



NATIONAL CONVERSATIONS ON THE FUTURE OF WORKERS' COMPENSATION

The following are the notes from the National Conversation held on April 20, 2016 in Santa Fe, New Mexico.

DISCUSSION

1. What are the objectives of a workers' compensation system in 2016 and beyond?

Discussion on the objectives of workers' compensation at first centered on the objectives defined in the 1972 National Commission, but quickly broadened. Each group was asked to present one objective and during a break, the following objectives were presented to the group for voting. The voting results are noted:

- **Broad coverage for covered employees** (100% agreement)
- **Equitable benefits to employees at reasonable cost to employers.** (100% agreement)
- **Define the mechanism for calculating and paying permanent partial disability.** (100% agreement)
- **Encourage safety** (92% agreement)
- **Adequate communication to all workers and employers and about their rights and responsibilities** (88% agreement)
- **Focus on outcomes, to include return to work and medical care** (97% agreement)
- **Maintain exclusive remedy** (76% agreement)
- **Workers' compensation systems should be flexible and adaptable** (55% agreement)
- **Cover all working people** (53% agreement)

This objective garnered considerable discussion. The goal of this objective was to provide coverage irrespective of employment relationship, which would include all independent contractors (i.e. uber/lyft drivers). There was also discussion of agricultural workers which are excluded from coverage requirements. There was no discussion on financing this model but many felt it was important to recognize changing relationships people have with work.

Additional comments on objectives:

- Quick and efficient medical and indemnity benefits
- Modernize law
- Integration with general healthcare
- Return to function for employer and employee
- Holistic approach

- Protect interests of employers - risk management; continuation of business operations; exclusive remedy
- Protect interests of employees - economic protection and coordination of benefits
- Accountability for all parties
- Education for employers and employees; enhanced transparency

2. Has the grand bargain been breached since workers' compensation was first introduced in the United States?

Discussion of the grand bargain dominated during this small group. There were many who felt that the grand bargain was an "illusion" and that there is no single bargain. In many ways, the grand bargain is really more about the "spirit" of employers and employees coming together and striking an agreeable deal than a concrete quid pro quo. The groups described the grand bargain in many ways - frayed, stretched, evolved, eroded, expanded and contracted - but most felt the spirit of the grand bargain remains.

There was considerable disagreement about if the grand bargain had been "breached" in favor of the employer or employee. Expansions of benefits - coverage of occupational diseases and medical treatment for conditions that could be caused by the aging process - were in favor of employees. Contraction of benefits - restrictions on medical care and compensability thresholds - were in favor of employers. There was recognition the answer could vary from among jurisdictions.

Additional Notes:

- Grand bargain has been effected by changes in the economy, but the basic concept remains
- Inaccurate payment of benefits (under payments, lack of adjuster education, injured workers who do not understand the system)
- All parties are pushing their personal interests and not necessarily the good of the system
- Concern that use of workers' compensation as an "economic development tool" for jurisdictions was not in keeping with the grand bargain. Could lead to poor consequences

3. What is the responsibility of employers with respect to occupational injuries and illnesses?

4. What is the responsibility of employees with respect to occupational injuries and illnesses?

5. What is the state's responsibility toward workers' compensation?

During the first small group, many focused exclusively on the grand bargain and did not get to these questions. Those groups that did address these questions noted that workers' compensation is a social contract between employees and employers and both most play an active role in the system.

Employers are responsible for tending the contract and should make sure the system adapts to the changing workplace, workforce, and kind of work. Employers need to make sure their workplaces are safe and have a responsibility to report injuries.

Employees need to know what their benefits under workers' compensation. They have a duty to be safe and report unsafe practices at work. In addition, employees need to play an active role in their recovery.

The state must ensure coverage is in place for those who should be covered. The state should also ensure there is a balanced approach to resolving disputes.

Additional Notes:

- Employers should report claims and follow applicable laws; promote safety and risk management; provide timely care; communicate with injured workers; provide return to work options
- Employers must maintain wc coverage
- Employees should comply with treating physician; communicate with employers
- Employees should timely report claims and attend medical appointments
- The state should ensure compliance by all parties; educate all parties; maintain equitable playing field for all
- The state must evolve with the economy in terms of its laws and procedures
- The state is the shepherd of the system
- The state should maintain the social contract

6. What are the most serious challenges for workers' compensation today?

Discussion of the most serious challenges in workers' compensation was very diverse. One group synthesized their challenges into two broad categories - "medical management" and "lack of uniformity and/or harmonization across states." There was some recognition that many discussions within the system place "cost" at the center of change; but the more appropriate conversation should be achieving better outcomes.

Each group was asked to share a few of the challenges their group discussed, which resulted in the following list:

- Lack of standardization between laws and processes.
- Wide variation in the rules of compensability and little agreement what should or should not be compensable
- Inadequate insurance rates
- Increasing cost and complexity of the system
- Medical evaluation vs. medical treatment
- Changes in nature of employment
- Aging workforce
- New technology may redefine some of our terms.

- Jurisdictions not having the financial resources or personnel expertise to adequately address system challenges
- WC is not self-executing
- Resolving the debate on whether WC is a benefit or a right
- Paperwork processing
- Increasing medical cost and complexity
- Those who participate in the system (i.e. IW) have no “skin in the game” (i.e. there is no incentive for them to comply with medical treatment or get back to work); Consideration of employee contributions and co-pays
- Alternative options/opt-out
- 24-hour coverage
- Lack of communication and/or education about what the system is all about (to legislators, employers, employees, and other stakeholders)
- Tension between incremental change and being nimble.
- Evolving employer and employee relationships; difficult to define who is an employee
- Opioids
- Advancing technology including wearables; concern about invasion of privacy
- Ability to distinguish between occupational injuries/diseases and those a result of the normal aging process
- Lack of incentives for medical providers to focus on treatments that offer the best outcomes because providers know they will be completely reimbursed for most treatments
- No incentives for safety
- Finding providers who will treat wc patients
- Educating state legislators
- Focus on cost containment not outcomes
- Shared economy and its impact on employer/employee relationships

Additional Notes:

- Opioid use and dependence
- Medical cost containment - unfunded mandate - hospital fees and surgical centers
- Stakeholder concerns being heard
- Advocacy for competing physicians, inherent self- interest
- Utilization review is too cumbersome
- Technology (wearables and telemedicine are too examples) - industry is too slow to adapt
- Improved collaboration between employees, employers and regulators

7. What are the pros/cons of state vs. federal regulation?

Attendance for the Santa Fe conversation had a significant percentage of state regulators. Perhaps not surprisingly, discussion on state vs. federal regulation was lively. There was consensus among this group that states were better positioned to meet workers’ compensation challenges in the future.

One common theme in these discussions was that state systems can reflect the values and culture of their people and there is no “one size fits all” system.

In discussing federal regulation many commented a federal system could provide a common set of rules, uniformity of benefits, centralized administration, and possibly economies of scale. At the same time, a federal system would have to deal with congress (which currently has very low favorability ratings) and could become a large bureaucracy. There was also recognition that not everything makes sense in all states which could be problematic for a federalized system.

In discussing state regulation many commented the ability to customize the system to meet the needs of that jurisdictions people and economy. States can be more responsive and innovative. However, 50+ different systems can result in administrative inefficiencies. There can also be an incentive to reduce benefits/costs to be more attractive to employers.

Additional Notes

- Federal system could offer more uniformity in benefits and administration; concerns the system would be inefficient. Comparison to the Veterans Administration
- Example of implementation of Medicare Set-Asides and Affordable Care Act of how a federalized system would go
- Federal system would provide one set of rules for employers, carriers, attorneys, and workers; might result in less cost-shifting to other programs; would eliminate “race to the bottom” for states in lowering their rates
- States know their employers and can be more adaptable; states can better select physicians; have local autonomy
- States have more complex payor systems; administration changes can shift priorities and projects; lack of uniformity across states can be inefficient
- Complacency of the status quo; there is too much money at stake to promote adaptability..

8. How can workers’ compensation regulation be improved to be more efficient and effective without being overly burdensome?

There were many ideas on how to improve the system. One common theme was a desire for more uniformity and harmonization across jurisdictions. Many groups commented that standardized forms and reporting would be beneficial. This led to discussion about monetizing this solution; if the industry could provide some numbers around this kind of effort it would be extremely helpful for regulators.

Another common theme repeated throughout the conversation was the need for enhanced communication with employers and employees. They need to understand their roles and responsibilities from the beginning. One group commented there could be best practices in informing injured workers of their rights and the process. In addition, there was a shared desire to bring stakeholders together.

An interesting point raised by one group was that efficiency is really in the eye of the beholder. It is important to consider the impact of changes and innovations to make sure the needs of the system as a whole is being met.

Other opportunities for improvement were:

- Allow other options than hard copy checks for payment of indemnity benefits; one payor indicated a hard copy check was estimated to cost \$50
- Federal government might have a role in setting standards because it is challenging for employers and insurers to comply and keep up with all the changes at the state level
- States could come tighter to put forward uniform standards in certain areas
- States gain more information through EDI and data that they could use to profile scenarios that may be catastrophic. Comment that it may not be necessary to have a rule for the 1% situations; legislation may not be needed to resolve everything
- Modernize and take advantage of technology
- More uniformity in approaches; adopt the attitude that less is more and simplify
- Jurisdictions should show how they use the data they collect
- Remove insurers
- Have a standardized procedure for medical coverage
- Regulators are at the hub of the process; make sure states are adequately funded and that wages are competitive with the private sector
- Clearly defined written statutes and interpretations to stakeholders
- No dual approaches (i.e. paper and EDI)

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