

Conference to Highlight Comp Reforms

North Carolina employers should be pleased major reforms passed by the General Assembly in 2011 and new medical-fee schedules imposed in 2015 – two initiatives supported by the North Carolina Association of Self-Insurers - are moderating indemnity and medical costs in the state. But, despite reforms and despite recent improvements, total costs per claim in North Carolina between 2012-2017 were 23% higher than the median of the 18 states monitored by the nonprofit Workers Compensation Research Institute.

Our 2020 annual conference - scheduled for March 25-27 at the Holiday Inn Resort in Wrightsville Beach - will take a closer look at North Carolina's performance. Carol Telles, senior analyst at WCRI and author of the recent study, will present her findings, and we will also hear the Industrial Commission's perspective on how reforms are affecting employers and injured workers.

Also on the agenda, a panel discussion by three prominent lawyers on strategies for defending extended benefits, a case law update, recent advances in joint replacement surgeries, and tips on injury prevention and faster rehab. We will also hear about emerging issues at the national level.

"Our annual conference is an ideal forum to network with your peers and potential customers, and learn how workers' comp is developing in North Carolina," notes NCASI president Stephanie Gay. She adds along with providing valuable continuing education credits for adjusters and lawyers, the conference is also an excellent opportunity for sponsors and exhibitors.

"This year, we are pleased to waive registration fees for self-insured or high-deductible employers who would be attending the conference for the first time or after an absence. The employers who pay the \$350 membership dues can send several registrants at no additional cost," explains Stephanie Gay, NCASI president.

NCASI's annual conference opens at noon Wednesday, March 25 and ends at noon on Friday. Registration fees for members are \$225 per person, and \$650 per person for non-members. Hotel room rates are \$159 per night for oceanfront and \$139 for standard rooms. Make reservations soon as the hotel fills up quickly.

Demand is brisk also for exhibiting space. Fees are \$650 for members and \$1050 for non-members. Fees cover registration for two individuals from the same company. Exhibitors can set up any time on Wednesday and take down at their convenience.

Finally, sponsorships are available as follows: Platinum - \$1,000; Gold - \$500; Bronze - \$350. For more details, contact Moby Salahuddin, executive director, at msalahuddin@sc.rr.com

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Upcoming Issues in Workers' Comp

By: *Lindsay Underwood*

The New Year will bring a number of issues to the forefront of workers' compensation. Though some are familiar, there are a few new issues we anticipate will take center stage in 2020.

Form 63, Box 2

In 2019, the "Form 63, box 2," also known as the medical-only Form 63, became very unpopular with the plaintiff's bar. We started seeing "Motions to Compel Defendants to File a Form 60 or Form 61" with greater frequency, and those motions were often granted. Plaintiffs argue the medical-only Form 63 gives defendants the ability to accept a claim "halfway," allowing defendants to cover medical expenses, without prejudice, with the option to deny the claim at any time.

Though essentially true, defendants argue it is crucial to allow proper investigation of the claim and provision of necessary medical treatment without delay, while also allowing time to evaluate compensability and causation.

We expect to see more of these motions in 2020, as well as a potential future push for a legislative change to remove this section entirely. Even so, we continue to recommend use of the medical-only Form 63, where appropriate, with the understanding that defendants may be required to file a Form 60 or Form 61 in the future. In addition, although the plaintiff's bar dislikes it, they have not proposed any viable alternatives. Eliminating it in its entirety could increase the number of claims that are denied initially due to a lack of information or questions regarding compensability. Whereas, the current practice allows for at least some medical treatment despite these issues.

Psychological Claims

We anticipate the possibility that even more psych claims will arise in 2020. Even outside of the proposed legislation to give law enforcement officers and first responders benefits for Post-Traumatic Stress Disorder (PTSD), we are seeing more psychological claims being filed, including claims for depression, anxiety, and PTSD.

These claims are either being filed on their own, or in conjunction with physical claims. Notably, the increase in psychological claims matches an overall increase in anxiety and depression in members of the general public over the last several years. This increase emphasizes the importance of obtaining complete pre-injury records, specifically primary care physician records, at the outset of the claim.

Extended Benefits

We will certainly be discussing extended benefits often in 2020. There have been no decisions on any of the total loss of wage-earning capacity claims yet, but claimants injured shortly

after the 2011 reform are now permitted to request a hearing on the issue.

As a refresher, for claims arising on or after June 24, 2011, the claimant may collect TTD benefits for a maximum of 500 weeks from the first date of disability. This includes periods of time where the claimant returns to work. That cap can be extended if the claimant can show extended disability under N.C.G.S. § 97-29(c). To show this, the claimant must request a hearing and present evidence supporting a total loss of wage earning capacity.

The claimant is only eligible to request a hearing on this after 425 weeks from the first date of disability, which allows a 75 week period for litigation before the termination of benefits at the 500 week mark. In 2019 we started to see the first Form 33 Requests for Hearing on this issue. This is becoming a more frequent topic at mediation and could start to become incorporated into settlement demands. One thing to note on this issue is that defendants will be entitled to a credit for any **Social Security retirement** benefits, not Social Security disability, received by a claimant.

We believe the plaintiff's bar is carefully vetting cases with the best factual issues to present to the IC and Court on the extended benefits issue. Similarly, defendants need to be very careful in deciding which cases to appeal. In light of the uncertainty regarding how courts will decide this issue, it is worthwhile to discuss the benefits of full and final settlement of long-term cases that have potential for extended benefits, in the event the case would not make for an ideal "test case."

This is the exact type of legal issue where "bad facts can make bad law" in a litigated setting. Whereas, in the area of settlement, we have the ability to control which cases make their way up the chain to the North Carolina Court of Appeals or North Carolina Supreme Court. Additionally, defendants should start preparing to present the best possible evidence to show a claimant has wage earning capacity after the 500 week benchmark to properly defend the against a request for extended benefits.

Lindsay Underwood is an attorney in Teague Campbell's Raleigh office. She is a graduate of Cleveland State University and Wake Forest University School of Law.



President's Note

Closing in On a Milestone

The North Carolina Association of Self-Insurers will celebrate its 30th anniversary next year and I have been pondering how best to mark this milestone. I welcome your thoughts and suggestions. It will be 2021 before we know it!

Thirty years is an impressively long time for a non-profit group. We have been the employers' voice in workers' compensation all these years, and we remain the only organization in the state dedicated solely to advocating for employers in this arena.

This year we are offering an especially sweet deal: we are waiving registration fees for self-insured and high-deductible employers who have never attended our annual conference or have been away for a while. If you fall in this category, you can send several registrants at no additional cost once you've paid the \$350 annual membership dues. I will note our usual registration fees for members are \$225 per person.

Over the past several months, I have also been meeting with members to brainstorm how we can draw more employers to the



conference. The math is simple: employers attract sponsors and exhibitors and that, in turn, helps us to put on an outstanding conference and otherwise keep the association up and running.

And last but not least, we want to hear from you if you are interested in making a presentation next year or have specific topics you would like addressed. Many of the presentations you will hear at this year's conference originated with a brief email from our members who saw an unmet need and seized the opportunity.

I am looking forward to seeing you all in March. Bring a friend or two!

With very best wishes,

Stephanie Gay

Top Issues for Industry Leaders

The National Council on Compensation Insurance reports the following five issues are most-important to the 100 executives NCCI surveyed for its forecast:

Rate adequacy

Workers' comp executives say they are monitoring the sustained trend of declining loss costs reported by rating bureaus. Increased competition and newer players are lowering premiums and stalling growth.

To address rating adequacy, many organizations are investing in predictive analytics to help with pricing, along with dedicating more resources to actuarial research and analysis. Insurers are closely evaluating and monitoring risks for the purposes of acceptability, pricing and coverage.

Aging/changing workforce

As more employees work beyond traditional retirement age, observers anticipate new complications in health coverage because of the more-complex medical conditions of older workers. Industry leaders are also following the increase in hiring of unskilled workers and how that impacts workplace safety.

Some are spending more time learning about the challenges of an aging workforce, while others are monitoring contract workers and following up on employer audits of their workforces. An overall focus on workplace safety and education remain important priorities in the new year.

Medical care costs

Given rapid changes in medical technology and treatments, it is difficult to predict how this key component of workers' comp costs will play out in the recent future. For now, insurers are taking a variety of steps, including working with physicians and specialists to ensure they're not overprescribing treatment, in addition to enhancing claims systems to enable deeper analysis of complex medical cases. Also becoming more common, partnerships on new, smart solutions such as artificial intelligence and telemedicine.

Gig economy

Industry leaders expressed skepticism about the hype over the impact of the gig economy, questioning whether the phenomenon will ever grow to the point that it has a material impact on workers' compensation.

Given that many states are considering or passing legislation on the gig economy, insurers are dealing with the complexity of regulation that varies from state to state. Seeing increasing numbers of independent contractors, they're wondering, "How do we offer them benefits?"

Rapidly changing technology

Insurers say that they're adapting to new technology—and the opportunity that it provides—in a variety of ways, such as exploring wearable technology and the data it generates, and are considering alternatives for policy delivery systems for employers and their workers.

coming up

March 25-27, 2020

NC Association of Self-Insurers' Annual Conference.

Holiday Inn Resort, Wrightsville Beach

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The employers' voice in workers' comp

Update from The Commission

By Bruce Hamilton

The North Carolina Industrial Commission recently published its 2019 annual report. In addition to the statistical overview of fiscal year 2018-2019, (61,776 workers compensation claims filed for the fiscal year), the IC also reported that the long-awaited modern case management system is projected to go live by June 2020.

The IC realized cost savings by closing the Greenville Regional Office on June 28, 2019. The commission will continue to serve Eastern North Carolina by holding hearings in the Greenville area, but the Deputy Commissioners assigned to the Greenville office were transferred to the main office in Raleigh.

The General Assembly amended G. S. 97-94, changing the minimum daily penalty amount for not obtaining proper workers compensation insurance. Previously, the minimum daily penalty was \$50 per day. Under the new law, an employer is punished one dollar per day for each employee, with a minimum penalty of \$20 per day and a maximum penalty of \$100 per day. There is also an alternative penalty in those cases involving employers that were not previously penalized. Finally, the penalty shall not apply to a period of noncompliance that occurred more than three years prior to the date the IC first assessed the penalty.

Effective July 18, 2019, the General Assembly amended G. S. 97-170 to require that a copy of an application for licensure as a self-insurer be filed with the North Carolina Self-Insurance Security Association at the same time the application is filed with the Commissioner of Insurance. Prior to this amendment, a copy of the application was to be filed with the North Carolina Self-Insurance Security Association at least 90 days before the proposed licensing date.

Finally, pursuant to G. S. 97-78(e), the IC made the following recommendations to the General Assembly for potential amendments to the Workers Compensation Act:

The IC recommends that the two-term limit for Deputy commissioners be removed from G. S. 97-79 (b) so that the Chair of the Commission has the option of continuing the service of experienced Deputy Commissioners.

In addition, the IC recommends that there be parity and consistency in the way business entities are treated in G. S. 97-2 (2) in terms of individuals who count as an "employee" regardless of whether the defendant employer is a sole proprietor, partnership, member of a limited liability company or executive officer of a corporation.

Under current law, every executive officer of a corporation is considered an employee of such corporation, but may exclude such executive officer from workers compensation coverage. Whereas, any sole proprietor or partner of a business or a member of a limited liability company may elect to be included as an employee under the workers compensation coverage of such business if he or she is actively engaged in the operation of the business. The current law leads to confusion occasionally on who is or is not covered under a Worker's Compensation policy.

Bruce Hamilton is a partner in Teague Campbell's Raleigh office.