

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
CHARLESTON, SOUTH CAROLINA
FEBRUARY 27, 2015
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Mills House Wyndham Grand Hotel in Charleston, South Carolina, on Friday, February 27, 2015, at 9:00 a.m.

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

Other members of the Committee present were:

Rep. Matt Lehman, IN
Rep. Ken Goike, MI
Rep. George Keiser, ND
Assem. William Barclay, NY
Sen. Kevin Bacon, OH
Rep. Warren Kitzmiller, VT

Other legislators present were:

Assem. Ken Cooley, CA
Sen. Travis Holdman, IN
Sen. William Haine, IL
Rep. Ron Crimm, KY
Assem. Kevin Cahill, NY
Sen. James Seward, NY
Rep. Mike Henne, OH
Rep. Barbara Sears, OH

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Molly Dillman, Nolan Associates, NCOIL Director of Legislative Affairs
Andrew Williamson, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 21, 2014, meeting in San Francisco, California.

SOUTH CAROLINA WORKERS' COMPENSATION INSURANCE SYSTEM

Gary Cannon, Executive Director of the South Carolina Workers' Compensation Commission, presented an overview of that agency's operation. He said the Commission has seven members who all are appointed by the Governor and confirmed by the state Senate. He advised that each commissioner serves a six-year term, the chairman serves as the Chief Executive Officer, and the Executive Director serves as the Chief Operating Officer. Mr. Cannon said Commission departments include Claims, Judicial, and an Insurance, Medical, and Administrative

Department, as well as an information technology department that is in the process of assisting the Commission to go paperless.

Mr. Cannon said that the Commission aims to provide an equitable and timely system of benefits to injured workers in the most responsible, reliable, and accurate way possible. He said that the Commission has worked to engage relevant stakeholders and get them more involved in the policymaking process. He reported that until recently decisions were made through a top-down structure and did not allow for input from stakeholders. He indicated that with the creation of advisory committees, stakeholders are now able to be directly involved in the process when adopting policy and establishing regulations.

Mr. Cannon stated that all seven commissioners serve two roles. He said the first is as an administrative law judge bound by the judicial code of conduct. However, he noted that someone does not have to be an attorney in order to be a commissioner. He said that South Carolina is divided into seven different districts and that when the commissioners are acting as administrative judges, they conduct individual hearings in these districts. He noted that once a month a three-member panel of commissioners hears appeals. Mr. Cannon said that the commissioners also act in a second capacity when they propose public policy and regulation and develop payment schedules for workers' compensation recipients.

Mr. Cannon reported that the value of the commercial insurance market in the state of South Carolina for the 2013 to 2014 fiscal year was \$665 million, with self-insurance premiums calculated at \$218 million. He reported that the state's total annual insurance market is approximately \$1 billion and that it has a large impact on the state's economy. He reported that last year there were 65,000 accident claims filed with the commission, which represents an increase of approximately 60 percent since 2012.

Mr. Cannon said that the cost of the workers' compensation insurance system is divided into two areas, medical and compensation. He stated that the Commission's responsibility is to ensure that medical care is available to claimants while controlling system costs. He indicated that this is a balancing process and that the Commission is currently examining updates to the medical fee schedule and to the medical service provider manual. He said that the Commission uses the Medicare relevant value and the conversion factor, which is \$50, as opposed to Medicaid's \$34 conversion fee.

Mr. Cannon reported that operating of the workers' compensation program is labor intensive. He advised that with respect to last year's closed cases, workers' compensation medical costs were approximately \$342 million. He said that this figure had increased despite the fact that the fee schedule had remained the same.

Mr. Cannon said that distributions under the compensation system are divided into two areas: awards, which make up five percent and settlements, which comprise 95 percent of the money awarded in South Carolina. He said that with fewer hearings and more settlements, claims are being resolved sooner, and this has reduced costs for both employers and carriers.

Mr. Cannon reported that in 2014, 9,550 cases were assigned to commissioners but as a result settlements, only 1,200 of these cases were actually heard. With respect to appeals, he said there were 344 appeals last year, which represented a slight increase from the previous year.

He noted that in 2004 it took 167 days to process a request but now it takes only 28 days. He said that in 2004 it required 233 days to place a case on the docket and now it takes 83 days. He reported that to file an appeal in 2004, it took 119 days, and this has been reduced to 76 days.

Mr. Cannon noted his earlier mention of increasing stakeholder involvement and said that in furtherance of this goal, the Commission recently developed two advisory committees on which stakeholders serve. The first is studying whether payments to claimants should switch from checks to debit cards, and the second deals with use of opioid narcotics.

In response to a question from Rep. Riggs, Mr. Cannon said that South Carolina has no fee for air ambulance transport but acknowledged this is a possible future issue.

In response to a question from Rep. Keiser, Mr. Cannon said that South Carolina is using the 2010 relative values of Medicare reimbursement with a conversion factor that pays higher. He said that South Carolina is currently considering a new fee schedule for next year that would utilize the 2015 Medicaid level. He also stated that providers are able to meet general medical needs but said this becomes more difficult for specialties like mental health.

POTENTIAL PROFESSIONAL EMPLOYER ORGANIZATION (PEO) REFORMS

Mona Carter, National Policy Director of the National Council on Compensation Insurance (NCCI), said that as per Committee request at the 2014 Annual Meeting, interested parties had discussed potential recommendations for PEO workers' compensation reform. She said it was clear that several issues need to be considered.

Wes Bissett, Senior Counsel at the Independent Insurance Agents & Brokers of America (IIABA), suggested that the Committee allow more time for examination of recently identified issues, as they go well beyond previous concerns. Jenn Webb, Counsel and Director of Regulatory Affairs for the National Association of Professional Insurance Agents (PIA), also said more time is needed.

Barbara Cox, Vice President of Legal & Regulatory Affairs at the National Conference of Insurance Guaranty Funds (NCIGF), explained that guaranty funds pay covered claims when an insurance company is liquidated and becomes insolvent. She said there are two sources of funding: the remaining assets of the now-insolvent insurance company and assessments that are ultimately paid by the public.

Ms. Cox said that guaranty funds frequently address workers' compensation claims and that NCIGF has concerns with certain PEO businesses. She said it has been NCIGF experience that PEOs are using large deductible products, which either are not sufficiently collateralized or have no collateral or connection to the general assets of an estate.

Ms. Cox provided an example, saying that since 2004 the state of Florida has reported ten workers' compensation insolvencies and that a number of them relate to PEO activity. She stated that paid claims and reserves thus far amount to approximately \$170 million, though the insolvent estate has only contributed \$6 million. Ms. Cox indicated that those costs will be passed on to the public and that normal recoupment from insolvent companies is about half of

what guaranty funds pay out. She said NCIGF has concerns regarding how the collateral is managed and how the additional costs are passed on to the public.

Frank O'Brien, Vice President, State Government Relations at the Property Casualty Insurers Association of America (PCI), agreed that there may be a number of PEO issues to address. He said that guaranty fund concerns are a significant issue from a workers' compensation insurer perspective because insurers and their policyholders ultimately pay for related costs. Mr. O'Brien said that with more time, interested parties might reach agreement on PEO reforms for NCOIL consideration.

In response to a question from Rep. Riggs, Ms. Carter said she is not familiar with any PEO that uses a risk retention group.

Daniel Harris, Senior Director of State Government Affairs at the National Association of Professional Employer Organizations (NAPEO), stated that NAPEO is the national trade association for the PEO industry. He said that PEOs provide human resource services to small businesses, typically businesses that have between one and 50 employees. He said these small companies outsource human resources services because they do not have time or expertise to comply with all relevant federal and state laws.

Mr. Harris indicated that PEOs provide Fortune 500-level benefits to companies that do not have the ability to offer such benefits on their own. He said further that PEOs offer small business an opportunity to grow faster and to have less employee turnover. He reported that the PEO industry is approximately an \$81 billion industry in gross revenue and about 2.5 million employees are covered by some sort of PEO arrangement in the United States.

In response to a question from Rep. Riggs, Mr. Harris said that a majority of the 38 states with PEO legislation have used some portion of a NAPEO model act.

Rep. Keiser suggested that the NCOIL President form a task force to work with interested parties on potential amendments to the NCOIL PEO model.

STATE OPIOID DEVELOPMENTS AS RELATED TO NCOIL BEST PRACTICES

Daniel Blaney-Koen, Senior Legislative Attorney at the American Medical Association (AMA), reported that more than 16,000 people have died from opioid or prescription opioid-related overdoses. He said that according to statistics recorded by the Center for Disease Control (CDC), the figure has leveled off in the last few years. He said that the number of deaths attributed to heroin overdoses has increased from approximately 6,000 in 2012 to 8,300 in 2013. He said that figure does not appear to be leveling off.

Mr. Blaney-Koen reported that one of the most common actions states have taken to address opioid abuse is to implement prescription drug monitoring programs and said that this year there are more than 117 pieces of legislation nationwide related to such programs. He said that much of the discussion focuses on mandates but very little on whether existing mandates are reducing abuse, misuse, overdose, or death. He said this is one of the reasons the AMA and state medical associations have requested that the National Governors Association (NGA) place

an increased emphasis on overdose prevention and treatment as well as on ensuring appropriate care for patients suffering from pain.

Mr. Blaney-Koen said that the AMA and state medical societies have cautioned the NGA that the heroin problem within each state is likely to worsen if states focus entirely on restricting access to prescription opioids and to physicians providing them.

Mr. Blaney-Koen reported that overdose prevention efforts have been significant in nearly every state. He said efforts include both enhancing access to naloxone and increasing protection for Good Samaritan laws, with approximately 25 states passing such laws since the beginning of the year. He said it is AMA's goal to have all 50 states pass laws by the end of 2015. He noted that the NCOIL opioid best practices support these approaches.

Mr. Blaney-Koen noted that another of the NCOIL best practices recommendations is an increased emphasis on treatment for substance use disorder and for patients suffering from pain. He said this is an area where NCOIL input could significantly benefit states across the country. He said current insurance policies must be revised if they limit a patient's access to treatment for substance use disorder and that attention must be paid to legislation that has potential to limit patient access to pain management. Mr. Blaney-Koen said that prior authorization, step therapy, and "failed first" protocols all have a role in drug utilization, but it is the AMA's position that they are inappropriate if they serve as a barrier to access to care.

Mr. Blaney-Koen asked the Committee to consider developing model legislation that would accomplish three things. He said it would enhance access to treatment for patients with substance use disorder, would continue to help save lives from overdoses, and would ensure that patients in pain have access to the care they require.

In response to a question from Rep. Keiser, Mr. Blaney-Koen said more states are examining workers' compensation in relation to opioid abuse and how patients in the workers' compensation system may or may not benefit from opioid-related therapy. He said a 90-day utilization period is common and may be effective but that there is no stated reason why it should be 90 days as opposed to 60 or 120 days. He said the AMA feels it is important to examine what is working in states to ensure that patients and the workers' compensation system are adequately taken care of while also taking steps to identify abuse and reduce diversion. He said that the AMA is concerned that patients in the workers' compensation system may be discouraged from seeking care because some states require that physicians report back to the employer. He said the AMA does not feel that the employer should be in the examination room.

In response to a question from Rep. Riggs, Mr. Blaney-Koen said Abuse Deterrent Formulations (ADF) legislation is being increasingly introduced throughout the United States. He said the legislation typically mandates that insurers are required to cover ADF formulations the same as non-ADF formulations.

Rep. Keiser asked about the AMA position regarding the opioid pain medication Zohydro. Mr. Blaney-Koen responded that the AMA position is that physicians should be able to prescribe drugs as they see fit.

Rep. Sears asked about programs for providers and other professionals who suffer from addiction. Mr. Blaney-Koen said that many states have assistance programs for physicians, lawyers, and other professionals. He said that professionals are just as likely to suffer from addiction as anyone else.

In response to a question from Sen. Haine, Mr. Blaney-Koen stated that the AMA has guidelines for the evaluation of permanent impairment and said he believes that all states are using a version of that system.

ADJOURNMENT

There being no other business, the Committee adjourned at 10:00 a.m.