

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
WORKERS' COMPENSATION INSURANCE COMMITTEE  
SAN FRANCISCO, CALIFORNIA  
NOVEMBER 21, 2014  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Grand Hyatt in San Francisco, California, on Friday, November 21, 2014, at 8:30 a.m.

Rep. Bill Botzow of Vermont, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK	Rep. Don Flanders, NH
Rep. Matt Lehman, IN	Assem. Will Barclay, NY
Rep. Steve Riggs, KY	Rep. Mike Henne, OH
Sen. Ronnie Johns, LA	Rep. Marguerite Quinn, PA
Rep. Ken Goike, MI	Rep. Warren Kitzmiller, VT
Sen. Jerry Klein, ND	Sen. Daniel Hall, WV
Sen. David O'Connell, ND	Sen. Mike Hall, WV

Other legislators present were:

Sen. Joyce Elliott, AR	Rep. Heather Bishoff, OH
Rep. Jon Eubanks, AR	Rep. Bob Hackett, OH
Rep. Kelley Linck, AR	Rep. Brian Kennedy, RI
Rep. Stephanie Malone, AR	Sen. Ronnie Cromer, SC
Sen. Matt McCoy, IA	Rep. Sarah Copeland Hanzas, VT
Rep. David Ober, IN	Rep. William Jewett, VT
Rep. Pete DeGraaf, KS	Del. Harry Keith White, WV
Rep. Joe Fischer, KY	
Sen. Mike Parson, MO	
Sen. Joe Hardy, NV	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Molly Dillman, Nolan Associates, NCOIL Director of Legislative Affairs  
Andrew Williamson, Nolan Associates, NCOIL Director of Legislative Affairs

#### MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 11, 2014, meeting in Boston, Massachusetts.

#### CALIFORNIA WORKERS' COMPENSATION SYSTEM

Destie Overpeck, Acting Administrative Director of the California Division of Workers' Compensation, reported on recent efforts to reform California's workers' compensation insurance law, with an emphasis on SB 863. She stated that the impetus for this bill came from

a more than 50 percent cut in permanent disability benefits made by a prior reform bill, SB 899, passed in 2004.

Ms. Overpeck stated that the new bill, SB 863, would improve the delivery of medical treatment in response to employee complaints regarding excessive delays and employer complaints about excessive costs. She said this was a bipartisan bill reflecting the views of both labor and management. She stated that the guiding principles underlying the legislation were to increase permanent disability benefits, improve access to medical care, reduce costs for employers, and increase system efficiency.

Ms. Overpeck reported that the change to increase permanent disability benefits has led to a dramatic change regarding medical treatment. She said that California has implemented a new Independent Medical Review Board to resolve disputes about requests for medical treatment. She stated that under the old system, judges were required to make those decisions.

Ms. Overpeck stated that the change regarding disability benefits provides a 30 percent increase. As an example, she explained that a person with total loss of vision in one eye earning more than \$435 per week, under the old system, would have been awarded \$19,000. She said that under the new system, that same patient would now receive \$34,000.

Ms. Overpeck then summarized relevant claims administration data, noting that 54.3 million treatment requests were filed in 2013. She stated that in the future it is expected that there will be 140,000 to 180,000 IMR applications per year. Ms. Overpeck said that each IMR application has at least two treatment requests, and only 16 percent of such requests are overturned.

Ms. Overpeck concluded by stating that while these findings are preliminary, so far three percentage points have been trimmed from the rate increases. She indicated there has been an increase in permanent disability benefits, but said that currently the ultimate fiscal impact on the system is uncertain. She said that changes in some fee schedules have shown a 26 percent reduction in fees being paid to ambulatory surgery centers.

Rep. Botzow asked if there was any way to measure if any of these changes have improved return-to-work outcomes. Ms. Overpeck stated that this reform was not geared towards return-to-work incentives.

#### PROPOSED FARM LABORER MODEL ACT

Rep. Riggs stated that the proposed *Model Act Regarding Workers' Compensation Coverage for Agricultural Laborers* would establish parameters whereby farm laborers would be subject to certain workers' compensation requirements and would also exclude small farms. Rep. Riggs then moved that consideration of the model act be postponed indefinitely until such time as more interested parties could be involved in NCOIL discussions. The motion was seconded and passed on voice vote.

#### MEDICARE SECONDARY PAYER REFORM

Frank O'Brien, representing the Property Casualty Insurers Association of America (PCI), spoke in support of a resolution urging federal legislation to reform the Medicare secondary payer system. He commented that the system as it presently exists is confusing, cumbersome and

extensive. He noted that in 2008 and 2012 NCOIL passed similar resolutions in support of reform legislation. Mr. O'Brien indicated that a consensus exists that the problem needs to be remedied, and he noted that there is legislation currently pending in Congress. He stated there was a desire to have the legislation pass before the current session ends. Mr. O'Brien said that if passage did not occur before the end of the year, then legislation would be pursued in the new Congress.

In response to a question, Mr. O'Brien stated that there were no significant substantive differences from the legislation supported previously by NCOIL. He also elaborated on the payment structure of the secondary payer system that he said needed to be clarified. He noted that part of the difficulty in securing passage of reform legislation was the fact that it had budget implications that put it in competition with other legislation with budgetary implications.

Upon a motion made and seconded, the Committee adopted the proposed resolution.

#### NCOIL PROFESSIONAL EMPLOYER ORGANIZATION (PEO) MODEL ACT

At the request of Rep. Botzow, Ms. Thorson reported on the history of the *Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships* and stated that the model was originally passed in 2007. She said that since states had not passed the model, the Committee in November 2013, during its bylaws required review of the model, determined to readopt it for another year, with the understanding that interested parties might offer proposed amendments to bring the model more in line with existing business practices.

Mona Carter of the National Council on Compensation Insurance (NCCI) reported that when the model was first proposed in 2007, the aim of the Committee was to prevent fraudulent and noncompliant activities among PEOs. She stated there have been five pieces of legislation drafted around the country regarding PEOs since the NCOIL model was adopted. Ms. Carter stated that, unfortunately, none of these states used the NCOIL model as a basis. She said that the NAIC developed model guidelines with several recommendations, which many states did include.

Ms. Carter reported that in addition to her involvement as a member of an advisory group organized to examine PEOs, other participants included insurers that write coverage for the PEOs and PEO companies. She stated that the group had been working for over a year to develop standards to help states regulate workers' compensation as related to PEOs. She said that the group had been looking at developing better definitions to identify more clearly what constitutes PEO activity. She stated that companies using temporary agencies continue to grow and that large temporary agencies are taking over large work forces.

Ms. Carter stated that many things have changed over the years regarding PEOs, including the ability to have risk experience follow the client. She observed that an employer has a statutory obligation in a state to provide coverage to make sure their injured workers are protected. She stated that the PEO process has in-effect made PEOs co-employers, and while the PEO has joined with the employer, it does not relieve the statutory obligation of that client to protect its workers.

Ms. Carter stated that when an employer contracts with a PEO, that employer picks up services related to payroll, health-care, and workers' compensation. She indicated that all these services are paid at a contract price, not a premium. She stated that the premium is paid by the PEO and the PEO is the party that has a contract with the insurance carrier, and that the statutory employers are clients of the PEO and not clients of the insurance company.

Ms. Carter said the advisory group had been looking at developing better definitions to identify more clearly what constitutes PEO activity and at clarifying how experience modification factors are used when an employer is in a PEO arrangement as well as when the company is leaving one. She said that the group also was looking specifically at proof-of-coverage issues and at ways to improve notifications when cancellations occur, as well as to identify what insurer is providing coverage and how.

Ms. Carter said her organization wants to make sure that the client does not get overlooked in the process. She stated that, in the past, the biggest problem was not being able to follow the experience of the client. She said the client identification information is the key factor in order for necessary information to flow through the system to the workers' compensation administrators to allow proper processing for injured employees.

A motion was made to defer further consideration of the model until the next meeting. The motion was seconded and passed unanimously.

#### PROPOSED 2015 COMMITTEE CHARGES

The Committee considered the following proposed 2015 charges:

- evaluate proposed amendments to the NCOIL professional employer organization (PEO) model act and consider exploring other PEO areas of interest
- consider issues regarding employer experience ratings and costs and identify reform opportunities
- investigate workers' compensation impacts of emerging health insurance concerns (e.g., the Affordable Care Act, Ebola risk, etc)
- explore issues regarding termination of treatment and worker recourse
- continue effort to educate states pursuing opioid-related insurance reforms, i.e. NCOIL best practices (*in conjunction with the Health, LTC & Health Retirement Issues Committee*)

Rep. Botzow suggested that the Committee also explore issues regarding employer experiences with independent contractors.

After a motion was made and seconded, the Committee unanimously adopted the proposed 2015 charges, as amended.

#### ADJOURNMENT

There being no other business, the Committee adjourned at 9:33 a.m.

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