



Property Casualty Insurers

Association of America

Advocacy. Leadership. Results.

Oyango Snell
State Government Relations Counsel

May 1, 2013

The Honorable Matthew Denn
Lieutenant Governor
Chairman, Workers Compensation Task Force
State of Delaware
820 N. French Street
Wilmington, DE 19801

Dear Lieutenant Governor Denn:

The Property Casualty Insurers Association of America (PCI) is a national trade association of over 1000 property casualty insurers. Our members write nearly 54 percent of the workers compensation insurance in Delaware. In addition, several provide TPA services to self-insured employers.

As PCI has observed the work of the Workers Compensation Task Force, we are increasingly concerned that the Task Force has focused too much on insurance concerns (i.e. the messenger) rather than on the cost drivers (the message) that required the Delaware Compensation Rating Bureau to file for such large increases in 2012. Over the years, well-meaning individuals when faced with a workers compensation crisis in Delaware have been reluctant to consider solutions that directly affect Delaware institutions and citizens so they have focused on changes on the fringe, including the insurance regulatory scheme. Even a substantial change in the system such as that made by S.B. 1, did not go far enough. PCI warned at the time that we believed that the projected savings were overstated.

The proposal to change 18 Del.C§2610 to require the Insurance Department to engage an attorney to represent ratepayers through the rate-setting process with the authority to retain an actuarial expert and to require data to be produced is not needed. It is duplicative of the existing powers and responsibility of the Insurance Commissioner to enforce the insurance laws, and it will unnecessarily add to insurer expense, which ultimately will be passed on to policyholders. The Insurance Department's performance during your tenure as Insurance Commissioner demonstrates that the Insurance Department is adequately equipped to protect the interest of policyholders. Adding an attorney advocate position will move the existing rate review process from an administrative proceeding to more of a judicial proceeding.

PCI strongly opposes the proposal to eliminate the requirement that the Department of Insurance find that a non-competitive market exists before determining whether rates are excessive. In essence, this is a return to administered pricing. The United States economy is based on the concept that in a non-monopolistic environment, competition is the best mechanism for assuring that rates will not be excessive because competition will not let that happen. In such an environment, the regulator's primary responsibilities are to assure the rates are not inadequate so that injured workers receive the benefits these were promised to them by law and to assure that insurers do not unfairly discriminate among their policyholders.

There was a reason that states moved away from administered pricing in the 1980's. Well-meaning, but misguided regulators, tried to protect the employer community from rapidly rising costs by refusing to grant needed rate increases to cover rising losses. In some states, this resulted in carriers departing the market and a rapid growth in the residual market-which had to be subsidized by the remaining insurers and their policyholders. Eventually, rates had to be increased by very large amounts to protect insurer solvency. Instead of protecting employers, these regulators actually hurt them.

The proposal to require the Department to investigate any insurer with a material (undefined) market share if, after accounting for claim volume its reported increase in Delaware medical expenditures is 50% greater than that of the industry. Besides placing a burden on the larger carriers and not the smaller ones, it demonstrates a significant lack of understanding of workers compensation and workers compensation insurance. First, insurers have different market segments that they seek to write. Some specialize in low-hazard operations such as those with policyholders' having mainly clerical employees. Others may specialize in construction or even more risky employment. Those that focus on high hazard business are likely to have much higher medical costs.

The reason employers have insurance is that it reduces the volatility in their workers compensation costs because accidents are unpredictable and there is volatility in each year's workers compensation costs. For example, a business that has only clerical employees may have four employees riding in a car to a meeting that is struck by a truck running a red light injuring all four – one is left a quadriplegic, another suffers a severe brain injury, and two suffer 2nd and 3rd degree burns over 50 percent of their bodies. Medical costs alone could be over \$100 million. Given the size of the Delaware workforce, this would have a very significant impact on the insurer's medical loss experience. Given the volatility and randomness of accidental injuries, it is important to have large numbers of observations to really understand what is happening. Looking at even large carrier's experience does not give you that.

The proposal also ignores the possibility that the trend will be very small. If the medical trend for all workers compensation insurers is one percent and a large carrier's trend is 1.5 percent is it really worth investigating.

PCI acknowledges that there is a legitimate concern about the poor compliance record of employers to complete the Modified Duty Availability forms. This is a statutory obligation that should be enforced by the State of Delaware. Those that somehow would like insurers to enforce the employer's obligation fail to recognize how limited the insurer's ability is to influence the behavior of policyholders. Insurers can no more tell them to complete a form than insurers can tell them to make their workplace safer. Insurers can recommend things they can do to make the workplace safer, but employers do not have to adopt the recommendations. If the employer doesn't, the insurer will have to decide whether the premium will be sufficient to cover the exposure or whether not to insure the risk. Even then, the employer may find another insurer willing to insure them, or the employer can obtain coverage through the residual market.

Medical costs remain the primary cost driver. PCI recommends that the Task Force expand its review of the medical provisions of the workers compensation law. For example, we urge consideration of expanding the Health Care Advisory Panel to increase the representation of payers. Also, PCI urges the Task Force to engage in a more thorough review of the fee schedules. A number of studies have found that states with charge based fee schedules have higher medical costs than states using Medicare as a base. In fact, medical costs on average in those states can be almost as high as those states without any fee schedules. In 2007, PCI said that geozips made no sense in Delaware, and we continue to believe that. The proposal to freeze rates is a band-aid type solution and avoids looking to see whether some providers are excessively compensated, while others are undercompensated. If some providers are excessively compensated and others undercompensated in relationship to their effort and cost structure, a freeze will not eliminate the inequity.

The present utilization review system is not working. National recognized peer reviewed treatment guidelines rather than ones developed by self-interested local providers should be adopted. PCI believes insurers should be able to use any URAC certified utilization management company to conduct utilization review.

Additionally, having treatment guidelines and utilization review does not achieve its objective if the utilization review decisions are regularly overturned on appeal. Perhaps, medical decisions should be taken out of litigation system. For example, Texas uses an independent medical review process where medical review decisions are made by medical professionals. California has just moved to such a system starting January 1, 2013. Also, the treatment guidelines need to be expanded to additional conditions.

There has been a trend for many years of increasing time from injury before a case closes. The Task Force ought to be determining whether there are incentives that encourage delay or mechanisms needed to help informal resolution of disputes. For example, if a state has a provision that determines benefit entitlement as

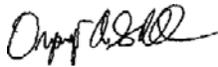
of the date of award, not injury, it may create an incentive to delay the settlement process. Many states have adopted some form of mediation to encourage informed and quicker resolution of disputes.

Disputes could be reduced at the front-end if employers/insurers could pay temporary benefits for up to 90 days without creating liability. Many states including your neighbor, Pennsylvania, have such provisions. As a companion piece, PCI would like to see a provision giving the employer authority to direct care to a panel of providers for up to 90 days. Given the size of the population of Delaware providers, a panel approach should still assure employees a fairly good representation of providers.

The majority of states place a limitation on the duration of temporary total disability. Delaware should consider a limit. It is not temporary if it can extend for years.

PCI urges the Task Force to broaden its study to look at core issues of the system. Until this is done, Delaware will continue to experience cost problems.

Sincerely,

A handwritten signature in black ink, appearing to read "Oyango A. Snell". The signature is fluid and cursive, with the first name being the most prominent.

Oyango A. Snell