

WORKERS' COMPENSATION (C) TASK FORCE

Workers' Compensation (C) Task Force Nov. 15, 2022, Minutes

Workers' Compensation (C) Task Force Oct. 7, 2022, Minutes (Attachment One)
2023 Charges (Attachment One-A)

Draft Pending Adoption

Draft: 11/23/22

Workers' Compensation (C) Task Force
Virtual Meeting (*in lieu of meeting at the 2022 Fall National Meeting*)
November 15, 2022

The Workers' Compensation (C) Task Force of the Property and Casualty Insurance (C) Committee met Nov. 15, 2022. The following Task Force members participated: Alan McClain, Chair, and Jimmy Harris (AR); John F. King, Vice Chair, and Steve Manders (GA); Mark Fowler represented by Jennifer Dabney-Brown and Erick Wright (AL); Peni Itula Sapini Teo represented by Elizabeth Perry (AS); Ricardo Lara represented by Yvonne Hauscarriague and Giovanni Muzzarelli (CA); Andrew N. Mais represented by Wanchin Chou and Amy Waldhauer (CT); Karima M. Woods represented by Angela King (DC); Trinidad Navarro represented by Lucretia Prince and Jeffry Schott (DE); David Altmaier represented by Greg Jaynes (FL); Doug Ommen represented by Travis Grassel (IA); Dean L. Cameron represented by Randy Pipal (ID); Vicki Schmidt represented by Julie Holmes, Sara Hurtado, and Cassandra McCall (KS); James J. Donelon represented by Tom Travis (LA); Timothy N. Schott represented by Brock Bubar, Sandra Darby, and Robert Wake (ME); Grace Arnold represented by Tammy Lohmann (MN); Chlora Lindley-Myers represented by Tina Grinde, Jo LeDuc, and Rebecca Shavers (MO); Mike Causey represented by Fred Fuller (NC); Marlene Caride represented by Carl Sornson (NJ); Andrew R. Stolfi represented by David Dahl, Brian Fordham, and TK Keen (OR); Michael Humphreys represented by Lu Cisoffeng; Shannon Kost, Michael McKenney, Dennis Sloand, and Eric Zhou (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Michael Wise represented by Will Davis (SC); Larry D. Deiter and Tony Dorschner (SD); Jon Pike (UT); Kevin Gaffney, Pat Murray, and Rosemary Raszka (VT); and Allan L. McVey, Matthew L. Harvey, and Erin K. Hunter (WV). Also participating were Reid McClintock and Judy Mottar (IL); Thomas Faust (IN); Paige Dickerson and Tina Nacy (MI); Connie Van Slyke (NE); Christian Citarella (NH); Anna Krylova and Bogdanka Kurahovic (NM); Cuc Nguyen and Andrew Schallhorn (OK); Brian Hoffmeister and Jessica Thomas (TN); Nicole Elliott (TX); and Rebecca Nichols (VA).

1. Adopted its Oct. 7 and Summer National Meeting Minutes

The Task Force conducted an e-vote that concluded Oct. 7 to adopt its 2023 proposed charges.

Commissioner King made a motion, seconded by Commissioner McVey, to adopt the Task Force's Oct. 7 minutes (Attachment-One) and Summer National Meeting minutes. The motion passed unanimously.

2. Heard a Presentation from the NCCI on Federal Updates as They Pertain to Workers' Compensation

Susan Donegan (NCCI) said the conversation regarding cannabis continues at both the state and federal level. These ongoing conversations include both recreational and medical cannabis. Bipartisan dialogues started last year at the federal level, and it appears these conversations will continue.

Donegan said the House Subcommittee on Civil Rights and Civil Liberties is holding a hearing today regarding cannabis reform. The title of the hearing is "Developments in State Cannabis Laws and Bipartisan Cannabis Reform at the Federal Level." The hearing includes witnesses from advocacy groups and veterans' groups. Of note, the use of cannabis for post-traumatic stress disorder (PTSD) has been gaining attention. Additionally, a discussion regarding the removal of obstacles to using medical cannabis more freely has received attention.

Thousands of people convicted of simple possession of cannabis charges were pardoned recently by the Biden administration. This action has put a spotlight on cannabis reform at the federal level. During the 2022 midterms, a group of states put the legalization of cannabis on their ballots. Maryland and Missouri voted to legalize recreational cannabis. However, North Dakota and South Dakota did not pass a law to legalize the use of cannabis recreationally.

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Donegan said the cannabis business is something the banking and insurance industry is trying to understand. Without federal law legalizing cannabis, liability exists for financial institutions, and many insurers do not want to or believe they can, write insurance for businesses in the cannabis sector.

Donegan said several states have been considering implementing single-payer health care at the state level. She said this would better be addressed following the meeting of the new Congress.

Donegan said that in early October, the Biden administration, under the federal Fair Labor Standards Act (FLSA), issued a call for comments for a proposed rule issued on Oct. 13. This rule is about determining whether workers are employees or independent contractors. The proposed rule would limit the use of “independent contractor” like what California implemented. This rule states an employee must not be “economically depended on their employer for work and are in business for themselves.” If an employee is economically dependent, they are to be classified as an employee, and therefore entitled to minimum wage, overtime, and other protections, such as workers’ compensation.

Donegan said there will be legal challenges to this rule, as businesses believe this rule is a burden. Some studies show when a business is forced to cover employees they feel do not belong in the “worker” category, it increases their costs by approximately 30%. The legal challenges will encompass whether agencies can adequately explain why they need to change the existing rule, as the existing rule is more expansive. Comments are open until the end of November, so there will likely be more discussion in December.

Jeff Eddinger (NCCI) said the recent workers’ compensation environment has been favorable to decreasing loss costs. Workers’ compensation is unique in that the exposure base is sensitive to inflation. Payroll is the exposure base for workers’ compensation, so as wages increase, premiums automatically increase. If workers’ compensation benefits paid out increase at the exact same pace that wages and premiums increase, the system would remain in balance.

The recent environment indicates that the benefits paid out are not keeping pace with the increase in premium. Benefits that are paid out are equal to the number of claims that occur and the severity of the claims, or the average cost of these claims. In recent years, the severity of claims has increased approximately 2% slower than wages. Eddinger said there are a couple of reasons for this: 1) not all indemnity benefits are tied directly to wages; and 2) there are maximums for indemnity payments.

Eddinger also said that most states have medical fee schedules, as well as other facility and physician fee schedules, which keep benefit costs increasing at a slower rate than wage increases. Additionally, workers’ compensation premiums, through the modifications, can be lowered by reducing claims and increasing safety. The NCCI has continued to see the frequency of claims decrease by an average of approximately 4% per year.

Eddinger said over the past nine years, the NCCI has been decreasing loss costs by about 6% a year.

Eddinger said the combined ratio compares the benefits and expenses paid out to the amount of premium collected. Even with the recent rate decreases, the combined ratio on a countrywide basis has consistently been exceeding the benefits and expenses paid out. The countrywide, private carrier combined ratio averages about 86% over the past five years. Recently, the NCCI published an update to the workers’ compensation financial results. This update shows that for 2022, the private carrier direct written premium increased almost 10% through the first half of the year, as compared to previous years. The calendar year 2022 loss ratio through the first half of the year shows improvement over the previous year through the first six months. This provides an idea of what next year might look like. Even with the rate decreases, premiums are still exceeding the benefits that are being paid out.

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Eddinger said for years, the NCCI has been asked about when premiums will take a turn and begin increasing again. The NCCI cannot predict if or when rates might begin increasing, but he said he believes it is necessary to prepare for it and to be willing to consider a loss cost increase if warranted. Eddinger said he believes the NCCI's selections in its filings are designed using assumptions that do not necessarily just use the past improvements and project them forward. The NCCI's rate filings are conservative, realizing that what has happened in the past may not continue at the same rate in the future.

Donegan said the important thing for state insurance regulators is solvency. She said the NCCI's focus is always about rate adequacy, as it is the foundation for solvency.

McKenney suggested the Task Force add a new 2023 charge to monitor the impact of telework on workers' compensation. He said he would like to see some presentations regarding teleworking and its impact on workers' compensation. McKenney said he does not think that waiting to see how telework affects workers' compensation in the future is prudent and that he would like the Task Force to gain a little more perspective. Commissioner McClain said he would look at adding this to the Task Force's 2023 charges.

McKenney said he believes the NCCI and other independent bureaus are in the process of changing or considering how COVID-19 claims are treated in experience modifications, as well as how they are treated for rate-making purposes, how they are captured statistically, and how teleworkers should be classified or reclassified. He said he would like for the Task Force to discuss these items.

Commissioner McClain said the changing workforce is another item he would like the Task Force to discuss soon, likely at the Task Force's next meeting.

Having no further business, the Workers' Compensation (C) Task Force adjourned.

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Draft: 10/25/22

Workers' Compensation (C) Task Force
E-Vote
October 7, 2022

The Workers' Compensation (C) Task Force of the Property and Casualty Insurance (C) Committee conducted an e-vote that concluded Oct. 7, 2022. The following Task Force members participated: Alan McClain, Chair (AR); John F. King, Vice Chair (GA); Lori K. Wing-Heier (AK); Mark Fowler represented by Jennifer Dabney-Brown (AL); Ricardo Lara represented by Mitra Sanandajifar (CA); Andrew N. Mais represented by George Bradner (CT); Trinidad Navarro represented by Frank Pyle (DE); David Altmaier (FL); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Travis Grassel (IA); Timothy N. Schott represented by Sandra Darby (ME); Grace Arnold represented by Tammy Lohmann (MN); Chlora Lindley-Myers (MO); Mike Causey represented by Fred Fuller (NC); Barbara D. Richardson represented by Gennady Stolyarov (NV); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Michael Wise represented by Will Davis (SC); Jon Pike represented by Reed Stringham (UT); and Allan L. McVey represented by Juanita Wimmer (WV).

1. Adopted its 2023 Proposed Charges

The Task Force conducted an e-vote to consider adoption of its 2023 proposed charges (Attachment One-A). The motion passed with a majority of the members voting in favor of adopting the Task Force's 2023 proposed charges.

Having no further business, the Workers' Compensation (C) Task Force adjourned.

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Adopted by the Workers' Compensation (C) Task Force, Oct. 7, 2022

2023 Charges

WORKERS' COMPENSATION (C) TASK FORCE

The mission of the Workers' Compensation (C) Task Force is to study the nature and effectiveness of state approaches to workers' compensation and related issues, including, but not limited to: assigned risk plans; safety in the workplace; treatment of investment income in rating; occupational disease; cost containment; and the relevance of adopted NAIC model laws, regulations and/or guidelines pertaining to workers' compensation.

Ongoing Support of NAIC Programs, Products or Services

1. The **Workers' Compensation (C) Task Force** will:
 - A. Oversee the activities of the NAIC/International Association of Industrial Accident Boards and Commissions (IAIABC) Joint (C) Working Group.
 - B. Discuss issues with respect to advisory organizations, rating organizations, statistical agents and insurance companies in the workers' compensation arena.
 - C. Monitor the movement of business from the standard markets to the assigned risk pools. Alert state insurance department representatives if the growth of assigned risk pools changes dramatically.
 - D. Follow workers' compensation issues regarding cannabis in coordination with the Cannabis Insurance (C) Working Group.
 - E. Discuss workers' compensation issues related to COVID-19 and teleworking.
2. The **NAIC/IAIABC Joint (C) Working Group** will:
 - A. Study issues of mutual concern to state insurance regulators and the IAIABC. Review relevant IAIABC model laws and white papers and consider possible charges in light of the Working Group's recommendations.

NAIC Support Staff: Sara Robben/Aaron Brandenburg