



## **Workers Compensation is Under Utilized**

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Workers compensation was historically a compact between employers and employees that grew out of the Industrial Revolution. Injured workers gave up their right to sue their employer -- and the uncertain outcome of litigation -- in exchange for prompt, certain but modest benefits, including medical care and a stipend while they were out of work.

Unfortunately, reality falls far short of expectation. Today, workers injured on the job confront a system where the support they receive is inadequate. California has the nation's highest Workers' Compensation insurance premiums; yet, inexplicably, it has the lowest benefit payments for the 1 million workers injured on the job every year.

This system clearly needs improvement. More resources need to flow to injured workers and less should be spent on the bureaucratic maze of middle men that have flourished within the system.

As we concentrate on reforming the Workers' Compensation System, the following should be kept in mind, the system is underutilized by the very people it was designed to serve. Rather than face the hostility of the system, injured workers frequently elect to use their health plan to access treatment for work related injuries.

When an injured worker decides to access the health care system through their health plan rather than use the Workers' Compensation system, a series of unfortunate consequences ensue.

First, the worker faces the costs associated with deductibles and co-payments that are part of his/her health plan's co-insurance infrastructure. These co-insurance costs have been increasing over the past several years. This is out-of-pocket expense that the worker's family can ill afford.

Second, the health plan assumes the liability for treatment that should be covered under the Workers' Compensation insurance company policy. This liability translates into financial instability for the worker's health plan with reduction in benefits and increasing co-insurance costs resulting.

Finally, this increased cost for health benefits translates into increasing acrimony between organized labor and management. The unfortunate deterioration in labor relations across Southern California can be directly attributable to the cost of health care coverage for the employees and their families.

It is of critical importance that the trustees for health plans know the magnitude of health care costs that should have been covered under Workers' Compensation but have been paid for by the health plan. This information is also of critical importance for both labor and management as they negotiate new contracts in the future.

## Background

California's 90-year-old Workers' Compensation System was among the first wave of state programs established in the early 20th century in response to dangerous working conditions in the nation's shops and factories.

More than 14 million California workers are covered by the system, which is paid for by the state's employers. California companies are required by law to buy coverage or set up their own self-insurance programs.

- California's Workers' Compensation insurance costs have doubled over the past three years -- although the number of claims per worker per year declined 20 percent between 1996 and 2001.
- California employers now pay the highest premiums in the nation, an average of \$5.23 for each \$100 of payroll.<sup>1</sup> Runner-up Florida was \$4.50, while 40 states average less than \$3.
- The cost for Workers' Compensation has been particularly painful for California's industrial and construction trades, higher-risk sectors where premiums have soared. For example, some roofing firms are paying rates in excess of \$99 for each \$100 of payroll on their least experienced workers.<sup>2</sup>
- Yet weekly benefits to injured California workers rank in the bottom third of all states.

## The Workers' Perspective

For workers injured on the job, approaching the Workers' Compensation System is not an attractive option. The system is supposed to pay for medical and rehabilitation services and income maintenance for those with job-related illnesses and injuries. Unfortunately, reality is far short of expectations.

- Even though California's frequency of workers' compensation claims has fallen 20% between 1996 and 2001, California's benefits to injured workers are now among the lowest in the nation.
- Injured California workers must go to court to get benefits 20 percent of the time, double the rate 12 years ago and more than four times the national average.
- One out of every five workers injured on the job last year -- some 200,000 Californians and 5,000 on the North Coast -- are mired in a workers compensation maze of confusion, delays and litigation that will last an average of almost three years.<sup>3</sup>

Many workers with injuries slam into a wall of frustration that will inhibit their accessing the system. If the worker chooses to file a claim, some will lose their jobs, others will run a demoralizing gauntlet designed to minimize the Workers' Compensation insurer's liability.

Given the above, it is reasonable behavior for the injured worker to bypass the system. They go directly to their own doctor for treatment when injured. In addition, early symptoms of work related injuries are often not attributed to the workplace. Early cardiovascular or pulmonary disease can present as chest pain, shortness of breath, or acute bronchitis and the relationship to workplace exposure is not recognized by either the patient or the physician. Only in retrospect can the causal relationship be identified.

Claims are generated and paid by the injured worker's health plan. No coordination of benefits occurs. The health plan does not recover, through subrogation, payment from the employer's Workers' Compensation insurance company. Under this set of circumstances, the health plan

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<sup>1</sup> Oregon Department of Consumer and Business Services

<sup>2</sup> Roofing Contractors Assn. of California.

<sup>3</sup> "Special Report - Insult to Injury"; the Press Democrat; Santa Rosa, CA 1997.

subsidizes the Workers' Compensation system and the health plan experiences inappropriate medical costs in return.

## **Work Related Injuries**

Work related injuries tend to cluster around the musculoskeletal system. The accompanying diagram, taken from a comprehensive series<sup>4</sup> examining Workers' Compensation and published by the Press Democrat in Santa Rosa several years ago, summarizes the types and location of injuries documented over a five year period.

Certainly one would expect workers within the building trades to demonstrate a similar pattern of injuries. However, certain subsets of the building trades may demonstrate a unique clustering of chronic diseases related to work place exposure.

For example, the Northern California International Union of Painters and Allied Trades may manifest an increased incidences of pulmonary complications (asthma, chronic bronchitis, recurrent pneumonia, etc.) associated with chronic exposure to aerosolized solvents in confined spaces.

Workers within the Pipe Trades demonstrate high frequencies of chronic knee, shoulder and neck injuries. In addition, as these workers are exposed to asbestos in older buildings, they can expect multiple respiratory symptoms that ultimately result in pulmonary fibrosis and/or malignancies.

Each building trade has an established historical record for exposure to trauma and toxins within the workplace. This record can be analyzed. A pattern of injury for each trade can be identified and quantitated.

## **Future Action**

We now have data mining technology that can be used to analyze the prior paid claims for each of the various union health plans. Using this technology, we can not only identify patterns of injury that are unique to a given trade, we can also identify each incidence of injury and how much the health plan paid for treatment.

Armed with this information, the health plan's case managers can then review each case and, where appropriate, seek reimbursement from the employer's Workers' Compensation Insurance Company. At present, there is not reliable data as to the size of expected recoveries the union health plans could expect thorough this subrogation of payment activity, but the potential is substantial.

In addition, by understanding patterns of disease within subsets of working men and women, we can identify chronic health conditions at an earlier state of development and intervene to improve the level of health outcome for the individual worker.

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## Conclusion

Reform of the current system is clearly indicated. The program's overall cost must be brought into line with national norms or California's economy will suffer. Injured workers need to receive promised support when they are vulnerable and experience less hassle when they use the system. The middle men (insurance companies, lawyers, health care providers, hospitals, etc.) need to receive less of the system's resources. Powerful special interests and politicians must recognize that serving the interests of the injured worker is the primary mission for the program.

While we are fixing the Worker's Compensation System, we must also recognize that the economic stability of the employee's health plan is precarious at this time. These plans can barely cover the financial liability that now result from legitimate health care goods and services that are covered under the plan's benefit structure. To shoulder additional liabilities for work related injuries is an unreasonable added burden that can no longer be tolerated.