

2005 MWCEA Conference

Wednesday, September 21, 2005

10:15 – 11:00 a.m.



2005 LEGISLATIVE OVERVIEW

Moderator:	Joseph Jagielski, Esq.
Senators:	Hon. Nathaniel Exum Hon. John J. Hafer
Delegates:	Hon. John F. Wood, Jr. Hon. Joseph J. "Sonny" Minnick

Workers' Compensation

2005 Issue Papers - Business Regulation - Workers' Compensation

There has been a decline in the frequency of workers' compensation claims; however, medical costs continue to rise. Maryland ranks twelfth lowest in workers' compensation premium rates in 2004, an improvement over last year when Maryland was sixteenth lowest. During late fall, the Workers' Compensation Benefit and Insurance Oversight Committee anticipates discussing the recent revision to the medical fee guide and reviewing medical and pharmaceutical cost containment options to deal with the rising cost of workers' compensation insurance.

The Rising Cost of Workers' Compensation Insurance

According to an annual review of manufacturing industry costs by Actuarial and Technical Solutions, Inc., Maryland had the twelfth lowest workers' compensation premium rates in 2004. Despite the improvement over 2003 when Maryland was sixteenth lowest, Maryland has seen its ranking steadily deteriorate from the fifth lowest in 1998. Several states that have remained among the lowest premium states are Arizona, Indiana, Utah, Oregon, and Virginia.

The National Council on Compensation Insurance, Inc. (NCCI), an independent national rating organization, calculates the component of insurance premium rates that are needed to prefund projected claim loss payments to injured workers. Each year NCCI adjusts, subject to the approval of the Maryland Insurance Administration, the aggregate pure premium rates for Maryland. Based on data from policy years 2001 and 2002, NCCI's 2005 filing is an increase of 3.4 percent in overall loss costs. NCCI observes that there has been an overall decline in the frequency of claims; however, medical costs continue to rise. Prior year filings included the following overall adjustments: decrease of 6.1 percent for 2004 and increases of 1.6, 1.3, and 7.6 percent for 2003, 2002, and 2001, respectively.

A 2003 study by Milliman USA, an independent insurance consulting firm, identifies factors that may contribute to the rising costs of workers' compensation claims. The firm examined the claim experience of the Injured Workers' Insurance Fund (IWIF), the third-party administrator of the State's workers' compensation insurance and the insurer of last resort for workers' compensation coverage, and compared it to data analyzed by the Workers' Compensation Research Institute from 12 large workers' compensation states. IWIF's claims experience has relevance to the general experience of workers' compensation insurance claims in Maryland because it serves about 35 percent of the Maryland market. Significant cost drivers identified included the rate of attorney representation in the determination of permanent partial disability claims and the increased cost of medical payments.

220 Department of Legislative Services

A 2004 study by the National Academy of Social Insurance shows that, based on 2002 nationwide data, employers' costs and benefits to injured workers grew faster than workers' wages. An increase of 0.4 percent in workers' wages was the slowest growth in more than a decade, largely the result of a poor economy. Benefits rose by 7.4 percent, with employer costs up 13 percent. Generally, medical payments account for about 40 percent of the total benefits.

A 2004 study by the Council of State Governments concludes that the number of nationwide workers' compensation claims has been declining; however, workers' compensation costs and benefits paid out are still rising. A variety of factors cause high costs, including medical expense increases, investment income losses, effects of terrorist acts, slow economic growth, increasing fraud, extensive litigation, and workforce demographics.

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Identifying Options to Control Cost Drivers

Since a wide range of factors influence workers' compensation systems, states have been considering an assortment of actions to contain medical costs and deal with inefficiencies. The Department of Legislative Services anticipates providing its study of recent state reforms in December 2004. Some options that have been identified by other states for controlling cost drivers are described below.

- To contain medical care costs, California requires medical treatment to be provided by networks established by employers or providers. To contain prescription drug costs, Arizona requires a prescription drug fee schedule that mandates the use of a generic equivalent drug unless the medical practitioner specifically requires a brand name drug. (According to NCCI, workers' compensation insurers in Maryland paid 75 percent more in 2001 than group health insurers for the same drugs.)
- To reduce the amount of lawyer involvement, Maine and Texas require parties to participate in a benefit review conference to attempt to resolve a dispute. (According to NCCI, attorney involvement in Maryland, as a percentage of claims, is higher than in neighboring states.)
- To limit the payment of temporary disability benefits, California caps these benefits at 104 weeks or 240 weeks for more serious injuries. To make the determination of permanent partial disability impairment ratings more objective, Tennessee uses a formula that lowers the benefit to an injured worker if the employer returns the worker to the worker's prior job at the same or greater wage.

Further, the Workers' Compensation Commission recently established a workgroup of representatives of the disciplines of the workers' compensation system to review inefficiencies in the State's workers' compensation system; the workgroup anticipates reporting its recommendations in December 2004.

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Workers' Compensation Benefit and Insurance Oversight Committee

During late fall of 2004, the oversight committee will be discussing the following issues:

- Medical fee guide revision: The commission recently revised the medical fee guide to set reimbursements to medical providers based on 109 percent of the Medicare reimbursement amount for that service. Orthopedic groups were particularly dissatisfied since their reimbursements significantly decreased based on this new formula. An access-to-care issue may arise as these groups threaten to not participate in workers' compensation. (Prior calculations were based on prevailing charges of medical services; these have been unchanged for years, except for a 4 percent increase a few years ago.)
- Medical and pharmaceutical cost containment options: Insurers and claimant representatives will provide suggestions for dealing with rising costs.
- Workers' compensation fraud: Chapter 471 of 2004 requires the commission to refer to the Insurance Fraud Division any case in which a preponderance of the evidence establishes that a person knowingly affected the payment of compensation, fees, or expenses by means of a fraudulent representation. By December 31, 2004, the commission is required, in consultation with the Maryland Insurance Administration, to study how to prevent, identify, and deter workers' compensation fraud.

Reintroduction of Prior Legislation

In response to a June 2003 decision by the Maryland Court of Appeals (*Vernell Harris v. Board of Education of Howard County*, CA No. 43, Sept. Term 2002), the 2003 General Assembly considered several bills that would have altered the definition of an accidental personal injury. Current law defines a compensable accidental personal injury as an injury that arises out of and in the course of employment. While case law dating to 1927 has generally supported an "unusual activity" standard, the decision found no statutory basis for that standard to apply in order for an injury to be compensable, causing Maryland to be aligned more closely with 46 other states. Senate Bill 113/House Bill 13, Senate Bill 468, House Bill 749, and Senate Bill 638/House Bill 1069 (all failed) would have reversed the decision and preserved the unusual activity standard.

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Although NCCI included a 2 percent increase in its 2004 filing, little post-*Harris* data is included in the experience period that is the basis of its 2005 rate filing. Critics of the ruling warn that the impact could be higher, causing premium rates to increase by at least 5 percent. The *2004 Joint Chairmen's Report* charged the commission with studying the effect of the decision. Since the commission's August 13, 2004, report concludes that it is too early to definitively confirm its impact, the commission intends to provide a follow-up report.

While its actual impact remains to be seen, it is anticipated that legislation will be reintroduced to negate the decision by clarifying the application of an "unusual" test.

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Evaluation of Permanent Injuries

Licensed physicians, including psychiatrists, are authorized to evaluate a permanent impairment and report the evaluation to the Workers' Compensation Commission (WCC). Under current law, psychologists are not specifically authorized to perform these evaluations. ***Senate Bill 264/House Bill 384 (both passed)*** specify that if a permanent impairment for a workers' compensation claim involves a behavioral or mental disorder, either a licensed psychologist or qualified physician must perform an evaluation of only the mental or behavioral portion of the permanent impairment. These bills do not affect workers' compensation claims that involve only physical injuries; only a licensed physician is authorized to perform these evaluations.

Volunteer Fire and Rescue Companies

Members of volunteer fire and rescue companies in 16 counties are covered employees for the purposes of workers' compensation. In some counties, the board of county commissioners has the authority to set guidelines for coverage. Volunteer fire and rescue companies in eight counties (Allegany, Carroll, Charles, Garrett, St. Mary's, Somerset, Washington, and Worcester) are not covered employees unless the board of county commissioners elects coverage, as provided by commission resolution. In most of these counties, the county allocates a certain amount of funding to the volunteer company that can be used to purchase coverage. ***House Bill 454 (passed)*** requires that all members of a volunteer company be covered, while on duty, by a workers' compensation policy provided by either the company or the county in which the company is located.

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2005 REGULAR SESSION OF THE MARYLAND GENERAL ASSEMBLY

This information was current as of September 3, 2005 - 2:04 a.m.

WORKERS' COMPENSATION

**Current Status of Legislation
Total number of Bills: 32**

<u>HB 49</u>	Status as of April 26, 2005: Became Law - Chapter 192	PASSED
Sponsored By	Delegate Smigiel	
Entitled	Witness Fees and Mileage Costs	
Committee Assignments	House: Judiciary Senate: Judicial Proceedings	

<u>HB 348</u>	Status as of May 10, 2005: Became Law - Chapter 369	PASSED
Sponsored By	Delegates Bartlett, Burns, Conroy, D. Davis, Feldman, Haddaway, Impallaria, Krebs, Miller, Minnick, Moe, Taylor, and Trueschler	
Entitled	Insurance - Fraud Reporting and Prevention - Expansion	
Committee Assignments	House: Economic Matters Senate: Finance	

<u>HB 384</u>	Status as of May 10, 2005: Became Law - Chapter 371	PASSED
Sponsored By	Delegates Krysiak, McHale, and Moe	
Entitled	Workers' Compensation - Evaluation of Permanent Impairments	
Committee Assignments	House: Economic Matters Senate: Finance	

<u>HB 454</u>	Status as of May 26, 2005: Became Law - Chapter 552	PASSED
Sponsored By	Delegates Glassman, Aumann, Benson, Bohanan, Boutin, G. Clagett, Cluster, Conroy, DeBoy, Eckardt, Elliott, Frank, Frush, Gilleland, Healey, Howard, Malone, McComas, McDonough, McMillan, Menes, Moe, Parrott, Pendergrass, Ramirez, Stern, Stocksdales, Stull, Weldon, and Wood	
Entitled	Workers' Compensation Insurance - Volunteer Fire and Rescue Companies	
Committee Assignments	House: Economic Matters Senate: Finance	

<u>HB 461</u>	Status as of May 26, 2005: Became Law - Chapter 553	PASSED
Sponsored By	Montgomery County Delegation	
Entitled	Workers' Compensation - Heart Disease and Hypertension Presumption - Montgomery County Correctional Officers MC 514-05	
Committee Assignments	House: Economic Matters Senate: Finance	

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<u>HB 489</u>	Status as of March 21, 2005: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegates Miller, Bates, Boutin, Conroy, Eckardt, Elmore, Feldman, Fulton, Haddaway, Impallaria, Jameson, Krebs, McComas, McDonough, McKee, Myers, Parker, Stull, Trueschler, and Wood	
Entitled	Workers' Compensation Commission - Decisions and Orders - Requirements	
Committee Assignments	House: Economic Matters	

<u>HB 515</u>	Status as of March 21, 2005: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegate Wood	
Entitled	Workers' Compensation - Evaluation of Permanent Impairments	
Committee Assignments	House: Economic Matters	

<u>HB 634</u>	Status as of April 11, 2005: Bill is in the Senate - Favorable with Amendments Finance	FAILED
Sponsored By	Delegates Simmons, Feldman, and McHale	
Entitled	Workers' Compensation - Uninsured Employers - Penalties	
Committee Assignments	House: Economic Matters Senate: Finance	

<u>HB 635</u>	Status as of March 31, 2005: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegate Wood	
Entitled	Workers' Compensation - Permanent Partial Disability - Petition to Reopen	
Committee Assignments	House: Economic Matters	

<u>HB 636</u>	Status as of March 25, 2005: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegate Wood	
Entitled	Workers' Compensation - Accidental Personal Injury - Definition	
Committee Assignments	House: Economic Matters	

<u>HB 668</u>	Status as of March 21, 2005: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegate Moe	
Entitled	Workers' Compensation - Jurisdiction of Commission Pending Appeal - Temporary Total Disability	
Committee Assignments	House: Economic Matters	

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<u>HB 1069</u>	Status as of March 26, 2005: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegates Wood and Krebs	
Entitled	Workers' Compensation - Presumptions	
Committee Assignments	House: Economic Matters	
<u>HB 1085</u>	Status as of March 21, 2005: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegate Simmons	
Entitled	Uninsured Employers' Fund - Liability of Corporate Officers and Limited Liability Company Members	
Committee Assignments	House: Economic Matters	
<u>HB 1163</u>	Status as of March 21, 2005: Bill is in the House - Withdrawn Economic Matters	FAILED
Sponsored By	Delegate Krysiak	
Entitled	Labor and Employment - Subsequent Injury Fund - Renaming	
Committee Assignments	House: Economic Matters	
<u>HB 1265</u>	Status as of April 11, 2005: Bill is in the Senate - Re-referred Finance	FAILED
Sponsored By	Delegate Love	
Entitled	Workers' Compensation - Occupational Disease - Anne Arundel County Deputy Sheriffs	
Committee Assignments	House: Economic Matters Senate: Finance	
<u>HB 1289</u>	Status as of March 25, 2005: Bill is in the House - Withdrawn Economic Matters	FAILED
Sponsored By	Delegates McHale, Anderson, Griffith, Marriott, Montgomery, and Rosenberg	
Entitled	Workers' Compensation - Evaluation of Permanent Impairments - Social Workers	
Committee Assignments	House: Economic Matters	
<u>HB 1371</u>	Status as of April 9, 2005: Bill is in the House - Unfavorable Appropriations	FAILED
Sponsored By	Delegate Kelly	
Entitled	Reemployment of Retirees - State Workers' Compensation Commission	
Committee Assignments	House: Appropriations	
<u>HB 1460</u>	Status as of February 22, 2005: Bill is in the House - First Reading House Rules and Executive Nominations	FAILED
Sponsored By	Delegate Moe	
Entitled	Workers' Compensation - Standards of Health Care - Accessibility and Schedule of Treatment	
Committee Assignments	House: House Rules and Executive Nominations	

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<u>HJ 2</u>	Status as of February 1, 2005: Bill is in the House - First Reading House Rules and Executive Nominations	FAILED
Sponsored By	Delegates Morhaim and Leopold	
Entitled	Maryland Victims of the 2001 Anthrax Attacks - Recognizing a Problem	
Committee Assignments	House: House Rules and Executive Nominations	

<u>SB 33</u>	Status as of March 21, 2005: Bill is in the Senate - Unfavorable Finance	FAILED
Sponsored By	Senator Kittleman	
Entitled	Workers' Compensation - Temporary Partial and Temporary Total Disability Compensation - Retired Persons	
Committee Assignments	Senate: Finance	

<u>SB 34</u>	Status as of March 30, 2005: Bill is in the House - First Reading Economic Matters	FAILED
Sponsored By	Senator Kittleman	
Entitled	Workers' Compensation - Students in Unpaid Work-Based Learning Experiences - Waiver	
Committee Assignments	Senate: Finance House: Economic Matters	

<u>SB 46</u>	Status as of March 7, 2005: Bill is in the Senate - Withdrawn Finance	FAILED
Sponsored By	Senator Kittleman	
Entitled	Workers' Compensation - Accidental Injury - Unusual Activity	
Committee Assignments	Senate: Finance	

<u>SB 128</u>	Status as of May 10, 2005: Became Law - Chapter 285	PASSED
Sponsored By	Chairman, Finance Committee (By Request - Departmental - Insurance Administration, Maryland)	
Entitled	Insurance - Workers' Compensation - Cancellation or Nonrenewal of Policies	
Committee Assignments	Senate: Finance House: Economic Matters	

<u>SB 190</u>	Status as of April 6, 2005: Bill is in the House - First Reading House Rules and Executive Nominations	FAILED
Sponsored By	Senator Kittleman	
Entitled	Workers' Compensation Commissioners - Qualifications	
Committee Assignments	Senate: Finance House: House Rules and Executive Nominations	

<u>SB 227</u>	Status as of March 21, 2005: Bill is in the Senate - Unfavorable Finance	FAILED
Sponsored By	Senator Kittleman	
Entitled	Workers' Compensation - Temporary Partial and Temporary Total Disability Compensation - Incarcerated Persons	
Committee Assignments	Senate: Finance	

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<u>SB 264</u>	Status as of May 26, 2005: <u>Vetoed by the Governor - Cross-filed bill was signed</u>	VETOED
Sponsored By	Senators Exum, Astle, Della, Gladden, Hooper, Kelley, and Teitelbaum	
Entitled	Workers' Compensation - Evaluation of Permanent Impairments	
Committee Assignments	Senate: Finance House: Economic Matters	
<u>SB 396</u>	Status as of February 11, 2005: Bill is in the Senate - First Reading Finance	FAILED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation - Evaluation of Permanent Impairments	
Committee Assignments	Senate: Finance	
<u>SB 419</u>	Status as of February 23, 2005: Bill is in the Senate - First Reading Budget and Taxation	FAILED
Sponsored By	Senator Miller	
Entitled	Reemployment of Retirees - State Workers' Compensation Commission	
Committee Assignments	Senate: Budget and Taxation	
<u>SB 490</u>	Status as of February 11, 2005: Bill is in the Senate - First Reading Finance	FAILED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation - Accidental Personal Injury - Definition	
Committee Assignments	Senate: Finance	
<u>SB 491</u>	Status as of February 11, 2005: Bill is in the Senate - First Reading Finance	FAILED
Sponsored By	Senators Astle, Hafer, and Kittleman	
Entitled	Workers' Compensation - Presumptions	
Committee Assignments	Senate: Finance	
<u>SB 828</u>	Status as of March 2, 2005: Bill is in the Senate - Re-referred Finance	FAILED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation - Permanent Partial Disability - Petition to Reopen	
Committee Assignments	Senate: Finance	
<u>SB 856</u>	Status as of March 22, 2005: Bill is in the Senate - Unfavorable Finance	FAILED
Sponsored By	Senators Kelley, Gladden, and Stone	
Entitled	Workers' Compensation - Evaluation of Permanent Impairments - Social Workers	
Committee Assignments	Senate: Finance	