in January a study entitled *Hospital Outpatient Cost Index for Workers' Compensation (second edition)* that analyzed how different state reimbursement mechanisms—"fixed-amount" fee schedules, "percent-of-charge" fee schedules, and no fee schedules—appeared to affect average hospital outpatient expenses. She said the study, which ran from 2005 to 2010, focused on 20 large states—California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina, Oklahoma, Pennsylvania,

Tennessee, Texas, Virginia, and Wisconsin—that represented 65 percent of the U.S. workers' compensation market.

Ms. Thorson said that WCRI had determined the following, among other things:

- States with no fee schedules for hospital outpatient reimbursement had higher costs compared with states with “fixed-amount” fee schedules.
- States with hospital outpatient fee regulations based on percent of charges had higher costs compared with states that had “fixed-amount” fee schedules.
- Except for Illinois, states with “fixed-amount” schedules had relatively lower costs among the 20 states.

ADJOURNMENT

There being no other business, the Committee adjourned at 9:45 a.m.