

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
BOSTON, MASSACHUSETTS
JULY 15, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Westin Boston Waterfront Hotel on Thursday, July 15, 2021 at 10:00 A.M. (EST)

Representative Tom Oliverson, M.D. (TX), Chair of the Committee, presided*.

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

Rep. Deborah Ferguson (AR)	Rep. George Keiser (ND)*
Sen. Mathew Pitsch (AR)	Sen. Jerry Klein (ND)
Asm. Ken Cooley (CA)*	Rep. Wendi Thomas (PA)
Rep. Matt Lehman (IN)	Rep. Dennis Powers (TN)
Sen. Paul Utke (MN)	Del. Steve Westfall (WV)
Rep. Tracy Boe (ND)	

Other legislators present were:

Sen. Keith Ingram (AR)	Sen. Charles Younger (MS)
Rep. Steve Meskers (CT)	Rep. Hank Zuber (MS)
Rep. Tammy Nuccio (CT)	Sen. Shawn Vedaa (ND)
Rep. Roy Takumi (HI)	Asm. Ken Blankenbush (NY)
Rep. Terri Austin (IN)	Sen. Bob Hackett (OH)
Rep. Jim Gooch (KY)*	Rep. Forrest Bennett (OK)
Rep. Bronna Kahle (MI)	Sen. Ronnie Cromer (SC)
Rep. Lori Stone (MI)	Sen. Sandy Senn (SC)
Sen. Mike McClendon (MS)	
Sen. Walter Michel (MS)	

Also in attendance were:

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

MINUTES

Upon a motion made by Asm. Ken Cooley (CA), NCOIL Vice President and seconded by Del. Steve Westfall (WV), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's December 11, 2020 and April 16, 2021 meetings.

"STATE OF THE LINE" PRESENTATION – AN UPDATE ON THE STATUS OF AND TRENDS IN THE WORKERS' COMPENSATION INSURANCE MARKETPLACE

Jeff Eddinger, Executive Director, Regulatory Business Management at the National Council on Compensation Insurance (NCCI), stated that he will start off looking at the workers'

compensation premium. When people ask me what is the biggest impact of COVID on work comp this is really it and it's actually an indirect impact so the recession that was caused by COVID and shutdowns caused work comp premiums to decrease by 10% in the calendar year 2020. So, the next slide will show you that it does vary a little by state but any shade of blue means that premiums decreased for that state so pretty much across the board every state was affected to some extent. The next slide shows residual market premium which also shows a slight decrease but really the important thing to note here is that the residual market premiums has been stable and dropping over the last few years really just showing that the work comp market has been very stable and insurance carriers are willing to write work comp on a voluntary basis because the next slide shows that the residual market share has covered around 7% and you see there that is 6.5% for the most recent year so it's very small and manageable showing that the market is competitive and companies are able to find coverage in the voluntary market.

The next slide just shows the approved changes in the loss costs that have occurred over the last 20 years and over the last few years the filings NCCI have been making have been dominated by decreases so there were a couple of years where the decreases overall with states approached 10% and that has moderated a bit so in the last year overall -5.6% and the next slide will show the reason for that and that is last year's rate filing cycle for all the states and you can see that it is very dominated by loss cost decreases the largest one being a 20% decrease in Virginia. The one thing I wanted to mention is that the rate filing season has just started as NCCI just made its first filing last week and it did release some information on how we have addressed pandemics in the rating process for filings going forward. The decision that NCCI has made is to treat COVID claims and any future pandemics as a catastrophe and what that means is any claims from COVID are being excluded from the rate making calculation because they are being addressed through approved catastrophe provisions in the majority of states. The majority of states have both a terrorism catastrophe provision and an additional catastrophe provision for other types of catastrophes such as domestic terrorism versus foreign terrorism, earthquakes and catastrophic industrial accidents so during this rate filing season we'll be adding pandemics to the list of catastrophes that are address by the approved provisions in the majority of our states.

Slide 10 shows the combined ratio for work comp and you can see the latest year the combined ratio for calendar year 2020 is 87% and that's the fourth straight year of calendar year combined ratios under 90% and the seventh consecutive year under 100% so obviously the line has been in the very strong position for a number of years now and the next slide shows the slight uptick in the latest year's combined ratio is driven by a slight uptick in the loss ratio. The next slide shows investment gains on insurance transactions at 11% over the last two years which is right around the long term average of about 12%. The next slide show that when you combine the calendar year underwriting profit with investment gain you see there a pretax operating gain of 24% similar to last year's 25% so a very robust operating gain there.

The next several slides show information we have on COVID claims. Slide 15 is a basic summary on what our data shows so far for COVID claims. We're looking at about \$260 million in incurred losses in COVID claims and that's made up of about 45,000 claims so the average for those claims is about \$6,000 so fairly small. The next slide shows that 75% of those claims are lost time claims. Normally for other types of claims we kind of see the opposite distribution – that 75% of clams are medical only and 25% are lost time but in the case of COVID it's the other way around. The next several slides show how the claims break down by size of loss so you can see on slide 17 that about 60% of the claims are very small and under \$1,500 and if you keep on going through the slides you'll see the percentages: \$1,500–4,999 about 27%;

\$5,000 – 10,000 about 6%; and then slide 19 shows that there are a very small percentage of COVID claims over \$100,000 very severe making up 60% of the losses we saw before.

The next slide not surprisingly shows that the overwhelming majority of COVID claims are driven by healthcare workers and first responders accounting for close to 75% of COVID claims. The next slide shows that rounding out the rest of the claims we do have restaurant workers, building operations, distribution stores and others but the majority of claims come from healthcare and first responders. So, slide 23 shows claims frequency and what we're looking at is almost every single year we see a decrease in work comp claim frequency and we see it again in the latest year of minus 7% which is a little bit larger than the long term average that we see of 3% or 4%. The next slide shows the claims severity so the average cost per claim this is the medical claim severity and obviously medical claim severity has been going up. The previous year was up 3.7% and the latest year we had more difficulty estimating due to COVID claims we're calling it plus or minus 2% but at somewhat moderated over time and that's what slide 25 shows that medical claim severity in the last half of that slide has been more in line with the medical consumer price index (CPI) versus the first half of that slide where the blue line was increasing a lot faster than the red line.

The next slide shows the average claim costs for indemnity or loss time claims wage replacement and the latest increase there is a 3% increase and when you look at the next slide its basically showing that indemnity average claims severity has been changing about the same amount as wage inflation is changing so both medical and indemnity costs have moderated and are moving more in line with wages and CPI. The next slide basically sums up the highlights of what the work comp industry is experiencing right now with premiums down by 10% and the calendar year combined ratio of 87% and we are looking at an actual year loss ratio of 100% still breaking even. The reserve position is stronger than ever and the claim frequency is down by 7% and indemnity and medical severity while up are up in a moderate way and as I said we're looking at about \$260 million in reported COVID claims for 2020.

The final slide looks at what are we keeping an eye on – the system is strong but we are looking at what future COVID claims could happen and could there be more surges and how long will it take for premium recovery in the line. We've seen the impact of vaccines but again we are seeing surges in many states. Permanent disability we are looking at some long haul claims and keeping an eye at some of those claims turning into very high cost claims where there is permanent injury involved. The other thing we are watching are the presumptions that are still being introduced and some may have retroactive features and may expand coverage beyond first responders and healthcare workers and may start to include infectious diseases that normally would be excluded. And then just looking at how our loss development might be affected by COVID so really just wondering whether 2020 is anomaly or wondering whether there will be lasting effects on the market.

Asm. Cooley stated that you highlighted the difference between medical expense claims and lost time claims saying we kind of saw things turn around with COVID - can you offer more commentary on the characteristics of lost time claims and a distinction to the other type for general education. Mr. Eddinger stated that when I talk about your normal every day work comp claim so not COVID related the reason that the majority of those claims are medical only is because you can have a slip or fall or a burn that is not necessarily severe and only requires a little medical attention and you are back to work right away or within the waiting period but COVID is the opposite as you may not be hospitalized and you may contract COVID or think that you have COVID and you have to quarantine and cant work and stay home and wait it out so you are paid for time off while doing that but then you are back to work - and again this is not

everybody but the majority of people who contracted COVID on the job only received those types of benefits and never had to receive hospitalization or medical benefits.

Rep. Oliverson stated that he was struck by the small dollar amount with respect to claims that were filed for lost time at work and wages and stuff like that. Are you able to dig into that to different sectors of the economy whether certain jobs that were sort of more associated with these claims or were there any trends you can tell us. I find that fascinating as you said the average claims was less than \$1,500 for lost time at the job and of course I remember when the pandemic first began folks were being told they couldn't come back to work for two weeks so I'm wondering if there is more data on that. Mr. Eddinger stated that the average claim is about \$6,000 so we did run through a lot of small claims and there are a lot of instances where it could even be that someone thinks they contracted COVID so they have to get off work to get tested but for a lot of people who contract the disease it could be mild and it could be a very short time off of work so you could just be talking about a few days or week off work and then they are back to work without ever having to receive any medical attention or hospitalization and that is pretty consistent in the non-NCCI states that the average cost of claims is relatively small.

Rep. Oliverson stated that the other question he had was that when this first began he talked to some carriers and companies in Texas and everyone was sort of accepting every claim that came their way because they didn't have any legal framework for liability protection for exposure or anything like that and there wasn't a vaccine and we really didn't know what we were dealing with. I would assume that we are starting to see a lot of these claims tail off now in terms of medical claims severities probably getting a little less expensive - are the time off work related claims heading in the right direction from what you can tell? Mr. Eddinger stated that we really wouldn't have that sort of up to the minute data to know whether or not things are trailing off but the one thing I would mention is that the claims I'm talking about are from 2020 so just keep in mind we have claims occurring in 2021 but we had a large surge at the end of 2020 and then now we are seeing a lot fewer claims but now we are seeing another surge so I can't really say what is happening out there and I think there are going to be work related claims going forward as long as there are COVID claims happening.

Sen. Mathew Pitsch (AR) stated that those are extremely impressive numbers but at what level did federal dollars coming into the system perhaps make those numbers better. Mr. Eddinger asked which numbers specifically. Sen. Pitsch stated that it could be the CARES Act or small businesses were able to find funds to not have people file work comp. I look at that number and much like Rep. Oliverson stated that is just too good of a number for us to look at COVID. We were all running around scared of what that number would look like and here it is very small. I guess I'm looking for why that number is so attractive. Mr. Eddinger asked Sen. Pitsch if he was talking about the number of claims or the dollars of claims? Sen. Pitsch stated that he is referring to the dollars of claims - I'm looking at a \$14 billion dollar reserve and I'm looking at \$240 million maybe in claims and an average claim of \$6,000 with \$1,500 most of them and those seem small to me as a small business owner that if I've got a work comp caused by COVID I've lost an employee for awhile to file that and those are awful small and I'm wondering if the research shows that small businesses did something else besides file a work comp claim.

Mr. Eddinger stated that I wouldn't know if someone did or did not decide to file a work comp claim but I will say that the vast majority of COVID claims are not that severe so it's a very small percentage and there are obviously some deaths involved as well but again that's a relatively small percentage basis and relatively small percentage that ends up being a very long term long haul claim so I'm not necessarily surprised that the average cost of a COVID claim is small. I think maybe everybody can breathe a sigh of relief that the total dollar amount and total impact

on work comp losses have remained relatively small maybe about somewhere around 1% of work comp and part of that too could just be not every COVID claim you here about was contracted in the line of work on the job so as I showed earlier 75% we're talking about first responders and healthcare workers so work comp is going to be a small piece of every COVID claim that occurred in the U.S.

USING WORKERS' COMPENSATION DATA AND SYSTEMS TO IMPROVE SAFETY AND HEALTH

Steve Wurzelbacher, PhD, CPE, ARM, Director of the Center for Workers' Compensation Studies (CWCS) National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), stated that we are going to give a basic outline of the potential within work comp for improving health and safety and then give some updates on different types of studies we have online and that includes claims, health services, risk exposure assessment, prevention effectiveness and outreach and then we'll end with outlining some partnership opportunities. Our basic mission is to maximize the use of work comp data and systems to improve workplace safety and health and the only way to really do that is through partnerships and we try to really build bridges between public health, insurance, employer and worker communities.

When we look at the actual potential of the system most people look at just claims and we do focus a lot on claims and what they can tell us about emerging risks and ways to control those but we also realize that every single claim is a person so we can also look at how their treatment was conveyed and how they are getting and receiving treatment and returning to work and making a full recovery. What's more, the insurers actually have quite a bit within the system to do risk assessment as they put people out in the field to do hygiene sampling and safety walkthrough and many of the states also have risk control programs so they have people in the field and in some states they offer actual programs to fund putting in place things like engineering controls and really the whole infrastructure for work comp is a way that especially small employers can reach health and safety.

At this point I am going to talk about some of the main focus that we have which is to look at the claims data. As this group knows, work comp is really the largest database of workplace injuries in the U.S. so this includes a variety of reports within each state from a first report and then detailed reports as you go down but this really entails millions of claims in some single state claims databases and includes a variety of information such as narratives of how the injury occurred and codes for industry and occupation and detailed diagnosis and patient demographics. All this information can be really very informative to understand what caused the injury to occur in the first place and how we can prevent that. One of the things we did a few years ago was to develop a grant and the purpose of it was to develop collaborations between state work comp bureaus, dept's of health and unemployment insurance agencies. The bottom-line goal was to help states really be able to use the comp trend data by industry and cause of injury. What these states did, CA, MA, OH, TN, MI which were funded, was they took the comp data in their states and linked it to the unemployment insurance data and how they did it was there is a federal employer identification number that's common in both sets. These are both state controlled sets so really it's just within the state they were able to get the data use agreement and the info wasn't shared with NIOSH it's only with OH that we have a detailed partnership. Basically, what they are able to do is to attach the work comp claim and add to it the employer industry and numbers of employees which appears in the unemployment insurance data quarterly. What this allows then is not only counts of claims but also rates so the

number of claims say per 100 workers as an employer and industry level. Many of the state reports are publicly available and you can see the depth they went into in different reports.

NIOSH has also had a longstanding partnership with OH and OH is one of four exclusive work comp fund states meaning that the state itself acts as the insurance company. We've had a very rich partnership with OH and been able to really put out quite a bit of work on claims analysis to look at overall industries, detailed causes of injury and then drill into specific industries that we knew were higher rated in terms of injury like ambulances and landscaping. And also dig into specific types of diagnosis such as traumatic brain injuries. We have also been working with the work comp community on COVID. NCCI has been a huge partner in this in terms of what they are able to do and put out on a regular basis. Their dashboard is fantastic and if you haven't checked it out you should do that. Many states are also individually putting out information on COVID in addition to NCCI such as the California Workers' Compensation Institute (CWCI). We also host monthly calls which are open if anybody would like to join and is a sounding board for folks to present data on COVID and share best practices for analysis. We are also sponsoring studies to actually look into more detail as to how COVID is related to different factors like occupation, age, tenure, gender and also employer factors like industry firm size and region and country. These studies are also looking at the impact of on total injured worker care not just those folks that have COVID claims but overall in the comp system and a big task is looking at the long term impact so what are the detailed diagnoses, treatments, disability, costs and so forth that are occurring within these claims. So, what NIOSH has done is actually partnered with six states and the Workers' Compensation Research Institute (WCRI) to do these analysis. A number of the states are sharing data right now and WCRI has put reports out as has NCCI so its an ongoing process.

With work comp, a lot of times with the size of these databases unique solutions are needed to address the size and volume of data and types of data being produced so I'll talk a little bit about machine learning and text mining and data visualization. Machine learning is something that has been around for awhile and you basically can apply it to narrative text so for instance the claims data like I slipped on ice and hurt my back you can actually apply a text mining approach that will code that into a structured outcome. We worked a lot with leaders in the field such as Liberty Mutual and Purdue University has basically developed auto coders that can code to three levels of causation. If anyone would like these we can share them and they are basically free algorithms. In a similar way NIOSH researchers have also developed automated coding approaches for industry and occupation so if you have a free text field for either of those there is a free system you can go to online and it will actually code it for you. There have been a lot of results and we have basically been producing dashboards and it's a great way to visualize complex data. Internally we also are using quite a bit in terms of power BI to really cut through the data and visualize and understand and tap into the power of that narrative.

That's claims in a nutshell and health services is the next perspective of what we do and this is really assessing the impact of health factors on work comp outcomes and this includes looking at the person's functional status whether they can return to work and what's their pain level and prescription drug use. Healthcare factors under study include: access and quality of care; conventional and alternative treatments; care coordination, re-injury; injury cause and diagnoses; and patient occupation/industry, employer size. We have a number of current studies under way working with OH Bureau of Work Comp (OHBWC) looking at different types of treatment like chiropractic and one of our folks is also working on his dissertation with WA looking at physical therapy. A big focus of course is preventing opioid use disorders among workers so we have an internal framework for that and hosted a meeting a couple of years ago and sponsored some work with WCRI in this area. We continue to also share research from a

number of other organizations such as NCCI, Workers' Compensation Insurance Rating Bureau of California (WCIRB) and so forth.

Another aspect of what we do is risk and exposure assessment and as I mentioned insurers are really some of the largest collectors of the group of occupational risk and exposure data in many areas so there are a lot of opportunities to look at the data and determine whether it can be used to understand risk across industries and determine whether there are different emerging hazards. We had two studies that looked at industrial hygiene data and what's the practice within work comp insurance carriers and what type of standardized forms were being used to collect this data. We have been working a lot with the American Industrial Hygiene Association and they are recommending the creation of a guidance document to guide how data can be standardized. The proposal has just now been accepted so it is being processed.

Another aspect of what we do with partners is to identify what works to prevent injuries and we call it intervention effectiveness. We really look at insurers as ideal partners because insurers provide services and grants and tend to have access to employers, especially state based ones over a long period of time. Ohio in particular has had a grant where they actually put in place engineering controls and since 1999 they have had this program and as of the most recent year they have paid almost \$15 million in a matching grant so it's basically a 3:1 grant that OH pays \$3 for every \$1 from employer but the idea is actually to put in place an engineering control that is needed at the work place. We have partnered with several folks to study whether this program is effective and not to get into the details too much but it definitely has shown to be effective and we have gone through and RAND actually did a study as this type of program has been offered by other states and some of them are competitive based programs and it has shown it can work. We are also looking at things like insurers on site risk control processes and also with OH it has also sponsored an employee wellness program. We have also worked with SCIF (CA state WC fund) and studied in-vehicle monitoring systems (IVMS).

With outreach what we try to do is try and connect insurer, public health, employer, and worker communities. We have a regular webinar series and state work comp analyses work groups formed and a lot of work focuses on COVID now but also related to everything else. One of our recent webinars discussed cannabis and work comp which has been a big topic and we are working on a follow up paper and our director John Howard is the co-author of it which includes authors from NCCI, WCRI and The International Association of Industrial Accident Boards and Commissions (IAIABC) so that should be coming out in the next few months. We have also had one based on opioid use within the comp system which was presented by folks who looked at an overall literature approach to the area and summarized a lot of the factors that are effective in controlling that within comp systems. We also did one recently focusing on what insurers are doing to respond to COVID and again they are a great intermediary to reach employers for safety and health reasons so they have been doing quite a bit to understand and communicate ways to prevent COVID and in a number of cases the state programs were actually providing funding for engineering controls and personal protective equipment (PPE) such as masks and also advising how they were coding risk control. If anyone would like any information on anything I have mentioned as far as auto coders, cross works and denominator methods we have a toolkit. We also do something called data viz services so if your state is interested let us know and we would be more than happy to work with you. I'll close by saying we thrive on partnerships and that's how we operate and we are always looking for areas of collaboration so if your state is interested please let us know and we would be more than happy to work with you.

Rep. Oliverson stated that you were talking about studies monitoring the use of chiropractic care and physical therapy and cannabis and things like that – where would we go as legislators to have access to the results of some of the work? Is there a portal to get them? Dr. Wurzelbacher stated that we do and if you go to our webpage we basically post everything that we publish on that website and if for some reason you can't access it you can e-mail us and we can give you a copy. Rep. Oliverson stated that he has read several of the reports and I've found them to be very helpful in developing legislation in Texas. Rep. Oliverson asked if NIOSH also collaborates with various entities that run work comp programs to develop best practices to treat certain types of injuries and the speediest recoveries. Dr. Wurzelbacher stated that's probably the area of our research where it's most new and I think we're at the beginning of that. NIOSH in general focuses on injury prevention so this is one of the first times we're starting to look at what happens after an injury occurs but there have been entities that have worked on that for quite some time such as NCCI and WCRI and WA state the put out quite a bit of work. At this time we would be echoing past work but we are hoping to make contributions to that area in the future.

Asm. Cooley stated that I would like to jump in and make a comment. Earlier this week in CA we had a bill that came up in our insurance committee and became controversial and it was a work comp question and the controversy was that there were allegations of misconduct but not a lot of specific detailed data to back it up. So the bill didn't advance because there was an argument that there is something broke without narrative data to support it so for the lawmakers on the call this presentation and Mr. Eddinger's are very important for us as lawmakers to take note of because for example in work comp there is a lot of data available and under your state law and mine in CA carriers are required to collaborate and respond to inquires from the regulator so I just want to point out that if you ever as legislators are hearing of an issue affecting the insurance marketplace of work comp that is a moment to think about how could we get insights on this issue out of the marketplace and yes the insurance regulators paly a very key role but their role is to really implement your state law so if you are hearing about an issue that interests you and would like to learn more about it that's a time to place a call into your regulator and get their team to talk with you and discuss the issue and what they have in their systems that might shed light on it and whether there is some question directed at the industry or through some of these intermediary data groups that can help shed light on it. I do think coming to NCOIL is actually coming to learn in the insurance space how to exert the power of our individual offices and this presentation is a portal to exercising that power.

CONSIDERATION OF RE-ADOPTION OF MODEL LAWS

Rep. Oliverson stated that per NCOIL bylaws, all Model Laws must be considered for re-adoption every five years or else they sunset. The three models scheduled for re-adoption are the Trucking/Messenger Courier Industries Workers' Comp Model Act; Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage; and the Model State Structured Settlement Protection Act. Rep. Oliverson noted that there are amendments to the Structured Settlement Model that are currently being developed so the motion to re-adopt that model will need to be temporary until the next conference in November so that the amendments can be developed and finalized and considered at that conference. Upon a Motion made by Sen. Paul Utke (MN), Vice Chair of the Committee, and seconded by Asm. Cooley, the Committee voted without objection by way of a voice vote to re-adopt the Structured Settlement Model until the November conference.

Upon a Motion made by Rep. George Keiser (ND) and seconded by Asm. Cooley the Committee voted without objection by way of a voice vote to re-adopt the Trucking/Messenger

Courier Industries Workers' Comp Model Act and Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Oliverson and seconded by Asm. Cooley, the Committee adjourned at 11:15 a.m.