

National Trends in Workers Compensation

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As workers compensation costs continue to rise, it is crucial to understand the national issues currently impacting the market to determine how these costs can be controlled. Some of the most compelling issues involve the Affordable Care Act, war veterans returning to the workforce and mediation of claims. These issues affect how all companies do business, and it is important to understand how they will influence the workers compensation market.

Impact of the Affordable Care Act

The Patient Protection and Affordable Care Act was enacted into law in 2010 with the aim of making health care accessible to all Americans while simultaneously containing costs. Although recent delays will prevent its full implementation, the act is scheduled to take effect on Jan. 1, 2014. While public opinion is divided on whether the legislation goes too far or not far enough, there is no doubt that the ACA has changed the health care industry in the United States. This is significant because, in recent years, medical costs have become the greatest expense of a workers compensation case.

While it is difficult to gauge what the exact impact of the ACA will be on the workers compensation system, initial indications are that it will result in some savings to the business community. One aspect that already took place when it was first implemented—the elimination of lifetime

caps on medical insurance coverage—has already helped to reduce costs. Prior to the enactment of this legislation, anyone with health insurance had a lifetime maximum—typically \$1 million—that a health insurance company would pay for health care coverage. Because of this cap, those who sustained work injuries went out of their way to make certain that any medical treatment received as the result of a work injury was apportioned to the workers compensation carrier so that it would not impact their personal lifetime maximum. The removal of this maximum means that individuals are less concerned about cost-shifting than they once were, which should result in savings to the workers compensation system.

Under the ACA, a health care insurer can no longer refuse to insure someone with a pre-existing condition, which should also reduce costs. In the past, if an individual sustained a work injury that created the necessity for on-going medical treatment, that treatment would almost always have been directed to the workers compensation carrier. This would have been done not only to avoid reaching the lifetime maximum, but also because the individual's health insurance carrier would not pay for that treatment. From a claims perspective, this meant that many cases remained open because treatment would not otherwise be covered. The ACA may work to shift some treatment

costs away from the workers compensation carrier to a private health care insurer.

Another driver of workers compensation medical costs lies in the number of comorbid factors—diseases or disorders that exist simultaneously, but independently, with another disorder—that injured workers may have that make it more difficult to recover from work injuries. These conditions include systemic problems, such as hypertension, obesity or diabetes. Often, injured workers who have been out of work for a long period of time have lost their medical insurance because their employers can no longer carry them on the books as employees. This lack of insurance makes it difficult for them to afford prescriptions for any of these underlying systemic conditions. These untreated medical conditions then slow recovery from the work injury, which leads to higher costs for the workers compensation carrier.

In one such case, a claimant sustained serious orthopedic injuries while on the job. After conservative treatment failed, it was determined that surgery was necessary. During the preoperative process, however, it was discovered that the claimant had hypertension, which had to be treated before surgery, but he could not afford the medication since he no longer had health insurance. The carrier had no choice but to pay for the hypertension medications and the necessary visits to the internist because the claimant could not have surgery until his blood pressure was controlled. It took several months before the claimant's blood pressure could be stabilized. Not only did the employer have to pay additional prescription costs, it also had to continue paying the claimant's indemnity benefits until surgery could be performed. In such cases, the cost of medication is passed on to the workers compensation carrier.

Theoretically, under the ACA, the claimant's treatment costs would not have to be shifted away from the health insurer and this scenario should no longer happen.

Another beneficial component of the ACA is that it provides employers with incentives to offer wellness programs. An employer can reduce the amount of money it pays for health insurance by developing and maintaining programs that encourage wellness. These programs should create a workforce that is less obese and healthier, which will result in a reduction of healing time for work injuries.

Overall, the ACA is designed to create greater access to health care for most people. Presumably, greater access to health care will mean that systemic conditions will be treated and controlled through the health care system, and it will not be necessary for these costs to be shifted to a workers compensation carrier. The corollary of this is that greater access to health care should result in a healthier workforce, which will ideally lead to a reduction in workers compensation costs.

Veterans Return to the Workforce

Another issue on the horizon for the workers compensation system is the return of war veterans from the Middle East to the workforce. At the height of the wars in Iraq and Afghanistan, there were 2.4 million Americans serving in combat. More than 50,000 troops sustained injuries during those wars. These veterans began returning home in significant numbers over the past two years—and all soldiers are scheduled to be out of combat zones by 2016.

This will impact both workers and the employers who hire them, as companies will likely have to accommodate individuals who

may have physical and mental injuries because of their service. How these veterans will impact the workers compensation system remains to be seen.

Employers of veterans with service-related injuries probably will not be affected, as the Veterans Administration (VA) will continue to address all service-related problems. While there may be some question of what happens when a service-related injury is superimposed upon a work injury, this should be handled no differently than a “normal” work injury that is superimposed upon a pre-existing work injury.

The issue has the potential to become murky when there is an initial question of whether an injury is work-related or not. If a veteran suffers a work injury in the course of his or her new employment, it is likely this person will continue to seek medical attention from the VA facility where he or she is accustomed to obtaining treatment. If the injury is later contested and found to have been compensable, there will be a question about how the federal government will be paid back for treatment rendered for the work injury. It is unlikely the government will code treatment for alleged work injuries differently than it codes treatment for other conditions.

What happens to the workers compensation carrier when the federal government decides several years after a veteran’s work injury that it now has a large lien for which it wants reimbursement? Will the onus be on the injured workers and their attorneys to separate out the treatment that the employee receives so that the government can be reimbursed as soon as an adjudication is made? Many complexities lie ahead.

Mediating Workers Comp Claims

Somewhere in the last 10 to 15 years, there has been a shift from litigating claims to mediating them. From a claims perspective, the thought has been that mediation moves cases through the system more quickly than does litigation. While statistics suggest that mediations do lead to the swifter disposition of cases, there is a question of whether the rush to mediate cases has created an expectation on the part of injured workers and their attorneys that every case will settle.

Proponents of mediation emphasize its societal benefit as a peaceful way of resolving disputes and eliminating conflict. Mediation may also be a cost-saver if it occurs early enough that legal and medical expenditures are reduced. While an independent medical examination may still be necessary, the lack of deposition expenditures reduces the cost of a claim as well.

The process does have its flaws, especially for larger employers. When a case settles through mediation, other workers are often made aware that a settlement has taken place. If the case involved dubious injuries, other workers may get the message that they can also receive compensation for any and all work injuries. Even where there may be a confidentiality clause, information does leak and those leaks may have a negative impact on the employer.

There are also times when mediation is not appropriate, such as when an employer wants to enforce certain business decisions. For example, an employer might have chosen not to offer paid maternity leave. Should a workers compensation case arise

involving a pregnant worker, it may benefit the employer to litigate the case rather than mediate, since paying a claim could establish a precedent of providing such leave.

A shift away from mediation may have already begun. More carriers in liability cases are asking that cases be tried to verdict. Will this carry over to the workers compensation system and will fewer cases settle? Only time will tell.

National Concerns, Local Impact

The workers compensation system does not exist in a vacuum. While the legislatures in each state are continually tinkering with their respective state systems, it is essential that practitioners and the business

community remember that national issues often impact these state programs and have a great effect on the bottom line.

Since our world is constantly evolving, we will continue to experience changes that will impact the workers compensation arena. The regulation of health care, the introduction of new classifications of workers and various legal approaches to handling cases and claims are a few of the issues trending now, and the business community, in its quest to reduce costs, should take note.



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