

# **Workers' Compensation Benefit and Insurance Oversight Committee**

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**Maryland General Assembly**  
**Workers' Compensation Benefit and Insurance Oversight**  
**Committee**  
**2012 Membership Roster**

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Senator Katherine Klausmeier, **Co-chair**  
Delegate Sally Jameson, **Co-chair**  
Senator Allan H. Kittleman  
Delegate Joseph J. Minnick

*Representative of Maryland Business Community:*  
Mary Anne Reuschling

*Representative of the Maryland Labor Organization:*  
Jerry S. Lozupone

*Representative of MD Building and Construction Labor Organization:*  
Roderick P. Easter

*Two Members of the Public:*  
Michael G. Comeau  
Debora Fajer-Smith

*Member of Insurance Industry:* Vacant

*Member of a Workers' Compensation Rating Organization:*  
George Ortiz

*Member of Medical and Chirurgical Faculty of Maryland:*  
Kenneth R. Lippman, M.D.

*Members of the Bar:*  
Rudolph L. Rose, Defense Lawyer  
P. Matthew Darby, Plaintiff Lawyer

*Maryland Certified Rehabilitation Service Provider:*  
Kathy M. Stone

*Self-insured Local Government Entity (per Chapter 5 of 2011):* Vacant

*Workers' Compensation Commissioner – Ex officio:*  
Maureen Quinn

**Committee Staff**

Tami Burt, Laura Atas, and Jennifer Ellick





## MARYLAND GENERAL ASSEMBLY

### WORKERS' COMPENSATION BENEFIT AND INSURANCE OVERSIGHT COMMITTEE

December 14, 2012

The Honorable Thomas V. Mike Miller, Jr., Co-chairman  
The Honorable Michael E. Busch, Co-chairman  
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The Workers' Compensation Benefit and Insurance Oversight Committee respectfully submits a summary report of its 2012 interim activities. The committee met once during the interim (November 13) to consider a number of issues that affect the State's workers' compensation insurance market, including whether the establishment of a pharmaceutical fee schedule for dispensing physicians would lower workers' compensation costs and whether the Chesapeake Employers' Insurance Company should be required to join a ratemaking organization. Below is a summary of the issues that the committee considered.

#### **Workers' Compensation Commission Annual Report**

Mr. Karl Aumann, Chairman of the Workers' Compensation Commission (WCC), summarized WCC's annual report, which states that the number of claims filed in fiscal 2012 increased by 2.0% over the prior year. There had been a 1.7% increase from 2010 to 2011. Mr. Aumann advised that the number of claims filed has nearly returned to the fiscal 2009 level. In addition, Mr. Aumann gave an update on the impact of *Potomac Abatement, Inc., v. Sanchez*, 424 Md. 701 (2012), which established that WCC retains jurisdiction to hear new issues while other issues in the same claim are pending on appeal (provided that no evidence was taken or decision made on the new issues in the hearing from which the appeal was taken). Although WCC had initially expressed concern that the *Sanchez* decision might result in over-burdened dockets, Mr. Aumann advised that *Sanchez* has been applicable to only 22 cases (out of thousands) and that any impact to dockets has been minimal.

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## **Workers' Compensation Insurance Premium Rates for 2013**

Mr. George Ortiz, State Relations Executive of the National Council on Compensation Insurance, Inc. (NCCI), advised that NCCI has proposed an overall average workers' compensation voluntary market loss cost level change of +3.8% effective January 1, 2013. Mr. Ortiz advised that the increase in pure premium rates constitutes a minor adjustment and that, overall, the State's workers' compensation system is stable.

Mr. Thomas Phelan, President and Chief Executive Officer; Mr. Dennis Carroll, General Counsel; and Ms. Paige Beck, Chief Financial Officer, of the Injured Workers' Insurance Fund (IWIF) stated that, although IWIF follows a different ratemaking approval process, its rates on average will not change for policies issued or renewed after January 1, 2013.

## **Workers' Compensation Issues**

### **Maryland Insurance Administration's Report on Whether the Chesapeake Employers' Insurance Company Should Become a Member of the Designated Rating Organization**

Chapter 570 of 2012 converted IWIF to a private, nonprofit, nonstock insurance company called Chesapeake Employers' Insurance Company (Chesapeake), which will serve as the State's workers' compensation insurer of last resort effective October 1, 2013. The legislation further required the Maryland Insurance Administration (MIA), in consultation with NCCI, to determine and report by October 1, 2012, whether the company should be required to align its ratemaking practices with those of all other Maryland workers' compensation insurers through membership in the designated rating organization.

Ms. Therese Goldsmith, Commissioner, and Ms. Sandra Castagna, Associate Commissioner, of MIA summarized the findings from MIA's report. MIA recommended that Chesapeake (1) become subject to Title 11 of the Insurance Article; (2) report its loss experience to NCCI on a phased-in basis over a five-year period; and (3) develop a merit rating plan to lessen the impact of the transition on insureds.

Mr. Ortiz concurred with each of MIA's recommendations and advised that the recommendations would result in a uniform marketplace, disrupt the market no more than minimally (due to the five-year transition period), and result in cost savings to Chesapeake (which would no longer need to pay a private firm for ratemaking services). Mr. Ortiz also noted that IWIF is the only private carrier in the nation that does not belong to a rating organization.

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Mr. Phelan and Mr. Carroll disagreed that it is necessary for Chesapeake to join NCCI. Mr. Phelan indicated that IWIF is satisfied with the private firm that serves its ratemaking needs and that its current contract for these services is less expensive than membership in NCCI. Mr. Phelan stated that Maryland's rates are more stable than other states' rates and that IWIF's current ratemaking process is successful in keeping rates low for Maryland employers.

**The committee anticipates that legislation regarding Chesapeake's membership in NCCI may be introduced in the 2013 session.**

### **Repackaging and Physician Distribution of Pharmaceuticals**

Physician-dispensing of repackaged pharmaceuticals increases costs for the workers' compensation system because physicians in many states are not bound by state fee schedules and pharmacy cost controls. According to a study by the Workers' Compensation Research Institute released in July 2012, physicians directly dispensed 35% of all medications prescribed to injured workers in Maryland, representing 47% of total spending on pharmaceuticals for workers' compensation claims. The report determined that in Maryland from 2007 to 2011, prices paid for physician-dispensed prescriptions increased while prices paid to pharmacies changed little or fell. For example, the average price per pill paid to physicians for Vicodin increased 78%, while the price paid per pill to pharmacies for the same drug fell 8%.

WCC previously proposed two sets of regulations that would have established a pharmaceutical fee schedule. Several states have lowered overall workers' compensation costs by implementing similar measures. The AELR Committee, however, did not approve either set of regulations.

Several interested parties spoke at the meeting regarding the potential establishment of a pharmaceutical fee schedule for dispensing physicians. Mr. Michael S. Levin, on behalf of the Maryland Chamber of Commerce; Mr. Bob Erlandson, on behalf of the Maryland Self-Insurers' and Employers' Compensation Association; and Mr. Robert Emmett Bonner, on behalf of the American Insurance Association, argued that a fee schedule is necessary to control costs, while Mr. Jay Schwartz, on behalf of MedChi, argued that proposed regulations in this area unfairly target physicians and are not cost effective. Mr. Schwartz claimed that a lower number of pills are dispensed to an injured worker when provided directly by a physician, as opposed to when an injured worker takes a prescription written by a physician to be filled by a pharmacy. The insurance representatives argued that over prescribing of drugs has caused injured workers to become dependent on certain drugs. Commissioner Maureen Quinn mentioned that WCC is concerned about the dependency on prescription drugs.

**The committee anticipates that further discussion or legislative action may occur in the 2013 session to address the issue of rising, inflated prescription drug costs.**

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## **Proposed 2013 Legislation and Other Issues**

Ms. Ileen Ticer of the Maryland Defense Council discussed House Bill 751 of 2010 (failed), which would have granted insurers a credit against a future award if treatment is delayed by an unrelated medical condition. She gave an example of someone who is delayed in having surgery that is necessary for the healing of a work injury because the person is pregnant. The employer/insurer has to continue paying temporary total benefits during the time of the unrelated medical condition.

**The committee anticipates that similar legislation regarding delay of treatment due to unrelated health problems may be introduced in the 2013 session.**

Ms. Debora Fajer-Smith, a claimant attorney and a public member of the committee, suggested access to care as a potential issue for future discussion and study by the committee. Mr. Robert Zarbin, a claimant attorney representing the Maryland Association for Justice, agreed that access to care is an important issue. In addition, Mr. Zarbin argued for increased regulation of employers/insurers' independent medical exams to achieve lower costs and enhanced fairness. Independent medical exams conducted by a physician chosen by the claimant or the claimant's attorney are regulated under the fee guide, while independent medical exams conducted by a physician chosen by the employer, the employer's insurer, or the defense attorney are not regulated under the fee guide.

**The committee anticipates discussing the access to care issue during the 2013 interim and that legislation regarding increased regulation of independent medical exams may be introduced in the 2013 session.**

During the 2013 session, the committee may also conduct its annual review of workers' compensation-related legislation and any outstanding issues raised during the interim, including a required study on occupational disease presumptions for firefighters and emergency personnel.



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The committee expresses its appreciation for the advice and assistance provided by governmental officials, members of the public, and legislative staff during the 2012 interim. The committee looks forward to the same spirit of cooperation and assistance during the 2013 legislative session.

Respectfully submitted,

Senator Katherine Klausmeier  
Senate Chair

Delegate Sally Jameson  
House Chair

KK:SJ/TDB/tas

cc: Mr. Karl S. Aro  
Mr. Warren G. Deschenaux  
Ms. Lynne B. Porter