

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
BOSTON, MASSACHUSETTS
JULY 20, 2006
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Boston Park Plaza Hotel and Towers in Boston, Massachusetts, on Thursday, July 20, 2006, at 10:30 a.m.

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

Other members of the Committee present were:

Rep. Donald Brown, FL	Rep. George Keiser, ND
Rep. Pat Patterson, FL	Rep. Larry Taylor, TX
Rep. Dennis A. Ross, FL	Sen. Ann Cummings, VT
Sen. Dean Kirby, MS	Rep. Virginia Milkey, VT
Sen. Pam Redfield, NE	Del. Harvey Morgan, VA
Rep. Donald Flanders, NH	

Other legislators present were:

Rep. Richard Laird, AL	Sen. William J. Larkin, Jr., NY
Sen. Joseph Crisco, CT	Rep. Frank Wald, ND
Rep. Sandra Adams, FL	Rep. Robert W. Godshall, PA
Sen. Ralph Hudgens, GA	Rep. Brian P. Kennedy, RI
Sen. Dean Cameron, ID	Rep. Kathleen Keenan, VT
Rep. Terry Parke, IL	Rep. Warren F. Kitzmiller, VT
Rep. Michael Ripley, IN	Rep. Mark Young, VT
Rep. Ronald Crimm, KY	Del. Kenneth Tucker, WV
Sen. Bob M. Dearing, MS	Sen. Dan Kapanke, 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 February 23, 2006, meeting in Weston, Florida.

MASSACHUSETTS WORKERS' COMPENSATION SYSTEM

Gregory White of the Massachusetts Department of Industrial Accidents (DIA) updated members on results of the state's recent workers' compensation system reforms. He noted that, in the past two years, there has been a 16 percent reduction in the workers' compensation insurance assessment rate, and premium rates have decreased by three (3) percent, which saved businesses \$34 million in 2005. He said that as a result of the reforms Massachusetts has enjoyed a 100 percent compliance rate for three years.

Mr. White described four aspects of the system's reform effort. He said that the state first worked to revamp an enforcement compliance system that was designed to fail. He then discussed how increased interagency cooperation has contributed to a more effective system. He pointed out that the state created a civil litigation unit to recoup payments made by the state fund by filing civil actions in Superior Court against employers. He said that the final aspect of reform has been a continuing public awareness campaign with Bob Villa as its spokesman.

MODEL RECIPROCITY AGREEMENT

Mona Carter of the National Council on Compensation Insurance (NCCI) explained why, in her opinion, states need to consider workers' compensation reciprocity agreements. She said that without such agreements, adjudication often becomes an issue to resolve benefit disputes when a worker is injured in a second state. She said that the International Association of Industrial Accident Boards and Commissions (IAIABC) *Model Agreement Between Jurisdictions to Govern Coordination of Claims and Coverage* would address such issues.

Ms. Carter further described concerns that were raised at a June meeting of the National Association of Insurance Commissioners (NAIC). She said that members discussed how the model related to emergency situations, such as Hurricane Katrina.

Rep. Keiser said that the primary issue in reciprocity agreements is the definition of temporary employment, and he noted that in North Dakota, the legislature passed a bill that would extend the definition of "temporary employment" during a declared emergency. He recommended that the Committee add a drafting note to the model that would suggest states be aware of the definition of temporary employment as it relates to emergency situations. Upon a motion made and seconded, the Committee voted unanimously to support adding a drafting note to the model.

Upon another motion made and seconded, the Committee voted unanimously in favor of an amendment sponsored by Sen. Leavell that deleted Appendix One, Oregon Enabling Legislation, as it was not essential to the model.

Sen. Leavell emphasized that the model is not an answer to all situations but an important aspect of cross-border coordination, and he suggested that the scope of the model should be understood by legislatures and insurance departments.

John Lobert of the Property-Casualty Insurers Association of America (PCI) said that PCI supported the Committee approving the IAIABC model agreement and suggested that there were additional issues related to cross-border agreements.

Upon a motion made and seconded, the Committee voted unanimously to support the amended IAIABC model agreement.

COST CONTAINMENT STRATEGIES

Dr. Richard Victor of the Workers' Compensation Research Institute (WCRI) described different strategies to control pharmaceutical costs, an issue that he called one piece of the cost containment picture for workers' compensation. He said that containment of pharmaceutical costs has been slow and that workers' compensation systems use fewer public policy tools than other medical payers.

Dr. Victor noted that a fee schedule is a primary policy tool, but added that only two-thirds of the states employ one. He further said that workers' comp systems mandate the use of generic drugs, yet rarely use drug formularies, step therapy, or co-payments.

Dr. Victor said that workers' compensation systems pay more than other payers for identical prescriptions. According to Dr. Victor, policymakers are challenged with figuring out rules and determining business practices that would speed eligibility determinations and would ultimately lower costs. He suggested using pharmacy benefit managers (PBMs) to improve efficiency for pharmacies and payers.

PROFESSIONAL EMPLOYER ORGANIZATIONS (PEOs)

Robert Wake of the Maine Bureau of Insurance and chair of the NAIC PEO Working Group said that a draft NAIC model regulation would address several main issues. He listed preventing gaps in coverage, preserving the integrity of the loss reporting system, and facilitating premium payments as important. He noted that there are PEO concerns beyond the scope of insurance law, including the definition of an employer and a determination of who is eligible to claim benefits.

Tim Tucker of the National Association of Professional Employer Organizations (NAPEO) noted that 28 states have enacted comprehensive PEO reform. He said that there needs to be a statutory framework to guide the industry and proposed that NCOIL consider a resolution regarding the NAIC model.

Dennis Smith of the American Association of State Compensation Insurance Funds (AASCIF) expressed his support for legislation that would define the party responsible for workers' compensation payments and describe the rights and responsibilities of PEOs. He noted that trying to assign liability can be problematic and that some people have used relationships with PEOs to hide employers' high experience modification factors.

Rep. Keiser said that North Dakota had addressed PEOs through unemployment legislation, a workers' compensation code, and legislation requiring PEOs to register as business entities. He said that North Dakota believed that the experience rating of the original company should be the basis for a policy's premium.

Sen. Leavell directed NCOIL staff to work with interested parties to prepare a proposal for the NCOIL Annual Meeting that could be the basis for model legislation.

OTHER BUSINESS

REVIEW OF MODEL LAW, AS PER BYLAWS

Randy Dyer of the National Structured Settlements Trade Association (NSSTA) said that development of a *Model State Structured Settlement Protection Act*, which NCOIL supported in 2004, was a classic case of cooperation between state and federal officials. He said that the model would protect structured settlement recipients involved in the transfer of structured settlement payment rights and would address the issue of court approval. Mr. Dyer noted that 46 states have passed legislation regarding structured settlements and that 28 states based their bills on the NCOIL-supported model.

Matt Bracy of the National Association of Settlement Purchasers (NASP) said the model would establish procedures for the approval of transfers and would require disclosures to payment recipients.

Upon a motion made and seconded, the Committee voted unanimously to reaffirm support for the *Model State Structured Settlement Protection Act*.

ADJOURNMENT

There being no further business, the meeting adjourned at 11:35 a.m.