

Joint Committee on Workers' Compensation Benefit and Insurance Oversight

Maryland General Assembly
Joint Committee on Workers' Compensation Benefit and
Insurance Oversight
2016 Interim
Membership Roster

Senator Katherine Klausmeier, Co-chairman

Delegate Kriselda Valderrama, Co-chairman

Senator Brian J. Feldman

Delegate Cheryl D. Glenn

Delegate Sally Y. Jameson (monitor)

Representative of Maryland Business Community:

Mary Anne Reuschling

Representative of the Maryland Labor Organization:

Craig Simpson

Representative of Maryland Building and Construction Labor Organization:

Tom P. Hayes

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:

David Benedict

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:

Jody Malcolm

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

Ronald J. Travers

Workers' Compensation Commissioner – Ex-officio:

Maureen Quinn

Committee Staff

Tami D. Burt

Laura H. Atas



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401

Joint Committee on Workers' Compensation Benefit and Insurance Oversight

December 14, 2016

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 2016 interim activities. The committee met once during the interim (December 14) 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 2017 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 2016 interim and looks forward to the same spirit of cooperation and assistance during the 2017 legislative session.

Respectfully submitted,

Katherine Klausmeier

Senator Katherine Klausmeier
Senate Chair

Kris Valderrama

Delegate Kriselda Valderrama
House Chair

KK:KV/LHA/nac

cc: Mr. Warren G. Deschenaux
Ms. Carol L. Swan
Mr. J. Ryan Bishop

Joint Committee on Workers' Compensation Insurance and Benefit Oversight

At the committee's interim meeting, the members considered a number of issues, including an annual update on the Workers' Compensation Commission's operations (WCC), a discussion of the State's Prescription Drug Monitoring Program (PDMP), and a review of anticipated legislation relating to insurance rating and permanent total disability benefits. 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 2016 decreased minimally (by 0.1%) over the prior year. There had been a 1.7% decrease from fiscal 2014 to fiscal 2015. Mr. Aumann advised that the number of claims filed has consistently declined over the last few years. Despite a decrease in the number of claims filed, however, WCC experienced an increase in the number of hearings scheduled. In fiscal 2015, WCC scheduled 40,059 hearings, compared to 43,891 in fiscal 2016. The members generally expressed concern over the increase in hearings scheduled and the overall claim volume. Mr. Aumann explained that no single factor was responsible for the increase in the number of hearings scheduled and noted that WCC had scheduled 43,382 claims for hearings in fiscal 2014. Senator Brian Feldman asked whether WCC needed an additional commissioner to process claims. Mr. Aumann indicated that WCC continues to hear thousands of claims each year, but distributes orders in a timely manner. Several of the members expressed their opinions regarding WCC's efficient processing of claims. Ms. Deborah Fajer-Smith suggested that the Beltsville hearing location could be expanded to better accommodate the high volume of claims heard at that location. Mr. Aumann explained the constraints surrounding expansion at the site and discussed WCC's practice of scheduling certain cases at two alternate hearing sites to lower the volume of claims heard at the Beltsville location.

Mr. Aumann further discussed WCC's Enterprise Modernization initiative, which is designed to collect, document, and recommend high-level business and technical processes for reengineering WCC's computer system. WCC contracted with a company to recommend changes to upgrade and integrate the existing computer system, which Mr. Aumann said is more than 20 years old. The consultant firm issued a report in January 2016 that contains a number of recommendations that WCC is working to implement.

Update on Implementation of the Prescription Drug Monitoring Program

Ms. Kate Jackson addressed the members in her role as PDMP Manager at the Department of Health and Mental Hygiene. She indicated that the PDMP has been live since December 2013 and continues to undergo changes in light of legislation passed during the 2016 session.

Ms. Jackson explained that the PDMP is a secure, statewide, electronic database that contains Schedule II-V pharmaceutical controlled dangerous substances (CDS) dispensed in the State. Prescription data can be accessed and disclosed for specified clinical, investigative, and research uses. Both prescribers and pharmacists have defined roles as clinical users and may delegate authority to licensed practitioners without prescriptive authority or non-licensed clinical staff that work for the same practice or facility. Ms. Jackson indicated that the expansion to include non-licensed clinical staff was one of the changes required by House Bill 437 of 2016, which was designed to better integrate PDMP data review into the existing clinical workflow.

Ms. Jackson advised the members that the 2016 legislation made two other significant changes that bring the State's PDMP in line with a number of other jurisdictions. First, pharmacists and prescribers will be required to register with the PDMP by July 1, 2017. As part of the electronic registration process, individuals will view a training video to facilitate use of the system. Once the registration mandate is implemented, Ms. Jackson indicated that pharmacists and prescribers will be required to demonstrate compliance with the requirement in order to receive or renew a CDS prescribing permit. Second, the recent legislation established a use mandate that will be effective July 1, 2018. Pharmacists will be required to access the system when they suspect that a prescription is being filled for something other than an existing medical diagnosis. When prescribing specified CDS medications (opioid or benzodiazepine), subject to specified exemptions, prescribers will be required to access the system for a new treatment episode and at least every 90 days thereafter for the duration of the treatment.

In response to a question from Mr. Michael Comeau, Ms. Jackson indicated that the Veterans Affairs healthcare system and its pharmacists and prescribers participate in the PDMP as any other clinical practice or facility.

Proposed 2017 Legislation

Survival of Claim for Permanent Total Disability

In 2016, the Maryland Court of Appeals held in *Hollingsworth, et al. v. Severstal Sparrows Point, LLC, et al.* that when WCC finds a claimant permanently totally disabled, § 9-640 of the Labor and Employment Article governs survival of benefits regardless of whether the claimant's permanent total disability is due solely to accidental injury or a combination of accidental injury and preexisting conditions. Under § 9-640, if a covered employee dies from a cause that is not compensable, any compensation still owed to the claimant at the time of death is capped at \$45,000 for surviving dependents. Mr. Robert Zarbin presented a legislative proposal that would allow dependents or other individuals (a surviving spouse who is legally entitled to financial support and/or surviving minor children) to receive the full amount of any unpaid portion of a permanent total disability award. He explained that this situation only arises when a claimant has had a preexisting condition and the Subsequent Injury Fund has been impleaded in a case. Mr. Robert Erlandson acknowledged that the \$45,000 cap has not been revisited in a number of years, but expressed concern over requiring employers to pay the full balance of an unpaid award for permanent total disability in these cases. At the Co-chairs' request, both Mr. Zarbin and Mr. Erlandson agreed to attempt to reach a compromise on the issue.

The committee anticipates that legislation regarding the survival of a claim for permanent total disability will be introduced in the 2017 session.

Rating Plans

Chapter 570 of 2012 converted the Injured Workers' Insurance Fund to Chesapeake Employers' Insurance Company (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 National Council on Compensation Insurance (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.

Chapter 36 of 2015 subjected Chesapeake to Title 11 of the Insurance Article, which requires workers' compensation insurers in the State to join a rating organization. Chesapeake must join NCCI by January 1, 2023. Among other provisions, the legislation required NCCI, as the designated rating organization, to (1) make annual reports to specified committees of the General Assembly concerning the status of Chesapeake joining the rating organization and (2) create a classification code for governmental occupations that are not already included in police, firefighter, and clerical classifications.

Mr. Carmine D'Alessandro, Chief Legal Officer for Chesapeake, presented legislation that would codify one of MIA's recommendations by authorizing insurance carriers to utilize merit rating plans if approved by the Insurance Commissioner. The legislation would also authorize insurers to file tiered rating plans with the Insurance Commissioner for approval. Mr. D'Alessandro indicated that the Insurance Commissioner has approved plans that Chesapeake has filed over the years, but said that tiered rating plans and merit rating plans are not specifically referenced in statute. As Chesapeake prepares to join NCCI, Mr. D'Alessandro said that explicit statutory authority regarding these plans would ensure continuity in Chesapeake's ratemaking practices and would minimize disruption to policyholders.

Mr. David Benedict, State Relations Executive for NCCI, indicated that NCCI has no position on the proposal at this time. He referenced the report that NCCI generated on the status of Chesapeake's transition to NCCI affiliation – the first of its kind required by the 2015 legislation – and indicated that the early stages of the transition have gone smoothly. He offered to discuss the report in greater detail at the next meeting, when the Co-Chairs have asked him to present an update on the status of the workers' compensation system in Maryland.

The committee anticipates that legislation regarding rating plans will be introduced in the 2017 session. Members will continue to seek and receive updates on the status of Chesapeake's transition to NCCI affiliation.