



NATIONAL CONVERSATIONS ON THE FUTURE OF WORKERS' COMPENSATION

The following are the notes from the IAIABC National Conversation held on September 27, 2016 in Portland, Maine.

POLLING

Participants were asked to respond to polling throughout the event; all responses were anonymous. Polling responses are found below:

Core Objective	% Agreement
Broad coverage for covered employees	88%
Equitable benefits to employees at a reasonable cost to employers. Workers' compensation should remain the exclusive remedy	89%
Focus on outcomes, including medical recovery and return to work	98%
The system should be flexible and adaptable	71%
The system should reduce complexity	96%
The system should reduce disputes and be less adversarial	90%
Workers' compensation should be more consistent across US jurisdictions	48%
Encourage safety	92%
Should states have shared agreement on the objectives of workers' compensation?	81.5%
Should there be a mechanism to monitor compliance?	47%
Do opportunities exist for more uniformity across jurisdictions?	92%

DISCUSSION QUESTIONS

Participants were asked to discuss several questions as small groups, with each group having 6-10 individuals. Each table was asked to record responses and reported the results of their discussion to the large group.

1. How do we define BROAD COVERAGE of employees?

During polling, 88% of attendees agreed broad coverage of employees was a core objective of the workers' compensation system. However, after breaking into small groups for further discussion, participants discussed the ambiguity and challenges defining and measuring this objective.

Many groups mentioned the need for a modernized and uniform definition of employee, especially in light of changing employment relationships. Each state defines employee differently, and often there are different definitions within a state for workers' compensation, unemployment, and taxation purposes. Some felt "employee" should be defined nationally but others believed it should stay a state-by-state issue.

Discussion about the need to define “broad” as states range from 85% to almost 99% of the labor force covered. Many states have exclusions of various types and it would be valuable to understand the social cost of exclusions. Some desire to reduce exclusions because it causes disparate treatment based on employment classification, agriculture for example.

One group suggested workers’ compensation coverage should be mandatory for all workers, regardless of their employment relationship (i.e. sole proprietors, agriculture workers, domestics, etc.) There was a comment that comprehensive coverage of this kind would likely be cheaper than liability coverage.

Another group agreed it was not enough to have a standard definition of employee there is a need for consistency in what conditions are covered under workers’ compensation (i.e. mental, physical). Suggestion for a uniform standard of causation with recognition this would be challenging from a national perspective.

Other comments

- One group said the question did not bear answers just more questions, including: Who is covered? What is covered? Are volunteers covered? Are there employees that should be exempt? What should be the coverage for different injury types? What is “course of scope”? How do to define fault, causation? What difference does it make about location of where the accident occurred?
- Comment that an all payer healthcare system would change workers’ comp into an indemnity benefit program only.
- Needs to be consideration of the consequences of delinking medical benefits and indemnity.

2. Can WC be both “flexible and adaptable” and “stable and predictable?” Is one or the other more desirable?

During the first National Conversation in April, a slight majority (55%) agreed that an objective was that the system should be flexible and adaptable. During polling in September, 71% agreed that workers’ compensation should be flexible and adaptable.

Discussion groups were asked to discuss if “flexible and adaptable” were at odds with “stable and predictable” – which is often the desire of many within the industry. Opinions varied greatly in answering this question, with some regulators believing stable and predictable was more desirable. Others commented that it was important to achieve stable and predictable but flexibility is important. They proposed defining set outcomes, which would be predictable, but remain flexible in how to achieve the outcomes.

One discussion group believed the question implied the system could not be both and felt both were important or desirable depending on perspective. Others commented there was an implication that stability and predictable implies the state can’t change but many felt this was not true. Another comment was that stable does not mean static (example of TX fee schedule = stable but not static.)

Another commented the world is not stable or predictable so should workers’ compensation expect to be. The system has to balance those sometimes competing forces; especially since workers’

compensation is influenced by many external forces (technology, economy, healthcare, etc) that force it to adapt.

Many believed there was already flexibility within the system; information technology and advances in medicine are examples of flexibility in how the system operates. Several cited the use of evidence based medicine as an opportunity to enhance stability and predictability in medical treatment.

3. What are equitable/adequate benefits?

During polling, 89% of attendees agreed equitable benefits at a reasonable cost to employers was a core objective of the workers' compensation system. Several small groups were asked if we could more concretely define equitable and/or adequate benefits. This would be especially useful since many recent reports (Propublica, OSHA, other research groups) have criticized state workers' compensation systems as causing financial distress for injured workers.

The goal of the system is to get an injured worker as close to 100% physical recovery and back to work as soon as possible. The system should ensure timely return to livelihood, function, and work. The system should ensure timely wage replacement and appropriate medical care. Benefits must be consistent, predictable, and fair.

The general consensus was adequacy of indemnity benefits was as close to pre-injury wages as possible and allow a person to remain in the same socio-economic class. Another group said adequate indemnity benefits should be more than just survival; they should be adequate to maintain a similar lifestyle and replace as close to possible future earning losses as well as include the loss of pension, 401k and other benefits contributions. The system needs to redefine "covered wages" to calculate for these benefits.

Many people agreed that maximum benefit caps were not equitable. Some commented it was also not equitable that different classes of workers (i.e. Full-time vs. Part-time workers) or those with employment contracts would receive different kinds of benefits. In addition, time limit restrictions on certain kinds of indemnity benefits (i.e. TTD) were not equitable.

There is a need to adjust indemnity benefits based on inflation.

Other groups discussed medical benefits in addition to indemnity benefits. Medical treatment should be accessible and as effective as possible. Some believed medical networks and direction of care might be inequitable and inadequate but others disagreed.

Other comments

- One discussion group commented that 66 2/3 of pre-injury wages was an appropriate threshold.
- If an insurer does the "right thing", it should not be penalized
- Workers' compensation benefits need to be delivered through a transparent process

4. What is a reasonable cost to employers?

During polling, 89% of attendees agreed equitable benefits at a reasonable cost to employer was a core objective of the workers' compensation system. Small groups discussed how to define and agree on "reasonable" cost.

One group said reasonable is the cost needed to "do the right thing," which is deliver equitable benefits in a timely fashion. Another group commented reasonable cost to the employer is high enough to fund the system and motivate safety but low enough that the employer does not try to go without coverage.

Many groups commented that reasonable cost for employers should be based on the employer's individual claims experience. Employers who have a positive claims record (i.e. safer) should not be expected to pay the same as an employer with a bad claims record (i.e. unsafe).

Some believe 2% payroll (close to the national average is reasonable but recognize there are many industry classifications where the cost of workers' compensation coverage is much higher than that.

Reasonable is ultimately a political decision and is often defined politically as cheaper than the surrounding states. Cost cannot be so high that employers leave the state or are motivated to go without coverage. An alternative view is reasonable is ultimately negotiated between labor and management, as a part of the grand bargain.

5. What should workers' compensation accomplish for employers? What should workers' compensation accomplish for injured workers?

There was almost unanimous consensus, 98%, that workers' compensation should focus on outcomes including medical recovery and return to work as a core objective. There was rich discussion of how we would define outcomes for employers and employees.

Small groups discussed what workers' compensation should accomplish for employers. They commented the system should be sufficiently funded to pay for all required benefits, cost should be predictable to allow for stability in in the workplace, and the system should promote safety, and remain the exclusive remedy.

There was some disagreement about exclusive remedy as labor feels injured employees should have the right to sue for negligence if limitations on benefits continue. In response, there are comments that it is important not to have caps or limitations on benefits.

One group says the system should provide incentives for employers to "do the right thing" and educate employers so they know what the "right thing is."

Small groups also discussed what workers' compensation should accomplish for employees. They should commented it should provide adequate compensation (see previous discussion on how to define), resources to understand how to navigate the claims process, RTW as quickly as possible, quality medical care, timely resolution of disputes (increased use of mediation), be treated fairly, and vocational rehabilitation.

One group observed that the question really underscores the problem – the system needs to accomplish the same thing for both employers and employees; they should not be thought of

separately. They believe the goal of workers' compensation is timely return to work, maintenance of a trained workforce for employers and quality of life and financial stability for those injured at work.

Additionally, there was discussion about the need to avoid friction and adversarial relationships because they create chaos. Workers' compensation should offer a level playing field for both sides; it should not disadvantage either party.

Other comments:

- Education about value of RTW and risk of long-term disability; need to understand their value to the employer and economy
- Expedient healing and RTW by educating all stakeholders about their role and value in the process
- Ensure a team is in place with the goal/focus on healing and RTW to achieve the best results
- Workers' compensation should provide appropriate benefits for all legitimate cases
- There should be no exceptions to the exclusive remedy
- There should be compensation for permanent disability

6. How can the system be simplified?

During polling, 95% of attendees agreed the system should reduce complexity and presented many opportunities to achieve this goal. Suggestions included:

- Increase use of alternative dispute resolution and mediation
- Eliminate delays in medical treatment. One example is to allow medical treatment, with payment by group health insurer, if claim is in dispute (*Ex. Maine statute 222 "Payment of benefits due a person under an insured disability plan or insured medical payments plan may not be delayed or refused because that person has filed a workers' compensation claim based on the same personal injury or disease."*)
- Identify ways to get rid of regulation that is no longer necessary/or applicable; remove processes that are unnecessary
- Workers' compensation agency's should face a sunset (like Texas) so they have an incentive to be efficient
- Ensure adjusters have the right caseloads so they can do an effective job
- Reduce forms
- Reduce the adversarial nature of the system
- Properly fund workers' compensation agencies so they have the resources to do their job properly
- Enhance communication with all parties; use technology to facilitate this communication
- Ombudsman type program for both employers and employees
- Develop an easy mechanism for determining causation
- System should cover everyone (including volunteers and independent contractors), instead of "legally defined employees," which would help reduce disputes related to misclassification
- Do not make a rule/regulation about everything which will help eliminate disputes on how to interpret the rule/statute
- Implement utilization review with teeth
- Single payer healthcare (24/7) which would limit workers' compensation to indemnity only

7. Should states have shared agreement on the objectives of workers' compensation?

During polling, less than half (48%) agreed workers' compensation should be consistent across US jurisdictions. Small group discussion on how this might be achieved, or if it was desirable, was lively.

Several groups commented that shared objectives, as long as they were broad enough would be desirable as long as states could find their own ways to implement strategies in achieving those objectives. An organization like the IAIABC would be a logical place to develop broad social objectives shared among states with elements like wage replacement, return to work, and medical treatment.

Others felt this would not be desirable as workers' compensation is shaped by the norms that your area dictates and the economic factors are too varied. There was concern that getting the level agreement needed to achieve this would be difficult and it was unclear what the "model" state system would be. Each state's system is based on their stakeholders/constituencies input and interests. States will likely oppose standards, unless they're more of a minimum - highly political with vastly differing opinions from worker and employer advocates.

8. Should there be a mechanism (standards, legislation, NAIC-like body, scorecards, etc.) to monitor compliance?

While many agreed shared agreement on the objectives would be desirable, there was more disagreement on the need for compliance or an enforcement mechanism. Many groups felt negatively about the need for compliance by an external body.

There was more agreement about the need for system performance reports or scorecards to help monitor performance and/or effectiveness. Several explicitly noted they did not want national oversight by a federal agency over state specific regulations.

One group noted that without a mechanism to look at who is achieving shared objectives it would be a token effort.

Another commented that health issues are regulated at the state level, so that is naturally where workers' compensation public policy discussions should be.

9. Do opportunities exist for more uniformity across jurisdictions? (notice poster, EDI, etc.)

Most felt there were opportunities to promote uniformity across jurisdictions but felt it would be a challenging endeavor. Suggestions for places to begin were waiting periods, proof of coverage, benefit minimums and caps, notice posters, adoption of current CPT of coding methodology and consistency in process for medical billing, adoption of formularies and treatment guidelines.

Others felt this would be a daunting task and recommended more of a "best practices approach." Another cautioned we should be careful what you wish for; you may get more intensive reporting requirements to be the same as the most data/labor intensive state.

ATTENDEES

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