

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
POINT CLEAR, ALABAMA
NOVEMBER 15, 2012
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at The Grand Hotel Marriott Resort in Point Clear, Alabama, on Thursday, November 15, 2012, at 10:30 a.m.

Rep. Barry Hyde of Arkansas, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Matt Lehman, IN	Sen. Carroll Leavell, NM
Sen. Ruth Teichman, KS	Assem. Nancy Calhoun, NY
Rep. Steve Riggs, KY	Rep. Charles Curtiss, TN
Sen. Dan Morrish, LA	Rep. William Botzow, VT
Rep. George Keiser, ND	Rep. Sarah Copeland Hanzas, VT
Sen. David O'Connell, ND	Rep. Kathie Keenan, VT
Rep. Don Flanders, NH	Rep. Warren Kitzmiller, VT

Other legislators present were:

Rep. Greg Wren, AL	Rep. Alan Seabough, LA
Sen. Travis Holdman, IN	Sen. Videt Carmichael, MS
Sen. Frank Mrvan, IN	Sen. Pete Pirsch, NE
Rep. Robert Damron, KY	Sen. William J. Larkin, Jr., NY
Rep. Jeff Greer, KY	Sen. Jake Corman, PA
Rep. Susan Westrom, KY	Rep. Michele Kupersmith, VT
Rep. Greg Cromer, LA	Del. Harry Keith White, WV

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Ed Stephenson, Nolan Associates, NCOIL Director of Legislative Affairs—DC
Dan Valente, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 12, 2012, meeting in Burlington, Vermont.

OPIOID ABUSE

Mona Carter, National Policy Executive with the National Council on Compensation Insurance (NCCI), spoke to a model law and regulation, being developed by an International Association of Industrial Accident Boards & Commissions (IAIABC), that would address the prescription and utilization of opioids. She said that most states are looking at opioid abuse in the context of the healthcare delivery system and that the IAIABC language aims to close workers' compensation loopholes. She said the draft IAIABC language could work in concert with state laws on opioid dispensing.

Sherry Green, Chief Executive Officer with the National Alliance for Model State Drug Laws (NAMSDL), said that states have begun requiring certain patients, namely those who will receive opioids for a long term, to sign a treatment agreement with their physicians. Ms. Green said these

agreements typically require a patient to get his/her opioids from one prescribing practice and to have drug tests to ensure that he/she is taking—rather than selling, for example—the prescribed substance.

Ms. Green commented that the draft IAIABC model law and regulation did a good job of trying to incorporate safeguards that would prevent abuse, addiction, and diversion while still allowing individuals who need prescription opioids to receive them. She spoke to certain specific IAIABC provisions, stressing the importance of referencing specialists who are properly certified.

Rep. Hyde asked for Committee direction on how to proceed. During discussion that followed, legislators and interested parties said, among other things, that:

- Workers' comp patients have a unique incentive to sell, or "divert," their prescribed opioids because wage replacement amounts are often far below typical wages and the money from illegal opioid sales helps to supplement.
- Opioid abuse is a wide-ranging problem, not limited to workers' compensation, that is perhaps most often caused by addiction rather than by illegal diversion and sales.
- A recent Kentucky law, which included reforms to the state's prescription drug monitoring program (PDMP), could be a basis for NCOIL model legislation.

Upon a motion made by Rep. Damron, the Committee unanimously voted to hold a special Spring Meeting session with the Health, LTC & Health Retirement Issues Committee in order to hear stakeholder perspectives and to consider possible development of an NCOIL model.

PHYSICIAN DISPENSING/REPACKAGED DRUGS

Robert Holden, Vice President at Stateside Associates, updated the Committee on state efforts to regulate reimbursement rates for repackaged pharmaceuticals, as well as on state laws regarding physician dispensing. He said that 11 states over the last four years have tied reimbursement rates for repackaged drugs to the original manufacturer's National Drug Code (NDC) and Average Wholesale Price (AWP), and that Michigan and Illinois were in the process of examining the issue. He noted that California took a similar approach, tying reimbursement rates to its Medi-Cal fee schedule. Regarding physician dispensing, Mr. Holden reported that six states either prohibit or severely limit the practice.

Rep. Hyde said that for approximately one year the Committee had considered various issues related to physician dispensing of repackaged drugs. He asked for specific Committee direction on how to proceed. Following brief discussion—including of how, when, and where certain states addressed the issue—the Committee voted unanimously to consider a proposed model law at the Spring Meeting that would require reimbursement rates for repackaged drugs to reflect AWP.

VOLUNTEER FIREFIGHTER COVERAGE

Chief Butch Browning of the Louisiana Office of State Fire Marshal reported on a recent Louisiana law that established workers' compensation coverage for volunteer firefighters. He said that 85 percent of fire departments in the state are volunteer, which equates to approximately 12,000 firefighters, and that the departments are "plagued" by fiscal challenges. Chief Browning said that in 2009, only 3,000 of the volunteers were protected by some form of workers' comp. A small accident and disability policy that the state had offered for 25 years at no cost to volunteers, Chief Browning said, had a \$25,000 cap and was insufficient to cover a workers' comp injury.

Chief Browning reported that Louisiana's workers' comp carrier of last resort determined in 2008 to stop covering volunteer firefighters because they are not considered employees under Louisiana law. In response, he said, the legislature unanimously passed a 2009 law that designated volunteer

firefighters as state employees for the specific purpose of receiving certain workers' comp benefits, including unlimited medical. He explained that legislators determined to fund the coverage by imposing a two percent tax on fire insurance premiums in the state.

Chief Browning said that competition among carriers writing the volunteer firefighter coverage is a challenge but that prices are slowly dropping as the volunteers develop a lengthier loss history. He said that roughly all volunteer firefighters in the state now are covered by workers' comp insurance.

Regarding the state's 4,500 paid firefighters, Chief Browning supported creation of a policy that would let local governments buy into the volunteer firefighter program.

In response to a question from Rep. Keiser, Chief Browning said that coverage begins when a volunteer leaves his/her home for a "bona fide" fire department reason.

Rep. Botzow then spoke to a 2011 Vermont law, which responded to a circumstance in which an insurer denied a volunteer firefighter's claim by asserting that the firefighter had not been engaged in "public employment" when injured. Rep. Botzow said that the firefighter had been re-roofing his firehouse at the time.

Rep. Botzow explained, after outlining various reasons for ensuring that firefighters are covered, that the 2011 law aimed to clarify legislative intent by defining "public employment" for both paid and volunteer firefighters as "acting under the direction and control of the fire department." He said that the new definition would encompass activities related to fire department service that are not strictly emergency response.

Rep. Botzow noted that fire departments in Vermont receive workers' compensation coverage through an assigned risk pool. He said that six private insurers participate.

Following brief discussion, and upon a motion made by Rep. Curtiss, the Committee voted to consider developing model legislation to address issues raised by Rep. Botzow.

AGRICULTURE AND MIGRANT FARM WORKERS

Rep. Riggs said there is significant disparity in how states address workers' comp coverage for farm workers. He said that a long-standing Kentucky law does not require coverage on the grounds that buying the coverage could financially strain the state's numerous family farms. He said that demographics have changed, however, and that most Kentucky farms now are commercially owned. He opined that these businesses should pay for workers' comp insurance rather than have taxpayers bear the cost of injured farm workers who seek treatment at hospitals.

Virginia Ruiz, Director of Occupational and Environmental Health with Farmworker Justice, reported that most farm workers are young males, often with families, and that approximately 30 percent have incomes below the U.S. poverty line. She said that agricultural workers face many workplace hazards, including exposures to pesticides, extreme weather conditions, and dangerous equipment; lack of adequate drinking water; unsanitary working conditions; and musculoskeletal injuries.

Ms. Ruiz asserted that workers' comp coverage for farm laborers is important, helps to reduce healthcare-system costs that taxpayers wind up paying, results in laborers returning to their jobs more quickly, and deters injured laborers from turning to government assistance programs when they cannot work. She also said, among other things, that agriculture in the U.S. is becoming more big-business.

Sandy Hallmark, Workers' Compensation Compliance Supervisor with the Alabama Department of Labor, said that Alabama laws and rules do not define "farm labor." She said the Department considers "farm labor" to mean raising crops or tending livestock and that the Department evaluates other agricultural activity on a case-by-case basis. Ms. Hallmark reported that in Alabama, businesses with five or more employees, either full or part time, must carry workers' compensation insurance.

Upon a motion made by Rep. Riggs, the Committee voted to consider a proposed model law regarding state workers' comp requirements for farm laborers.

PROPOSED 2013 COMMITTEE CHARGES

Upon a motion made and seconded, the Committee unanimously adopted the following proposed 2013 Committee charges:

- investigate and take a position on approaches to curb escalating opioid-related insurance costs
- continue to investigate medical cost trend and containment strategies, such as regarding physician dispensing and drug repackaging
- consider opportunities to promote fair workers' comp coverage for volunteer firefighters
- continue review of agricultural/migrant farm worker insurance concerns/approaches

ADJOURNMENT

There being no other business, the Committee adjourned at 11:50 a.m.