

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
DUCK KEY, FLORIDA
NOVEMBER 18, 2004
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at Hawk's Cay Resort in Duck Key, Florida, on Thursday, November 18, 2004, at 8:15 a.m.

Sen. Carroll Leavell, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Shirley Bowler, LA
Rep. Joe Hune, MI
Rep. George Keiser, ND
Rep. Gene Seaman, TX
Rep. Larry Taylor, TX
Sen. Ann Cummings, VT

Other legislators present were:

Rep. Bob McClusky, CO
Rep. Mike Ripley, IN
Rep. Matthew Whetstone, IN
Rep. Greg Davids, MN
Assem. Nancy Calhoun, NY
Del. Harvey Morgan, VA
Rep. Gini Milkey, VT
Sen. Frank Deem, WV

Also present were:

Candace Thorson, NCOIL Director of Legislative Affairs and Education,
Property-Casualty and Workers' Compensation Insurance
Franesa Liebich, NCOIL Director of Legislative Affairs and Education, Health
and Life Insurance

MINUTES

The Committee voted to approve, as submitted, the minutes of its July 15, 2004, Committee meeting in Chicago, Illinois.

STATE OF THE WORKERS' COMPENSATION INSURANCE MARKET

Mona Carter of the National Council of Compensation Insurance (NCCI) said that the workers' compensation insurance marketplace is moving along steadily despite concerns regarding high medical costs and the uncertainty of Terrorism Risk Insurance Act (TRIA) reauthorization. She said that the marketplace had become more competitive and that combined-ratios had improved. Ms. Carter noted,

however, that there were problems with reserving and long-term workers' compensation leave. She said that terrorism cannot be excluded from workers' compensation and that any employer in any state must provide coverage for acts of terrorism. Ms. Carter said that since terrorism risk cannot be excluded from workers' compensation coverage, that. She said that in 2002, after TRIA was enacted, NCCI filed with each state a surcharge for foreign terrorism which, she said currently exists on most policies. She said that the surcharge in each state would have to be revisited if the federal backstop was removed.

FLORIDA WORKERS' COMPENSATION INSURANCE SYSTEM

Roy Wood of the Florida Department of Financial Services said that Florida, as of October 1, 2003, had enacted reforms to the state workers' compensation insurance system that had stemmed from the need to address escalating rates and declining results. He said that as part of the reform package, employers are required to post a notice to an injured worker regarding his or her rights and responsibilities. He said that the notice included a \$25,000 anti-fraud reward. He said that the reform had resulted in a 14 percent reduction in workers' compensation rates and that he anticipated another decrease in 2005.

Mr. Wood said that, among other things, the reform affected indemnity benefits, carrier compliance, Joint Underwriting Association (JUA) rating plans, fees to attorneys, and employer compliance. He said that with the indemnity benefits, Social Security eligibility standards were eliminated and higher thresholds were developed to meet permanent total disability eligibility standards. He said that injury due to fright, stress, or excitement no longer qualified as an injury. Mr. Wood said that psychiatric impairments could not be considered permanent and that payments for these injuries are based on percentages of impairment. He said that the compensation for funeral and death benefits had increased.

Mr. Wood said that the Florida reforms had made changes to the maximum Medicare reimbursement payments for physicians. He said that attorneys' fees and payments would be based on benefits received by the injured worker. Mr. Wood observed that the division had increased its investigation team from 35 to 70 investigators. He said that between October 1, 2003, and November 15, 2004, the division had issued 2,299 stop-work orders on employers, which generated revenue of approximately \$35 million dollars. He said that fines had increased to \$1,000 a day for employers who do not provide coverage to employees. Mr. Wood said that carrier compliance also had changed to include penalties for untimely payments of compensation and noted that the department had collected an estimated \$253,000 in penalties from self-insured employers. Companies, he said, had been fined \$491,000 for belatedly giving notice of injuries. He said that the department would be conducting onsite audits of employers in order to change accountability behaviors. He said that an injured employee or any other party claiming benefits must sign a document attesting that they had reviewed, understood, and acknowledged a fraud statement. He also said that a carrier must submit an annual report to the department regarding the operation of the insurer's anti-fraud investigative unit. Mr. Woods said that individuals can learn more through the division's Website, www.fldfs.com/we.

OSHA ERGONOMIC GUIDELINES FOR NURSING HOMES

Ms. Thorson reported that during the NCOIL Summer meeting, interested parties gave testimonies regarding OSHA ergonomic guidelines for nursing homes. She said that a draft resolution, which likely would support these guidelines, had been scheduled for consideration at the Annual Meeting but would

not, in fact, be ready until the Spring meeting. By way of background, she said that several years ago NCOIL had adopted a resolution that opposed Clinton-era ergonomic standards that preempted state laws.

After a motion moved and seconded, the Committee voted unanimously to defer until the 2005 NCOIL Spring meeting consideration of a proposed *Resolution Regarding OSHA Ergonomics Guidelines for Nursing Homes*.

REPORT ON 2004 STATE WORKERS' COMPENSATION LEGISLATION

David Guisti of StateNet reported that during the 2003 and 2004 legislative sessions, over 192,000 bills were introduced in the 50 states and Congress, with approximately 7,000 relating to insurance and 1,329 enacted. He said that with regard to workers' compensation, 1,713 were introduced in 48 states, with 424 passing their respective house of origin, and 252 were enacted. He said that 1,076 related to eligibility and benefits, 143 concerned employer contributions, 252 related to insuring methods, and 38 related to subsequent injury funds. He referenced a report that was distributed to Committee members containing workers' compensation legislation.

PROPOSED 2005 COMMITTEE CHARGES

Ms. Thorson said the proposed 2005 Committee charges were to:

- Identify and report on state workers' compensation insurance systems, focusing particularly on reform efforts, cost containment, and best practices
- Monitor and report on the Occupational Safety and Health Administration's (OSHA) continuing development of industry-specific ergonomics guidelines

Upon a motion made and seconded, the Committee unanimously adopted the proposed 2005 Committee charges.

FRAUD ISSUES AND LEGISLATION

Howard Goldblatt of the Coalition Against Insurance Fraud reported that over-utilization of narcotics had been a problem, especially with enforcement. He reported that large amounts of narcotics, such as Oxycontin, were being sold on the illegal drug market. He said that persons committing this illegal activity were being reimbursed for the medication from the workers' compensation system. He said that a drug diversion program was needed to monitor increases in claims reimbursement for narcotics in order to better provide enforcement.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:10 a.m.