

2013-2014: “Top Ten” Trends and Emerging Issues in Workers’ Compensation

The following chart includes ten workers’ compensation topics that are surfacing nationwide: (1) Opt Out, (2) Eliminating “liberal” construction of interpretation of work comp act, (3) AMA impairment guides – 6th Ed., (5) Medical fee schedules, (6) Restrictions on the choice of treating physician, (7) Arbitrary Benefit Limitations (7) Mental injuries in the workplace (8) Opioids & Dr. Reimbursement, (9) Medical Treatment Guidelines and (10) Occupational Disease. Other important emerging issues to pay attention to include: limiting cumulative trauma benefits for professional athletes, concurrent jurisdiction for Long-shore & state work comp act and the use of medical marijuana for chronic pain and obesity.

Issue	Description	Legislation
Opt Out & Union Carve Out Programs		
<p>Opt Out Proposal</p>	<p>Permits “qualifying” employers to opt out of the state’s mandatory workers’ compensation system, and specify “conditions” and place “limitations” on the type of benefits covered.</p> <p>Oklahoma’s new law gives employers: Complete authority to determine how benefits are designed, Impose arbitrary conditions on an employee’s ability to receive benefits, Select treating physician, and Control over dispute resolution system</p> <p>One of the most important differences between OK’s and TX’s systems is that Oklahoma preserves the employer’s “exclusive remedy” protection. In Texas, injured workers for employers who opted-out are free to pursue remedy in the civil courts.</p> <p>Oklahoma’s new law may be used as a model for other states.</p>	<p>OK SB 1062 (2013 En.)</p>

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Union Carve Out Programs	<p>Carve out programs permit employers and unions to establish alternative dispute-resolution procedures for injuries through collective bargaining arrangements.</p> <p>A carve out bill was introduced in New Jersey this session that would have required workers to follow a fast track system for dispute resolution (ADR) - requiring all claims be submitted to binding arbitration.</p> <p>Injured workers giving up several rights under these arrangements including: (1) right to choose whatever doctor they want, (2) in some states - the worker’s right to get their own IME and (3) the requirement that they use a fast track system – often involving mandatory arbitration – to resolve problems</p>	NJ AB 3423 (2013 Pending)
Eliminating “liberal” construction of interpretation of Comp Act		
Liberal Construction	<p>In 2013, Tennessee’s general assembly recently enacted a major work comp “reform” bill that provides that the new law should be interpreted impartially—“without favor to either employee or employer.”</p>	<p>TN SB 200 (2013 En.)</p> <p>MS SB 2576 (2012 En.)</p> <p>Louisiana (2012 En.)</p>
AMA Impairment Guides – 6th Ed		

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AMA Guidelines	<p>Kansas SB 187 dictates that physicians must use the 6th Edition to determine functional impairment and permanent partial for injuries occurring on and after Jan. 1, 2015</p> <p>NY, KY & IA have rejected the 6th Ed.</p>	<p>KS SB 187 (2013 En.)</p> <p>IL HB 1698 (2011 En.)</p> <p>MT HB 334 (2011 En.)</p>
Medical Fee Schedules		
Fee Schedules	<p>This session Indiana’s Governor Mike Pence signed into law workers’ compensation reform legislation that imposes a fee schedule for medical services at 200% of Medicare’s rate.</p> <p>Virginia was able to defeat a fee schedule bill this session, however, stakeholders have been asked to work together for the next year to come up with a bill though.</p>	<p>IN HB 1320 (2013 En.)</p> <p>VA HB 1612 (2013 – defeated)</p>
Reduce or Cap Benefits		
Treating Physician Limitations & Raise Std. of Proof for Changing Physicians	<p>The practice of allowing a worker to be treated by his or her own physician is also under attack in many states.</p> <p>Many proposals provide for an absolute right for the employer or the insurer to choose the physician or require that the injured worker be “treated” by a specific physician. In Ohio - legislation was introduced this session that would restrict an injured workers’ freedom to choose their treating physician if the worker did not return to work within 45 days.</p> <p>The physician choice provision was removed from HB 34 (Budget bill) after strong opposition from organized labor and the trial bar.</p>	<p>OH HB 34 (2013 – language removed from budget bill)</p>
Arbitrary Limits on Medical Benefits		

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Arbitrary Limits on Medical Benefits	<p>Many states have faced legislation to terminate benefits after the passage of time or when the injured worker or the surviving spouse reaches retirement age.</p> <p>For example, OK SB 1062 (2013 En.)</p> <ul style="list-style-type: none"> • Decreases TTD maximum duration from 156 to 104 weeks, • Decreases TTD maximum weekly indemnity benefit from 100% to 70% of SAWW • Decreases max duration from 500 to 250 weeks • Decreases PPD max weekly indemnity from \$323 to \$250 	<p>IN HB 1320 (En. 2013)</p> <p>GA HB 154 (2013 En.)</p> <p>OK SB 1062 (2013 En.)</p> <p>TN SB 200 (2013 En.)</p>
Medical Treatment Guidelines		
Treatment Guidelines	NY WC Board misapplying new Guidelines retroactively to terminate medical treatment	Implemented in New York on Dec. 1, 2010
Mental Injuries in the Workplace		

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Mental Injury	<p>A number of bills have been introduced across the country addressing coverage to first responders for emotional injury.</p> <p>Minnesota recently joined the majority of other states in amending its statutes to allow for mental-mental injuries (a psychiatric disorder without a physical injury).</p> <ul style="list-style-type: none"> • The law provides that the employee must be diagnosed with post-traumatic stress disorder (PTSD) by a licensed psychiatrist or psychologist in order to qualify for benefits. • This change arose from the Red Lake school shootings in 2005. Several teachers at the school were diagnosed with PTSD, but denied workers’ compensation benefits as physical injuries were not sustained. <p>Unfortunately, legislators in Connecticut failed to take the opportunity to demonstrate active support for injured first responder workers in the aftermath of the Sandy Hook Shooting tragedy.</p> <ul style="list-style-type: none"> • A bill was introduced that would have expanded Connecticut’s workers’ compensation coverage to all individuals diagnosed with posttraumatic stress syndrome as a result of witnessing the death or maiming of another human being. • Currently, in Connecticut, mental health related trauma is not covered if the worker only suffers a psychological injury. Unfortunately, the legislature failed to pass the bill. <p>A Long-shore bill pending in SC would delete a requirement that workers provide medical evidence that working conditions caused the mental trauma.</p>	<p>MN SB 1234 (2013 – En.)</p> <p>CT SB 823 (defeated)</p> <p>SC HB 3369 (pending)</p>
Opioids & Dr. Reimbursement for Repacked Drugs		

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<p>Opioids</p>	<p>Insurers claim that long-term opioid use drives up claim durations, disability payouts and medical expenses. Several solutions have been proposed to address this issue. One proposed solution is to implement prescription drug monitoring programs (PDMP) nationwide. Another suggestion is to adopt more restrictive evidence based medical treatment guidelines</p> <p>Washington's guidelines are frequently cited as a "model" for other states. In 2007 Washington implemented new guidelines that recommended that doctors not increase opioid doses beyond 120 milligrams when a patient does not demonstrate “improved functionality.”</p>	<p>See NCSL for summary of state legislation in 2013 – http://www.ncsl.org/research/health/prevention-of-prescription-drug-overdose-and-abuse.aspx</p>
<p>Dr. Reimbursement for Repacked Drugs</p>	<p>In Florida a bill was recently signed into law that creates a maximum reimbursement rate for physician-dispensed medication of 112.5% of the average wholesale price, plus an \$8 dispensing fee.</p> <p>Indiana’s new law also limits the maximum reimbursement of repackaged drugs.</p>	<p>Florida SB 662 (2013 En.)</p> <p>IN HB 1320 (2013 En.)</p>
Occupational Disease		
<p>Occupational Disease</p>	<p>Missouri enacted a bill that provides that OD are exclusively covered under the workers' compensation statutes:</p> <ul style="list-style-type: none"> • It expanded benefits for OD due to toxic exposure other than mesothelioma equal to 200% of the state's AWW • For mesothelioma cases, an additional amount of 300 percent of the state's average weekly wage for 212 weeks is payable by employers and employer pools that insure mesothelioma liability. • Creates the Missouri Mesothelioma Risk Management Fund to pay mesothelioma claims brought against contributing members. • The Act also establishes psychological stress of police officers as an occupational disease under workers' compensation. 	<p>MO SB 1 (2013 – En.)</p>

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EMERGING ISSUES

(1) Professional Athletes & Cumulative Trauma

On April 3, 2013, the Governor of Arizona, Jan Brewer, approved SB 1448 which drastically limits the ability of workers who “temporarily” work outside of Arizona to file claims in other states.

Similarly, a newly enacted law in California (AB 1309) prevents professional athletes from filing work comp claims in California if their team is based outside of the state. Members in CA were, however, successful in warding off changing the SOL language which continues to be one year from the date of disability and shut down a WCAB decision that opened the door to challenging jurisdiction for ALL out of state workers.

(2) Longshore & Workers’ Compensation Exclusive Jurisdiction

A pending bill in South Carolina (H. 3369) prevents workers covered by the federal Longshore and Harbor Workers' Compensation Act or the Jones Act from filing state workers' compensation claims

A similar bill passed in Virginia in 2012 that amended Virginia’s work comp law to prohibit concurrent jurisdiction

(3) Medical Marijuana

NCCI reports that insurers are increasingly receiving requests to pay for medical marijuana since it could potentially be used for injured worker pain relief . Some argue that it’s cheaper and less addictive than drugs like Oxycontin.

NCCI notes legislation recently introduced in several states:

- (1) are proposing legislation/regulation that medical marijuana treatment not be covered in the workers compensation system
- (2) have introduced legislation preventing employee termination for off-duty medical marijuana use
- (3) have laws that employee cannot be terminated for off-duty legal activities

(4) Obesity

NCCI’s state advisory reports devoted a great deal of attention to the relationship of obesity and increasing workers’ compensation costs and the need to “reserve in the age of obesity.”

Insurers may use this to justify over reserving or introduce legislation aimed at reducing benefit levels for individuals with a high BMI