

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
CHARLESTON, SOUTH CAROLINA
APRIL 16, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Francis Marion Hotel on Friday, April 16, 2021 at 5:00 P.M. (EST)

Senator Paul Utke of Minnesota, Vice Chair of the Committee, presided.

Other members of the Committee present were (* indicates virtual attendance via Zoom):

Sen. Jason Rapert (AR)
Asm. Ken Cooley (CA)*
Rep. Matt Lehman (IN)

Rep. Daire Rendon (MI)
Rep. Tom Oliverson, M.D. (TX)*

Other legislators present were:

Sen. Mathew Pitsch (AR)
Sen. Travis Holdman (IN)
Rep. Jim Gooch (KY)*
Sen. Kirk Talbot (LA)

Rep. Kevin Coleman (MI)
Asm. Kevin Cahill (NY)*
Rep. Dennis Powers (TN)
Rep. Jim Dunnigan (UT)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Tess Badenhausen, Assistant Director of Administration, NCOIL Support Services, LLC

DISCUSSION ON SOUTH CAROLINA WORKERS' COMPENSATION MARKETPLACE AND RESPONSES TO COVID-19

Gary Cannon, Executive Director of the South Carolina Workers' Compensation Commission (Commission), stated that he will discuss how the Commission is set up and some of the issues they have dealt with this past year. We have six commissioners that are appointed by the Governor and appointed by the Senate and they are staggered terms. There are seven districts in which the commissioners conduct hearings in across the state. They rotate their district every two months so there is some sense of rotation there. The chairman and two other commissioners are up for reappointment this year and we just learned they will be up before the Senate judiciary committee next week and then next year we have two more commissioners up in that six year rotation as they serve for six years.

The commissioners basically serve in a judicial capacity in the seven districts conducting administrative law hearings of the disputes between the individual claimants and their employers. They also participate in phone conferences and approve settlements. The public policy is a little different in SC as they also approve regulations and approve the medical fee schedule. Many states have medical fee schedules that service providers have to abide by and must be approved by the general assembly but in SC the commissioners approve the fee schedule and it must be updated once per year per statute and its based on Medicare CMS values and SC is typically about 40% higher on its values in the fee schedule than Medicare.

The Commission's mission statement is of course very much like NCOIL's and we try to provide an equitable and timely system that benefits injured workers and one of the core values that we press into our employees every day is to apply the facts of the case to the law. It's a level playing field and there is no special interest groups out there and we also try to have continuous improvement and respond timely to our constituents. Stakeholders are very much like those at NCOIL – employers, employees, insurance carriers, medical service providers, attorneys, uninsured employers fund, guaranty fund, and members of the general assembly. As I mentioned, we have a very small agency but the systemic economic impact of work comp in SC is about \$1.04 billion annually. This past fiscal year we paid out \$451 million in medical and \$587 million in indemnity payments so you can see the economic impact and that doesn't include the premiums that are paid.

The annual operating budget for the Commission is about \$8.1 million per year and about \$2.5 million is appropriated by the general fund and \$5.6 million is approved as expenditures from fines and fees it collects from its stakeholders. We have 63 approved full time employees but for the past several years we've only been funding 53 of those, 18 in the general fund and 45 in the earmark fund. The Commissioner has several departments and divisions – commissioners; executive director; information technology because its the foundation of all services provided; insurance & medical services does the coverage and compliance requirements; claims makes sure all forms are filed every year on a periodic basis; and judicial is like the courts and takes disputed cases and gets them over to the commissioners.

As I mentioned earlier, the commissioners have two functional capacities – judicial and public policy. The commission has several intergovernmental partnerships – they do not have dedicated hearing sites in SC so they have to beg borrow and steal the sites for the commissioners to conduct hearings across the state so we use local government council chambers, court houses, and other state agencies hearing rooms. We have about 100 on a list that we use but that's a constant battle for us to continually obtain those sites for the commissioners to use. We use the department of employment workforce for employer wage and personnel data for coverage compliance. We have a regular contractual relationship with the SC Department of Vocational Rehabilitation where the research data base is and last year they referred 2,204 referrals to the claimants for potential service for vocational rehab. We have an ability to go to probation, pardon and parole partnership facilities so that the incarcerated persons who are filing work comp claims will go to the prison conference room and our commissioners do not have to attend that. And then certainly with our department of insurance (DOI) we have a great relationship with Director Ray Farmer and his staff and when we have to notify carriers of paying fines and we are looking at adjuster training and I'm not sure if this is a problem in other states but in SC we have a lot of out of state adjusters that are handling individual cases and many times they don't know SC law and as you can imagine the law in SC may be different than other states in handling and adjusting a claim so we are working with the DOI to look at getting some training requirements for the adjusters in SC.

Some of the challenges and opportunities we faced this past year was obviously COVID-19 and the pandemic. The commission is also in the process of updating its IT legacy system. Others include: venues which is always on the commissioner's list of challenges in terms of what it needs to do and how to get the hearings held; medical service provider manuals and adjuster training are other challenges. With regard to how the commission's COVID-19 cases have gone – since February of last year the commission has had 3,251 cases filed related to COVID; last month there were 175. As you can imagine the three largest counties were the three most populous counties in the state – Greenville, Charleston, and Richmond. We had 25 fatalities.

The commission has 13 open cases denied and 1,829 closed denied cases. Most of those cases do not go to dispute as most settle and that's why they are closed denied and there was some settlement there.

Some more information on COVID cases includes: The commission had 101 attorney representation and the medical amount paid out on the closed cases was \$444,372 and the total paid on the Non-Medical Paid indemnity Cases was \$1,885,537. That's the total amount – not per case. As you can imagine the highest number of the occupation of cases filed happened to be registered nurses and the medical field. Last year, Governor McMaster issued an Executive Order where he closed the agency to the public and all state agencies. The commission continued by having 20% of its staff working on site and 80% work from home and the commissioners suspended in-person hearings from March until June 1st. When hearings started again the hearings were conducted by Zoom and CourtCall and pre-hearing conferences were conducted by telephone but it was decided by the jurisdiction commissioner whether they were going to have something in person as well as or if it was going to be electronic. So each of the seven commissioners managed the docket that way. We then cut off any paper documents being submitted to us and only accepted electronic versions by USPS.

On June 1, the Commission re-established in person hearings and established a lot of CDC safety protocols on in person hearings but meetings continued to be held via Zoom and CourtCall and we are having our first business meeting this month in person since March of last year because of COVID numbers going down. We established the advisory notices that would go out to notify stakeholders of what was going on with those hearings. The IT project that we have been working on that started in 2018 to replace a 30 year old claims mgmt. system and the new system plans to allow online form completion, electronic payments, electronic service or orders, allow people to view and download documents, enhance security and provide data collection analysis.

We worked on it for over a year and we had an initial release date of Oct. 31, 2019 and once released it was delayed in until December 4 and we had some problems. The vendor was unable to correct the problems and the product they delivered was unacceptable and the vendor of course needed additional funding to correct them and we denied the request and the vendor terminated the contract on February 14, 2020. We were able to get Microsoft to conduct a gap analysis of the system that they developed to find out exactly how much of the code they provided us we could use and basically Microsoft said the system would need to be started over and do a complete rebuild. We filed a dispute with the chief procurement officer against the contractor and the dispute hearing is pending and we initiated a tracking responsibility and we are now contacting other states who have recently initiated this upgrade of their legacy IT systems to determine how they went through this. MN is one state, KS is another and so we are determining exactly what needs we will have for the new system and we are accepting advice from the chief procurement officer to accept those proposals. We are hoping that once the hearing is conducted that it will have no bearing on us going forward to conduct RFPs with soliciting proposals to get our system up and running.

The commission has the responsibility of ensuring medical care is available to claimants and controlling costs of the system. There is a balance there of adopting a fee schedule to put a maximum amount of an amount that a medical service provider can be paid but the balance of that is to make sure medical care is available to the claimants. As I mentioned we have medical service provider lists which is updated annually and is based on Medicare and we are currently updating it effective April 1 and it was based on the resource based relative values from CMS. There were several issues that came up when the medical service provider manual was being

updated and it was decided that some of them needed further study so they will be chartering an advisory committee to look at those issues to help ease the administrative burden that is placed on the medial service providers and that process will be starting next week. With regard to venues, there are seven districts across the state consisting of 54 sites. There are no dedicated hearing rooms so court rooms, city/county council chambers, state agency conference rooms, and technical colleges needed to be used.

DISCUSSION ON CALIFORNIA STAFFING AGENCY REFORM ASSOCIATION (CAL-SARA)

Mark Bertler, Executive Director of CAL-SARA, stated that he and his colleague, Pollie Pent, CAL-SARA Membership Chair and former CA DOI Insurance Detective, are pleased to be here to talk about their model on CA based on some frustrations with work comp insurance fraud in CA and perhaps across the country. We formed this trade association in 2020 so we are really new and we formed it to be an association of businesses to promote legal and regulatory compliance in the sale of workers' compensation insurance and to promote the common business interest of members in recognizing and eliminating workers compensation' fraud in the temporary staffing/staffing/recruiting industries.

Ms. Pent stated that she is going to talk a little bit about the current situation in CA and to do that she is going to use a metaphor with one of the last patrol calls she took when she worked patrol prior to going to work for the city and county of San Francisco. I got a call for a domestic violence in progress and I showed up to the call and I heard screaming and I increase my backup to code three and I made entry and from the back of the hallway a woman jetted out of a room and she was obviously injured and behind her was a man and he started coming towards me and I ordered him to get down and he started crawling towards me. I finally got him to stop and I started cuffing him while he was on his belly and I got one hand cuffed and when I started to get the other he started actively fighting me. I'm basically sitting on him controlling one of his hands and he is just moving and what I noticed was there are five blue accordion style lid bins in a half circle and he is crawling toward those and I am of course telling him to stop and I can hear the siren of my backup coming. The wife yells at me from the corner of the hallway where I told her to stay that there are six rattlesnakes in every box because he is dealing illegal reptiles and I can hear as he is starting to hit the boxes to turn them upside down so that they will slither out on me I can hear their tails starting.

At that moment at the door comes my backup who is a younger guy and a surrogate son and he is almost laughing at the sight of me sitting on him and I told him about the rattlesnakes. The backup pulls out his gun and starts waving his gun at the boxes and I told him that if you don't have snake shot in that gun its not going to be helpful. We took the guy to jail and the wife was ok and it turns out he was dealing illegal reptiles. The reasons why I use this as a metaphor is because that's how work comp fraud felt to me when I got involved at the city of San Fran then I lateraled to the CA DOI. When I got involved with Professional Employer Organization (PEO) and staffing fraud, what I learned was there were boxes all around me and snakes of different colors in each box because the fraud is horrific. In the PEO and staffing agencies in CA its actually an underground economy as there are billions of dollars a year that are being diverted out of the state regulated system into the fraudulent system and that system undermines business practices because it creates unrealistic and fake pricing because cheaters actually do it cheaper.

I remember when I was a campfire girl we would sing that song over and over – cheaters never prosper and that is not true in CA work comp especially in the staffing and PEO industry. The fraud in CA is not addressed by any specific rules and laws as far as regulation of PEOs and

staffing. There is zero regulation. All we have in CA are CA penal codes that have to do with grand theft, forgeries for fake certificates of insurance (COIs) and two insurance codes in the penal code and then we have our insurance code - that is the only way to regulate the problem – criminal prosecution. For four years I did nothing but work staffing and PEO fraud in PEO and in that time I had three cases filed and my 4th case was filed immediately after me leaving in August 2020 and the reasons why they are difficult to file is only the CA DOI has the expertise to file these cases as they are extremely complicated and multifaceted and because of that they take a lot of time. The crimes ranges from simple grand theft from simply stealing money for monetary instruments to forgeries for passing COIs which are monetary instruments but the investigations require specialized units such as computer forensics so when we serve a search warrant we are going to get all of their data and payroll records and all internal and external communications from e-mail which is all vital to criminal prosecution but they also require forensic audits especially if you are going to theft or premium fraud issues and those are very difficult to find in CA. In fact the entire northern part of CA which is Bakersfield North and if you are familiar with CA that's a lot of territory there is one forensic auditor at CA DOI.

These cases don't offer a lot of bank for buck in terms of stats. The dollar amounts are huge but I had one case where I actually got it filed and in CA it was a \$64 billion case and they were based out of GA and operating in several other states including SC and we figured it was about \$120-220 million the best we could track via audit. The IRS had four people for that. So, from a timeframe it took three years to investigate and the state flew me to GA several times and there wasn't a lot of bang for buck because I only got four arrests for that and the idea that we would get money back was very low because many of the fraudsters are very clever and their assets are offshore or they spent it all.

CA DOI is drastically understaffed like many law enforcement agencies right now and they most often deny cases even good cases for lack of resources. Injured workers in CA in these cases are most often vulnerable populations that have low skill levels and don't for the most part speak English and the percentage I had at one time was 68% of the workers in one case I was working didn't speak English and they were 95% Hispanic. They have limited employment options and because if that they are easily intimidated and silenced. An important part of PEO and staffing fraud is making sure that claims go away and this is a perfect workforce to do that with because they don't understand their rights under work comp laws and they often need the job which is why they came to the U.S. and so they are easily intimidated and silenced into not pursuing claims. For all of these reasons this type of work comp fraud involving PEO and staffing fraud is rampant and unchecked and that a polite way of saying it because its out of control.

Mr. Bertler stated lets talk a little bit about our approach. One of the reasons we came together as a trade association is to address the challenges Ms. Pent talked about. We want to encourage stakeholders to join CAL SARA and commit to combating fraudulent practices. We want to develop educational materials and presentations to inform about fraud and empower stakeholders to fight fraud in their businesses. We want to participate in coalitions and joint efforts to address and expose fraud. We want to identify and assist whistleblowers in exposing and addressing fraudulent practices and activities which can be hard with limited English proficiency and we want to act as that safe haven. We also want to pursue litigation to hold fraudulent actors accountable. One portion of our association is our litigation arm and one of the reasons that we are here is because one of the first things we did in November was that we sued one of the largest work comp fraud companies in the country.

Ms. Pent stated that when we file litigation we receive a fraud referral. We sometimes receive them on the CAL-SARA portal and sometimes people call me directly or sometimes insurance

brokers will actually send us information. We use the Unfair Business Practices Act as an available remedy through litigation under California Business and Professions Code 17200 as our basis. We do this because CA case law has allowed for any sort of business practice that offends public policy, is oppressive, that causes injury to business or markets, that is unscrupulous unethical or immoral so it gives us a pretty wide breadth of ability to go after people. The other thing we have done is looked at aiding and abetting which is a criminal statute. Obviously we are not going to file a criminal case so what we have done is looked at civil conspiracies in CA which requires CAL-SARA to provide evidence that "the defendant had knowledge of and agreed to both the objective and the course of action that resulted in the injury, that there was a wrongful act committed pursuant to that agreement, and that there was resulting damage." I can tell you in the number of cases we have taken into CAL-SARA to date which I will say is we are litigating three right now and there are six others that I have done the initial investigation on this is not hard to prove and in fact its easy and as Mark mentioned we also like to work with other partners and we also package them and notify CA DOI of them to let them have a chance of taking the case but ultimately I have been taking them straight to the county DA which has been very helpful and successful and almost all of them have been accepted for prosecution in a criminal sense.

Mr. Bertler stated that our membership includes staffing agencies, brokers, PEOs and others and we ask that they support our association with dues and also we have a litigation arm so we ask for contributions to our litigation fund to pay the lawyers. One of the things that we understand is that work comp fraud is multidirectional so not just insurance companies reporting fraud on staffing agencies, its staffing agencies trying to get by and either going around or violating the rule so we ask that our members sign a code of conduct that says they will not be involved in these sorts of activities and since this is the 21st century we provide them a digital badge and we allow them to use that on their materials and the reason we like digital badges is because if we find out someone has violated our code of conduct we can take away the digital badge electronically and they cant use it anywhere as it won't show up on any of their material and if it does our agreement says we can prosecute them for it. This is to work with stakeholders and maintain a fair and compliant CA staffing agency marketplace. We are focused on staffing agencies and our core functions are education, assistance, and as mentioned taking action.

We reach out to like minded individuals and organizations to join forces to identify and eliminate fraud in the work comp insurance marketplace. As Ms. Pent mentioned, one of the large organizations that we are in court with right now, we are adding to the plaintiffs in the federal district court in CA and we are also interested in developing and borrowing educational tools to help individuals and organizations identify and avoid workers' compensation insurance fraud. We believe education is a really important part of us as I think sometimes people believe what a fraudulent insurer tells them and they have no other way to determine if that's real or what kind of trouble they get into.

Ms. Pent stated that CAL-SARA is going to continually pursue its current ligation and I should add that we have to have standing in any kind of litigation so that is why we ask people if they have a complaint and they want us to file that they join as a member. We are going to continue litigation and investigating and looking into the practitioners of all different kinds of fraudulent work comp activities. Right now we have a multiple employer welfare arrangement (MEWA) that is illegal that we are looking at and a staffing company that was dissuading their injured people and we have illegal collateral agreements in another managing general agent (MGA) we sued that was a big company doing most of the staffing in CA as their collateral agreement was not actually approved by the state.

Mr. Bertler stated that CAL-SARA is developing and producing educational materials including webinars to explore the various aspects of workers' compensation fraud and its impact on the staffing industry and workers. That includes partnering with our gov't agencies and regulators but by the same token one of the things that Ms. Pent told me that I thought was very interesting was that she was an insurance investigator and a sworn officer taking these things down and one of the things we are able to do as CAL-SARA and of the reasons why we function better as a trade association is that it allows us and Ms. Pent and other fraud investigators to take any pathway that works so if we get stalled going up the chain of command in the DOI we can go to the county DA and if we get stalled there we can go to federal court so that is one of the benefits of building an association like this.

Sen. Utke stated that you mentioned you are a trade association so are you separate from the state as far as funding goes or do they help fund you? Also, this sounds like a massive job and you have plenty of work in front of you – how big is your organization and how many members do you have at this point? Mr. Bertler stated that we are an independent 501(c)6 trade association so we are a non-profit and domiciled in CA and we have about three of us who are working on it right now and we are building a dues base. We started in October of 2020 and we filed a massive lawsuit in November of 2020 and hit the ground running but trying not to get too far ahead of our supply chain.

Sen. Mathew Pitsch (AR) stated that he is fascinated by this and stated that he is an engineer so he wants numbers and percentages and asked if this is happening in a lot of states and if we as legislators should be finding numbers and dealing with this problem. Ms. Pent stated that's exactly why we are here as part of what we are doing is to get awareness out and the cases we are working are all multistate and I might have done the prosecution in CA for victims and losses in CA but every single one of them was working in almost every state in the nation and I would say that I could name out of four large PEOS that were committing fraud I could say we are way above \$20 billion just in terms of what I could quantify in terms of CA losses and that does not cover all the premium loss to the insurance companies, I'm talking about losses to businesses and losses to the uninsured fund in CA and losses to everybody down the chain. With regard to COIs, everyone listed on the COI in CA under the work comp appeals board rules all of those are named in any lawsuits including employment practices liability insurance (EPLI) providers for those companies so its just a shotgun approach to try and fix it but its not fixing it but just band aiding the problem.

Sen. Pitsch asked if legislators should stay involved and if this is occurring across the country. Mr. Bertler stated that its just not surfacing and Ms. Pent was very kind to her former employer as sometime things just get stalled and with one of the recent cases CAL-SARA was pursuing the CA DOI said it didn't have adequate resources and as a former lobbyist my response was show me your budget proposal where you asked for additional resources to prosecute this sort of thing and we want to partner with them as we don't want to demonize state regulators we want to have them take more seriously the fraud that is going on and frankly its hard to quantify because there are a lot of people involved and a lot of people don't know they are being taken advantage of and when we filed that one big lawsuit people from around the country, staffing agencies and insurance brokers said we know those people and we have lots of problems with them so thank you for doing that but that's kind of the big splash that we started with and hopefully it picks up steam that gets rid of at least some of the largest fraudsters and one of things we talk about is what if we are successful. If we are successful there will be fewer work comp insurance providers because of the amount of fraudulent ones that go out of business so how do we handle that challenge. And one of the things we are going to talk about is market

remediation – rather than getting big cash settlements that goes to who knows who lets use to it to rebuild the insurance infrastructure in the state just like if you did if someone environmentally polluted land or water.

Ms. Pent stated that what she found in the cases she was working was that she noticed that a lot of the middle level brokers that were involved with the fraudsters were located in a state in the Midwest and when I would get my prosecution packages ready I would send it to them thinking that ok I've done the job and I just have to do my job and go arrest these people but what I found was that this is in Illinois they only have five detectives in the entire state. I talked to another broker who moved from GA to TN because TN and TN DOI was not robust either but in GA they had a robust DOI and they don't have a lot of special agents but they are very aggressive in their actions and have a separate work comp department so a lot of it depends on what the state have going as well.

THE EARLY IMPACT OF COVID-19 ON WORKERS' COMPENSATION CLAIM COMPOSITION

John Ruser, President & CEO of the Workers' Compensation Research Institute (WCRI), thanked the Committee for the opportunity to speak about the early effect of COVID on work comp claims. I want to stress that this is an early look at the data through the second quarter of 2020 but I also want to argue and will show some data at the end that the findings that we present in this study tend to generalize that the same findings would be found if you were looking at more recent data. The WCRI is an independent non-profit founded in 1983. We have a diverse membership and funding support from insurance companies, large employers, labor unions, state agencies and independent rating bureaus. We focus on the delivery of work comp benefits, we don't focus on pricing as there are other organizations that do that. Importantly, we don't make policy recommendations nor do we take positions on issues – we just present the facts so that all stakeholders can make informed decisions about the work comp system so we are a resource for elected officials such as yourselves but also for all stakeholders.

So, I'm going to answer a few questions in this presentation. I'm going to talk about how COVID-19 claims have varied across states in the first two quarters of 2020 and what are some of the factors behind the variation that we see. I'll talk about non COVID claims and to what extent the pandemic has affected the number of non-COVID claims in 2020 and the previous year. Finally, a little bit about how time to injury to medical treatment was impacted by COVID and then I'm going to supplement with a little bit of state data to show the continuing relationships that we see in the data.

We are looking at 27 states here and using a database that WCRI has built over the years of work comp claims which is a large database and highly representative of states including the states on the list and in the study we are going to look at claims with medical or indemnity payments that arose in the first two quarters of 2019 and 2020. For 2020 you may ask if the claims were all accepted and interestingly the answer is not necessarily as they are claims that had a payment in some states and a payer can make a payment to a claimant but not actually accept liability for the claim.

First, we'll talk a little bit about COVID claims and what you see is the percentage of all paid claims that were COVID-19 claims in the 2nd quarter of 2020 and obviously what jumps out is the remarkable percentage of variation in the number of COVID claims across the different states. SC had only 1% of all claims being COVID claims as of the 2nd quarter of 2020 and the number rose all the way up to 43% in MA. So what are the reasons behind the numbers in the

variations we see. Well, the severity of the pandemic at the time of the data is crucial and compensability rules play a big factor here and I know you've talked about presumption rules and policies in previous meetings and such rules and policies and laws do have an impact on the fraction of all claims that are COVID claims as I'll show you in a minute. However, there are other compensability factors that come into play. MA has a pay without prejudice rule so the insurance company doesn't have to accept the claim to be making payments and it's a common practice in MA and then NJ has a special law in place before COVID hit – the Thomas P. Canzanella Twenty First Century First Responders Protection Act that allowed for first responders to receive work comp in the event of an illness due to a pandemic. So, these are rules that went into effect as to whether or not a claim receives payment for COVID. We're calculating our numbers as the number of COVID claims relative to all claims so if there is a big drop in the volume of non COVID work comp claims that also affects the numbers as a bigger drop in the number of non COVID claims means a bigger increase in the ratio of COVID to all claims.

One thing we found that did not seem to matter was the variation of industry across the different states so for instance the fact that there is a lot of healthcare in MA really was not a factor behind MA's high number. So, I'll show you a couple graphs to show how some of these factors impact the variation in work comp claims. The colored bars represent the number of COVID deaths per million in the general population, not the work comp population. There are three states, CT, NJ, and MA that at the time had over 1000 deaths per million due to COVID and so those are the states that not surprisingly have the most COVID claims at the time. At the other end of the spectrum those with the green had fewer than 100 deaths per million in the population at the time and not surprisingly those are states that tended to have fewer COVID claims at the time.

Another issue is presumption laws in the states so in gold we've indicated the eight states that had presumption laws or regs in place at the time of the study through June 4th and some folks know there were other laws passed after that time period including NJ in September but these are the eight that had them in place at the time and what you could see was that COVID claims tended to be higher in states where there was a presumption law in effect so I guess that's not really a surprise. However, again, there are other factors that come into play – MA not having a presumption law didn't affect the fact that it was the highest COVID claims. The other thing to note is that there were many states that did not have presumption laws in effect but still had COVID claims up to 5% and even PA and DE over 10%. So, where did we see COVID cases amongst all of the industries and occupations at the time of this study. We saw them in two categories of industries – high risk and low risk service industries. The risk was being measured here in terms of the risk of a non COVID related injury so principally those industries had most of the COVID claims. So what we did was more drilling into those broad industry categories and what we saw was, and we know this more and more, is that most of the COVID claims arose in assisted living facilities in hospitals and physician offices.

Let's talk briefly about what happened to non COVID claims at the beginning of the pandemic. We saw a big drop in the number of non COVID claims during the 2nd quarter of 2020 as compared to the same quarter of 2019. In MA, the number of non COVID claims dropped as much as 50% and in a typical state the number of non COVID claims dropped by at least 30%. The red line shows the percentage drop in employment between 2020 Q2 and 2019 Q2 and it shows that indeed there was of course a drop in employment as the result of the pandemic during those quarters but it doesn't account for the drop in the claims as some of the claims dropped because of the slow down in economic activity without necessarily a drop in employment but also things related to working from home and social distancing and the like.

One thing that's really fascinating is that even though the number of non COVID claims dopped substantially during this time period, if you look across the different types of injures, they didn't look that different as compared to 2019 so for example the most frequent kind of injury both in 2019 q2 and 2020 q2 was sprains and strains followed by lacerations an contusions so while there tended to be fewer work comp claims for injuries the distribution looked very similar during the pandemic as compared to before it.

Lets talk about time from injury to treatment. We all heard a lot about the potential for delays during the pandemic in terms of getting medical care so what we did here was look at non COVID claims with paid medical services during the first couple of quarters of 2020 and compared to the same quarters in 2019 and of this particular setting we looked at more severe claims such as those as more than seven days away form work. What we saw was relatively small drops in the proportion of claims that received various medical service in 2020 as compared to 2019. So on the left those are the q1 injuries that arose in ether 2019 or 2020 and on the right those are q2 injuries and what you see is some modest drops in the provision of medical services. For q1 injuries 64% of 2019 received physical therapy and only 61% received physical therapy in 2020 or a very modest 3% drop in claims receiving medical services. What we see here is when an injured worker filed a work comp claim they tended to get medical service during the pandemic as they had before.

When it comes to time to medical treatment, the number of days before an injured worker received medical services here you see that perhaps in 2020 the medical services were delivered a little fast but essentially what you see is that they were delivered about as fast during the pandemic as they were before the pandemic and again there weren't as many non COVID claims but when they occurred they tended to get the same medical treatment. This is the number of services provided both for evaluation and mgmt. and for physical therapy and you can see that injured workers got the same number of services during the pandemic as they did beforehand.

I've been showing you some evidence from the first couple of quarters in the pandemic so does it hold up to more recent data? What we saw was that no COVID claims were lower in 2020 than 2019 and I'm going to show you some other consistent evidence that shows that continues to be the case. I showed you the COVID claims were mostly seen in healthcare and social assistance industries as well as in public administration including first responders ill show you that remains the same too. I'll show you some excellent data from MN provided by the MN Dept of Labor and Industry and it shows the monthly claims count for COVID and non COVID claims and there are three things to draw from the graph. The red line shows the number of COVID claims that arose in a month of the year and you can see that the number of COVID claims spiked in December of 2020 and sort of surged around the same time the pandemic surged in MN and many other states during the winter this past year and into this year.

The blue line is non COVID claims in the previous year before the pandemic while the yellow line is non COVID claims during the pandemic and consistent with what I showed you before you can see that the non COVID claims in 2020 have been consistently below the non COVID claims in 2019 - the yellow line is consistently below the blue line and particularly low in the April/May time when we did the study and again in the window of time when the pandemic hit MN. Another piece of data from the MN dept. of labor is which kinds of workers are filing COVID claims and you can see consistent with our data its healthcare and social assistance workers and docs and nurses and people like first responders who are covered by the MN presumption law but what you can also see is that there are some COVID claims arising in other industries where the presumption doesn't apply including manufacturing and transportation and

warehousing. So the takeaway is that while most of the COVID claims in MN have occurred in healthcare and social assistance and public administration where there was a presumption there were other cases as well.

Lets quickly flip over to WA and some data I extracted form a WA state publication showing that 80% of all of the COVID claims in WA through Feb. 8 2020 were in healthcare, social assistance, and public administration so again its very consistent with the data that we show.

Rep. Matt Lehman (IN), NCOIL President, stated that you are looking at claims data and with as much as we went to work from home were there injures within the home that became compensable? When you talk of being in the course of employment, could I be covered if I fall in my home while working? Dr. Ruser stated that's a great question and we are not yet able to answer that with our data and we are trying to tease out in the data where the location of the injury was as it is not as obvious in the claims data that we received so I think its something that we definitely need to be mindful of as there are clearly ambiguities that arise in injuries while working for home as to whether you were on work status. Another issue that will probably arise is neuromuscular skeletal disorders and if you look at U.S. data over the past quarter century there was a big drop in such injuries like carpal tunnel syndrome as employers put more ergonomics in place but that's not necessarily the case in the work from home environment so we'll be looking into whether we see a rise in those kinds of cases.

Rep. Lehman stated that the MN slide stated that if that stretched for the U.S. when you look at social assistance and healthcare and public administration being the three biggest, those folks were not working from home so I always wonder if it played a part but I'm not sure if it really did. To your point of more long term are we going to see long term injuries as a result of not having my same office chair that will be interesting to see the data. Dr. Ruser said we will continue to follow the data in subsequent years.

ADJOURNMENT

Hearing no further business, the Committee adjourned at 6:15 p.m.