

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
SAN ANTONIO, TEXAS
FEBRUARY 26, 2004
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Hyatt Regency on the Riverwalk in San Antonio, Texas, on Thursday, February 26, 2004, at 9:00 a.m.

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

Other members of the Committee present were:

Sen. Steven Geller, FL
Rep. Shirley Bowler, LA
Rep. George Keiser, ND
Rep. Frank Wald, ND
Assem. Nancy Calhoun, NY
Rep. Larry Taylor, TX
Rep. Gene Seaman, TX

Other legislators present were:

Rep. James Tucker, LA
Rep. Greg Davids, MN
Rep. Jerry Klein, ND
Sen. William Larkin, Jr., NY
Rep. Craig Eiland, TX
Rep. Robert Dostis, VT
Rep. Kathleen Keenan, VT
Rep. Gini Milkey, VT
Rep. Mark Young, VT

Also present were:

Susan Nolan, Mackin & Company, NCOIL Deputy Executive Director
Candace Frick, NCOIL Director of Legislative Affairs and Education
Fran Liebich, NCOIL Director of Legislative Affairs and Education

MINUTES

The Committee voted to approve, as submitted, the minutes of its November 21, 2003, meeting in Santa Fe, New Mexico.

UPDATE ON TEXAS WORKERS' COMPENSATION INSURANCE SYSTEM

Brent Hatch of the Texas Workers' Compensation Commission (TWCC) updated the Committee on the state of the Texas system. He said that effective September 1, 2003, Texas implemented an approved list for doctors, which requires doctors to meet certain requirements in

order to participate in the system. Formerly, he said, any doctor licensed in Texas could treat an injured worker and receive workers' compensation reimbursement. Mr. Hatch said Texas further had established a medical-quality review panel, composed of doctors from across the state, that could sanction a physician or prohibit him from participating in the system if his treatment protocols fell outside accepted parameters. He said that prior to instituting the reforms, approximately 30,000 doctors treated workers' compensation cases. Now, Mr. Hatch said, that figure had dropped to just below 15,000.

Regarding cost-containment, Mr. Hatch said the Commission's 2002 medical fee guidelines took effect last August, following challenges that delayed their implementation. He said Texas had adopted the Medicare fee guidelines and that an insurer could charge 125 percent of what Medicare would allow. Some doctors had left the system, Mr. Hatch noted, because they felt that the reimbursement levels were too low. He said more time was needed for the Commission to determine the effectiveness of the new guidelines, but he noted that in certain instances reimbursements had gone up—for instance, for basic office visits.

In response to questions posed by Rep. Keiser, Mr. Hatch said the Texas system requires pre-authorization for certain services, such as shots, before the carrier can be held responsible for payment. He said, among other things, that the Commission has authority to resolve disputes when a carrier refuses to authorize treatment but the consumer insists on the need for the procedure. Mr. Hatch said the Commission recently proposed rules that would give a consumer recourse should a carrier determine that treatment would not be reasonable and necessary and, in response, the consumer's doctor decided not to pursue that treatment out of fear of not being reimbursed.

Rep. Bowler said she understood that chiropractic care was one of the major cost drivers in the Texas system, and she questioned the wisdom of raising the fees for basic office visits. Mr. Hatch responded that more data was necessary before the success of the new fee schedules could be determined. He said that doctors have a year before they must submit for reimbursement.

UPDATE ON INDUSTRY PROFITABILITY

Mona Carter of the National Council on Compensation Insurance (NCCI) reported that there had been few changes in the state of the workers' compensation market since her last report. She said there were some signs that things were stabilizing, and she noted that combined ratios appeared to be leveling off. She said this was partially due to the economy and to improved investment income. Ms. Carter said that frequency continued to decline, as it had for approximately 15 years, thanks to improved business practices and technology. She cautioned that severity and medical costs continued to increase.

Ms. Carter noted that NCCI files rates and loss costs for 36 states across the country. She said that average increases filed for 2003 were approximately four percent and predicted that 2004 rates would continue to rise. Ms. Carter said that the market share for the 20 residual markets that NCCI manages was up approximately 10 percent. She noted that Illinois has the largest assigned risk plan, while Alaska has the largest residual-market share. This means, she

said, that Alaska has the largest percentage of its market in the assigned-risk category. Ms. Carter said that, overall, 69 percent of policies in the residual market are under \$2,500.

Ms. Carter said that industries more susceptible to placement in the residual market include carpentry, clerical, trucking, painting, and outside sales.

OTHER BUSINESS

STRUCTURED SETTLEMENTS TRANSFERS PROTECTION MODEL ACT

Ms. Frick said that NCOIL bylaws required the Committee to review the NCOIL *Structured Settlements Transfers Protection Model Act*, which the Committee originally adopted in 2000. She said that over the course of the last several meetings, legislators had deferred their review of the model in order to investigate various issues related to the readoption or sunset of the bill, including consumer-protection provisions in a similar structured settlements model act and possible federal preemption of the NCOIL model under the *Victims of Terrorism Tax Relief Act* of 2002. Ms. Frick said that the Committee had before it several proposed amendments to the NCOIL model, sponsored by Assem. Calhoun, that were not submitted in accordance with the NCOIL 30-day deadline rule and that would require a two-thirds vote of the Committee to waive the 30-day rule. Ms. Frick said the amendments had been deferred from the November Annual Meeting in order to allow time for redrafting.

In general, Ms. Frick said, the proposed amendments addressed requiring notification of any costs that may be deducted from periodic payments; notification of the “cost” of a proposed structured settlement transfer; and penalties for non-compliance. She said that the NCOIL model, as adopted, would protect structured settlement recipients involved in the transfer of structured settlement payment rights and addressed the issues of court approval, standards for assignment, professional advice, and disclosure requirements.

Randy Dyer of the National Structured Settlements Trade Association (NSSTA) said that since NCOIL first adopted its structured settlements model act in July 2000, various interested parties had compromised on a separate but similar model, the *Model State Structured Settlement Protection Act*. He said 36 states had legislation on the issue and that those statutes often were based on the NSSTA/National Association of Settlement Purchasers (NASP) compromise bill. He said federal language was based on the compromise legislation.

Mr. Dyer commented that, though the three proposed amendments to the NCOIL model might improve that document, the reality was that support had shifted away from the NCOIL language in favor of the model drafted by NSSTA/NASP. Earl Nesbitt of the NASP agreed.

Upon a motion made by Rep. Bowler and seconded by Rep. Keiser, the Committee voted unanimously to sunset the NCOIL structured settlements model act and to support the NSSTA/NASP compromise bill. Sen. Leavell said that the issue would

appear on the Executive Committee's non-controversial calendar, and he noted that NCOIL would make clear that the language had been drafted by the NSSTA and the NASP.

UPDATE ON FRAUD ISSUES

Howard Goldblatt of the Coalition Against Insurance Fraud said several state legislatures had been addressing workers' compensation insurance fraud. He said that in California legislators continued an ongoing battle to require an applicant for employment to reveal whether he/she had previously been adjudicated for workers' compensation fraud. Hawaii, he said, was considering legislation to expand the state fraud bureau to cover all lines of insurance, not just auto. Mr. Goldblatt said that the AFL-CIO had concerns that expanding the bureau to cover workers' compensation would endanger the legitimate claims of injured victims. He said Maryland was considering, among other things, requiring the workers' compensation commission to report cases of workers' comp fraud to the fraud bureau. Finally, Mr. Goldblatt said Vermont had a bill that would make workers' compensation fraud a felony.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:50 a.m.

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