

A publication of the North Carolina Association of Self-Insurers



Annual conference set for March 24–26

The 2010 Annual Meeting & Educational Conference of the North Carolina Association of Self-Insurers is set for March 24-26 at the Holiday Inn Resort, Wrightsville Beach. Program and registration details are available at WWW.NCSELFINSURERS.COM

"Our annual conference is the ideal forum to make contacts, exchange news and views, and learn about developments in workers' compensation in North Carolina," notes Jay Norris, president of the self-insurers association. "It is also an excellent opportunity for exhibitors and sponsors to get the word out about their products and services," he adds.

As in previous years, the association will apply for continuing education credits for adjusters, nurses, and lawyers. Registration fees for the conference are \$225 for members, \$350 for non-members. Exhibitor fees, which cover registration for two individuals, are \$650 for members and \$750 for non-members. Also, the following sponsorships are available:

Platinum	—	\$1,000
Gold	—	\$500
Bronze	—	\$350

Please contact Moby Salahuddin at MSALAHUDDIN@SC.RR.COM for details. Dress for all events is business casual. We will open the conference at 12:45 p.m. on Wednesday, March 24 and conclude around 12:30 p.m. on Friday. Registration fees cover the opening day reception from 5:15 p.m. –6:15 p.m. and breakfast on Thursday and Friday (continental breakfast on Friday.)

Among this year's highlights:

- *Message from the NC Industrial Commission* by Pamel T. Young, chair, North Carolina Industrial Commission
- *Keeping Claimants away from Plaintiffs' Attorneys* by Sam Taylor
- *Case Law Update* from Bruce Hamilton
- *Medicare's New Regulations* by Scott Mattingly, regional team leader, PMSI
- *What is on the Horizon for Workers' Comp?* by Jane Jackson and Mark Peck

About NCASI

The North Carolina Association of Self-Insurers is proud to be the Employers' Voice in Workers' Compensation. The association is active before the North Carolina Industrial Commission and the General Assembly, and maintains legal counsel and a lobbyist to protect the interests of employers.

We update our members through our quarterly publication, NC Workers' Comp News and our website at www.ncselfinsurers.com.

Membership in the association is open to both self-insured employers and employers with large deductibles. In addition, many of North Carolina's largest employers belong to our association, along with claims professionals, rehab specialists, TPAs, surveillance professionals, and law firms.

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President's Note

Looking ahead to the conference, and 2011



We are looking forward to seeing you later this month, at our annual meeting & educational conference at Wrightsville Beach. Those of us who are regulars at this event

look forward to it because, apart from the educational content, the conference gives us a chance to renew old acquaintances and make new friends.

The conference is small enough for almost anyone to meet most everybody, and that makes it an exceptional opportunity for companies and individuals new to North Carolina. This year we plan to take advantage of the setting to get together informally with some of the major players to explore the possibility of a study of the state's workers' compensation system. We think that could be a prelude to meaningful change.

Some of you have contacted us to express an interest in making a presentation or in introducing a new speaker/topic. We welcome your suggestions and participation. It is not too early for the 2011 conference!

See you at Wrightsville Beach.

With very best wishes,

Jay Norris, *president*

CASE LAW UPDATE

By Joe Austin



Directing Medical Treatment

In many claims, an employer will allow an employee to treat with a provider that the employee has selected for one reason or another. However, under the Workers' Compensation Act, an employer has the right to direct treatment for any compensable injury, and failure to exercise that right can have a tremendous impact on the outcome of a claim, as demonstrated by the recent case of *Sykes v. Moss Trucking Co.*

In that case, there had been a dispute regarding the designation of the employee's treating physician, which the Industrial Commission resolved in 1997 by ruling that the employer was entitled to direct medical treatment and ordering the employee to use "good faith efforts" to cooperate with treatment recommended by the authorized physician.

In 1998, the Industrial Commission designated Dr. Robert Hansen to treat the employee, indicating that the employee's failure to comply with Dr. Hansen's treatment would result in termination of compensation. The employee later expressed dissatisfaction with the physician and refused further treatment, resulting in the suspension of his disability benefits.

In 2005, the employee returned to Dr. Hansen, representing that he had been treating with another physician and requesting a referral to that physician. Actually, the "other" physician was the physician the Industrial Commission declined to authorize in 1997. Dr. Hansen acquiesced to the employee's request, and did not render additional treatment, nor was any follow-up scheduled.

Based on Dr. Hansen's "referral," the Industrial Commission ruled that the employee had become compliant with treatment recommended by the authorized physicians, and ordered reinstatement of disability benefits. Commissioner Sellers dissented on the grounds that the employee continued to be non-compliant with the order designating Dr. Hansen as treating physician.

Noting that the employee's purpose in returning to Dr. Hansen in 2005 was not to resume treatment, but to obtain a referral to a physician the Industrial Commission had previously declined to authorize, the Court of Appeals concluded that the employee's return to Dr. Hansen was an attempt to circumvent the Industrial Commission's 1998 order. As a result, the Court ruled that because there was no evidence plaintiff had ever actually attempted to resume treatment with Dr. Hansen, the employee continued to be in violation of the 1998 order, and was not entitled to reinstatement of compensation.

Thus, the employer was not obligated to pay disability benefits after 1998 because the employer had exercised its right to direct treatment. Had the employer failed to exercise that simple right, compensation could well have continued for another decade, and while it is not necessarily a mistake to permit an employee to treat with a provider requested by the employee, employers should carefully evaluate their options before consenting to any such requests.

Joe Austin leads the workers' compensation practice group at Young Moore and Henderson in Raleigh. A graduate of Davidson College, Joe received his law degree from Wake Forest University.

NC comp rates drop 9.6%

Effective April 1, 2010 employers in North Carolina will see a 9.6% drop in workers' compensation rates, according to the state insurance department, which also approved a zero percent increase for the assigned risk markets.

The recent changes in the voluntary market loss costs follow decreases of 4.3% in 2009 and increase of 1.85% in 2008. Trends are favorable also in North Carolina's Assigned Risk Market which continues to decline in premium volume.

According to the North Carolina Rate Bureau, through July 2009 the number of policies was below last year by 26.7%, and the total premium volume is below last year by 30.9%. This decline is consistent with declines country-wide. In North Carolina, 66% of the Assigned Risk policies are under \$1,000 in premium.

The rate bureau reports four servicing carriers continue to service assigned risk business under agreements entered into effective January 1, 2008. The servicing carriers are:

- Companion Property and Casualty Insurance Company
- Key Risk Insurance Company
- LM Insurance Corporation
- Travelers Indemnity Company

The North Carolina direct assignment carriers are:

- ACE American Insurance
- American Interstate Insurance Company
- American Zurich Insurance Company
- Cincinnati Insurance Company
- Continental Casualty Company
- Granite State Insurance Company
- Hartford Underwriters Insurance Company

NCCI

Claims frequency declining nationwide

Thanks to the recession, the favorable declining trend in claims frequency is expected to continue, reports the National Council on Compensation Insurance. Virtually every major employment category examined has experienced a marked decline.

NCCI's preliminary figures indicate a decline of 4.0% for 2008. "This is on the heels of a 2.6% drop in claim frequency in 2007 and it extends a trend that started in the 1990s," the group says.

Now the bad news: "While the overall decline is widespread and good news for workers, employers and their insurers, high-cost Permanent Total claims have emerged recently as a noticeable exception to this decline.

NCCI's latest review of claim frequency and severity shows that, while claim frequency is down, indemnity and medical severities continue to rise.

Over the last five years, there were significant declines in total lost-time claims frequency for all industries, geographic regions, and employer sizes. Over the same period, the number and frequency of Permanent Total claims have increased significantly, with all major causes of injury contributing to the rise

NCCI reports the rise in Permanent Total claims appears to be driven primarily by workers age 50 or under.

NC rates compared

According to the widely publicized Oregon Workers' Compensation Premium Rate Ranking, North Carolina's workers' compensation rates are lower than South Carolina's but higher than rates in Georgia and Virginia.

In the 2008 rankings from Oregon, the most recent available, 21 states have higher comp rates than North Carolina. North Carolina ranked 22nd, South Carolina ranked 12th, Georgia ranked 25th, while only three states in the country had lower rates than Virginia (which ranked 48th).

The way Oregon displays its report, the state ranked number one has the highest workers' compensation pre-

mium rates in the country. Alaska typically holds that spot. The most desirable ranking in the Oregon report, which includes the District of Columbia, is 51st. In 2008, North Dakota claimed that spot, meaning it had the lowest workers' compensation premium rates in the country.

Both North Carolina and South Carolina have been losing ground. In 2006, for instance, North Carolina was ranked 37th but two years later had slipped to 22nd. South Carolina was ranked 25th in 2006 but slipped to 12th by 2008.

coming up

March 24-26, 2010

North Carolina Association of Self-Insurers
Annual Meeting & Educational Conference.

Holiday Inn Sunspree Resort, Wrightsville Beach

April 21-23, 2010

Members-Only Forum, SC Self-Insurers Association.

Litchfield Beach & Golf Resort

April 25-29, 2010

RIMS 2010 Annual Conference & Exhibition.

Boston Convention & Exhibition Center

NC Workers' Comp News is produced quarterly by the North Carolina Association of Self-Insurers. To be added to our distribution list, please contact Moby Salahuddin, executive director, at msalahuddin@sc.rr.com

www.ncselfinsurers.com

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Medicare Delays Secondary Payer Reporting Deadline

Heeding cries from the insurance industry that there are still too many uncertainties surrounding the Medicare Secondary Payer reporting system to stick with the current implementation schedule, officials from the Centers for Medicare and Medicaid Services(CMS) announced recently they have pushed back the data reporting deadline by several months.

As reported by the *California-based Workers' Comp Executive*, Responsible Reporting Entities (RREs) -- workers' comp carriers, self-insured employers, liability insurers and others who pay for medical care of Medicare beneficiaries -- were facing an April 1 reporting deadline for electronically reporting to CMS what they are spending on these claims. The new deadline is January 1, 2011.

"The uncertainty surrounding the functionality of the Medicare reporting system, as well as the basic security of the system, prompted several industry groups to send a joint letter to CMS earlier this month urging a delay in the reporting date," *Workers' Comp Executive* reported.

The American Insurance Association, the National Association of Mutual Insurance Companies and the Self-Insurance Institute of America listed several reasons why the reporting deadline should be extended. One concern was that with the original deadline only two months away, CMS still hadn't produced the final parameters of the reporting program.

The letter also noted that questions still remain on basic issues as who holds the reporting responsibility when multiple entities have a share of a settlement. "The letter also expressed concerns about the security and confidentiality of the data exchange system, which has suffered some lapses during testing," the publication reported.

It added the interest groups also noted that carriers may not be able to obtain some of the required data elements, such as a beneficiary's social security number or their health insurance claim number - data that CMS warns beneficiaries to guard closely. "In other words, reporting entities are being directed to obtain information from individuals that CMS itself advises those individuals to provide only to their physician or other Medicare provider," the letter pointed out.

Mandated by Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, the reporting program is intended to make sure that the Medicare remains the secondary payer for medical expenses that are the primary responsibility of a workers' comp carrier or a liability insurer. Carriers and other RREs that fail to meet the reporting deadline could be fined up to \$1,000 per day per claim.

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Association of Self-Insurers

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