NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
CHICAGO, ILLINOIS
THURSDAY, JULY 13, 2017
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Committee met at the Intercontinental Hotel in downtown Chicago on Thursday, July 13, 2017 at 10:15 am.

Representative Marguerite Quinn of Pennsylvania, Chair of the Committee, presided.

Other members of the Committee present:

Sen. Jason Rapert, AR
Rep. Martin Carbaugh, IN
Rep. Peggy Mayfield, IN
Rep. Joseph Fischer, KY
Rep. Bart Rowland, KY
Rep. Greg Cromer, LA
Rep. Edmond Jordan, LA
Rep. Michael Webber, MI
Rep. George Keiser, ND
Asw. Maggie Carlton, NV
Sen. James Seward, NY
Rep. Bill Botzow, VT
Rep. Kathie Kennan, VT
Del Steve Westfall, WV

Other legislators present were:

Sen. Irene Aguilar, CO
Rep. Dick Hamm, IN
Asm. Kevin Cahill, NY

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its March 4, 2017 in New Orleans.

DISCUSSION ON ILLINOIS WORKERS' COMPENSATION REPORT EFFORTS

Ramona P. Tanabe, Executive Vice President and Counsel, Workers' Compensation Research Institute (WCRI). Ms. Tanabe reviewed the mission of the WCRI and noted that she would be presenting the studies of the WCRI regarding opioid utilization and recent regulatory changes to the system across the states. She noted that the WCRI is supported by carriers, employers, state agencies, medical providers and labor advocates. The WCRI studies are all peer reviewed and do not take a position but rather provide information as a resource to those who are stakeholders in various jurisdiction. She went on to say that the WCRI has a role in the change of workers' compensation but they are not part of the decision-making process. She added that the

studies of the WCRI focuses on the benefit delivery system. Ms. Tanabe stated that the WCRI does not study financial issues since there are other organizations assigned that role and they do it well. Neither do they make recommendations.

Ms. Tanabe went on to report about Illinois findings of their CompScope™ which is their multi-state benchmarking program which studies information about an individual state as it compares to other states and then they look at the results over time. Ms. Tanabe stated that the total cost per claim in Illinois is $48,898, that being the individual unit of analysis within their studies. Those expenses include medical benefits, income replacement benefits and the benefit delivery expenses also known as the allocated loss adjustment expenses.

Ms. Tanabe reported that Illinois had been experiencing an increase until 2010 when the total cost per claim decreased. However, she noted that they were still higher than most other study states. She went on to say that the main reason for the decrease was in medical payments due to a reduction in the fee schedule that occurred within the state as well as some changes to the indemnity benefits. Ms. Tanabe went on to say that for many years, Illinois was experiencing an increase but also leading the pack in terms of costs compared to other states but then in 2010, they showed the largest decrease in total costs per claim.

Ms. Tanabe went on to say how Illinois compares to other states. She stated that Illinois was on the high side but not the highest state included in WCRI's study. She added that those states that are higher do not have medical fee schedules which could be the reason why they are higher. There are other indicators as to why those states were higher. She stated that starting in 2006 a medical fee schedule was introduced for professional services and it was again changed in 2011 and 2012. She added that 2009 introduced a fee schedule for ambulatory surgery centers and out-patient hospital care. 2011 saw the implementation of the preferred provider networks and some additional rules on utilization review and the limits on the duration of benefits for wage differentials.

She stated that the main reason for the decrease was due to the reduction in medical payments by 30% in fee schedule rates for all medical services in 2011. In 2011, Illinois was the highest state in the WCRI's study at $21,000 and, in 2012, it decreased and was only 18% higher than the median state in the study largely attributable to the medical improvement guidelines that were put into place.

Ms. Tanabe stated that Illinois has a higher temporary disability benefits because the average TD benefits are based on 133 1/3% of the state average weekly wage while other states use 100% of the state's average weekly wage as the maximum TD benefit. Illinois does not have a lot of injured workers that hit that maximum cap benefit because of the percentage of the higher than average weekly wage. Illinois also has a slightly longer duration of the TD because there aren't any limited on the duration of temporary disability. The WCRI has heard from other stakeholders that terminating temporary disability benefits in Illinois is a bit harder than in other states. There are higher percentages of claims in Illinois with lump sum settlements and, in 2011, Illinois implemented the AMA guidelines for use in the degree of impairment and there has been a higher percentage of claims that settle since then.

Ms. Tanabe stated that there were currently 18 states in the study all of which were selected because they are large important state like Illinois and there was a wide range of industries captured by those states. She added that those states represent about 70 – 75% of the benefits paid nationally. She also stated that the data is adjusted to make meaningful comparisons across the states.

Ms. Tanabe then addressed the use of opioids. She noted that opioids have become an issue in and outside the workers compensation system and she has pulled information from outside sources on what has been done in other jurisdictions in regard to opioid regulation. She said that guidelines have been put into place to monitor prescriptions of opioids. Drug formularies, or preferred drug lists, have been implemented in many states and changes were made on the prescribing limits and dispensing of opioids as well as the number of days supplied that are permitted. Treatment addressing opioids or addressing chronic pain management are becoming more common in states and drug monitoring programs have been implemented in many states.

Opioids have become a major issue in the industry and different states have put in reform revisions. Washington was the first workers' compensation jurisdiction to adopt a drug formulary in 2002. She went on to say that in 2011, Texas adopted a closed drug formulary based on official disability guidelines (ODG). Arizona, Oklahoma and Tennessee adopted the ODG formulary between 2014 and 2016; California is required to establish a formulary by July 2017 and other states with formularies include Delaware, North Dakota, Ohio and Wyoming. Ms. Tanabe stated that Washington's RX costs per claim were among the lowest as they require the use of generic forms of drugs as opposed to the brand name. Ms. Tanabe also stated that Ohio's Bureau of Workers' Compensation reported that their formulary resulted in a 25% decrease in Opioids and a 74% decrease in muscle relaxants. She further stated that there was a decrease in prescription drug costs by 15% between 2011 and 2014.

Ms. Tanabe reported that the number of opioids, per claim, decreased in most states between 2010 and 2013. However, in California, opioids make up 27% of all prescriptions requiring pre-approval. Other state policies have made the distribution of Opioids state specific. She further stated that different states prescribe opioids for certain periods of time, i.e. 48 hours, a 15-day supply or a 30-day supply with preauthorization. In addition, she stated that Tramadol is the most largely prescribed weaker opioid drug in Florida.

In 2011, Illinois changed the pharmacy fee schedule to put in place an equalization between the reimbursements for physician dispensed drugs to pharmacy dispensed drugs so that they would be reimbursed at the same price. In 2012, it was changed to where the pharmacy was reimbursed to the cost of the packaged wholesale price. There are three times the amounts of Opioids being prescribed -- one the standard release drug and the other an extended-released drug. She added that these new strengths are being prescribed by physicians at a much higher price than other strengths.

Treatment guidelines are also a common implementation across states but the evidence is mixed on the effectiveness of treatment guidelines. There are a number of states that adopted treatment guidelines or guidelines for chronic pain. Treatment guidelines

normally include drug testing. In New York, it was recommended once a year while in other states, 4 – 5 times a year. Some states recommend alternative care prior to the use of Opioids. She concluded by saying that Prescription Drug Monitoring Programs (PDMP) have been adopted in many states and, in some states, it was mandated however, there were other policies not discussed during this meeting that are likely to be adopted by states like continuing medical education for physicians, presenting identification when picking up prescriptions as well as exam requirement and contracts with patients.

Steve Schneider of American Insurance Association (AIA) stated that the Oregon Premium Rate Survey, which comes out every two years, is the most common way of monitoring the issues in workers compensation. He noted that some of the issues that have been seen as working in other states, particularly in regard to opioid drugs, have been almost dismissed in Illinois. He said that there have not been serious reform measures considered, noting that major issues are divided into three parts: the overview, the need for reform, and the lack of results to date.

Mr. Schneider stated that since the Governor's race in 2014, there have been approximately 8 bills that have currently passed by some bodies. He also stated that there were several pro-positive reform bills several in the Senate, Senate Bill 162, House Bill 200 and most important, House Bill 4068 and Senate Bill 12 which was a compromise measure that was seriously being considered in the Senate but eventually failed. He went on to say that critics have pushed for punitive, punishing measures stating that those were the only reforms necessary. He also stated that House Bill 2525 and House Bill 2622, both of which have passed the legislature, now reside with the Governor. Those bills state that an insurance company must get permission from the Governor before selling its product at a particular premium amount. He went on to say that they have asked the Governor to veto that legislation. He also stated that House Bill 2622 would put the State of Illinois in the insurance business and they have asked to Governor to also veto that Bill.

Mr. Schneider reported that there was no information provided to medical providers in Illinois. He added that there were some abuses, like the cost per pill, which should and can be corrected. He went on to say that the need for reform was obvious as the State of Illinois was the 8th most expensive state. Workers' compensation is vital to every States economy. System changes are steps in a positive direction. He concluded by saying that self-insureds are also asking for reform and they do not buy insurance.

Frank O'Brien from the Property Casualty Insurers Association of American (PCIAA) noted that workers' compensation is a very difficult issue in Illinois and that the politics are difficult. There is an iron proof case for the need for reform as presented by the business community. He also stated that there was political constituency on the side of reform in terms of the providers and the labor community.

NCOIL Treasurer Rep. Matt Lehman (IN) asked what the speakers feel that NCOIL should do so that there is a model to bring uniformity to all states. Mr. Schneider responded by stating that drug costs and prescription costs by doctors needed to be addressed, and that some uniformity should be prepared that could be monitored and

measured. What is being done in Indiana is a good model of what can be done in other states.

INTRODUCTION OF IMPACT OF DIRECT DISPENSE PROGRAMS ON STATE WORKERS' COMPENSATION SYSTEMS

Rep. Quinn stated that physician dispensing does not mean giving out samples. She stated that the practice continues and that the drug manufacturers put out the pills and that the NDC (National Drug Code) gets involved. Pills are repackaged and a new NDC is assigned. Once the new AWP (Average Wholesale Price) is added and many of the states including PA have statutory payment for physicians in WC. They are allowed a reimbursement at a rate of 110% which does not necessarily tie back to the original costs of the drugs so one of the problems is an inflation rate of 400 – 800%. The patient never sees a bill and so they have no idea that prices are being inflated dramatically and that people making the profit are the repackaging companies. She went on to say that most of her physicians in PA have never heard of this practice. She also stated that PA has limited the number of days that a physician can direct dispense to seven days. PA has also banned the practice of direct dispensing of over-the-counter drugs. Rep. Quinn stated that she looks forward to further discussing this issue at the November Annual Meeting in Phoenix.

DISCUSSION ON ALTERNATIVES TO WORKERS' COMPENSATION FOR INDEPENDENT CONTRACTORS

Brad Nail, Senior Manager, Insurance and Public Policy at Uber reported that work related injury protection has become an issue to Transportation Network Company (TNC) drivers. He noted that the model that NCOIL had passed has been widely praised and passed in many states but the next question was how do companies and the insurance industry improve workers' compensation for the TNC's and Uber driver partners. He stated that Uber drivers would benefit from additional coverage options to protect them in the event of work related injuries. Key facts include that drivers are independent contractors through the contracts they enter into with Uber and that they do not received workers' comp benefits. He went on to say that although they are well protected through the liability NCOIL model, there are possible exposures that could be addressed through additional insurance options. Uber and OneBeacon have come up with an Occupational Accident insurance policy available to drivers. This policy was designed to provide a variety benefits to independent contractors at a reasonable cost. It would give them protection from the most common types of loses that they would suffer from an accident related injury. One Beacon is the largest writer of occupational accident insurance for independent contractors.

Tedd Merrill Senior Vice President, Shared Economy at OneBeacon Accident & Health, stated that Occupational Accident Insurance was currently available to the trucking industry. Independent contractors have been used in the trucking industry for many years and they often are not covered under the motor/carrier workers' compensation plan and many times they cannot afford their own workers' comp policy. Often, drivers need an affordable work injury benefit and that is where occupation accident came into play. Mr. Merrill stated that OneBeacon worked with Uber to develop the first of its kind occupational accident policy for ride share drivers and also to provide usage base pricing. An insured is an independent driver of Uber who can enroll and sign up for

coverage through the app and drivers are covered when they are on line, in route and when they are transporting a passenger. He went through what the coverage limits were stating that the cost was 3.57 cents per mile. He further stated that the driver is only charged a premium when they are transporting a passenger. The cost per mile is added to the passenger base so that it does not affect the earning potential of the driver. Uber is not the broker. Aon is the broker. Different than the auto liability coverage, Uber is the policy holder and the driver is the additional insured.

Mr. Merrill reviewed the features of the app stating that Occupation Accident insurance is voluntary to the driver and it is made very clear that this is not workers' compensation coverage. Atlantic Specialty is the OneBeacon division that is the underwriting insurer and they have to file the policy in every state. It is a group insurance policy and, as such, needs to comply with group insurance rules in any given state and it needs to be approved by the insurance department. Currently, it is available in 28 states and it is filed and was approved in 30 states. It is also pending in 17 states.

Rep. Quinn stated that many states offer similar benefits and that in PA, there is a requirement of $5,000 of medical benefits including the driver. Assuming there is a problem, Rep. Quinn asked who the primary payer was. Mr. Nail responded by saying that the insurance policies themselves have clauses that dictates who pays and in what order. Often, the first party medical benefits on a personal auto policy may not apply while engaged in TNC activity. If it does in PA for example, the personal injury protection coverage would pay on a primary basis and the occupation accident medical coverage would step up after the $5,000 was exhausted.

Rep. George Keiser (ND) asked for Mr. Nail to review the maximum coverages stating that he was interested in the medical indemnity and rehab and the other features of a traditional workers comp model and how it applies to this product. Mr. Nail responded by stating that the medical expense coverage pays for the medical expenses as a result of an accident related injury up to a limit of $1,000,000. A floor of $100 per week was set as a minimum for disability for both short-term and inability to work as well as continuing disability. In a workers' comp policy, 52 weeks are used to average the earning but because of the nature of an Uber driver, most of whom are part-timers, it would probably be unfair to the driver. As such, only four weeks are calculated.

Rep. Quinn asked if there was coverage for the passenger in the car. Mr. Nail responded by saying that the passenger is protected two ways, one through $1,000,000 in third-party liability that is on the vehicle in case the Uber driver is at fault and second, through $1,000,000 for under insured motorist coverage through the Occupational Accident policy in case another party was at fault.

Rep. Bill Botzow (VT) asked how does this approach as an alternative to workers compensation apply to other occupations with a high incident of independent contractors or was this basically driver-trucking specific? Mr. Nail responded by stating that they started a sharing economy unit within One Beacon specifically for the reason of looking at other shared economy verticals that may benefit from this kind of insurance. He further stated that within a year, they should see something outside the area of wheels.

Sen. James Seward (NY) stated that New York has a workers' compensation component in regard to ride sharing through its existing black car fund which was set up

to deal with black car drivers in New York City but in other states that have ride sharing, there is no workers' compensation requirement and he wanted to confirm that this was another form of "workers' comp" coverage for those drivers where there is no workers' compensation. Mr. Nail responded by saying that New York is unique and the black car fund already existed and that occupational accident was geared to those drivers who do not have an employer relationship.

Rep. Peggy Mayfield (IN) stated that in the slides shown, it specifically stated accident related injuries multiple times and if she were a driver and she slips and falls, was that covered under this policy. Mr. Merrill responded by stating that that kind of injury was covered.

ADJOURNMENT

There being no further business, the Committee adjourned at 11:30 a.m.