

Tennessee Advisory Council on Workers' Compensation
MINUTES
October 14, 2014, 1:00 p.m. Central
Legislative Plaza, Room 30
301 Sixth Avenue North
Nashville, Tennessee

Members Present:

Voting Members

Chair Designee, Christy Allen, Assistant Treasurer, Legal, Compliance & Audit

Kerry Dove

Paul Shaffer on phone

Bob Pitts

Non-Voting Members

John Burleson

Paula Claytore on phone

Sandy Fletchall on phone

Bruce Fox on phone

Abbie Hudgens

John Harris on phone

Mike Shinnick

Lynn Schroeder, Administrator

The Chair, Assistant Treasurer, Ms. Christy Allen, called the meeting to Order at 1:05 p.m. She noted that, although a physical quorum was not present, a quorum was available by phone. She informed that T.C.A. § 8-44-108 authorizes electronic participation if there is a determination of necessity. A statement of necessity was read into the record by Administrator Ms. Lynn Schroeder, a motion to accept that statement made by Council member Mr. Kerry Dove, seconded by Council member Mr. Bob Pitts and voted upon unanimously by roll call, thereby permitting participation by telephone.

The Chair called for the next item on the agenda which was the approval of the Minutes of the Council's August 28, 2014 meeting. A motion to approve the minutes was made by Mr. Pitts, seconded by Mr. Dove, and a roll call resulted in unanimous vote, thereby approving the minutes of the Council's August 28, 2014 meeting.

An item of new business regarding the October 9, 2014 letter from Commissioner McPeak of the Department of Commerce and Insurance to Council Chairman Lillard was moved up on the agenda upon request of Mr. Pitts. The Commissioner had communicated to the Council her intention to increase the assigned risk plan loss cost multiplier (LCM) from 1.56 to 1.58 effective March 1, 2015. She requested any comments from the Council.

Council member Mr. Mike Shinnick explained that since the early 2000's the assigned risk plan started having a surplus and the Department has been very cautious to balance the cost of running the plan with the multipliers in the voluntary market. There are two statutory

considerations for the department, to be certain they are not overcharging and to address the issue of incentive for the agents. There has always been a stigma in the marketplace about being in this assigned risk pool and the commission is less. Agents are more vulnerable to lose that business than business in the voluntary market.

Mr. Pitts commented that he believed the Commissioner and her staff had prepared a most in-depth report on this subject and requested of the Chair to instruct staff to send a letter to the Commissioner commending her and her staff on giving the Council the opportunity to comment and for the outstanding documentation that was provided to the Council. There was no objection.

The Chair called for presentation by Mr. David Wilstermann of the Statistical Analysis and Report Concerning Tennessee Workers' Compensation Data for Calendar Year 2013.

Ms. Schroeder requested input from the Council members concerning what future statistics they would like to see Mr. Wilstermann compile and what data they would consider important to their respective industries.

Mr. Wilstermann began by explaining a brief history of how, before the statistical data forms (SD-1) were created, he physically went around and collected limited data from the various courts across the state. Once the SD-1 forms were created, the data increased in uniformity. However, it has been discovered that not all SD-1 forms may be complete or turned in at all. The statistics have been essentially the same year to year, but there may be data that is not being reported that might influence the numbers.

He went over the percentage of conclusion types over the last 11 years and explained that settlements accounted for more than 90% of all cases last year. Middle Tennessee utilized joint settlement petitions more than East and West Tennessee.

He informed the Council that the Median is more predictive than the Mean in workers' compensation figures, that the total number of permanent disability cases was reducing and that medical costs over time appeared to have leveled off. He discussed the lengths of time from injury to date to conclusion (average of 86.5 weeks), variables such as age (average of 46.8) education and compensation rates (\$459.78), the reducing amount of temporary and total benefits for differing body parts and psychological injuries and, finally, he provided a link for the manipulation of the graphs.

Mr. Pitts affirmed that there should be a continued improvement of data post reform upon which to make policy judgments and thanked David Wilstermann for his hard work.

Seeing no other questions or comments from the Council, the Chair thanked Mr. Wilstermann for his report and noted that the Council accepted the report for the record. The presentation may be viewed on the Advisory Council's website in its entirety at http://treasury.tn.gov/claims/wcac/2014_Statistical_Report_TDLWFD_2013_Data.pdf

The Chair called the next item on the agenda, that being introduction by NCCI Tennessee State Relations Executive, Amy Quinn, of Directing Actuary, Karen Ayres' to present her report on the Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2015.

Ms. Quinn pointed out that there are a key differences between the data that NCCI uses and that of Mr. Wilstermann. She continued by thanking Mr. Pitts, Mr. Shinnick and Ms. Schroeder for setting up the new procedures to assist with communication between the actuarial parties prior to presentation to the Council.

Ms. Ayres began by thanking the Council for improving the process of communication and coordination between the parties as well. She then summarized the recommendation of the NCCI for the State of Tennessee and reviewed her analysis and methodology underlying the -9.6% recommendation.

A separate, more detailed database was used to distribute that overall change to the various industry groups. The range of indications was typical of other states and historically in Tennessee. The experience period used was the latest 2 policy years which NCCI believes provides the appropriate reflection of trends in the state. This includes all premium and loss experience for policies written in 2011 and 2012. The loss development methodology looks at pay plus case losses for the last 5 years. Adjustment to current benefit levels provides for proper comparative results. There has been a steady decline in the indemnity loss ratios over time and medical has been volatile since 2005.

In actuarial science there is always the need to balance responsibility and responsiveness. NCCI was unable to provide a single driver for the improvements in loss cost in the State of Tennessee. Claim frequency and severity has continued to improve. NCCI, with approval, changed their methodology for determining the loading factor for the expected excess loss. There was improved loss experience. NCCI accounted for changes that will occur between now and March 1, 2015. NCCI's filed Medical trend is 0%. The impact of the proposed reduction in the indemnity trend has the effect of -3.5%.

Loss Adjustment Expense (LAE) provision methodology is based on countrywide data reported by carriers. LAE has two components, defense and cost containment expense (DCCE) and adjusting and other expense (AOE) which is more operational in nature, reported by accident year. DCCE estimates tend to decline over time. The AOE has not declined. Tennessee currently has an approved DCCE provision of 12.5% and an AOE of 7.3% for a total LAE of 19.8%. NCCI proposed a slight increase in the DCCE provision to 12.8% and AOE to remain at 7.3% for a total LAE of 20.1%. There is a continued downward pattern and NCCI is now using a three accident year average to try and mitigate the potential that this downward development will influence future LAE's. Tennessee specific DCCE data has been accumulated so NCCI is now able to make a Tennessee projection separate from the countrywide data. This was shared with the consulting actuaries which resulted in the 12.8% based solely on the Tennessee data. Again, all pieces rolled together produced the -9.6% that NCCI has filed.

The Chair thanked Ms. Ayres for her presentation and asked if there were any questions or comments from the Council. Mr. Pitts asked for an explanation of the new methodology listed on page 6 of Ms. Ayres' report. Ms. Ayres replied that if NCCI had not changed the methodology, the indication would have been less negative, perhaps a -8.5%. Seeing no further questions, the Chair thanked Ms. Ayres for her presentation and indicated that the Council received her report. The presentation may be viewed on the Advisory Council's website in its entirety at [http://treasury.tn.gov/claims/wcac/NCCI Presentation 3 1 15 Filing.pdf](http://treasury.tn.gov/claims/wcac/NCCI%20Presentation%203%201%2015%20Filing.pdf)

Presentation by Advisory Council on Workers' Compensation Actuary, By The Numbers Actuarial Consulting, Inc. ("BYNAC"), President, Lisa Dennison, on the Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2015.

BYNAC found the NCCI's recommendation of -9.6% to be reasonable based upon actuarial standards, but had a differing opinion and proposed -5.7% which they believed was more appropriate using a warranted longer 3 year experience period as suggested by Commissioner Mix-McPeak last year. BYNAC agrees with NCCI's selected trend factors of .965% for indemnity and 1.0% for medical based on a 15 year experience period. BYNAC's intention is to offer more stability and a smoother transition which is better for the State of Tennessee.

BYNAC's LAE proposed allowance of 19.8% was said to be more appropriate than the NCCI's 20.1% and its indication was -5.7% compared to the -9.6%. There was some variation in the loss ratios for 2011 and 2012 indemnity at 28.1% and 27.1%. The medical is 60.1% and 64.9%. There is judgment on the part of the actuaries.

Looking at the last 5 years, the last two years are the lowest in the five year window, and affect the numbers. There is not a straightforward trend, other than a better trend. There is downward development that is not reflected in these numbers, so BYNAC believed there should not be a change in the LAE. Paid losses were reviewed since the Reform of 2004. The balance attempted is one of responsiveness and stability. The reason 15 years is used is to reduce the variability.

The Chair asked if there were any questions of Ms. Dennison, seeing none, thanked Ms. Dennison for her presentation and informed her that her report was received by the Council for the record. The presentation may be viewed on the Advisory Council's website in its entirety at http://treasury.tn.gov/claims/wcac/BYNACPresentationon3_1_15_NCCIfiling.pdf

Presentation by Commerce & Insurance Department Actuary, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, Inc. ("BWR&B"), Vice-President, Chris Burkhalter, on the Voluntary Loss Costs and Rating Values Experience Filing proposed effective March 1, 2015.

Mr. Burkhalter indicated that, like BYNAC's issues with NCCI's proposal, all actuaries have slight discrepancies and opinions regarding the loss development factors, loss ratio trends, the LAE selection and the experience period.

The loss development factors show calendar year spikes. The percentage of paid plus case losses would grow. BYR&B felt it was appropriate to use a shorter term average of loss development and reflect a higher loss development in the indemnity. It was a wash with medical. The frequency all year trend is -1.6% per year. BYR&B looks at a longer trend for stability. For severity, the all year trend is a -1.8%. Negative trends in severity occur, but indemnity and medical trend is suspicious. BYR&B decided the trend the NCCI used were appropriate, the -3.5% and a 0% for medical.

There is a fall off of the LAE each year. The NCCI has changed methodology which will flatten this out, but this year there was a significant drop, so BYR&B chose a 19.4% rather than the 20.1% proposed by NCCI. There is improving experience; BYR&B allotted 30% weight to 2012,

25% to 2011, 20% to 2010, 15% to 2009 and 10% to 2008 which gives a higher weight to the emergent experience while holding on to older weight. NCCI's methodology conforms to actuarial standards of practice, is reasonably computed and could be supported actuarially. It comes down to actuarial judgment. 19.4% LAE ratio instead of NCCI's 20.1% and the 5 year weighted average brings what we believe to be the optimal indication to -4.4%.

The Chair thanked Mr. Burkhalter for his presentation and inquired if there were any questions from the Council members. She indicated that the report was received by the Council for the record and said report may be viewed on the Advisory Council's website in its entirety at http://treasury.tn.gov/claims/wcac/BWRB_Presentation_3_1_15_NCCI_Filing.pdf

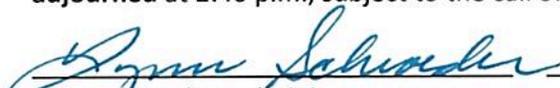
The Chair opened the discussion with the council regarding its recommendation to Commissioner McPeak.

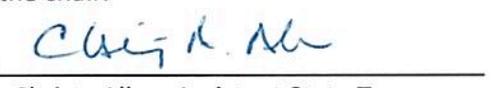
Mr. Pitts began the Council discussion by pointing out that there was not usually such a large distance between the actuaries' figures and that he felt it was a disagreement as to the number of years used for experience. He applauded the actuaries for the Council and the Dept. of Commerce & Insurance for using the Council's recommendation regarding the appropriate amount for LAE's. He reminded all that it will take several years for the reform numbers to show themselves. The big rate decrease recommended by NCCI would be great for business, but, in an effort to keep from having volatile swings in the numbers, a more conservative recommendation would be preferred which would then provide for another reduction next year.

Abbie Hudgens agreed and reiterated that she had concerns about using a two year experience period. She referred all back to Mr. Burkhalter's statement that BWR&B preferred to let the figures slide off rather than drop off. She suggested that such a conservative approach fit and seemed appropriate to her. She agreed that the recommendation should not be as low as NCCI because they should have used at least a 3 year period.

The Chair called for comments or a motion. Council member Bob Pitts **moved** that the Council make a recommendation to the Commissioner to stay with the 19.8% on LAE and the reduction be an average of the three figures presented, or -6.5%. Mr. Kerry Dove **seconded** the motion, the motion was restated, the chair called for a vote which was unanimous and the **motion passed**.

Chairman Allen called for any other business to come before the Council, and, seeing none, a **motion** to adjourn was made by Mr. Pitts, **seconded** by Mr. Dove, and the Council was **adjourned** at 2:46 p.m., subject to the call of the chair.


Lynn Schroeder, Administrator
Advisory Council on Workers'
Compensation


Christy Allen, Assistant State Treasurer
Legal, Compliance and Audit
Chairman Designee, Advisory Council on
Workers' Compensation