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

Maryland General Assembly
Workers' Compensation Benefit and Insurance Oversight
Committee
2009 Membership Roster

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Delegate Carolyn J. Krysiak, **Co-Chairman**
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Delegate Joseph J. Minnick

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Mary Anne Reuschling

Representative of the Maryland Labor Organization:
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Representative of Maryland Building and Construction Labor Organization:
Roderick P. Easter

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:
Kathy M. Stone

Workers' Compensation Commissioners - Ex-Officio:
Maureen Quinn

Committee Staff

Tami Burt and Michael Vorgetts
Department of Legislative Services



MARYLAND GENERAL ASSEMBLY
WORKERS' COMPENSATION BENEFIT AND INSURANCE OVERSIGHT COMMITTEE

December 14, 2009

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 2009 interim activities. The committee met once during the interim (December 9) 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 2010 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 2009 interim. The committee looks forward to the same spirit of cooperation and assistance during the 2010 legislative session.

Respectfully submitted,

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Nathaniel Exum

Senator Nathaniel Exum
Senate Chairman

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Carolyn Krysiak

Delegate Carolyn Krysiak
House Chairman

NE:CK/TDB/ncs

Workers' Compensation Benefit and Insurance Oversight Committee Interim Report

Discussion to Reform Workers' Compensation Death Benefits

Chapters 616 and 617 of 2009 required the Workers' Compensation Commission (WCC) to form a workgroup, comprised of individuals representing the various sectors of the workers' compensation community, to conduct a study of statutory death benefit provisions to determine legislative changes that would provide fair and equitable benefits to wholly and partially dependent individuals. The workgroup agreed with a majority consensus, after five meetings during the fall of 2009, to a set of basic principles on which to propose revisions to current law. Based on discussions at the December 9 meeting, the workgroup anticipates meeting one more time and issuing its final report in January 2010.

Mr. Karl Aumann, WCC Chairman and Ms. Maureen Quinn, WCC commissioner described the proposal developed by the workgroup. Under current law, the wholly dependent spouse of a deceased individual may receive benefits for the period of the dependency, generally resulting in lifetime benefits; a wholly dependent child of the deceased may receive benefits until the age of 18; and a wholly dependent who is not a spouse or child of the deceased may receive benefits until \$45,000 is paid. Further, under current law, any partially dependent (whether the dependent is the spouse or a child of the deceased or not the spouse or a child of the deceased) may receive benefits for the period of dependency, but only until \$75,000 has been paid.

The workgroup's proposal eliminates the statutory distinction between whole and partial dependents in favor of benefits that are based on the degree of dependency (*i.e.*, the percentage the deceased contributed to the total family income). Under the proposal, one benefit would be paid collectively to all dependents, with WCC determining the apportionment among all dependents. The proposal offers enhanced benefits, four-fifths of the worker's average weekly wage (not to exceed the State average weekly wage), to dependent spouses and children for two years. Dependents then receive benefits equal to two-thirds of the worker's average weekly wage (not to exceed the State average weekly wage) for 10 additional years. Benefits are terminated at the earlier of (1) the end of 12 years; or (2) what would have been the seventieth birthday of the deceased, if five years of benefits have been paid. The proposal eliminates lifetime benefits, unless a dependent was totally disabled at the time of the worker's date of disablement. Benefits to a dependent who is not a spouse or child of the deceased are collectively subject to a \$65,000 cap and may not receive enhanced benefits. In addition to the reformed death benefit provisions, the proposal includes an education benefit of up to \$20,000 (for "reasonable tuition and fees"), which is intended to help surviving spouses reenter the workforce.

Several interested parties spoke at the meeting regarding the proposal. Mr. Dennis Carroll, General Counsel at the Injured Workers' Insurance Fund, indicated that the proposal is easy to administer and is roughly revenue neutral in that partial dependents will

receive increased benefits while wholly dependents benefits will be capped resulting in a net savings. Mr. Michael Dailey of the Maryland Defense Counsel, Inc. discussed concerns that his clients, as well as self-insured employers and counties, may have regarding the cost impact of providing the enhanced benefits and the education benefit. He also indicated that self-insured counties may be concerned with the increased benefit to partial dependents since the added costs for these counties may not be offset with the savings from capping the benefits to wholly dependents. Chairman Aumann indicated that the National Council of Compensation Insurance, Inc. (NCCI) will be reviewing the proposal for its cost impact. The committee requested that the workgroup reconvene once the workgroup received NCCI's cost analysis as well as costs impact information from some of the self-insured counties. The committee also requested that the workgroup strive for a fully consensus proposal.

The committee anticipates that legislation regarding statutory changes to death benefit provisions will be introduced in the 2010 session.

Discussion of the Medical Fee Guidelines Cap

The committee heard testimony from Mr. Christopher Costello of the Maryland Workplace Health Care Association (MWHCA) regarding the development of the State's guide to medical and surgical fees. Maryland workers' compensation law allows WCC to establish a fee guide, but requires WCC to review the guide every two years for completeness and reasonableness, and to make appropriate revisions. MWHCA believes that it is unfair to base the workers' compensation fee guide on Medicare rates, as is the current practice, because the health care requirements for the two reimbursement systems differ significantly. Ultimately, MWHCA argues that the current fee guide (tied to Medicare rates) is unrealistic and has a depressing effect on the number of physicians willing to administer care in workers' compensation cases.

Mr. Karl Aumann, Chairman of WCC, testified that WCC is fulfilling its obligations related to the fee guide. Several years ago, regulations were adopted to implement the use of Medicare rates plus a series of multipliers depending on the medical or surgical procedure. WCC's fee guide committee meets regularly and provides an update at every WCC meeting on the adequacy of the multipliers. Further, as a recent trend, workers' compensation commissions around the country base their fee guides on Medicare rates (plus multipliers) because they are universally accepted, use standardized codes, and generally make access to care easier.

Discussion to Simplify the Appellate Process

The committee heard testimony regarding changes to the appellate process in workers' compensation cases. The specific issue was addressed in House Bill 1253 of 2009, which would have authorized an appellee, when responding to an appeal of a WCC ruling, to introduce a health care provider's writings or records without supporting testimony from a medical professional. Such records may be used as evidence of the existence of a health condition, a

health care provider's opinion, the health care provided, or the necessity of care. Mr. Robert Zarbin of the Maryland Association for Justice and other proponents argued that allowing a health care provider's writings to be introduced would reduce costs and simplify the appeals process. Mr. Michael Daily and Mr. Joseph Jagielski of the Maryland Defense Council, Inc. and Mr. Robert Erlandson and Mr. Franklin Goldstein of the Maryland Employers' and Self Insurers' Compensation Association and other opponents claimed that it is reckless to change the appellate process only for certain types of cases and that greater efficiency is not necessary in the appeals process because initial workers' compensation hearings are inherently expeditious judicial processes. The opponents indicated that other states have other approaches to jury trials, such as appeal boards, which should be considered as a way to simplify the appeal process.

The committee anticipates legislation regarding statutory changes related to the appeals process in workers' compensation cases will be introduced in the 2010 session.

Proposed Legislation by the Uninsured Employers' Fund

A section of Senate Bill 987/House Bill 1436 of 2009 (failed) would have increased the assessment paid to the Uninsured Employers' Fund (UEF) when WCC makes a decision for a workers' compensation claim against an uninsured employer. The assessment on the uninsured employer would be up to \$1,000 (instead of up to \$500) plus 15% of the claim amount up to \$5,000 (instead of up to \$2,500). The committee heard from Mr. James Himes, Director of UEF, who stated that the change is still a legislative priority for the agency.

Mr. Himes also stated that UEF plans to increase enforcement of the provisions of Chapter 601 of 2006. While Chapter 601 is considered to be generally unenforced at this time, it establishes that, if company assets are not sufficient to cover the payment of a claim award or assessment against an uninsured employer, the officers or members of a corporation or limited liability company with general management responsibility may be held liable for the payment of these obligations.

The committee anticipates legislation regarding statutory changes related to UEF assessment increases will be introduced in the 2010 session.

Annual Reports

Workers' Compensation Commission (WCC): Chairman Karl Aumann summarized WCC's annual report. The number of claims filed in fiscal 2009 declined by 5.9% over the prior year, contributing to the overall reduction of 31% since 1995. WCC is also continuing its effort to reduce wage and hour violations, premium avoidance, and other issues that arise due to the misclassification of employees as independent contractors. In addition to involvement with various interagency measures, WCC is designing a program that is intended to increase employer awareness of the workers' compensation laws and to bring employers into compliance with the requirements of those laws.

Injured Workers' Insurance Fund (IWIF): Mr. Thomas Phelan, President and Chief Executive Officer, and Mr. Dennis Carroll, General Counsel for IWIF, summarized IWIF's annual report. IWIF's base rate for 2010 will increase by 2.5%, largely due to rising medical costs. Claim frequency is expected to be down 10% in 2009; the reduction is likely due to greater automation, particularly in the construction industry, and the fact that during an economic decline the least experienced and most accident prone workers are the first to be laid off. IWIF further advised in its annual report that greater competition in the industry has resulted in a reduction in its market share from over 30% in 2006 to 20% in 2009.

National Council on Compensation Insurance, Inc. (NCCI): Mr. Robert Moss, an actuary with NCCI, provided NCCI's annual report. The pure premium rate filed by NCCI reflects a 3.5% overall increase for most industries in calendar 2010, compared to a 5.4% decrease for calendar 2009 and a 1.7% decrease in calendar 2008. 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 is the twenty-fifth highest in workers' compensation comparative benefits in 2008.