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Impact Of Affordable Health Care Act On Workers' Compensation Systems Is Speculative At Best At This Point In Time

By Chuck Davoli, WILG President

Representatives of WILG (the Workers' Injury Law & Advocacy Group) recently attended two conferences on behalf of workers' comp claimant's attorneys, primarily for the purpose of assessing the potential impact of the new National Affordable Health Care Act's (AHCA) impact on state and federal workers' compensation systems. At both the Boston WCRI (Workers' Compensation Research Institute), March 12-13, and the ABA Mid-Winter Employment Law-Workers' Compensation Conference, March 13-15, despite an abundance of rhetoric and opinions from a variety of economists, medical providers, insurance executives, academic scholars, and an assortment of legal practitioners, the impact of the AHCA on workers' compensation systems is speculative at best at this point in time in its implementation.

Although the AHCA was enacted by Congress in March 2010, and has already survived a constitutional challenge in the U.S. Supreme Court, the first stages of its implementation establishing new national health care requirements for all citizens is still in its infancy. Obviously, from WILG's perspective, **how such compulsory health care requirements will now affect most employer's compulsory obligation to also provide health care benefits to injured workers deserves some thoughtful insight**.

Will we see a re-visitation of prior attempts of so-called "24-7" health care plans, which provide 24 hour coverage to employees regardless of injuries on or off the job? Will new health care insurance products evolve affording employees to opt in or out of coverage options, or employee waiver of job-related coverage in exchange for participation in employer/employee mutually sponsored health care plans? Will workers' compensation health care delivery systems, including provider reimbursement rates, be reconciled or equalized with traditional group health care delivery systems? Obviously, any such liability for work-related injuries assumed by injured employees would be contrary to the fundamental and underlying quid pro quo principles of workers' compensation systems.

Finally, how will an employer's workers' compensation liability for indemnity wage replacement benefits be integrated with any new universal health care plans? Could we see the development and integration of ERISA type STD/LTD indemnity plans with hybrid health care plans for compliance with employer workers' compensation liability? Could state versus federal jurisdiction become an issue in resolving future disputed workers compensation type claims if modeled like ERISA type plans?

Frankly, none on the above questions were either raised or discussed at either of these two

national forums, and perhaps attention to such developments is over-reaction by those of us immersed in the policy arena. However, the impact of AHCA on workers' compensation is more likely than not an evolving topic for legal practitioners. While the implications of the AHCA on workers' compensation systems was likely not even a remote afterthought during congressional debate for its passage, **balancing the interests of employers integrating compulsory health care and workers' compensation liability with the best interests of injured workers will be a challenge for WILG and its members in the future**.

Listening to economists on the issue, the expected impact of the AHCA is simply one of supply and demand. In short, with additional health care coverage of millions more patients, the supply or availability of medical providers, especially primary care physicians as the traditional gatekeepers of the medical delivery system, will cause delays in treatment and development of alternative treatment systems, such as "telemedicine" technology and greater utilization of para-professional medical personnel. The impact of shortages of qualified medical personnel will be felt most in underserved rural and inner city areas. As one example of another country's universal health care system addressing the needs of their workers' comp system, reportedly, Canada merely authorizes injured workers to "go to the head of the line" of those waiting for medical care to help offset the extended time of disability from work and indemnity benefit liability to employer's for delays in medical treatment caused by shortages of medical personnel.

The health care experts tell us to expect new health care plans with higher deductible costs shared by insured employees, in part, to offset the increased costs for compulsory health care to become the liability of most employers. Further, we should expect a shift back to medical provider networks and a reduction in patient choice of providers, in part, to allow health care plans to negotiate competitive provider costs between provider groups. We should also expect a shift of focus to provider treatment outcomes as a measure for continued treatment authorization, which, in workers' comp terms, means future treatment authorization could be directly tied to an injured worker's demonstrated functional improvement and return to employment expectations within set periods of time. Finally, our health and insurance experts agree, increased attention will be focused on the impact of co-morbidity medical factors and their relationship to both causation and continued disability of injured workers, such as: obesity, diabetes, high blood pressure and hypertension, arthritis, and the big one, opiate addiction.

Finally, one issue that generated consensus, but with uncertain outcome, was the inevitability of cost-shifting of medical liability from new group health plans to workers' comp health care plans. Despite the additional and often more restrictive provisions of workers' comp medical systems (like: evidenced-based medical treatment guidelines, employer medical peer reviews and/or employer selected providers, etc.), due to employee avoidance of deductible health care plan liability, it is anticipated that injured employees may seek financial refuge in workers' comp claims rather than group health plan coverage. Such transference of liability could open new doors of disputes over causation, the effect of pre-accident, pre-existing medical conditions, and the proportioning of disability related to any alleged work accident or occupational disease.

In conclusion, WILG and OAJ members must pay attention to state and federal developments as

the AHCA evolves, as well as monitor closely its impact on workers' compensation systems. Most likely the AHCA is here to stay, and we need to stay in front of related developments to insure reasonable justice and fairness for injured workers' in America.

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