Tennessee Advisory Council on Workers' Compensation
MINUTES
October 31, 2013, 9:00 a.m. CST
Legislative Plaza, Room 30
301 Sixth Avenue North
Nashville, Tennessee

Members present:
Voting Members
Chair David H. Lillard, Jr., State Treasurer
Kerry Dove
J. Anthony Farmer via telephone
Jack Gatlin via telephone
James Hale
Bob Pitts
Gary Selvy via telephone

Nonvoting Members
Sandy Fletchall via telephone
Bruce Fox via telephone
Dr. Keith Graves
Abbie Hudgens
Lynn Lawyer via telephone
Jerry Mayo
Gregg Ramos
Mike Shinnick

Lynn Ivanick, Administrator

Chairman Lillard introduced himself, had Ms. Ivanick call the roll, declared that a quorum was present and first spoke about changes in the Council membership.

Chairman Lillard thanked long time council member, Jerry Lee, for his service and informed that Mr. Lee had worked beyond his term until the Governor could fill his seat. Chairman Lillard further stated that Mr. Lee had asked that the Chairman express Mr. Lee's respect to his fellow Council members and toward the work of the Council and his best wishes to the Council. The Chairman continued to tell that Jerry Lee was a long time member of the Council and he, as Chairman, certainly enjoyed working with him as Jerry was always a very courteous, thoughtful and informed member of the Council.

Chairman Lillard then introduced and welcomed to the Council Mr. Lee's replacement, Mr. James Hale, a native Tennessean, born and raised in DeKalb County. Mr. Hale retired in 2008 from the Laborer's International Union after 38 years of service as an elected official. Mr. Hale is currently the sole proprietor of Hale & Associates, LLC.

Council Member Bob Pitts inquired if there would be any objection to instructing staff to prepare an appropriate Commending Resolution from the Advisory Council for our retiring member Jerry Lee. He indicated that it had occurred on occasion and inquired as to whether there was an established policy. Such a motion was made by Mr. Pitts and seconded by Mr. Hale. Chairman Lillard indicated that, seeing no objection, the Council would take a voice vote on the matter. Upon such vote, Chairman Lillard declared the "ayes" had it and that the motion was adopted. The staff was instructed to proceed as Mr. Pitts had outlined.

Chairman Lillard then expressed appreciation for the service of past physical therapist member Mr. David Davenport , explained that David's term had expired and that his replacement, appointed by the Governor, is John Harris who is Regional Director for Benchmark Physical Therapy from Knoxville, Tennessee. Mr. Harris will be introduced at the time of his first attendance.

The Governor's office reappointed Dr. Keith Graves, Dr. Sam Murrell and attorney Mr. Gregory Ramos, all of whom have been council members in the past and will continue their service. The appreciation of the Council was noted.

Chairman Lillard proceeded to item two on the agenda, the approval of the minutes. A motion to approve the minutes of the August 29, 2013 meeting was made by Mr. Kerry Dove and seconded by Mr. Pitts. A roll call resulted in a majority vote of the members of the Council and the minutes of the August 29, 2013 meeting were approved and adopted.

Chairman Lillard called item three, that being the first item under new business, and presentation by NCCI representative Ms. Amy Quinn, and actuary Ms. Karen Ayres on the Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2014 and Law-Only Filing proposed effective July 1, 2014

Ms. Quinn introduced herself, informed that she handles state relations for the State of Tennessee and introduced Ms. Ayres, NCCI's actuary for the State of Tennessee. She thanked everyone for their cooperation in sharing information ahead of time in preparation of the meeting. She explained that it was a much smoother process this year and that the actuaries were now in a position to "agree to disagree" and make their presentations accordingly. Ms. Quinn turned the presentation over to Ms. Ayres.

Ms. Ayres introduced herself, reiterated NCCI's thanks for a smooth process amongst the actuaries in the sharing of information in advance. Ms. Ayres indicated that although they don't necessarily agree on the numbers, they understand that their differences of opinion are differences of actuarial judgment and that their roles are different as well.

Ms. Ayres continued with her presentation on the two filings. The first filing was the experience filing based on updating the data which is to become effective March 1, 2014. The second was to reflect the impact of the recently enacted legislation, Senate Bill 200, which will become effective July 1, 2014. The two proposals are an 8.4% decrease for the experience filing and 5.9% decrease for the law filing.

The average changes by industry groups had an 8.4% decline overall for the March 1, 2014 Filing. The breakdown is:
Manufacturing: ...... -10.5%
Contracting:......... -10.1%
Office & Clerical:......-9.5%
Good and Services:....-7.6%
Miscellaneous: ....-4.8% (Not quite as homogeneous as the other industry groups.)

A new methodology was introduced by NCCI several years ago which was intended to bring more stability and less volatility in the industry group differentials. The methodology is evaluated every year. NCCI used the latest two policy years. Loss development is based on paid plus case losses. NCCI uses a 5 year average in determining the loss development factors. The experience period is an area where the three actuaries have a difference of opinion as to which is most appropriate way to reflect the changes that are evident in the experience this year.

A question was posed from Council Member Mr. Jerry Mayo as to whether the data collected also comes from carriers who have gone bankrupt. Ms. Ayres responded that those carriers who are able to produce valuable data are taken into consideration, but that once they are at a certain point in bankruptcy, they are no longer required to provide that data. Then there are three areas of internal review: quality review, peer review, then management level review.

A question was raised from Council Member Ms. Abbie Hudgens as to how, other than the large amount of data that was involved, NCCI arrived at the decision to use two years? Ms. Ayres responded that NCCI used to use one policy year & one accident year, but after evaluation by NAIC in the 1990's, it was suggested to not be so volatile that NCCI use two, which they have done since that time. Some states use three policy years to avoid volatile results because of their limited volume. In Tennessee, the latest two year period is deemed appropriate and, in some cases, is more responsive since it reflects the trend. There is a balance between stability and responsiveness. There was a large loss methodology implemented five years ago, where losses in excess of a particular threshold are capped to provide stability in NCCI's overall rate level.

All historical experience is adjusted as if it was at today's loss cost levels. This is the second consecutive year of improvement. There is also improvement on the indemnity side. The trend includes loss ratios and includes claim frequency and claim severity. How many claims and average cost. On the medical side, there is no difference of actuarial opinion this year. NCCI agrees there is no medical trend, or 0% trend. Loss adjustment expense (LAE) is included in the loss cost in Tennessee. A total LAE provision of 19.8% is proposed. Usually, and also for this year, Tennessee reflects the same as countrywide for the adjusting and other expense piece, as it is not state-specific in nature.

A comment and question from Council Member Mr. Bob Pitts, expressed appreciation for the actuaries working together, asked Ms. Ayres to go back in her presentation and asked her to provide to Council, at a later date, information as to what degree there is a different mix of data providers and whether it is showing any meaningful difference from where we were?

Ms. Ayres continued with her presentation by turning to the defense and cost containment expense (DCCE) piece. She indicated that NCCI will continue to evaluate and investigate whether there may be something about NCCI's methodology that causes an overstatement in the results. NCCI believes that they do provide an adequate DCCE provision.

The average changes by industry groups had a 5.9% decline overall for the July 1, 2014 Law Only Filing to reflect the impact of Tennessee Senate Bill 200. The breakdown is:
Manufacturing: . . . . . . -6.3%
Contracting: . . . . -6.1%
Office & Clerical: . . . . . -5.6%
Good and Services: . . . -5.1%
Miscellaneous: . . . . . . -6.4%

NCCI will submit a revised filing if the March 1, 2014 does not go through as proposed.

A question came from Council Member Mr. Gregg Ramos as to the -5.9% law-only filing; "did NCCI use actual cases and overlay them with the new law to arrive at the figure?" Ms. Ayres responded positively that it was done this way generally, and was the case in this instance. Some provisions were not able to be quantified due to lack of data.

A question came from Mr. Pitts as he inquired whether next year at this time there would be very little data on NCCI's report as an outgrowth of the reform? Ms. Ayres replied in the positive, that next year's report will be data of 2013, none of which will be post-reform.

A comment and question from Council Member Mr. Mike Shinnick indicating that it will be 2017 before the reform data will be reflected in the reporting. Ms. Ayres responded that in the filing to become effective on March 1, 2016, there will be a little bit of data on which NCCI can start to get an early look as to what the accident year might look like. It won't technically be reflected in the filing since NCCI does not use accident year, but NCCI will have some anecdotal information upon which to make predictions.

Upon completion of all questions and answers, Chairman Lillard thanked Ms. Ayres for her presentation. Ms. Ayres' NCCI presentation may be viewed at http://treasury.tn.gov/claims/wcadvisory.html, under the Reports tab.

Chairman Lillard called the next order of business, that being a presentation by Advisory Council on Workers' Compensation's Actuary, By The Numbers Actuarial Consulting, Inc. ("BYNAC"), Ms. Mary Jean King, on the Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2014 and Law-Only Filing proposed effective July 1, 2014.

Ms. King indicated that the proposed NCCI changes of -8.4% effective March 1, 2014 due to experience, trend and benefits including the medical fee schedule change effective January 1, 2013, had been reasonably calculated in accordance with actuarial standards of practice.

Likewise, the July 1, 2014 filing of -5.9% which is the estimated impact of Senate Bill 200, the Workers' Compensation Reform Act of 2013, also has been reasonably calculated in accordance with actuarial standards of practice.

The use of a longer experience period may be warranted in determining the experience indication. The use of a three year average of the policy year experience and the BYNAC's selected development factors would result in an experience indication of -5.2%. BYNAC is in agreement with the NCCI selected trend factors 0.970 for indemnity and 1.000 for medical are reasonable.

An area where BYNAC believed the Council should consider a different recommendation was in the LAE allowance. BYNAC believed an LAE of 19.4% was more appropriate than the 19.8% allowance proposed by NCCI. The overall indication, using BYNAC's indication was -5.5% compared to NCCI's Selection of -8.4%.

NCCI's calculation of the effect of Senate Bill 200 was reasonable, so the -5.9% would be proper. Most provisions are expected to result in savings or have a negligible effect. The change in determination of maximum medical improvement for mental injury could result in an increase in claim cost, but that was the only provision that BYNAC thought might have an increase. The overall effect of both filings is -13.8%.

Using the historical experience for a longer period than that used by NCCI would produce a .948 instead of NCCI's selected ratio of .916 for the experience, trend and benefits. With that difference and BYNAC's proposed LAE of 19.4% rather than NCCI's 19.8%, BYNAC's recommendation for changes in loss based expenses is an overall -5.5% rather than the -8.4% proposed by NCCI.

Upon completion of question and answers, Chairman Lillard thanked Ms. King for her presentation. Ms. King's BYNAC presentation may be viewed at http://treasury.tn.gov/claims/wcadvisory.html, under the Reports tab.

Chairman Lillard called the next order of business, that being a presentation by the Commerce & Insurance Department Actuary, Select Actuarial Services, Ms. Mary Frances Miller, on the Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2014 and Law-Only Filing proposed effective July 1, 2014.

Ms. Miller explained that actuarial judgment was involved and was the reason for the differences in opinion. Overall judgments regarding NCCI methodology were reviewed at great length over a decade ago and usually produce good results.

In addressing the experience period, standard procedure is two policy years, so it captures recent relevant experience. It assumes there is enough data to get a credible result and since Tennessee has fairly large volume that is probably true, but when there are huge gaps like there were this year, that should be a red flag not to just apply the standard judgments, but to dig deeper. Digging deeper revealed that it is not in the indemnity loss ratios, but it's in the medical loss ratios. There was a 55.6 from 2011 and a 61.7 from 2010, which were unacceptably far apart to base an indication on, so Ms. Miller recommended using more years.

On the medical side, there has been no positive trend in medical loss ratios in Tennessee since the law reform. This is the first year NCCI has recognized that and is filing 0% trend. Ms. Miller concurred with NCCI's selection of 0% this year, and informed that 0% should have been selected two or three years ago.

Although 2011 was a great year and insurers made a lot of money, Ms. Miller expressed concern that NCCI has proposed too big a decrease which will result in overcompensation. Carriers would get a nice decrease for a couple of years, then a big increase. A 20% decrease needs a 25% increase to get back to the same point. Therefore, Ms. Miller recommended using a longer experience period. She reminded the Council that she had recommended using a longer period of years last year as well and indicated that she would do so again every year. Ms. Miller recommended a four year average, explaining that it would provide a medical loss ratio just under 60% rather than what was filed at 57%, so the revised indication would be -5.4%, very close to BYNAC's figure. She reiterated that there really is not a trend. There has been a lot of volatility, but no real measurable trend since the law change.

NCCI's calculations for loss adjustment expenses (LAE) have resulted in a consistent overstatement of the ultimate loss adjustment expense to losses ratio. In every case, the last year's estimate was higher than the present year's estimate. Logically, this points to an 18.5% provision, which is what Ms. Miller recommended. A reasonable range of indications would be somewhere from -4 to -7. The -8.4% is too aggressive. Ms. Miller recommends something between a -5% and -6%.

Ms. Miller believed the law-only filing was appropriately calculated. She noted that there are multiple components, most of which have been projected to have a positive impact, but the NCCI cannot measure them right now.

A comment came from Council Member Mr. Mayo, that as an underwriter, he looks at a risk for as much loss experience as he can get. He indicated that it is not unheard of to use three to five years and he would like to see NCCI have more data to give the rates some validity so the volatility will stop.

Upon completion of comments, questions and answers, Chairman Lillard thanked Ms. Miller for ten years of education in his five years as Chair and for her presentation. Ms. Miller's SAS presentation may be viewed at http://treasury.tn.gov/claims/wcadvisory.html, under the Reports tab.

Chairman Lillard moved to the agenda point under new business to discuss whether the Council had a recommendation with respect to the NCCI Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2014 and Law-Only Filing proposed effective July 1, 2014. Such recommendation would be due to the Commissioner of Commerce and Insurance on or before November 5, 2013. Chairman Lillard indicated that the Council had heard the statements and presentations of the actuaries that appeared today and examined the reports, so he opened the floor for discussion. He further reminded all that the Chair is a voting member, but votes only on procedural and administrative matters.

Mr. Pitts was recognized and thanked the actuaries for their work. He explained that the two year period used by NCCI was brought about by request years ago due to the numbers historically always being a plus figure. Back then, the argument to the NCCI was that the data needed to be shortened enough to immediately reflect changes. Now that the numbers have reversed, a fresh look may need to be taken going forward. This Council has some obligation to make recommendations even if they may be unpopular.

Mr. Pitts continued in noting that there was consistency in the recommendations of the two non-NCCI actuaries that would provide significantly less reduction than that being proposed by NCCI. He expressed his continuing concern since 2008 about LAE. He expressed his concern about continually failing to address LAE, indicated that he was uncomfortable with using the 2011 data since it appeared to be an anomaly and was reluctant to agree with what NCCI was proposing under those circumstances. He further indicated he would forgo his LAE argument this year if using the -6.95% was acceptable. That figure was derived from taking the reduction proposed by NCCI (-8.4%) and the two other actuaries (around -5.5%) split between both, to achieve -6.95%.

Council member Ms. Hudgens, commented that she was concerned about the two year period, but thinks four years might be too much. She agreed that it was prudent to avoid a decrease that is more generous than expected only to have to come back the next year with an increase. Volatility is bad for Tennessee, so another time period may be more appropriate.

Mr. Mayo agreed that the use of the two year period keeps volatility occurring and indicated he favored Mr. Pitts' motion to increase the years as well as to split the difference and propose a 6.95% decrease.

Mr. Pitts indicated that he was in agreement with recommending three years be used.

Mr. Hale explained that he had an issue with trying to figure out how the Council was recommending rates when basing the recommendation on historical data which doesn't reflect the heavy decrease in benefits. He indicated that it appeared the Council was setting rates for a time when benefits were going to be reduced, so he wondered if the proposed figures provided enough of a decrease.

Mr. Pitts addressed the issue raised by Mr. Hale by explaining that the data would not reflect the impact of the decrease in benefits until July of next year and with the multi-year cycle of the NCCI filing, actually would not be seen in hard data until 2017.

Mr. Hale inquired as to when the companies would see the benefit of the new law in their costs.

Ms. Miller responded that the NCCI has estimated that the law change was worth -5.9% and that was going to go into effect July 1, 2014 regardless of what was decided about the experience filing. She continued by explaining that it will take several years to have data that is all post-law change. It takes a long time to see what the actual value is because there needs to be experience figures after the law change in order to make those calculations.

Chairman Lillard invited further comment from the other actuaries and expressed that the difficulty is in interpreting the historical data and the experience period. He called for any other discussion on these points, and seeing none, inquired if anyone wished to make a motion with respect to the filing.

Mr. Pitts moved to recommend to the Commissioner of the Department of Commerce and Insurance -6.95% and with the additional recommendation that going forward three years of data rather than two on loss experience be used. Council member Mr. Tony Farmer seconded the motion. Roll was called on the motion, a unanimous vote supported the motion and it was adopted.

Mr. Dave Broemel was recognized by Chairman Lillard for comment. Mr. Broemel thanked the Council for its work and then inquired about a motion on the law-only filing. The Chair indicated that since there wasn't a recommended change that it wasn't necessary, but, since requested, the Council could so move.

Mr. Pitts made a motion that the Council recommend and agree on the law-only filing proposed by NCCI, or -5.9%. The motion was seconded by Mr. Kerry Dove. The Chair called for any discussion on the motion. Roll was called and was unanimous in favor of the motion and so it was adopted.

Mr. Pitts explained that he was looking for less volatility even though the recommendation wasn't a popular one since the -8.4% number was already out there in the insurers' minds. Chairman Lillard agreed and indicated that in his experience as an attorney who has dealt with actuaries and statistical data most of his career, one of the more difficult things is interpreting and applying data after the fact. He continued in stating that it remains a challenge for everyone, the actuaries, the Council, the Commissioner of the Department of Commerce and Insurance and everyone involved in the system. He commented that he appreciated Mr. Hale for speaking up in his first meeting with a well taken point and felt that the meeting had produced good discussion. Finally, Chairman Lillard thanked everyone for their service to the State and to the Council and asked if there was a motion to adjourn.

A **motion** to adjourn was made by Mr. Pitts, **seconded** by Mr. Dove, and the Council was **adjourned**, subject to the call of the chair.

Lynn Ivanick, Administrator Advisory Council on Workers' Compensation	David H. Lillard, Jr., State Treasurer Chairman, Advisory Council on Workers' Compensation