

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
WORKERS' COMPENSATION INSURANCE COMMITTEE  
BURLINGTON, VERMONT  
JULY 12, 2012  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Hilton Burlington in Burlington, Vermont, on Thursday, July 12, 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	Rep. Michael Stinziano, OH
Rep. Steve Riggs, KY	Rep. Charles Curtiss, TN
Sen. Dan Morrish, LA	Rep. William Botzow, VT
Rep. Don Flanders, NH	Rep. Sarah Copeland Hanzas, VT
Sen. Carroll Leavell, NM	Sen. Ann Cummings, VT
Assem. Nancy Calhoun, NY	Rep. Kathie Keenan, VT
Rep. George Keiser, ND	Sen. Mike Hall, WV
Sen. David O'Connell, ND	

Other legislators present were:

Rep. Isaac Choy, HI	Rep. Jay Hottinger, OH
Rep. John Picchiotti, ME	Rep. Brian Kennedy, RI
Sen. Jim Marleau, MI	Rep. Michele Kupersmith, VT
Rep. Don Gosen, MO	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Michael Keegan, Nolan Associates, NCOIL Director of Legislative Affairs—DC  
Michael Carroll, Nolan Associates, NCOIL Director of Legislative Affairs

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its February 24, 2012, meeting in Biloxi, Mississippi.

## PHYSICIAN DISPENSING/REPACKAGED DRUGS

Robert Holden of Stateside Associates reported that over the past four years, 11 states have enacted rules requiring reimbursement rates for repackaged drugs to reflect the original manufacturer's National Drug Code (NDC) and Average Wholesale Price (AWP). Mr. Holden stated that using the NDC and AWP of the original manufacturer typically reduces the cost of repackaged drugs. Additionally, Mr. Holden mentioned that Montana, Massachusetts, New York, New Jersey, Texas, and Utah prohibit or severely restrict the practice of physician dispensing. However, he noted, most of these states allow for physician dispensing on an emergency basis or when there is no access to a community pharmacy (e.g., rural communities in Texas).

Sen. Alan Hays (FL) said that physicians are abusing the workers' compensation system by charging exorbitant prices for repackaged drugs. For example, Sen. Hays stated that one Florida doctor purchased 60 tablets of the drug Maloxicam for a cost of \$8.33, and then charged the workers' compensation system \$437.48 for these tablets after they were repackaged and dispensed. Sen. Hays

reported that in 2012 he helped pass a bill through the Florida House of Representatives that would have stopped this abusive practice. However, he said, the bill stalled when the Senate President blocked it from coming to the Senate floor.

Frank O'Brien of the Property Casualty Insurers Association of America (PCI) said that repackaging companies are aggressively marketing their services to physicians who provide treatment to injured workers. He stated that physicians are being lured into dispensing repackaged drugs by the promise of huge revenue streams. Mr. O'Brien noted that repackaged drugs are significantly increasing pharmaceutical costs in the workers' comp market, which contributes to rising premiums and increased costs for businesses. Mr. O'Brien stated that PCI supports regulations and legislative efforts that require reimbursement payments for repackaged drugs to be calculated using the NDC of the drug's original manufacturer.

Bruce Wood of the American Insurance Association (AIA) said that the cost of repackaged drugs is a serious threat to state workers' compensation systems. Mr. Wood said that Louisiana has a significant problem with repackaged drug costs, and that Automated Healthcare Solutions (a large repackaging company) is very active in the political process in that state. Additionally, he noted that now is the time for legislators throughout the country to "step up to the plate" to protect their workers' compensation systems.

During Committee discussion that followed:

- Rep. George Keiser (ND) stated that North Dakota does not have an issue with repackaged drug costs, but that the entire healthcare industry must be engaged to fix this problem in other states.
- Mona Carter of the National Council on Compensation Insurance (NCCI) mentioned that the costs of repackaged drugs are not paid by the patient. Instead, she noted, the charge is billed to an insurance carrier and these costs manifest themselves in higher insurance premium rates for businesses.
- Rep. Barry Hyde (AR) noted that representatives of the repackaging industry were invited to make presentations to the Committee, but they had not responded to the invitation. He said that this was the second Committee meeting in a row that these representatives have chosen not to attend.

#### OPIOID ABUSE AND WORKERS' COMP COSTS

Bruce Wood of AIA warned that opioid abuse is the most serious problem threatening the workers' compensation system today. Mr. Wood noted that opioids were originally developed for treating patients with end-stage cancer, but now are widely used to treat workplace injuries. He stated that injured workers who abuse opioids are either dysfunctional for extended periods of time (which prevents them from returning to work) or dying from overdoses. Mr. Wood noted that this problem started as a result of legislation and regulation in the states that allowed opioid use without dosing guidelines. For example, Mr. Wood cited a Washington state law passed in 1999 which said, "No disciplinary action will be taken against a practitioner based solely on the quantity and/or frequency of opioids prescribed."

To show the recent growth of opioid abuse in the U.S., Mr. Wood cited the following statistics from a report by the White House Office of National Drug Control Policy:

- From 1997 through 2007, the milligram per person use of prescription opioids in the U.S. increased from 74 milligrams to 369 milligrams, equaling a 402 percent increase.
- In 2000, retail pharmacies dispensed 174 million prescriptions for opioids; by 2009, 257 million prescriptions were dispensed, equaling a 48 percent increase.

Additionally, Mr. Wood reported that \$1.4 billion will be spent on opioid narcotics this year for workers' compensation claimants, and prescription drugs account for about 19 percent of workers' compensation

medical costs. Despite this reliance on opioids, Mr. Wood noted that there is little credible evidence that long-term opioid use is appropriate treatment for workers' compensation injuries.

Lucinda Dean Saxon of the Work Loss Data Institute (WLDI) reported that her organization publishes the *Official Disability Guidelines* (ODG), a treatment guideline that covers prescription drugs in workers' compensation. She noted that the ODG has been adopted in Texas and in some limited form in 24 other states. Ms. Saxon stated that the ODG is derived from evidence-based medicine, which she characterized as a comprehensive, systematic medical literature review with analysis of over 10 million lost-time cases by an advisory board of 100 doctors across various specialties.

Ms. Saxon noted that in 2011 Texas adopted an ODG formulary based on the guidelines. She reported that since the implementation of the formulary, total prescription drug costs for 2011 claims were reduced by 26 percent (approximately \$1.4 million); the frequency of opioid prescriptions dispensed to injured employees decreased by ten percent; and the costs associated with opioid prescriptions declined by 17 percent.

#### AGRICULTURE AND MIGRANT FARM WORKERS

Stephen Monahan, Director of Workers' Compensation and Safety for the Vermont Department of Labor, stated that most Vermont farms are required to provide workers' compensation for their employees; however, a limited exception exempts from coverage requirements farms with a total aggregate payroll of less than \$10,000. Additionally, Mr. Monahan cited a report from the U.S. Bureau of Labor Statistics (BLS) which noted that there are five reportable injuries per 100 agricultural workers in the United States, and approximately 600 people died while performing agricultural work in 2011. Mr. Monahan stated that if coverage is not provided for these workers, then social safety nets or healthcare systems pick up the treatment costs.

Rep. Steve Riggs (KY) questioned the rationale of factory employees receiving workers' compensation coverage when agricultural workers are often denied these benefits. He noted that there are a myriad of different state laws regarding workers' compensation for agricultural workers, and that NCOIL should look into the possibility of developing a model law as an appropriate step forward on this issue.

Susan Nolan, Executive Director of NCOIL, indicated that NCOIL staff created a chart outlining the 50 state laws relating to workers' compensation coverage for agriculture and migrant farm workers. She noted that this chart should be a useful resource for Committee members when studying this issue.

#### UPDATED MEDICARE SECONDARY PAYER RESOLUTION

Rep. Barry Hyde (AR) said that NCOIL, in 2008, had adopted a *Resolution in Support of H.R. 2549, Establishing Workers' Compensation Medicare Secondary Payer Reforms*, which now had been updated to reflect current activity. Rep. Hyde made a motion to adopt the updated resolution, the motion was seconded, and the Committee unanimously adopted it.

#### ADJOURNMENT

There being no other business, the Committee adjourned at 11:45 a.m.