

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
HILTON HEAD, SOUTH CAROLINA
MARCH 3, 2005
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Hilton Oceanfront Resort in Hilton Head, South Carolina, on Thursday, March 3, 2005, at 8:15 a.m.

Sen. Ann Cummings of Vermont, Vice Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Shirley Bowler, LA
Sen. Pamela Redfield, NE
Rep. Donald Flanders, NH
Rep. George Keiser, ND
Rep. Larry Taylor, TX
Rep. Gini Milkey, VT

Other legislators present were:

Rep. Pat Patterson, FL
Rep. Terry Parke, IL
Sen. Neil Breslin, NY
Sen. William J. Larkin, Jr., NY
Sen. Stewart Greenleaf, PA
Rep. Craig Eiland, TX
Sen. Claire Ayer, VT
Del. Harvey Morgan, VA

Also present were:

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

MINUTES

The Committee voted to approve, as submitted, the minutes of its November 18, 2004, Committee meeting in Duck Key, Florida.

SOUTH CAROLINA WORKERS' COMPENSATION INSURANCE SYSTEM

Gary Thibault of the South Carolina Workers' Compensation Commission reported that most states had experienced a decline in the frequency of accidents over the last century, which had helped control rates. However, he said that states had experienced increases in costs related to indemnity and medical treatments.

Mr. Thibault said that South Carolina had lower costs compared to other states. He said that the South Carolina market was stable and fairly diversified, with the voluntary market accounting for 50 percent of the total marketplace and the remaining in the assigned-risk, residual, and self-insurance markets. He said that the South Carolina market had increased 52 percent from 1994 to 2003. Mr. Thibault said that expenditures for compensation expenses, medical expenses, and average weekly wages had increased. He said South Carolina's workers' compensation case load was about 88,000 claims a year, with half being medical-only cases. He said that the adjudication process where claims are set for hearing was working well. Mr. Thibault said that loss-ratios for South Carolina had remained the same.

Mr. Thibault said that South Carolina was concerned with medical bills. He said that outpatient bills were three to four times more than they would have been if patients had used inpatient services.

Rep. Eiland said that Texas had seen an increase in the development of stand-alone surgical centers, where services that usually are done in-hospital are conducted and billed at much higher outpatient rates. He said that a factor behind the increase was Medicare reimbursement rates. Mr. Thibault said that South Carolina was experiencing a similar situation and that pricing outpatient services was extremely difficult.

WORKERS' COMPENSATION INSURANCE MARKET

Mona Carter of the National Council of Compensation Insurance (NCCI) said that growing medical and prescription costs were key issues of concern across the country. She said many states during the 2005 legislative session were looking at their fee schedules in order to control medical costs.

Ms. Carter said a significant focus of the workers' compensation insurance market related to the Terrorism Risk Insurance Act (TRIA). She said that insurers could not exclude terrorism from workers' compensation. She said that if TRIA was not extended, costs could be reflected in workers' compensation insurance. She said that industry was making a concerted effort to communicate with Congress the importance of TRIA and its positive effects.

Ms. Carter said that NCCI was looking at issues with professional employment organizations (PEOs) and that the National Association of Insurance Commissioners (NAIC) was working on a model act regarding PEOs. She said that other issues that NCCI was looking at included hazardous incidents impacting the costs of insurance in particular areas.

OSHA ERGONOMIC GUIDELINES FOR NURSING HOMES

Sen. Cummings, sponsor of a proposed NCOIL *Resolution Supporting OSHA Ergonomics Guidelines for Nursing Homes*, overviewed the resolution. She said that the proposed resolution encouraged nursing homes and related facilities to follow guidelines proposed in the *Guidelines for Nursing Homes: Ergonomics for Prevention of Musculoskeletal Disorders*, issued in 2003 by the Department of Labor, Occupational Safety and Health Administration (OSHA), for the safety of the residents and their caregivers.

Ms. Liebich said that the proposed resolution supported alternative lifting programs as proposed in the *OSHA Guidelines for Nursing Homes*. She said that the guidelines were not a set of standards or laws.

She said that the guidelines were developed to help nursing homes and related facilities reduce their work-related injuries and associated costs. She said that nursing homes had some of the highest rates of work-related injuries compared with other industries.

Rep. Bowler expressed concern that sending the proposed resolution to the Department of Labor might encourage the guideline's evolution into standards or law.

Ms. Liebich said that OSHA and the Department of Labor supported the guidelines and that they were not intended to become law. Ms. Thorson said that the Clinton Administration had proposed standards that would have preempted state workers' compensation laws. She said that Congress, acting under the Congressional Review Act, had removed such standards and replaced them with guidelines. Ms. Thorson said that the Bush Administration supported the guidelines and that the likelihood of them evolving into law was slim.

David Askew, representing Ethica Healthcare, said that the corporation had developed a safety improvement team and alternative lifting programs that were consistent with the OSHA guidelines. He said that they had eliminated manual lifting in facilities where the company had instituted initiatives. Mr. Askew said that there was an initial cost to implement the guidelines but that the company anticipated costs to decrease over time.

Yolanda Pince, also representing Ethica Healthcare, said that the "no-lift" program that Ethica implemented in a 153-patient facility had cost \$24,000 and that from an operational standpoint the guidelines and initial training were all that were needed to facilitate the program.

Rep. Bowler asked whether the company had seen any savings in workers' compensation claims that would offset the equipment costs. Mr. Askew said that he was unsure as to how long it would take to recoup the costs for the equipment.

Rep. Bowler made a motion to amend the proposed resolution by deleting "Department of Labor" from those who would receive the resolution in the last resolve clause of the document. Upon a unanimous voice vote, the Committee amended the resolution by striking "Department of Labor" from the resolution.

Upon a motion moved and second, the Committee voted unanimously to adopt the proposed *Resolution Supporting OSHA Ergonomics Guidelines for Nursing Homes*, and then referred the model to the NCOIL Executive Committee for consideration later the next day.

PROFESSIONAL EMPLOYMENT ORGANIZATIONS (PEOS)

Tim Tucker of the National Association of Professional Employer Organizations (NAPEO) said that PEOs had evolved from the business of employee leasing. He said that since the business model had developed, the regulatory landscape had matured. He said that PEOs served primarily small businesses with an average of 15 employees. He said PEOs also accommodated larger businesses. He said that PEOs administered the human resources functions of businesses, conducting the hiring and firing of employees, payroll, employee benefits, and workers' compensation insurance.

Mr. Tucker said that states had taken various approaches to allow PEOs to provide workers' compensation coverage. He said that the NAIC was working on a model regulation that would address the providing of workers' compensation by PEOs. He said that such a regulation would provide much needed uniformity. He said that he expected a final draft of the model regulation later in 2005.

David West of the California State Compensation Insurance Fund (SCIF) said that in 1995 California entered an open-rating system. He said as prices dropped and the stock market rose, capacity and the employee-leasing industry expanded. He said that in the early part of the decade, the market began to harden and that among the first risks that insurers shed were poor-performing employee leasing companies. He said that by 2002 SCIF, as the assured market, comprised approximately 80 percent of the market.

Mr. West said that on January 1, 2003, SCIF began writing policies in the clients' and the employers' names instead of in the PEO's name. He said the shift in liability and the change in underlying contractual relationship from carrier-PEO to carrier-client was required to better assess the risk involved. Mr. West said that since then SCIF, the Workers' Compensation Insurance Rating Bureau, and the California PEO industry had reached an agreement on new rules that would, among other things, provide the option of writing a policy in the name of either the PEO or the client and would require that the PEO-client relationship be clearly stated on policies. He said that a point of contention within the insurance industry was whether the policies could be written to cover all the client's employees, and not just PEO-leased employees.

Mr. West said that SCIF's opinion was that writing in the client's name would establish a level playing field, protect the overall workers' compensation system, strengthen insurer relationships with PEOs, and rejuvenate the voluntary PEO market.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:15 a.m.