

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
SEATTLE, WASHINGTON
JULY 19, 2007
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Sheraton Seattle Hotel & Towers in Seattle, Washington, on Thursday, July 19, 2007, at 8:30 a.m.

Acting chair Rep. Kathleen Keenan of Vermont presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK	Rep. Donald Flanders, NH
Rep. Donald Brown, FL	Assem. Nancy Calhoun, NY
Sen. Ralph Hudgens, GA	Sen. Steve Stivers, OH
Sen. Dean Kirby, MS	Rep. Ronald Peterson, OK
Rep. George Keiser, ND	Rep. Virginia Milkey, VT

Other legislators present were:

Rep. Michael Ripley, IN	Sen. Keith Faber, OH
Sen. Ruth Teichman, KS	Sen. David Bates, RI
Rep. Ron Crimm, KY	Sen. William Walaska, RI
Sen. Delores Kelley, MD	Rep. Charles Curtiss, TN
Rep. Joe Atkins, MN	Rep. Craig Eiland, TX
Rep. Frank Wald, ND	Rep. Warren Kitzmiller, VT
Sen. Pete Pirsch, NE	Rep. Michele Kupersmith, VT
Rep. William Batchelder, OH	Sen. Dale Schultz, WI

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Mike Humphreys, NCOIL Director of Legislative Affairs & Education,
Life, Health, and Workers' Compensation Insurance Committees

MINUTES

The Committee voted unanimously to approve the minutes of its March 1, 2007, meeting in Savannah, Georgia.

MEDICARE SECONDARY PAYER AND WORKERS' COMPENSATION SETTLEMENT AGREEMENTS ACT

Ray Farmer of the American Insurance Association (AIA) said that a *Medicare Secondary Payer and Workers' Compensation Settlement Agreements Act*, H.R. 2549, was introduced in the U.S. House of Representatives by Reps. John Tanner (D-TN) and Phil English (R-PA). He said that the bill would amend a *Medicare Secondary Payer Act* (MSP) that was enacted in 1980.

Mr. Farmer reported that the MSP was passed to protect Medicare as a secondary payer for treatment related to a worksite injury when a primary payer, such as a self-funded employer or insurance company, existed. He noted that the Centers for Medicare & Medicaid Services (CMS) was authorized to review workers' compensation settlements with overlapping Medicare coverage to ensure that an appropriate amount had been set aside by a primary payer to protect Medicare from paying claims. He said the CMS review was slow, and that the set-aside process had created confusion for employers and insurance companies. He said problems with the MSP ultimately lead to administrative costs that sometimes exceed the cost of a workers' compensation settlement.

Mr. Farmer informed members that H.R. 2549 sought to establish predictable and efficient processes to protect Medicare as a secondary payer without sacrificing the integrity of state workers' compensation systems. He said it would create certainty as to the rules for calculating Medicare set-asides and speed up the Medicare set-aside review process by requiring CMS to review and process claims within 60 days.

WASHINGTON WORKERS' COMPENSATION SYSTEM

Robert Malooly of the Washington Department of Labor and Industries described legislation enacted in Washington during 2007. He said that a vocational improvement project—established by ESSB 5920—would provide injured workers with an opportunity to participate in retraining programs for up to two years, which, he said, was 12 months longer than previous programs. He reported that eligible workers would have an opportunity to opt-out of retraining programs and instead receive a cash payment. He noted that the opt-out option was included for individuals who may not view retraining as suitable for their position.

Mr. Malooly then discussed ESSB 5290, which would statutorily establish advisory committees that had previously been volunteer-only. He said the medical and chiropractic advisory committees would provide advice to the department regarding treatment protocols, medical guidelines, and procedures that should, and should not, be covered expenses. He noted that the legislation would compensate committee members for their time and provide them with immunity from civil liability.

Rep. Brown asked whether the Washington workers' compensation system covers chiropractic procedures. Mr. Malooly responded that the department had worked closely with the chiropractic community to make sure that the department was not paying for

procedures that do not help the injured workers, as well as to eliminate fraud. He said chiropractic costs had been flat for almost ten (10) years.

Rep. Keiser questioned whether the advisory committee had addressed Independent Medical Examiners (IMEs). Mr. Malooly answered that IMEs were a problem that the department hoped to address in 2008. He said the department had conducted a study of IMEs that reported inconclusive results.

Responding to a question from Rep. Keenan regarding fee schedules, Mr. Malooly said that the department uses a modified Medicare fee schedule. He noted that the department had to adjust reimbursement for particular practices, such as primary care physicians, in order to encourage physician participation in the workers' compensation system.

Members further discussed issues related to appeals processes, IMEs, and weekly maximum payouts for injured workers.

PROFESSIONAL EMPLOYER ORGANIZATIONS (PEOs)

Rep. Keiser reported that an NCOIL PEO Working Group held three conference calls with interested parties to discuss amendments to a proposed *Model Act Regarding Professional Employer Organizations (PEOs) in Workers' Compensation Insurance*. He said the current version of the model act was consistent with its original purpose, which, he said, was to require that a PEO be registered and to require client-level experience rating. He reported that the National Association of Insurance Commissioners (NAIC) had submitted mark-up comments following the final Working Group call. He recommended that members reauthorize the Working Group to further discuss amendments to the model draft, and he urged members to focus on the technical changes proposed by the NAIC.

Robert Wake, representing the NAIC, said NAIC proposed amendments addressed potential gaps in coverage related to a client that secures coverage through a policy that excludes direct hire employees. He further stated that NAIC proposed clarifying language regarding experience rating requirements in Section 5 of the draft NCOIL model. He said the NAIC would support expanding the model draft to address coverage termination, payment of benefits, and exclusive remedy.

Dawn Ingham of the National Council on Compensation Insurance (NCCI) said, among other things, that the model law would require changes regarding how insurance carriers report master policy data to NCCI and how NCCI would accept that master policy data. She reported that NCCI was working with various industry stakeholders to be able to accept data on a master policy basis.

Tim Weisscarver, representing the American Academy of Actuaries (AAA), urged members to decide whether to require the use of master, multiple-coordinated, PEO, or individual client policies in the model act. He reiterated comments made by Ms. Ingham regarding the reporting system changes required under the model, and he cautioned that

such changes could be expensive. He further commented that the definition of a PEO should be clarified, beyond the use of examples.

Rep. Keiser reported that the Working Group had reached consensus that the model would not permit the use of master policies and would require individual client-level rating and reporting. He urged interested-party representatives to submit additional mark-up comments to NCOIL on issues that remained to be discussed.

Tim Tucker of the National Association of Professional Employer Organizations (NAPEO) expressed support for policy platform flexibility, and said that PEOs can address individual client level data under a master policy. He suggested that members review NAIC PEO guidelines and similar International Association of Industrial Accident Boards and Commissions (IAIABC) work products to address issue areas that were deferred by the organizations for legislative direction.

Responding to questions from Sen. Hudgens regarding state regulation of PEOs, Mr. Tucker said that 30 states have established regulatory frameworks. He noted that 32 states permit master policies and said that in states that do not establish regulatory frameworks for PEOs, a PEO is treated as a large employer.

After further discussion of master policies and PEO relationships, Mr. Wake reported that the NAIC had decided that a master policy should only be permitted in the voluntary market for workers' compensation insurance, and only when client-by-client experience is tracked on an ongoing basis.

Rep. Wald asked whether a low-risk employer would subsidize costs of a more hazardous client under a master policy. Mr. Tucker answered that costs are partially subsidized under a master policy but noted that several PEOs focus on specific industries, such as construction workers or office workers, where claims are similar.

Dennis Smith, representing the American Association of State Compensation Insurance Funds (AASCIF), said the integrity of NCCI rating mechanisms would be threatened if there was a change to permit the use of master policies. He said NCCI had established a strict protocol for tracking individual client experience.

Upon a motion made and seconded, members voted unanimously to reauthorize the PEO Working Group to address proposed mark-up amendments to the model act. Rep. Keenan requested that interested parties submit mark-up proposals to NCOIL by Friday, August 17.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:00 a.m.