



Examination of Workers' Compensation Gaps and Inequities in the United States

published by
Insurance Studies Institute

September 21, 2009

Insurance Studies Institute is a non-profit foundation dedicated to advancing knowledge and understanding of the insurance industry's economic and social impacts in a free market economy.

Workers' compensation is designed to provide monetary and medical benefits to workers injured as a result of a workplace accident, injury, or occupational disease. Both workers and employers benefit from workers' compensation when the system works properly, as it protects workers and their families against undue hardship resulting from workplace injuries while granting employers immunity from costly litigation. However, there are gaps in the workers' compensation system that prevent some injured workers and their families from getting the help that they need. The following is a discovery paper designed to highlight several of these flaws and shed light on inequities that exist in the system. The Insurance Studies Institute hopes to use this to advance additional research and exploration.

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Introduction

The intent of Workers' Compensation ("WC") is to provide monetary and medical benefits to workers injured as a result of a workplace accident, injury, or occupational disease. Both workers and employers benefit from WC, as it is designed to protect workers and their families against undue hardship resulting from workplace injuries while granting employers immunity from costly litigation. However, there are gaps in the WC system that prevent some injured workers and their families from getting the care they need. The following is a discovery paper designed to highlight some of these flaws and shed light on some of the inequities in the system. The Insurance Studies Institute ("ISI") hopes to use this to advance additional research and exploration.

Whether researched internally, in partnership, or through grant funding for other institutions, the findings of this paper should serve as a stepping-stone for more in-depth research of the inequities of the WC system and to serve as a catalyst for reform. The topics listed in the table of contents below are highlighted in this paper to serve as future research projects.

Research Topics

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Executive Summary

The objective of workers' compensation is straightforward: to provide wage replacement and medical care benefits to workers who are injured or made ill from work-related causes. WC provides payment for lost wages and medical care to treat occupational injuries or illness, and provides indemnity benefits for workers with permanent impairment.

Many developed nations administer WC on a federal level; whereas the United States, consistent with other forms of insurance regulation, sponsors state-level administration. While this may allow for greater flexibility in tailoring programs to conform to unique regulations in the states, it also creates cross-jurisdiction legislative inconsistencies, disparities in available benefits, and regulatory blind spots.¹ The nature of WC provides many advantages to employers and workers alike, but there are also disparities in the way WC benefits are administered, resulting in inadequate treatment for some injured workers.

Complicating matters further is the presence of moral hazard. Moral hazard arises out of information asymmetries, where the worker has full knowledge of the cause and severity of injury but the employer and insurer do not. This creates an opportunity for fraud and/or exaggeration of the injury or illness. Many experts on the subject believe that there is a direct relationship between the generosity of benefits and the frequency of claims submitted.

Insurers typically respond to issues like moral hazard by increasing the rigor of the claims-approval process, thus making it more difficult for claimants to prove an injury or illness. This strategy helps keep WC costs down, but also leads to adverse ramifications. Sometimes workers give up on the WC system and simply submit their claim to their group or personal insurance carrier, thereby increasing the overall costs of group and personal medical insurance. Occasionally, workers forgo submitting a claim because of low expectations for receiving benefits, or out of fear of employer reprisals and job loss. Furthermore, the introduction of impairment ratings to assess the level of injury has replaced the use of physician expertise with systematic categorization of injuries and illnesses. Moreover, the conflict of interest embedded in the WC system between physicians and WC carriers deteriorates the quality of care provided by the WC system.

The intention of WC programs is to provide care for workers whose health is impaired by factors stemming from work-related causes. However, even though WC is designed as a social insurance program, it operates like private insurance. WC insurers participate in a competitive market to acquire customers; those customers being the employers that provide coverage for workers, not the workers themselves. WC insurers are incentivized to reduce claims payout rates because premiums are based, to some extent, on the employers' own loss experiences.²

¹ J.F. Burton, *Workers' Compensation Yearbook*, LRP Publications, 1995.

² Jeff Biddle, "Do High Claim-Denial Rates Discourage Claiming? Evidence from Workers Compensation Insurance," *The Journal of Risk and Insurance*, 2001.

Thus, while reducing WC claims payout rates to cut costs may be advantageous to insurers and employers, it can be detrimental to injured workers. This conflict of interest is at the heart of WC.

Social Vs. Private The differences between social and private insurance structures can create conflict between the intent of WC and the incentive structures.

WC programs have been established in all 50 states and the District of Columbia to provide wage replacement and medical benefits to workers who are injured on the job. WC covers more than 90% of the labor force.³ A typical WC plan combines features of a social insurance program with features of private insurance markets. WC is like social insurance in that workers are automatically covered and the benefit level is often defined by statute. Conversely, WC is like private insurance in that insurance policies are generally sold to employers in a competitive market by for-profit insurers; thus, insurers are incentivized to cut costs in order to keep premiums low. It is this conflict between social and private insurance that can lead to a misalignment between the intent of WC and the incentive structures.

Before the creation of WC, injured workers' only remedy was to sue their employer for damages. However, laws often favored the employers, and much of the time the awards were unpredictable.⁴ Furthermore, litigation was a lengthy process and many injured workers lacked the resources to proceed with such actions. When the injured workers could no longer provide for their families, the burden for care and support often shifted to the larger community.⁵ WC laws were created to reduce the need for litigation and to remove the burden to prove that the injury was the fault of the employer due to gross negligence. WC laws replaced workers' rights to sue employers for tort negligence with rights to compensation for injuries or illness caused by or occurring at the work place.

Even though WC is the oldest adopted social insurance program in the United States, it has many features that are comparable to traditional group insurance programs,⁶ e.g., except for in the state of Washington, employers purchase the insurance from competitive insurers to cover their employees. Unlike most group insurance programs, the employee has no choice in the matter. Also, unlike most private or group insurance, the purchaser of the WC insurance is not the person who submits the claim. This distorts the incentive structure because the person whose claim may be denied is not the one who purchases or bears the cost of the insurance.

³ Dennis Bolude, Bernard Fortin, France Labrecque, and Paul Lanoie, "Workers' Compensation, Moral Hazard and the Composition of Workplace Injuries," *The Journal of Human Resources*, vol. 37 no. 3, 2002.

⁴ C. Howard, "Workers' Compensation, Federalism, and the Heavy Hand of History," *Studies in American Political Development*, 2002.

⁵ *Ibidem*

⁶ Such as Life and Health or Property and Casualty.

Typically, market forces influence private insurers to provide more generous benefits in order to match or surpass that of the competition. In the case of WC, however, the purchaser of the insurance, the employer, may be swayed more by the cost of the insurance than the benefits provided. On the other hand, if workers were selecting WC coverage, insurers that pursued a strategy to reduce claim payout rates would be less likely to attract customers. This end user (employee) versus purchaser (employer) dynamic illustrates the difficulty involved in balancing the private and social aspects of WC insurance.

Moral Hazard Workers are motivated to be less risk-averse.

The purpose of insurance is to hedge or transfer risk. However, sometimes the presence of insurance may lead the insured to be less risk-averse than they might otherwise be. This concept is known as “moral hazard.” In WC, moral hazard is the result of information asymmetries where workers have full knowledge of the cause or severity of their injury, but the employer and the insurer do not. Because wage-replacement benefits compensate individuals for not working, workers have an incentive to exaggerate the severity of their injuries, miss more days than necessary, or attribute a potentially unrelated injury to work.

There are two forms of moral hazard: ex ante and ex post moral hazard. Ex ante arises when workers' incentive to exercise care diminishes because of the existence of protective benefits. Ex post moral hazard occurs when workers file claims that are fictitious or exaggerated. The difference between ex ante and ex post moral hazard is that ex post is a deliberate attempt to deceive, whereas ex ante moral hazard is when a worker's behavior is altered because of the presence of insurance. Ex ante moral hazard is much more prevalent in hard-to-diagnose injuries because the evaluation process is typically more subjective.⁷

The presence of moral hazard has a direct effect on the costs of WC programs. Moral hazard adversely affects insurer economics and encourages WC providers to analyze claims more stringently. Intuitively, a greater generosity regarding benefits increases the number of claims submitted; a number of studies support this statement.⁸ There is enough evidence to suggest

⁷ Dennis Bolude, Bernard Fortin, France Labrecque, and Paul Lanoie, “Workers' Compensation, Moral Hazard and the Composition of Workplace Injuries,” *The Journal of Human Resources*, vol. 37 No 3, 2002

⁸ For example: M. E. Staten and J. Umbeck, “Information Costs and Incentive to Shirk: Disability Compensation of Air Traffic Controllers,” *American Economic Review*, 1982; Richard Butler, David Durbin, and Nurham Helvacian, “Increasing Claims for Soft Tissue Injuries in Workers' Compensation: Cost Shifting and Moral Hazard,” *Journal of Risk and Uncertainty*, 1996; Denis Bolduc, “Incentive Effects on Public Insurance Programs on the Occurrence and the Composition of Workplace Injuries,” *Journal of Human Resources*, 2002; John Ruser, “Does Workers' Compensation Encourage Hard to Diagnose Injuries?” *Journal of Risk and Insurance*, 1998; or Michele Campolieti and John Lavis, “Disability Expenditures in Canada 1970-1996: Trends, Reform Efforts and a Path for the Future,” *Canadian Public Policy/ Analyse de Politiques*, 2000.

that an increase in the generosity of WC benefits increases both the duration of WC benefits⁹ and the frequency of reported accidents.¹⁰ As insurers compete to maintain low cost levels, legitimate WC claims are subjected to more difficult claim submission and approval processes. This ultimately leads to workers who may be entitled to, but do not receive, benefits from the WC system.

WC Costs Costs are contained with tightened eligibility and increased enforcement of benefits.

Workers' compensation costs are both direct and indirect. Direct costs include payments for lost wages, temporary or permanent impairments, pharmacies, hospitals, physicians, rehabilitation, and other medical costs. Indirect costs are harder to measure and relate to losses of productivity such as wage losses, household productivity losses, and employer productivity losses.

Throughout the 1980s, WC direct costs related to health care rose at a greater annual rate than the cost of general medical expenditures.¹¹ Employers and WC insurers responded to direct cost increases and quality care problems by initiating case management, adopting cost containment approaches, and developing managed care programs.¹² Historically, in the same fashion as WC insurance, other social insurance programs such as unemployment and social security disability have responded to rising costs by increasing denial rates. Tightening eligibility requirements or enforcing them more stringently typically achieves this goal. While this response may be necessary in a competitive market, it can lead to a systemic failure to provide injured workers with the necessary care.¹³

Additionally, most of the costs of occupational disease are not covered by workers' compensation.¹⁴ Occupational disease is defined as any chronic ailment that occurs as a result of work or occupational activity.¹⁵ WC systems are designed to cover direct costs such as hospital stays, physicians, rehabilitation, and other facility-related costs. However, indirect costs are somewhat controversial and difficult to quantify. Leigh and Robbins state that "most observers

⁹ Bruce Meyer, W Kip Viscusi, Meyer Viscusi, and David Durbin, "Workers' Compensation and Injury Duration: Evidence from a Natural Experiment," *American Economic Review*, 1995.

¹⁰ Alan Krueger, "Incentive Effects of Workers' Compensation Insurance," *Journal of Public Economics*, 1990.

¹¹ Carol Telles, "Medical Cost Containment in Workers' Compensation," *Workers' Compensation Research Institute*, 1993.

¹² Thomas Wickizer, Gary Franklin, Roy Plaeger-Broadway, and Robert Mootz, "Improving the Quality of Workers' Compensation Health Care Delivery," *The Milbank Quarterly*, 2001.

¹³ Jeff Biddle, "Do High Claim-Denial Rates Discourage Claiming? Evidence from Workers Compensation Insurance," *American Risk and Insurance Association*, 2001.

¹⁴ Paul Leigh, John Robbins, *Occupational Disease and Workers' Compensation: Coverage, Costs, and Consequences*, *The Milbank Quarterly*, 2004.

¹⁵ Examples of occupational disease include lung disease, skin disease, and carpal tunnel syndrome.

believe that unlike injuries, occupational disease is inadequately covered by workers' compensation."¹⁶

Claim Review Process Stringent claim reviews and claim-denial practices result in the reduction of benefits and appropriate care to workers and a disincentive for employers to seek better WC coverage.

WC insurers do not approve and pay all the claims that are submitted. Claims are either denied because the insurer believes the ailment is not covered by the terms of the policy or because the insurer suspects exaggeration or some form of deceit on the part of the insured. Insurers respond to appearances of fraud or deceit by making it more difficult for the worker to prove the injury or illness is legitimate. Increased stringency of the claim review process is intended to reduce the frequency of fraudulent claims submitted, but it can also reduce the frequency and approval of legitimate claim submissions.¹⁷

Furthermore, WC insurers can implement claim-denial practices to discourage fraudulent claims; however, this may not be in alignment with the overall intent of WC. Workers are not the purchasers of WC insurance policies, and for this reason there are few compelling forces to dissuade a WC insurer from excessively denying claims to the point that legitimate claims are systemically denied or not submitted at all. Employers, as the purchasers of WC insurance, have no economic reason to reject such a strategy either. The result of stringent claim reviews and claim-denial practices is a reduction of benefits and care for workers and fewer incentives for employers to seek better WC coverage. The result of stringent claim reviews and claim-denial practices is the reduction of benefits and care to workers and an improvement in insurer profitability that leaves employers with no economic incentive to seek better WC coverage.

Claim Submission Process Increased perceptions of claim denial and delayed processing leads to decreased claim submissions; and such practices adversely affect group and private plan health insurers.

Approximately 30% to 40% of all work-related injuries involving medical care or lost work time receive WC benefits.¹⁸ A worker who suffers a work-related injury must decide how much time

¹⁶ Paul Leigh and John Robbins, "Occupational Disease and Workers' Compensation: Coverage, Costs, and Consequences," *The Milbank Quarterly*, 2004.

¹⁷ Jeff Biddle, "Do High Claim-Denial Rates Discourage Claiming? Evidence from Workers Compensation Insurance," *American Risk and Insurance Association*, 2001.

¹⁸ Deborah Hensler, Susan Marquis, Allan Abrahamse, Sandra Berry, Patricia Ebener, Elizabeth Lewis, Allen Lind, Robert MacCound, Willard Manning, Jeannette Rogowski, and Mary Vaiana, *Compensation for Accidental Injuries in the United States*, The Rand Corporation, 1991.

off is needed, if any, and whether or not to file a claim for lost wage benefits. However, submitting a claim can be a rigorous process and the injured worker must evaluate the potential outcome before undertaking the process. Evidence has shown that a substantial number of potentially eligible workers do not file lost wage claims, suggesting that there is a significant cost in both time and energy to filing a WC wage-replacement claim.¹⁹

The inverse correlation between the stringency of claims processing and the number of claim submissions is also prevalent in other social insurance programs. For example, it has been observed that within Social Security disability insurance, a tightening of eligibility standards leads to a “self screening” process by potential applicants.²⁰ This suggests that a worker’s decision to file a WC claim is driven by the perceived probability of acceptance or denial, along with the perceived costs in terms of time and trouble imposed by the claim review process. Accordingly, a higher perceived probability of denial leads to fewer claim submissions.

Further, increased rigor of WC claim screening usually leads to delay in workers’ receipt of benefits; because injured workers often lack resources needed to endure delay, they accept early settlements for smaller claims or even return to work without appropriate medical attention. Stalling or delaying the receipt of benefits not only places the injured worker at a disadvantage but also shifts some of the burden to society. In some instances, after waiting for an extended length of time, injured workers can qualify for Social Security disability benefits. However, there is little research on whether retrenchment in one program increases demands on the other, and vice versa.²¹ The substitutability of Social Security disability benefits for injured workers has received little attention by researchers, and the ramifications of this use of Social Security are not well understood.

Group insurers should also take notice of the WC environment. WC insurers benefit from increased rigor of the screening process and resultant lower benefits costs, but such practices adversely affect group and private plan health insurers. If injured workers perceive the probability of receiving benefits as being too low, they may give up on dealing with the WC insurer and submit their claims to their group or private plan health insurers for coverage.

Employment-At-Will Fear of termination can lead to hesitancy over submitting claims to WC insurers.

¹⁹ Jeff Biddle and Karen Robbins, “Claiming Behavior in Workers’ Compensation,” *The Journal of Risk and Insurance*, 2003.

²⁰ Jonathan Gruber and Jeffrey Kubi, “Disability Insurance Rejection Rates and the Labor Supply of Older Workers,” *Journal of Public Economics*, 1997.

²¹ Ishita Sengupta, Virginia Reno, Christine Baker, and Lachlan Taylor, *Workers’ Compensation in California and in the Nation: Benefit and Employer Cost Trends, 1989 – 2005*, National Academy of Social Insurance, 2008.

Another factor that may add to workers' hesitancy to submit WC claims is the "employment-at-will" premise. For the past 100 years, job security has been governed by the common law "employment-at-will" doctrine.²² The employment-at-will doctrine states that an employment relationship can be broken by either party without liability. Specifically, under this doctrine an employer can legally dismiss an employee for a good reason, a bad reason, or no reason at all.²³ Many states have employment-at-will laws that can leave an injured worker without recourse in the event of termination, as the employer can fire the employee without cause. This can lead to situations where workers do not report an injury out of fear that the employer will simply terminate their employment without consequence. As evidence of this, the director and senior economist for the National Council on Compensation Insurance observed that the frequency of WC claim submissions drop during recessions.²⁴ While there may be other factors that influence this statistic, it is likely that fear of termination is a contributing factor.

The cost of an employer's workers' compensation insurance rates is based upon the claims history and experience of the employer. Because of this rate structure, employers are incentivized to employ tactics that intimidate workers in order to reduce overall costs associated with WC. Thus, workers must choose between filing a WC claim and risking termination or continuing to work despite an injury.

Legal Remedies The lack of understanding of their legal rights leaves many workers at a disadvantage.

Complicating matters further, many injured workers do not fully understand their legal rights. If the insurer or the employer disputes the WC claim the employee can pursue legal remedies, but the balance of resources is stacked against the employee. Chances are that when an employee does pursue legal action, he or she will be inexperienced and under-resourced compared to the employer or WC insurance carrier responsible for the benefits. These inequities likely lead employers, who bear the cost of insurance, and WC insurers, whose profitability is derived from the difference between premiums received and benefits paid out, to delay, deny, and dispute such claims in an effort to discourage future claims.

Moreover, high litigation costs diminish the value of potential or realized remedies available through the litigation process. Because legal costs to bring a case to trial are expensive, the overall effect is to dramatically hinder the delivery of WC benefits. The WC system results in an adverse-selection problem among low-income workers (those likely to hold the most dangerous

²² Alan Krueger, *The Evolution of Unjust-Dismissal Legislation in the United States*, Cornell University, School of Industrial & Labor Relations, 1991.

²³ Ibid.

²⁴ IFAwebnews Staff, "Economic Factors Mean Mixed Bag for Workers' Compensation Market," Insurance and Financial Advisor, 2009.

jobs and have no other health insurance, creating the greatest potential need for WC systems), who are shut out of the legal process due to the imbalance of power between the parties.²⁵

Insurance carriers always employ or retain experienced WC legal counsel for representation, but oftentimes the injured employee is unrepresented. This leads to material imbalances of power, especially when the insurer's representative offers a small settlement. In most states, the injured employee receives nothing until there is a settlement or award. Mounting medical bills and loss of income can induce the employee to settle for substantially less than the value of the claim. Furthermore, injured workers often find it difficult to receive medical attention if the claim is being disputed. There is some evidence that carriers contest cases and carry them to hearing for the sole purpose of exerting this pressure on claimants.²⁶

As previously mentioned, legal actions resulting from delayed or unapproved claims may delay or prevent many injured workers from receiving needed medical attention. Economics would suggest that few doctors would provide medical care to injured workers if the insurance carrier has not agreed to make payment. Most lawyers generally advise the injured employee not to accept rehabilitation, as it may reduce the settlement amount, which would subsequently reduce the lawyer's fee; an apparent conflict of interest. Additionally, insurers want to avoid rehabilitation because they do not want to be responsible for future rehab and administrative costs. The obvious downside of this approach is that any delay in rehabilitation significantly reduces the likelihood of a successful recovery.

Disability Assessment Challenges Impairment ratings often provide little useful information to WC administrators or to the WC system.

Physicians face a unique challenge when treating WC cases: they not only have to treat the injury, but must also assess the causal relationship between the injury and the work place and determine the level of economic damage caused by the injury. However, physicians receive little training for the administrative requirements of WC cases and even less training in the disability evaluation required to assess "lost earning capacity." Because of this, several approaches have been created to assist in the evaluation of the injury. In each approach, the level of injury is assigned as a percentage of disability and the benefits received are a function of that percentage.

There are four basic approaches that utilize the percentage-of-disability methodology: the *impairment-based* approach is the most common method (used in 19 states). Alternative approaches to impairment ratings are the *loss-of-earning-capacity approach* (used in 13 states),

²⁵ Clyde Summers, "Effective Remedies for Employment Rights: Preliminary Guidelines and Proposals," *University of Pennsylvania Law Review*, 1992.

²⁶ *Ibid.*

the *wage-loss* approach (used in 10 states), and the *bifurcated approach* (used in 9 states).²⁷ These disability evaluation approaches generally produce a percentage by which the injury limits motion, sensory perceptions, or physiological functions. However, critics of these methodologies have asserted that impairment ratings “often reveal little about disability and offer flawed promises of objectivity.”²⁸

Impairment ratings are intended to provide a simplified method of quantifying lost earning capacity, but are prone to error because they apply broad medical diagnosis codes to worker-specific injuries and illnesses. Peterson, et al. found that impairment ratings do a particularly poor job of predicting wage loss²⁹ and according to research conducted by Sinclair and Burton, the correlation between impairment ratings and workers' quality of life lost is very low.³⁰ Moreover, the impairment ratings significantly underestimate the quality of life losses perceived by injured workers.³¹ The result is that impairment ratings often provide little useful information to WC administrators or to a WC system designed to fairly compensate workers for the injuries they sustained.

Physicians Many physicians refuse to work with WC cases, further decreasing the quality of care available to injured workers.

The WC system places a considerable burden on physicians and other health care providers because of excessive billing requirements, referral approval procedures, and utilization management processes.³² Furthermore, failure to complete the required procedures and paperwork can result in lengthy delays, limiting the amount of obtainable maximum medical improvement and increasing lost work time and workers' risk of permanent disability.³³ Complicating matters further is the WC care delivery process, which is underdeveloped, inadequately understood, and allows a wide variety of practices among physicians. Physicians who treat WC patients are subject to deposition and cross examination by insurance carrier

²⁷ Peter Barth, “Compensating Workers for Permanent Partial Disabilities,” *Social Security Bulletin*, 2003/2004.

²⁸ Yong-Seung Park and Richard Butler, “Permanent Partial Disability Awards and Wage Loss,” *American Risk and Insurance Journal*, 2000.

²⁹ Mark Peterson, Robert Reville, Rachel Kaganoff Stern, and Peter Barth, “Compensating Permanent Workplace Injuries: A Study of the California System,” *Rand Institute for Civil Justice*, 1998.

³⁰ Sandra Sinclair and John Burton, “Development of a Schedule for Compensation of Noneconomic Loss: Quality-of-Life Values vs. Clinical Impairment Ratings,” *IRC Press, Industrial Relations Centre*, 1995.

³¹ *Ibid.*

³² Thomas Wickizer, Gary Franklin, Roy Plaeger-Brockway, and Robert Mootz, “Improving the Quality of Workers' Compensation Health Care Delivery: The Washington State Occupational Health Services Project,” *The Milbank Quarterly*, 2001.

³³ The point in the employee's medical recovery beyond which his/her condition is not expected to improve significantly.

defense lawyers, and treatment plans are disputed in lengthy review procedures by physicians paid by insurance companies and employers.

Often, physicians find it just as difficult to collect from the insurers as some injured workers do. To compensate for the extended collection time many physicians feel the need to increase their fees, thus contributing further to excessive cost of medical treatment. As a result, many physicians simply refuse to work with WC cases, decreasing both the quality and availability of care for injured workers. Without physicians who are properly trained and willing to assess the causality between the injury and scope of employment, determine the level of economic damage caused by the injury, and be willing to stand up to insurance carrier and employer scrutiny, injured workers stand at a significant disadvantage when trying to obtain the care they deserve and the benefits the WC system promises to deliver.

Conflict of Interest One of the most prevalent conflicts of interest in WC is when the treating physician is chosen by the WC insurer.

There are many subtle and not-so-subtle conflicts of interest imbedded in the WC system. One of the most prevalent conflicts in some states is that the treating physician is chosen by the WC insurer. In these situations, it is in the economic best interest of the insurer to choose physicians who are less likely to approve medical claims or to provide minimal care. The judgment of physicians/medical examiners who rely on WC insurers for their patient referral may be influenced by the fear that approving too many claims will result in less business. “The examiners’ opinions can empower an insurer to slash benefits, withhold medical treatment or stall a case.”³⁴

In other situations, independent examiners are semiretired physicians who are no longer actively practicing medicine. There have been instances where worker claimants and lawyers have asserted that the memories and judgments of some physicians have been somewhat impaired by their age and deteriorating mental ability.³⁵

Often, physicians need special training to perform WC exams,³⁶ but instructional training available to physicians on how to diagnose WC claims are designed and sponsored by the WC carriers. A disproportionate amount of training can be dedicated to how to detect workers’ claims fraud; this bias, whether explicit or subtle, can further increase the rejection of claims, both legitimate and illegitimate.

³⁴ N.R. Kleinfield, “Exams of Injured Workers Fuel Mutual Mistrust,” *New York Times*, 2009.

³⁵ *Ibid.*

³⁶ *Ibid.*

Quality of Care Misdirected incentives, ineffective clinical management processes, and the lack of health provider accountability have contributed to erosion of the quality of care produced by the WC system.³⁷

In order to improve the quality of care administered through the WC system, several key concepts need to be considered. WC is administered at the employer level, but affects all of society. Because employers and workers have different and sometimes competing interests, finding the appropriate level of system intervention and financial incentives is critical to balancing employee benefits with the employer cost structure.

One concept that aligns the interest of both workers and employers is that of “injury prevention.” However, this practice often gets overlooked due to the cost and lack of appropriate incentives within the WC system. The lack of communication between workers and employers further hinders WC.

Workers and employers need to engage in effective dialogue to develop preventative injury techniques. The WC system needs to involve physicians to a greater extent to improve the WC delivery system. The lack of appropriate training has led to a dearth of physicians with occupational health expertise and understanding of the importance of communication with employers regarding return-to-work issues, job modification, administrative procedures involving WC, and other related issues.³⁸ Furthermore, the use of WC fee schedules offers little incentive for physicians to improve their skills, enhance the overall WC delivery system, or the treatment of injured workers.

Legislative Reform Reforms have done little to improve the quality of the overall WC system.

Reform laws passed in the 1990s limited the amount of compensation a worker could receive under the WC system. Traditionally, anyone who was injured “out of and in the course of employment” received benefits. Under the reformed laws, compensation was commonly reduced for the aggravation of preexisting condition or for a condition related to aging.³⁹ Many reforms were passed in an attempt to alter the claim-filing process, essentially making it more difficult to receive benefits. However, these reforms have done little to improve the overall quality of the WC system.

³⁷ Marjorie Baldwin, William Johnson, and Steven Marcus, “Effects of Provider Networks on Health Care Costs for Workers with Short-term Injuries,” *Medical Care*, 2002.

³⁸ Thomas Wickizer, Gary Franklin, Roy Plaeger-Brockway, and Robert Mootz, “Improving the Quality of Workers’ Compensation Health Care Delivery: The Washington State Occupational Health Services Project,” *The Milbank Quarterly*, 2001.

³⁹ Leslie Boden and John Ruser, “Workers’ Compensation ‘Reforms’, Choice of Medical Care Provider, and Reported Workplace Injuries,” *The MIT Press*, 2003.

Many WC overhaul efforts have focused on fixing only the most troublesome aspects of the system, and this approach has done little to improve WC. Efforts have focused on short-term objectives and cost control measures, avoided addressing prevention tactics, and ignored the underlying fundamental problems of the health care delivery system. The misplaced focus of these reforms has resulted in less attention to the fundamental problems of excessive worker disabilities, poor quality of care, and increasing costs.⁴⁰ The lack of success for these reform efforts underscores the importance of examining the underlying causes and not the effects of the problems of the WC system.

Conclusion

Every day, people are injured on the job or become ill from work-related tasks. Workers' compensation was created to assist both employer and employee when these situations arise. By eliminating "fault" and the potential for costly litigation, WC is meant to streamline access to needed medical care and wage replacement benefits, enabling workers to receive adequate rehabilitation so they can return to work as soon as possible. Further, the presence of WC should encourage employers to reduce the number of accidents and provide a safer working environment.

However, the WC insurance system is wrought with numerous flaws that erode its effectiveness and impede the intent of the overall system. Workers themselves are sometimes at the heart of the breakdown. "Moral hazard," the information asymmetry that exists when a worker has full knowledge of the cause and severity of an injury but the employer and insurer do not, creates an opportunity for fraud. Distinguishing the fraudulent claims from the legitimate ones requires a balancing act for the system. Most of the system's imbalances, however, are not advantageous to workers in any way; rather, these issues create stumbling blocks for injured workers trying to access adequate care.

Inconsistencies brought on by state administration (rather than federal oversight) are a concern, but more worrisome is the conflict created by the system's social and private components. WC is a "social" insurance program insofar as it provides blanket coverage for workers, but it is "private" in that employers purchase the coverage in a competitive market and workers have no say in the purchase decision. This odd structure distorts the incentives that are present in a typical business scenario and causes employers to seek out the best price of coverage instead of seeking coverage with the best benefits for their workers. Similarly, insurers are incentivized to stay "competitive" by utilizing cost-containment measures that harm the employee: overly

⁴⁰ Thomas Wickizer, Gary Franklin, Roy Plaeger-Brockway, and Robert Mootz, "Improving the Quality of Workers' Compensation Health Care Delivery: The Washington State Occupational Health Services Project," *The Milbank Quarterly*, 2001.

rigorous submission processes, claim denials, and delays in payments to both workers and physicians.

Compounding the problem is that most workers do not understand their legal rights if a claim is denied, or they are intimidated into not filing the claim at all, for fear of being fired. More troubling, however, are the issues surrounding the delivery of medical care to WC patients. Often, the treating physician has been chosen by the WC insurer, and this creates a conflict of interest in which the doctor's judgment might be influenced by incentives to assist in the denial of claims or to provide minimal care. Moreover, it is difficult to find competent doctors willing to both develop proper occupational health expertise and manage the bureaucracy inherent to WC cases.

An overall lack of communication seems to plague the system. Workers, employers, insurers, and medical professionals need to engage in healthy dialogue to prevent fraud, improve access to care, streamline administration, and implement job modification systems when necessary. Effective communication could also result in injury-prevention techniques that would reduce the need for this program altogether.

Workers' compensation helps many workers in the United States every year, but ISI seeks to shed light on the issues that may prevent legitimately injured workers from receiving the benefits they need and are entitled too. ISI is seeking research partners to further explore the topics outlined in this workers' compensation discovery paper. The intent of such research is to raise awareness for these rarely examined topics and educate those who oversee the workers' compensation system.



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