

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

Maryland General Assembly
Joint Committee on Workers' Compensation Benefit and
Insurance Oversight Committee

2013 Membership Roster

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:
Thomas J. Phelan

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

Self-insured Local Government Entity (per Chapter 5 of 2011):
Ronald J. Travers

Workers' Compensation Commissioner – Ex officio:
Maureen Quinn

Committee Staff

Tami Burt and Laura Atas



MARYLAND GENERAL ASSEMBLY
WORKERS' COMPENSATION BENEFIT AND INSURANCE OVERSIGHT COMMITTEE

December 16, 2013

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 2013 interim activities. The committee met once during the interim (December 11) 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 2014 session, the joint committee plans to conduct its annual review of workers' compensation related legislation and discuss any outstanding issues raised during the interim.

The joint committee is appreciative of the advice and assistance provided by governmental officials, members of the public, and legislative staff during the 2013 interim and looks forward to the same spirit of cooperation and assistance during the 2014 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

Joint Committee on Workers' Compensation Insurance and Benefit Oversight

Interim Report

At the committee's interim meeting, the members considered a number of issues that affect the State's workers' compensation insurance market, including the status of Chesapeake Employers' Insurance Company (Chesapeake) and anticipated legislation relating to Chesapeake's membership in a national rating organization, physician dispensing of prescription drugs, and the Workers' Compensation Commission's (WCC) authority to issue subpoenas. Below is a summary of the issues that the committee considered.

Workers' Compensation Commission Annual Report

Mr. Karl Aumann, Chairman of WCC, summarized WCC's annual report, which states that the number of claims filed in fiscal 2013 increased by 1.4% over the prior year. There had been a 2.0% decrease from 2011 to 2012. Mr. Aumann advised that the number of claims filed has remained fairly stable over the last four years, but had previously reflected consistent, sizable annual declines. Although WCC continues to hear thousands of claims each year, the agency continues to distribute orders in a timely manner. Mr. Aumann indicated that in fiscal 2013, WCC distributed orders an average of 9 days after a hearing, despite a goal of sending out orders within 21 days.

Like many other State agencies, WCC has an aging workforce with many retirement-eligible employees. Mr. Aumann expressed concern about the loss of institutional memory, but said that the agency had continued to manage its workload this year despite a number of retirements and departures.

In response to a question from Senator Klausmeier, Mr. Aumann indicated that WCC did not run any incentive programs to reward employers that had no workers' compensation injuries or claims in a given year. Mr. Aumann explained that Chesapeake and perhaps other insurance companies offer incentives for employers with positive safety records. Other members of the committee supported the establishment of additional incentive programs.

Workers' Compensation Insurance Premium Rates for 2014

Ms. Lori Lovgren, Acting 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 +1.4% effective January 1, 2014. Ms. Lovgren explained 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 of Chesapeake stated that, although

Chesapeake follows a different ratemaking approval process, its rates on average will not change for policies issued or renewed after January 1, 2014.

Maryland ranks among the top-third of states for the range of benefits available to injured workers and has consistently ranked in the bottom-third for the total premium charged to employers. Ms. Lovgren said that these statistics mean that Maryland offers good benefits at a low cost to employers, making the State workers' compensation insurance marketplace "very healthy."

Status of Chesapeake Employers' Insurance Company

Mr. Phelan briefed the committee on the status of the Injured Workers' Insurance Fund's (IWIF) conversion to Chesapeake, which became effective October 1, 2013. Chesapeake has grown steadily, reporting 7%, 14%, and 10% annual growth from 2010 through 2013, respectively and has had no rate change over the last two years. In November 2013, Mr. Phelan reported, A.M. Best Company gave Chesapeake both a financial strength rating and an issuer credit rating of A-. Mr. Phelan expressed satisfaction over the ratings, which A.M. Best attributed to Chesapeake's "consistently profitable performance," "disciplined underwriting," "commitment to reserve adequacy," and other factors.

Mr. Phelan echoed Mr. Aumann's concerns about an aging workforce, but said that IWIF/Chesapeake had started a college internship program that has led to a number of permanent job offers and has helped the company anticipate future retirements and departures. Mr. Phelan responded to Senator Klausmeier's question about incentives for employers with safe workplaces and said that every year, Chesapeake invites the 15 insureds with the best safety records to a breakfast and awards banquet.

Proposed 2014 Legislation

Chesapeake Employers' Insurance Company Membership in the Designated Rating Organization

As discussed previously, Chapter 570 of 2012 converted IWIF to Chesapeake, which is a private, nonprofit, nonstock insurance company that now serves as the State's workers' compensation insurer of last resort. 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. 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. Dennis Carroll, Assistant Vice President and General Counsel of Chesapeake, discussed the affiliation recommendation and explained that IWIF/Chesapeake has historically resisted such efforts because of concerns that affiliation would cause disruption and cost to the company and its policyholders. Based on its recent conversion, Chesapeake is no longer resisting affiliation, but would like additional changes to be made to further “level the playing field” with other workers’ compensation insurers. Mr. Carroll distributed legislation that Chesapeake supports, which would give Chesapeake the ability to apply for approval to write workers’ compensation insurance policies in other states. In most states, by statute, an out-of-state nonprofit insurer such as Chesapeake is prohibited from writing policies in those states if the nonprofit insurer’s board is primarily composed of government-appointed members. Accordingly, the legislation alters the composition of Chesapeake’s board so that the Governor would only appoint two out of nine members on the board.

The committee anticipates that legislation regarding Chesapeake’s membership in NCCI will be introduced in the 2014 session.

Corrections to 2012 Conversion Legislation

Mr. Carroll explained that Chapter 570 of 2012 necessitates four changes to the laws that govern Chesapeake, based on issues that have arisen since the conversion legislation was enacted. First, Mr. Carroll said that legislation is needed to authorize Chesapeake to write employers’ liability coverage and coverage for various types of federal workers’ compensation claims. Although the statute authorized IWIF to write these types of coverage, the conversion legislation did not contain a corollary provision for Chesapeake. Second, Mr. Carroll said that Chesapeake lacks the ability to write large deductible policies because of the limited reasons that the company is authorized to cancel or refuse to renew a policy. Mr. Carroll explained that legislation is needed to authorize Chesapeake to cancel or refuse to renew a policy when an insured does not pay all or part of a deductible. Third, the State Ethics Commission advised Chesapeake that a State ethics law would prohibit employees of IWIF, who are State employees, from lobbying on behalf of Chesapeake, a private company. Mr. Carroll indicated that legislation is needed to authorize IWIF employees to register under the State ethics law as lobbyists. Fourth, Mr. Carroll explained that the Labor and Employment Article of the Maryland Annotated Code contains an obsolete reference to a report of accident or injury that an employer submits to IWIF. Mr. Carroll said that employers only submit those reports to WCC.

The committee anticipates that legislation regarding these corrections to the conversion legislation will be introduced during the 2014 session.

Repackaging and Physician Distribution of Pharmaceuticals

Physician dispensing of repackaged pharmaceuticals increases costs for the workers’ compensation system because physicians are not bound by state fee schedules and pharmacy cost controls. The Workers’ Compensation Research Institute released a study in September 2013 which found that physicians directly dispensed 40% of all medications

prescribed to injured workers in Maryland, representing 55% of total spending on pharmaceuticals for workers' compensation claims. These proportions represent increases from 35% of all prescriptions and 43% of total prescription costs just three years earlier. The report indicated that in Maryland from 2008 to 2012, prices paid for physician-dispensed prescriptions increased, while prices paid to pharmacies decreased or changed only slightly. The study concluded that on a per-pill basis, prices paid to physician-dispensers for generic medications were often more than double the prices paid for the same medications dispensed at pharmacies. A number of other studies released during the 2013 interim also address differences in costs and patient outcomes when physicians, instead of pharmacists, dispense prescription drugs.

Regulatory and legislative proposals introduced over the last few years have taken varying approaches to attempt to address the differential cost and patient outcome issues. Several interested parties spoke at the meeting regarding these reform efforts. First, a panel of pro-reform stakeholders spoke about two pieces of legislation that will likely be introduced during the 2014 session. Mr. Brett Lininger and Mr. Bob Erlandson of the Maryland Self Insured and Employers' Compensation Association described the legislation. The first bill, which is similar to Senate Bill 247/House Bill 174 of 2013 (failed), would specify that an employer or its insurer would not be required to pay for a prescription dispensed by a physician unless the prescription was dispensed within 30 days after the first appointment and was limited to a 30-day supply. The second bill would specify that an employer or its insurer would not be required to pay for controlled dangerous substances (CDS) dispensed to employees without preauthorization, participation in a signed management plan, and satisfaction of other requirements. Mr. Erlandson summarized several recent studies that suggest that physician dispensing increases patient utilization of narcotic medications and drives up prescription costs to the employer or its insurer, because of the need for repackaged medication. Mr. Carmine D'Alessandro, Director of the Legal Department at Chesapeake, expressed Chesapeake's support of both bills and indicated that 19 other states have imposed a restriction on physician dispensing. He further indicated that the State Prescription Drug Monitoring Program (PDMP) is voluntary and will not resolve the issues caused by physician dispensing. Mr. Jack Andryszak, representing workers' compensation insurers, similarly expressed his support of both bills and discussed qualitative and quantitative information that identifies physician dispensing as a cost-driver for the system and a revenue stream for physicians.

After the pro-reform panel spoke, several stakeholders expressed concern over reform efforts. Mr. Andrew Kahn of the Maryland Association for Justice explained that the law authorizes WCC to refuse to approve inflated prescription drug costs. Physician licensing standards and State and federal standards for CDS dispensation, Mr. Kahn said, adequately regulate the practice of physician dispensing. Mr. Robert Zarbin of the Maryland Association for Justice stated that physician dispensing ensures claimant access to care and is only viewed as a problem from the perspective of employers and insurers. Ms. Pam Kasemeyer, representing MedChi, explained that lawmakers should avoid analyzing costs on a per-pill basis because physicians often prescribe fewer pills and report lower per-claim costs. Ms. Kasemeyer indicated that physician dispensing ensures patient compliance. Dr. Lester Zuckerman, also representing MedChi, expressed concern that the bills would limit patient access to medication.

Mr. Michael Johansen, representing Comprehensive Rx, expressed support for a pharmaceutical fee schedule instead of the other more restrictive reform measures.

The committee anticipates that further discussion or legislative action may occur in the 2014 session to address the issue of rising, inflated prescription drug costs.

Commission Authority to Issue Subpoenas

Currently, WCC's authority to issue subpoenas is limited to compelling attendance at a hearing or compelling the production of documents at a hearing. Ms. Ileen Ticer and Mr. Mike Dailey of the Maryland Defense Counsel indicated that legislation is needed to authorize WCC to issue a subpoena to require a party to produce documents, like medical records, prior to the setting of a hearing date.

The committee anticipates that legislation will be introduced during the 2014 session to address this issue.

