

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
PHILADELPHIA, PENNSYLVANIA
JULY 12, 2013
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Philadelphia Marriott Downtown in Philadelphia, Pennsylvania, on Friday, July 12, 2013, at 2:15 p.m.

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

Other members of the Committee present were:

Rep. Kurt Olson, AK	Rep. Donald Flanders, NH
Rep. Greg Wren, AL	Sen. Carroll Leavell, NM
Rep. Matt Lehman, IN	Sen. William J. Larkin, Jr., NY
Rep. Jeff Greer, KY	Rep. Michael Stinziano, OH
Rep. Steve Riggs, KY	Rep. Charles Curtiss, TN
Rep. George Keiser, ND	Rep. Kathie Keenan, VT
Sen. Jerry Klein, ND	Sen. Mike Hall, WV

Other legislators present were:

Rep. Lindsey Holmes, AK	Rep. Sharon Treat, ME
Sen. Jason Rapert, AR	Rep. Keith English, MO
Sen. Rosalyn Baker, HI	Rep. Don Gosen, MO
Rep. Angus McKelvey, HI	Rep. Mike Henne, OH
Sen. Laura Kelly, KS	Rep. Dom Costa, PA
Rep. Ron Crimm, KY	Rep. Anthony Deluca, PA
Rep. Joseph Fischer, KY	Rep. Nick Kotik, PA
Rep. Bart Rowland, KY	Rep. Brian Kennedy, RI
Rep. Susan Westrom, KY	Rep. Stephen McManus, TN
Rep. Jeffrey Roy, MA	Sen. Deidre Henderson, UT
Sen. Delores Kelley, MD	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Jennifer Webb, 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 March 9, 2013, meeting in Washington, DC.

PROPOSED BEST PRACTICES FOR CURBING OPIOID ABUSE

Rep. Botzow directed the Committee to proposed NCOIL [Best Practices to Address Opioid Abuse, Misuse & Diversion](#), noting that NCOIL staff had developed the draft guidelines following the Spring Meeting. He said the proposal could serve as an important reference for states pursuing their own reforms, as a way for legislators to identify approaches that their states may or may not have considered.

Because the draft best practices were submitted after the 30-day deadline, the Committee voted unanimously to waive the 30-day rule to consider the proposal.

Ms. Thorson said that the draft best practices reflected written suggestions offered by a range of interested parties following the Spring Meeting, as well as other comments that NCOIL had received since early 2012. She said the proposed guidelines address the following four categories of possible reform:

- prescription drug monitoring programs (PDMPs)
- prescribing practices
- education and outreach
- treatment and prevention

Interested parties then commented, offering support for the proposal.

- Mona Carter of the National Council on Compensation Insurance (NCCI) said it was appropriate that the best practices were being developed under the auspices of the Workers' Compensation Insurance Committee, since opioid use was dramatically affecting workers' comp claims costs.
- Frank O'Brien of the Property Casualty Insurers Association of America (PCI) said the draft best practices identified important opportunities for reform and that, regarding implementation, insurers were eager to partner with the medical community.
- Daniel Blaney-Koen of the American Medical Association (AMA) agreed with the best practices' statements that "one-size-fits-all" does not work and that a variety of stakeholders should contribute to reform discussions. He highlighted specific elements of the draft best practices, including, among other items, a need for well-funded and real-time PDMPs, use of drug therapies to address opioid overdose and addiction, and educational opportunities that include input from state medical and similar societies.
- David Heckler, District Attorney of Bucks County, Pennsylvania, spoke to his experience with opioid abuse prosecution and said that a variety of stakeholders must be involved in developing reforms. He noted that the proposed NCOIL best practices support drug take-back programs and said that his state has a successful take-back initiative.
- Howard Goldblatt of the Coalition Against Insurance Fraud encouraged legislators to compare the proposed best practices with state requirements, in order to look for any public policy "gaps." He stressed the importance of PDMP funding and of education and outreach.
- Jeanne Tuerk of the American Association of Oral & Maxillofacial Surgeons (AAOMS) said the NCOIL proposal took a "thoughtful and balanced" approach to addressing opioid abuse. She said that certain exemptions from requiring physician use of a PDMP may be appropriate and that states should be careful to maintain doctor-patient relationships. She suggested that NCOIL expand the best practices to support allowing auxiliary personnel to handle PDMP reporting if a state makes such reporting mandatory.

Sen. Kelley said Maryland had recently passed opioid use reform, after recognizing that the state had become a mecca for abuse because neighboring states had tightened their own laws.

Rep. Curtiss reported that Tennessee now allows law enforcement to access the state PDMP and is phasing in a requirement that physicians check the PDMP before prescribing a narcotic.

Rep. Keiser commented, based on his experiences in North Dakota, that NCOIL would be most successful in its best practices effort if discussion extended beyond the Workers' Compensation Insurance Committee. He said that opioid abuse affects a broad spectrum of insurance and other

areas and suggested that the Committee work jointly with the NCOIL Health, Long-Term Care & Health Retirement Issues Committee.

Upon a motion made and seconded, the Workers' Compensation Insurance Committee voted unanimously to (1) seek specific recommendations from interested parties regarding possible enhancements to the proposed best practices, (2) update the current draft as appropriate following close of the comment period, (3) circulate a revised draft prior to the Annual Meeting 30-day deadline, and (4) hold a joint Annual Meeting session with the NCOIL Health Insurance Committee to consider and take action on the revised proposal.

PHYSICIAN-DISPENSED REPACKAGED DRUG MODEL ACT

Ms. Thorson said the Committee had adopted an NCOIL *Model Act on Workers' Compensation Repackaged Pharmaceutical Reimbursement Rates* at the Spring Meeting in order to have the model available for 2013 legislative sessions. She said that in voting on the model, however, the Committee had agreed to consider proposed amendments at the Summer Meeting that would expand on the model's language. She reported that there were now four proposed amendments for Committee consideration.

Amendment One

Ms. Thorson said that a proposed amendment to Section 4, regarding Reimbursement for Repackaged Pharmaceutical Products, would add the following drafting note below existing subsection B. She explained that the existing subsection B established general rules for repackaged drug reimbursement and that the drafting note would offer an alternative that states would use if they currently require reimbursement based on a pharmacy fee schedule.

- B. The reimbursement allowed shall be based on the current published manufacturer's Average Wholesale Price (AWP) of the product, calculated on a per unit basis, as of the date of dispensing.

Drafting Note: A state where a workers' compensation pharmacy fee schedule is already in place should use the following subsection B, in place of subsection B above:

B. The maximum reimbursement allowed shall be based on the current pharmacy fee schedule reimbursement methodology, utilizing the original manufacturer's NDC and corresponding Average Wholesale Price (AWP) of the drug product, calculated on a per unit basis, as of the date of dispensing.

Mr. O'Brien of PCI and Ms. Carter of NCCI supported the proposed drafting note.

Upon discussion and a motion made by Rep. Keiser and seconded, the Committee adopted the above amendment to Section 4 via unanimous voice vote.

Amendment Two

Ms. Thorson said that a separate proposed amendment to Section 4 would add the following new provision:

- D. The maximum period during which a provider may dispense a repackaged drug or over-the-counter (OTC) drug is the period from the date of the employee's injury through no longer than the seventh day after the date of the employee's injury.

Rep. Keiser said that the date of injury is not what should initiate the dispensing period. He suggested that the date of initial treatment would be more appropriate. Following Committee discussion with Ms. Carter regarding, among other things, the length of time during which a physician can prescribe a drug versus the amount of a drug that a physician can prescribe, the Committee unanimously voted to consider a possible alternative to the proposed amendment at a later date, such as at the next Executive Committee meeting.

Amendments Three and Four

Ms. Thorson said there were two other proposed amendments to existing Section 4. She said the third amendment would change terminology in subsection D, and the fourth amendment would add a drafting note, as follows:

D. The filling dispense fees otherwise provided in *[insert relevant workers' compensation statute]* shall be payable when applicable.

Drafting Note: Calculation of the AWP should be based on one or both of the universally accepted reporting databases, Medispan or Redbook, as selected by the payer.

Following Committee discussion and a motion made and seconded, the Committee adopted the two amendments via unanimous voice vote.

The Committee then adopted the [model as amended](#), with the understanding that the Committee would consider an alternative to proposed Amendment Two at a future session.

PROPOSED VOLUNTEER FIREFIGHTER COVERAGE MODEL ACT

Rep. Botzow said the Committee at the Spring Meeting had deferred consideration of a proposed *Model Act on Workers' Compensation Coverage for Volunteer Firefighters* in order to expand the model's scope. He said that as a result of post-Spring Meeting consultations between Sen. Hall and Ms. Carter of NCCI, the [proposed model](#) had been expanded to include three new sections in addition to the existing Section 3 Definition of "Public Employment." Rep. Botzow said that the proposed new sections related to Reporting of Rosters/Hours (Section 4), Review of Minimum Payroll Basis (Section 5), and Enforcement (Section 6).

Sen. Hall said that in West Virginia, volunteer firefighters were reimbursed based on the salaries they earned at their paid jobs. He said this approach made it difficult to calculate risk and became a particular problem when the state transitioned from a monopolistic to a private market system. He said that since transitioning, the state's general revenue fund had been subsidizing the cost of volunteer firefighter coverage.

Sen. Hall stressed the importance of defining "volunteer firefighter" and of understanding the risk that such volunteers present. He commented that the proposed NCOIL model might not work in every state but that it offered a starting point for further discussion.

Ms. Carter said that states approach volunteer firefighter workers' compensation in various ways and that the proposed model aimed to promote consistency by offering a basic definition of "volunteer firefighter." In response to concerns expressed by Sen. Larkin, Ms. Carter said it was important to address what happens when a volunteer works out of state. In other words, she said, under whose control is the volunteer operating? In response to a question from Rep. Keiser, Ms. Carter said that approximately 42 states provide coverage to volunteer firefighters, though costs were becoming prohibitive and subsidization was common.

Following comments from Rep. Curtiss regarding states' ability to tailor the model as appropriate, Rep. Botzow suggested that the Committee at the Annual Meeting consider a revised version of the proposed model that would include less specific provisions related to the Section 4 Reporting of Rosters/Hours. He said that a revised model might omit specific reference to a state "fire marshal." He commented that it would be important to further understand how various states approach providing volunteer firefighter coverage.

Upon a motion made and seconded, the Committee voted unanimously to consider a revised version of the draft model act that would include more general provisions related to Reporting of Rosters/Hours.

APPROACHES TO FARM LABORER COVERAGE

Rep. Riggs, who had brought the issue to Committee attention, said that although agriculture is an important industry in the U.S., state laws often allow agricultural employers to decline offering workers' compensation to their farm workers. He said that a model law may be necessary because, among other things, the costs of employment-related injuries ultimately are born by taxpayers when farm laborers seek treatment in emergency rooms.

Ms. Thorson said that at the Spring Meeting the Committee had requested additional information regarding farm worker demographics to help inform future Committee discussion. She said that although the migratory nature of farm laborers, among other reasons, made it difficult to offer specifics, a recent USDA *Farm Laborer Demographic Report* did offer some data. She said that according to the report, among other things:

- Most hired farm workers are found on large farms.
- Roughly 37 percent of all hired farm workers live in the Southwest, and 25 percent live in the Midwest.
- California and Texas account for more than one-third of all farm workers in the country.
- Most farm workers are located in metropolitan, rather than non-metropolitan, counties.

In response to a suggestion from Rep. Curtiss, the Committee determined via unanimous voice vote to consider at the Annual Meeting a proposed model law that would establish a threshold upon which farms with a certain number of employees must provide workers' compensation.

ADJOURNMENT

There being no other business, the Committee adjourned at 3:40 p.m.