

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
NEWPORT, RHODE ISLAND
JULY 7, 2005
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Hotel Viking in Newport, Rhode Island, on Thursday, July 7, 2005, at 8:15 a.m.

Sen. Carroll Leavell of New Mexico, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joe Crisco, CT
Rep. Shirley Bowler, LA
Rep. Donald Flanders, NH
Rep. George Keiser, ND
Rep. Gini Milkey, VT

Other legislators present were:

Rep. Joe Hune, MI
Rep. Greg Davids, MN
Sen. Duane Mutch, ND
Sen. Neil Breslin, NY
Sen. George Onorato, NY
Rep. Brian Kennedy, RI

Also present were:

Candace Thorson, NCOIL Director of Legislative Affairs and Education,
Property-Casualty Insurance
Erik Olson, 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 March 3, 2005, Committee meeting in Hilton Head, South Carolina.

RHODE ISLAND WORKERS' COMPENSATION SYSTEM

Matthew Carey, Assistant Director of the Rhode Island Department of Labor, Division of Workers' Compensation, reported on the successful refashioning of the Rhode Island Workers' Compensation Program after its state of crisis 20 years ago. He said the crisis had evolved from an informal hearing process that theoretically provided the injured employees with a quicker method of

payment designed to put them back in the workplace faster. Mr. Carey explained that Rhode Island courts would only become involved if a decision by the informal hearing body was appealed. He noted that the Rhode Island system required hearings within 14 days, a timeframe that did not always leave sufficient time to consider the issues. Eventually, Mr. Carey explained, an increasing number of appeals began to bog down the system, and hearings occurred later and later. He noted that the crisis came to a head when the Department of Business Regulations had to approve a 32 percent rate increase in workers' compensation insurance, and the National Council on Compensation Insurance proposed a 123 percent rate increase.

Mr. Carey said these circumstances provided the impetus for business, labor, and the medical community to support a comprehensive reorganization of the workers' compensation program. He said the reform allowed for

- the creation of a Workers' Compensation Court with exclusive jurisdiction over all hearings
- pre-trial hearings that would occur within 21 days
- non-prejudicial agreements, where an insurer could begin paying a claim, and then make a decision whether to accept the claim within 13 weeks
- stronger fraud penalties, including classifying workers' compensation fraud as a felony
- reduced benefits from 66 percent of gross wages to 75 percent of spendable earnings
- a requirement for employers to reinstate injured workers up to a year after their injury
- the creation of a competitive state insurance fund, now known as the Beacon Mutual Insurance Company
- the establishment of an advisory council
- the creation of the Rhode Island Medical Advisory Board
- limitations on injured workers' choice of doctors

Mr. Carey acknowledged the importance of the creation of the advisory council. According to Mr. Carey, advisory council participants include a broad range of representatives, from the executive and legislative branches of government to industry and labor. He explained that all workers' compensation legislation is funneled through the advisory council before proceeding to the legislature. Mr. Carey observed that the advisory council does a good job of preventing legislation motivated by special interests from scuttling the reform effort.

Mr. Carey described the Rhode Island Medical Advisory Board as another important part of the 1990 reform. He noted that it serves under the Chief Judge of the Workers' Compensation Court and is composed of 11 physicians and other medical providers. Additionally, Mr. Carey explained, it advises the Chief Judge in the creation of medical protocols for the treatment of compensable injuries. Mr. Carey described these protocols as important because, he said, merely having a fee schedule does not adequately address the issues for the adjuster. He cautioned that the protocols are not "cookbooks" but stressed that they have helped keep administrative costs down. Mr. Carey also noted that the Rhode Island fee schedule is one of the most generous in the nation. He stated that it convinces good doctors to handle workers' compensation cases.

Mr. Carey also noted that the workers' compensation program reform limited the range of the injured workers' choice of doctors. He observed that previously some injured workers would "doctor shop" to seek a favorable opinion. Under the reform, Mr. Carey explained, every injured worker may still choose their initial doctor, but the program now stipulates a preferred provider

network (PPN) from which the worker must select a doctor for a second opinion. He noted that the worker must have employer approval to go outside the network.

Mr. Carey acknowledged that some additional necessary reforms followed the comprehensive 1990 reform. He noted that after the infamous 2003 nightclub fire where the employer did not carry workers' compensation insurance, fines and penalties for noncompliance were increased, more serious cases were shifted from departmental hearings to the courts, and the Department of Labor was given the power to shut down businesses that refused to purchase insurance. Mr. Carey commented that these reforms appear to have increased compliance, because the amount of fines and penalties has reduced.

Summarizing the success of the reform, Mr. Carey noted that the number of certified self-insured employers had dropped from 185 in the early 1990s to about 47 at present. He explained that most of the remaining self-insured employers maintain a nation-wide program. Mr. Carey concluded that a competitive market for workers' compensation has emerged in Rhode Island.

WORKERS' COMPENSATION MARKET

Mona Carter of the National Council on Compensation Insurance (NCCI) stated that the market has taken a beneficial turn in 2005. She outlined many of the issues facing the industry, including a reduced rate of return for insurance carriers due to low interest rates and medical cost inflation. Ms. Carter referred to NCCI market research information available at the meeting that examined why workers' compensation medical costs were increasing at a faster rate than other medical costs.

Ms. Carter noted that areas with "trophy buildings," meaning presumptive targets for terrorist activity, continue to have high residual market volumes. She explained that some employers had not been able to secure coverage in the voluntary market and had been forced to remain in the residual market.

Ms. Carter also referred to industry concerns about uncertainty regarding the Terrorism Risk Insurance Act (TRIA). She noted that, because workers' compensation insurance cannot exclude terrorism, policies must cover terrorism risks, which affect the bottom-line of the premium.

Finally, Ms. Carter noted that workers' compensation calendar year results for 2004 dropped four points to 105, the best performance seen since 1997. She also said that the Accident Year Combined Ratio also had a downward progress to 94, the best performance seen in decades. Ms. Carter observed that carriers' efforts to make reserves have improved over the last four to five years, but she reiterated that lower interest rates are reducing rates of return.

Rep. Keiser noted a trend in his state where claimants sell prescription drugs rather than take them. He asked whether this trend is occurring nationally. Ms. Carter referred to a previous report before the Workers' Compensation Committee on the results of NCCI's prescription drug study. She noted that OxyContin was the number one drug sold illegally at that time. Ms. Carter mentioned state legislative efforts to eliminate OxyContin but noted that medical providers

continued to prescribe it for pain relief because it is effective in quickly returning injured employees to the workplace.

ISSUES RELATED TO PROFESSIONAL EMPLOYER ORGANIZATIONS (PEOs)

Tim Tucker of the National Association of Professional Employer Organizations (NAPEO) reminded the Committee that at the Spring 2005 meeting in Hilton Head, the Committee heard about the interaction of California workers' compensation and PEOs. He distinguished PEOs from other staffing models like employee leasing by noting that PEOs are co-employers. He explained that PEOs permit small businesses to offer more extensive benefits than would be possible as a sole employer. Mr. Tucker noted that PEOs have evolved from employee leasing over the last 20 years, and he addressed the need for the regulatory framework to catch up to the industry. He acknowledged that a significant source of concern for workers' compensation involves issues relating to when a small business joins a PEO and its employees enter the PEO's insurance plan. Mr. Tucker explained that the PEO industry is working to address collateral problems from this situation, including experience modification, avoidance, and tracking risk and exposure.

Mr. Tucker noted that one proposed state solution to the problem is that every client of a PEO would have an individual compliant policy. Mr. Tucker said that a California proposal allows carriers to choose if they want individual client policies or multiple coordinated policies, where the PEO holds the main policy and the individual business members have subpolicies. With this structure, he continued, the clients would keep their experience grading before and after joining a PEO. Mr. Tucker noted that the PEO would still manage claims and continue to provide benefits that small employers do not have the resources to control.

Dennis Smith of the American Association of State Compensation Insurance Funds (AASCIF) described some of the difficulties that insurers face with PEO arrangements in the workers' compensation arena. He outlined the difficulties as ranging from serious problems with trying to provide adequate loss prevention services and audit functions to disputes with PEOs over claims management. Mr. Smith acknowledged that PEOs play an increasingly important role in the marketplace for small employers. He welcomed NAPEO's efforts to address issues in workers' compensation insurance, but noted that not all PEOs are as forthcoming as NAPEO regarding the particular risks of their individual clients with the insurer. Mr. Smith called for a concerted effort to determine regulatory solutions for these concerns with PEOs.

Mona Carter of NCCI agreed with Mr. Smith and said that many challenges faced by insurers come from the residual market side. Ms. Carter identified the source of many of these problems as coming from data reporting. She underscored the necessity of tracking the employer's activities and risk for the experience rating. Ms. Carter expressed the need to maintain the integrity of the experience rating system, and she acknowledged that many legislative proposals focus on this. She noted that NCCI is working with the industry to investigate the feasibility of a method providing that a master policy could be reported at a client level.

UPDATE ON FRAUD ISSUES AND LEGISLATION

Howard Goldblatt from the Coalition Against Insurance Fraud announced the near-completion of a report on prescription drug diversion, co-authored by the National Health Care Anti-Fraud Association. He identified the need for adjusters to examine abnormally large prescriptions of drugs like OxyContin.

ADJOURNMENT

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