
Workers' Compensation Benefit and Insurance Oversight Committee

December 16, 2008

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 2008 interim activities. The committee met once during the interim (November 12) to consider a number of issues that affect the State's workers' compensation insurance market. Attached is a summary of the issues that the committee considered. During the 2009 session, the committee may also conduct its annual review of workers' compensation related legislation and any outstanding issues raised during the interim.

The committee expresses its appreciation for the advice and assistance provided by governmental officials, members of the public, and legislative staff during the 2008 interim. The committee looks forward to the same spirit of cooperation and assistance during the upcoming 2009 legislative session.

Respectfully submitted,

Senator Nathaniel Exum
Senate Chairman

Delegate Carolyn Krysiak
House Chairman

NE:CK/AMM/ncs

Maryland General Assembly
Workers' Compensation Benefit and Insurance Oversight
Committee
2008 Membership Roster

Senator Nathaniel Exum, **Co-Chairman**
Delegate Carolyn J. Krysiak, **Co-Chairman**
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:

Vacancy

Two Members of the Public:

Vacancy
Debora Fajer-Smith

Member of Insurance Industry:

H. Glenn Twigg, Jr.

Member of a Workers' Compensation Rating Organization:

Lori Lovgren, Esq.

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: (effective October 1, 2007)

Kathy M. Stone

Workers' Compensation Commissioners – Ex-Officio:

Maureen Quinn

Committee Staff

Tami Burt and Ann Marie Maloney
Department of Legislative Services

Workers' Compensation Benefit and Insurance Oversight Committee Interim Report

Employer Compliance

In 2002, the Legislative Auditor and the Joint Audit Committee of the General Assembly raised concerns that the Workers' Compensation Commission (WCC) lacks the authority to proactively identify uninsured employers. WCC has the authority to require an employer to obtain workers' compensation insurance and penalize an uninsured employer but may not be aware of a lapsed insurance policy until a claim is filed. Following discussions over the last several years, WCC formed the Task Force to Study Employer Compliance with Workers' Compensation Insurance to review the problem.

The task force recommended that WCC work with the Maryland Occupational Safety and Health Program and the Department of Labor, Licensing, and Regulation (DLLR) to obtain information such as accident investigation reports and employment and wage data. (WCC has developed a memorandum of understanding with DLLR to facilitate information sharing.) The task force also recommended legislation to clarify WCC's authority to conduct investigations and to enhance penalties for noncompliance.

The committee anticipates that legislation regarding employer compliance will be introduced in the 2009 session.

Vocational Rehabilitation

The committee heard from a claimant who was denied continuity of his vocational rehabilitation plan due to repeated appeals by the employer. Although it is not anticipated that legislation will be introduced during the 2009 session, the oversight committee may review the vocational rehabilitation process in the future to ensure that the circumstances described by the claimant do not constitute a significant problem.

Injured Workers' Insurance Fund (IWIF)

During the 2008 session, considerable discussion arose about the role and oversight of IWIF. Under Chapter 612 of 2008, the Maryland Insurance Administration (MIA) is required to study several issues related to IWIF and submit a report to the General Assembly by December 1, 2008, that evaluates whether IWIF's ratemaking process produces actuarially sound rates and identifies laws related to consumer protections and financial soundness that apply to other insurers but not to IWIF.

Since that report will not be released until December 31, pending a public hearing that was held December 10, the committee did not have an opportunity to review any recommendations that may be included in the report.

The committee anticipates that legislation could be introduced in the 2009 session, depending on the recommendations of the report of the Maryland Insurance Administration.

Proposed Legislation

The committee heard several possible legislative proposals from the workers' compensation community at its November 12 meeting, including proposals to:

- Reintroduce legislation (House Bill 480/Senate Bill 550 of 2007) that would allow a claimant who appealed to a court a decision on a claim filed with WCC to introduce a record of a health care provider without supporting live testimony.
- Reintroduce legislation (Senate Bill 602 of 2007) that would provide that an employer is not liable for temporary total disability benefits for an employee who is incarcerated and is not otherwise employed as a covered employee of the prison or participating in a work release program.
- Index to inflation death benefits for partial dependents. The current cap is \$60,000 and is set in statute.
- Update the statutory reference to the American Medical Association guidelines so that the most current edition is used.

Annual Reports

Workers' Compensation Commission (WCC): The number of claims filed in fiscal 2008 declined by 3.5 percent over fiscal 2007, a decline which, according to WCC, is a slightly smaller drop than last year. WCC's annual report shows an increase, however, in the number of issues per claim.

National Council on Compensation Insurance, Inc. (NCCI): The pure premium rate filed by NCCI reflects an anticipated 5.4 percent overall drop for most industries in calendar 2009, compared to a 1.7 percent decrease for calendar 2008 and a 5.2 percent decrease in calendar 2007. NCCI files the rates that insurers need to charge to cover their loss costs (called pure premium) and does not include expense and profit factors that insurers incorporate into the actual premium charged to policyholders. NCCI considers Maryland's rates and overall market to be stable.

Maryland is the tenth lowest in workers' compensation comparative costs in 2008 for manufacturing and seventh lowest for office and clerical. One of the main factors in limiting costs is the continued decline in claim frequency, which follows a national trend.

Maryland Insurance Administration (MIA): MIA's annual report confirms NCCI's opinion regarding the health and competitiveness of the State's workers' compensation insurance market. Over 100 insurers offer workers' compensation coverage, which is the third largest line in property and casualty insurance. Over 70 percent of the market is written by eight insurance groups. IWIF remains the largest insurer but its market share dropped from 30.8 percent in 2006 to 27.8 percent in 2007.