Spotlight On: Workers Compensation

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The Topic

Workers compensation insurance covers the cost of medical care and rehabilitation for workers injured on the job. It also compensates them for lost wages and provides death benefits for their dependents if they are killed in work-related accidents, including terrorist attacks. The workers compensation system is the “exclusive remedy” for on-the-job injuries suffered by employees. As part of the social contract embedded in each state’s law, in all states except Texas, where employers may opt out of the state’s workers compensation system, the employee gives up the right to sue the employer for injuries caused by the employer’s negligence and in return receives workers compensation benefits regardless of who or what caused the accident, as long as it happened in the workplace as a result of and in the course of workplace activities.

Workers compensation systems vary from state to state. State statutes and court decisions control many aspects, including the handling of claims, the evaluation of impairment and settlement of disputes, the amount of benefits injured workers receive and the strategies used to control costs. According to the U.S. Chamber of Commerce, from 2013 to 2014 maximum income benefits for total disability increased an average of 1.87 percent. The average maximum weekly benefit for 2014 is $867.91, with Iowa heading the list at $1,543.

Workers compensation costs are one of the many factors that influence businesses to expand or relocate in a state, generating jobs. When premiums rise sharply, legislators often call for reforms. The last round of widespread reform legislation started in the late 1980s. In general, the reforms enabled employers and insurers to better control medical care costs through coordination and oversight of the treatment plan and return-to-work process and to improve workplace safety. Some states are now approaching a crisis once again as new problems arise.

Among the cost drivers that require attention are the increasing costs of prescription drugs, in particular the long-term use and abuse of narcotic painkillers, according to industry studies.

Recent Developments

- **National:** According to NCCI's State of the Line analysis, in 2013 workers compensation premiums for private carriers and state funds increased to $41.9 billion, the highest level since 2007. Premiums for private carriers alone grew to $37 billion from $35.1billion, a jump of 5.4 percent from 2012 as employment figures moved up toward pre-financial crisis levels. Because its premiums are directly linked to employment and wages, workers compensation insurance was the line most significantly affected by the economic slowdown.

- Premiums for the residual market grew from $0.8 billion to $1.1 billion, and its market share rose from 7 percent to 8 percent as the market tightened. The increase was driven primarily by larger companies.

- The combined ratio, the percentage of each premium dollar spent on claims and expenses, was 101 for private insurers, the lowest since 2009 and a significant improvement over the 108 figure for 2012. The combined ratio for the 16 state funds administered by the NCCI was 115, compared with 124 for the previous year. A combined ratio of 100 or higher means that the industry is paying out more in claims than it is collecting in premiums.

- Lost-time claim frequency (the number of claims that include loss of income due to time off work as opposed to solely medical care claims) dropped 2 percent, continuing a trend that has been going on for many years. (Overall, claim frequency dropped 58.3 percent from 1991 to 2012.) The cost of claims increased slightly.

- Obesity has an impact on the cost of claims, according to a study by the NCCI. The duration of lost income claims was five times greater for the most severely obese workers than for workers who were not obese but filed comparable claims. The data came from insurers operating in 40 states. The study's findings are similar to those of a 2007 Duke University Medical School report on its own employees.

State activities

- **California:** In August 2012 legislators passed SB 863, a bill developed by labor groups and some large self-insured employers. Supporters claimed that the measure would produce savings of $880 million, more than enough to offset the $610 million in increased payments to workers receiving permanent disability benefits. The impact of the reforms is still not clear. The Department of Industrial Relations and its Division of Workers Compensation posted a progress report in July 2014 outlining improvements to the system as well as continuing challenges. The report, SB 863: Assessment of Workers Compensation Reforms, notes that the law is improving the delivery of appropriate medical care through an independent medical review process.

- **Delaware:** In June 2013, Governor Jack Markell signed H.B.175, a bill implementing recommendations put forward by a study group charged, among other things, with reviewing workplace safety, return-to-work data and recent workers compensation rate increases, which some lawmakers believe threaten economic growth, particularly for small businesses and the construction industry. Key provisions of the law include more closely monitoring a company's workplace records, requiring insurers to make more information available about modified duty jobs and work place safety inspection procedures and providing opportunities for employers to participate in workers compensation rate making discussions.

- **Oklahoma:** The transition put in motion by the passage of SB 1062 in 2013 is continuing. The measure totally revamps the state's workers compensation system, changing it from a system run by the courts to one that is administered by three commissioners appointed by the governor for six-year staggered terms. In July 2014 the two systems began operating as stand-alone agencies. The commissioners will appoint administrative law judges to hear disputed cases. New claims will be processed by the Commission and the old court-based system will be phased out by 2020 as old claims are settled.

- The legislation also allows employers that meet certain requirements to opt out of the state's workers compensation system and, instead, develop an alternative benefit plan. That plan will have to comply with ERISA, the Employee Retirement Income Security Act of 1974, the federal law that sets minimum standards for most pension, welfare and health plans offered by private industry. The bill will also cut payments to injured workers who receive certain types of benefits and reduce the need for attorneys to represent injured workers. Savings could be as high as 14.6 percent, beginning in early 2014, according to NCCI.

- The legislation will make ERISA-compliant plans the exclusive remedy for opt-out companies, preventing workers from suing their employers in state court. The exclusive remedy is at the heart of the workers compensation social compact, see the introduction to this report. In Texas, the only state to allow employers to opt out of the workers compensation system, nonsubscribers, employers that elect not to participate, are fully liable under the tort system for workplace accidents and can be sued for negligence.

- Oklahoma's old workers compensation system was one of the most costly in the region. Insurance Commissioner John Doak has said that the high costs have been pushing employers to think about relocating. According to the NCCI, injured workers in Oklahoma were more likely to file claims than in surrounding states, particularly claims for permanent partial disability. The total cost of those claims was as much as five times higher than in neighboring states. In addition, injured workers in Oklahoma were off work longer. The high costs are attributed by some legislators to the adversarial nature of the system, which provides lawyers with incentives to drive a workers disability rating higher to increase lost income benefits. Oklahoma's level of attorney involvement was 50 percent higher than the national average.

- **Tennessee:** Tennessee also reformed its workers compensation system. In April 2013, Gov. Bill Haslam has signed sweeping legislation that transfers all oversight functions from the courts to a single independent state agency. The measure also created an ombudsman to hear complaints, tightened the definition of a work-related injury and sets up medical treatment guidelines. Many insurers supported the switch to a purely administrative system because of the variances in judges' decisions and expertise. The new law is also expected to improve overall efficiency, providing benefits faster and returning workers to gainful employment sooner. Tennessee considered an opt-out provision but ultimately decided against it.

- **Texas:** Major reforms were enacted in 2005 that transferred responsibility for workers compensation from a commission to the Texas Insurance Department, improved access to healthcare and advice for injured workers, promoted return-to-work programs, created medical treatment guidelines and raised injured workers' benefits.

- The department publishes a biennial report on system improvements. Highlights of the 2012 report, the latest available, indicate that since 2003 to the end of 2011 rates have decreased almost 50 percent; the number of days lost from work due to work-related injuries fell from an average 97 days (median 26 days) in 2004 to 6.0 weeks (median 21 days); and the amount of time needed in 2011 to resolve medical disputes dropped significantly, with fee disputes taking 197 days instead of 335 days as they did in 2005, pre-authorization disputes 20 days instead of 59 and retrospective medical necessity disputes 31 days instead of 123. The percentage of employers that participate in the program (i.e., became subscribers, see Background section) rose from 62 percent in 2004 to 67 percent in 2012. Only an estimated 19 percent of Texas employees (about 1.7 million workers) were employed by non-subscribing employers.

- There were 114,000 employers in Texas that did not participate in the workers compensation program, according to Best's News Service, April 10, 2012. The Texas Insurance Department puts the figure at 33 percent.

- **Vermont:** In January 2013 the state released a report, "Integration or Alignment of Vermont's

Workers Compensation System with Green Mountain Care," which describes how the state is moving toward its ultimate goal of integrating its new single-payer healthcare system with its workers compensation system. This will take time, it says, but in the meantime, recognizing that this may involve further study, it is calling for administrative alignment. If fully integrated, the medical coverage portion of workers compensation would be eliminated and ultimately the private system would be abandoned in favor of a monopolistic, publicly funded workers compensation system. However, the report suggests, Vermont might select another route, integrating only the healthcare portion. Or it might reject integration in favor of some form of administrative alignment.

- **State Funds, Competitive Funds:** Following the successful change over in West Virginia from a state-controlled workers compensation system to a private competitive market, several states, including Arizona, Colorado and Oklahoma, all of which have workers compensation entities with some degree of state oversight that compete with the private market, have been looking into some form of privatization. Some impetus for the sale of these entities is the poor local economy and the resulting budget deficits.

- In Oklahoma in March 2014, the state's Supreme Court upheld a bill, passed last year that privatizes CompSource. The legislation created a mutual insurer, which is due to become operational in January 2015. A stockyards company challenged the law, arguing that the state should maintain ownership of CompSource's assets, valued at $265 million, but the court said that the assets were held in trust for employers and employees insured by CompSource and there was nothing in the state's constitution that would prohibit placing its assets in trust with a domestic mutual insurer. CompSource will continue to maintain its current role as the market of last resort, serving high-risk employers. It currently provides workers compensation coverage to about 35 percent of the market. Most of the businesses in the state are small, with 98 percent having fewer than 100 workers and 75 percent having fewer than 10, according to the State Chamber of Oklahoma.

- **Workplace Deaths and Injuries:** Bureau of Labor Statistics (BLS) preliminary data show that 4,383 workers were killed on the job in 2012, fewer than in 2011 (4,693) and far fewer than in 2008, when there were 5,071 workplace fatalities. The 2012 total represents the second lowest preliminary total since the BLS first started collecting this data in 1992. Many experts attribute the significant drop to the poor economy. However, construction industry deaths increased from 738 to 775.

- Workplace injuries requiring days off work have declined significantly each year since 2002 when the BLS first started using current reporting requirements. BLS data show the rate per 100 full-time employees was 3.4 in 2012, continuing the downward pattern of decline that, with the exception of 2011, has been seen for the last decade.

STATES WITH A STATE-RUN WORKERS COMPENSATION

FUND

Competitive with Private Insurers			Exclusive
Arizona*	Maine	Oklahoma	North Dakota
California	Maryland	Oregon	Ohio
Colorado	Minnesota	Pennsylvania	Washington
Hawaii	Missouri	Rhode Island	Wyoming**
Idaho	Montana	Texas	
Kentucky	New Mexico	Utah	
Louisiana	New York		

*Scheduled to be privatized by 2013.
**Compulsory for extra hazardous operations only. Employers with nonhazardous operations may insure with the state fund or opt to go without coverage.

Background

The Workers Compensation Social Contract: The industrial expansion that took place in the United States during the 19th century was accompanied by a significant increase in workplace accidents. At that time, the only way injured workers could obtain compensation was to sue their employers for negligence. Proving negligence was a costly, time-consuming effort, and often the court ruled in favor of the employer. But by the early 1900s, a state-by-state pattern of legislative proposals designed to compensate injured workers had begun to emerge.

Wisconsin enacted the first permanent workers compensation insurance law in 1911 (New York had enacted a law a year earlier but it was found unconstitutional), and by 1920 all but eight states had enacted similar laws. By 1949 all states had a workers compensation system that provided compensation to workers hurt on the job, regardless of who was at fault. The costs of medical treatment and wage loss benefits were the responsibility of the employer which were paid through the workers compensation system. As part of the compromise that made the employer liable for work-related injury and disease costs regardless of fault, the employee gave up the right to sue the employer for injuries caused by the employer's negligence.

The scope of workers compensation coverage has broadened considerably since its early beginnings. In 1972, states amended their laws to meet performance standards recommended by the National Commission on State Workmen's Compensation Laws. Many states took action not only to expand benefits but also to make the coverage applicable to classifications of employees not previously covered.

However, compensation levels are not uniform. In some states benefits are still inadequate, while in others, they are overly generous. Some states were slow in adopting the National Commission's guidelines and have still not embraced the entire package of 19 recommendations published in 1972. Many states exempt employers with only a few workers (fewer than five, four or three, depending on the state) from mandatory coverage laws. A major benefits issue still to be resolved in some states is the imbalance between levels of compensation for various degrees of impairment; permanent partial disabilities tend to be overcompensated and permanent total disability undercompensated.

Some coverage is provided by federal programs. For example, the Longshoremen's and Harbor Workers Compensation Act, passed in 1927 and substantially amended in 1984, provides coverage for certain maritime employees and the Federal Employees' Compensation Act protects workers hired by the U.S. government.

Employers can purchase workers compensation coverage from private insurance companies or state-run workers agencies, known as state funds. In 20 states, according to a Conning study, “Workers Compensation State funds, Evolution of a Competitive Force,” state funds compete with private insurers and in four states, the state is the sole provider of workers compensation insurance. (See list at the end of Recent Development section of this report.) Along with residual market pools, many state funds also function as the insurer of last resort for businesses that have difficulty getting coverage in the open market.

The only state in which workers compensation coverage is truly optional is Texas, where about one-third of the state’s employers are so-called nonsubscribers. In the event of a serious accident, those that opt out of the system can be sued by employees for failure to provide a safe workplace. The nonsubscribers tend to be smaller companies, but the percentage of larger companies opting out is growing. Some 25 percent of the state’s workers were employed by nonsubscribers in 2008, compared with 23 percent in 2006.

Some businesses finance their own workplace injury benefits through a system known as self-insurance. Large organizations with many employees can often estimate the cost of routine types of injuries. Self-insurance, along with large deductibles, which are in effect self-insurance, now account for more than one-third of traditional market premium. Put another way, workers compensation accounts for more than 40 percent of the alternative market, see also Captives report. Businesses that self-insure their workers compensation losses must prove that they are financially able to do so. They usually protect their assets by purchasing insurance coverage for catastrophic losses or losses in excess of a specific threshold.

About nine out of 10 people in the nation’s workforce are protected by workers compensation insurance. Laws vary by state for domestic workers, see chart, and at least 15 states do not require employers to provide workers compensation coverage to migrant and seasonal farm workers.

How the System Works: Workers compensation systems are administered by the individual states, generally by commissions or boards whose responsibility it is to ensure compliance with the laws, investigate and decide disputed cases, and collect data. In most states employers are required to keep records of accidents. Accidents must be reported to the workers compensation board and to the company's insurer within a specified number of days.

Workers compensation covers an injured worker's medical care and attempts to cover his or her economic loss. This includes loss of earnings and the extra expenses associated with the injury. Injured workers receive all medically necessary and appropriate treatment from the first day of injury or illness and rehabilitation when the disability is severe.

To rein in expenditures and improve cost effectiveness, many states have adopted cost control measures, including treatment guidelines that spell out acceptable treatments and diagnostic tests for specific injuries such as lower back injuries and fee schedules that set maximum payment amounts to doctors for certain types of care.

Most claims are medical only, but lost-time claims, those with both medical and lost income payments, though few, consume most resources. Claims are categorized according to the degree of impairment—partial or total disability—and whether the impairment is permanent or temporary. Cash benefits can include impairment benefits and, when the impairment causes a loss of income, disability or wage loss benefits.

Impairment can be defined in several ways. Payments may be based on a schedule or list of body parts covered and the benefits paid for a loss of that part. For injuries not on the schedule, benefit payments may be calculated according to the degree of impairment or the loss of future or current earnings capacity, often using the American Medical Association's definitions.

Most states pay benefits for the duration of the injury. But some specify a maximum number of weeks, particularly for temporary disabilities. For workers with a total disability, the benefit amount is some percentage of the worker's weekly wage (actual or state average). Cash benefits may not be paid until after a waiting period of several days.

Costs to Employers: Costs to employers include premiums, payments made under deductibles and the benefits and administrative costs incurred by employers that self-insure or fund their own benefit program. The percentage of total compensation costs that workers compensation premiums represent fluctuates. In the mid-1950s, private sector employers paid an average 0.5 percent of payroll for workers compensation. By 1970 this figure was 1 percent, escalating steeply in the 1980s and 1990s to a record high in 1994 of 2.99 percent. However, there is a wide variation in costs among states and industries, so that the highest rated (the inherently riskiest) groups could pay several hundred times that of the lowest rated (safest) groups, as a percentage of payroll. Also taken into account is the firm's own safety record.

Insurance, particularly commercial insurance, is a cyclical industry marked by hard and soft markets. In 2000 as the economy expanded, premiums started rising, ushering in the hard market, when demand outstrips supply. In 2007, with a generally soft market for most types of commercial insurance and a weakening economy, premiums began dropping again. From December 2007 to mid-2009, as the recession caused payroll, the basis for computing workers compensation premiums, to drop significantly (3.6 percent) workers compensation insurers saw premiums contract. In fact, the recent recession had the most serious impact on workers compensation in terms of payroll in 60 years. In the recessions of the 1970s and 1980s, the impact was less severe because of continuous wage inflation. Inflation was not a factor in the 2007-2009 recession.

Claim Costs: As mentioned earlier, there are two components to workers compensation claims costs: payments for lost income, which are usually linked to a state's average weekly wage, known as indemnity costs, and payments for medical care. Two decades ago, indemnity costs made up the greater part of total losses. In 1986 indemnity costs represented 55 percent of the total. By 1996 indemnity and medical had changed places, with indemnity at only 48 percent of losses. In 2008, as medical care costs continued to rise, indemnity accounted for 42 percent.

Growth in workers compensation medical costs for the most part has been much steeper than in the healthcare industry as a whole. The annual average rate of increase in workers compensation medical care costs was 3.9 percent from 1991 to 1995. Since then the rate of increase has more than doubled and, in most years, was more than twice the rate of increase in the medical Consumer Price Index (CPI). Between 2002 and 2007, the medical cost per lost-time claim -- where the employee was forced to take time off work because of the injury as opposed to just seeking treatment for the injury—increased by 6.7 percent compared with an increase of 4.0 percent in the medical CPI. However, in 2009 workers compensation medical care costs increased by only 2 percent, compared with a rise in the medical care CPI of 3.4 percent.

NCCI Holdings suggests that much of the difference between the cost of a healthcare claim and a workers compensation claim is due to the volume, duration and mix of services used by injured workers and group health claimants.

But while the size of claims (dollar amount) has been climbing due to the increasing cost of medical treatment, the number of claims filed (frequency) has been dropping steadily as insurers and their policyholders focus on safety. The frequency of lost-time claims dropped by 54.9 percent from 1991 to 2008. NCCI also attributes recent declines in the frequency of accidents to the use of robots, which reduce workers' exposure to hazardous activities; power-assisted devices that reduce physical stress, lighter and stronger materials; ergonomic designs that reduce strains; and cordless tools, which reduce the incidence of tripping over cords. Frequency declines, which first showed up among small employers are now evident also in large firms.

Insurance company financial results often report profitability in terms the combined ratio (the percentage of each premium dollar spent on claims and expenses). The combined ratio for workers compensation is reported in two different ways: by calendar year and by accident year. In 2008 the calendar year combined ratio started to deteriorate, moving from 99 in 2007 to 100 in 2008. The accident year combined ratio deteriorated more sharply going from 92 in 2007 to 101 in 2008, according to the NCCI. The accident year combined ratio hit a peak of 140 in 1999.

Calendar year results reflect claim payments and changes in reserves for accidents that happened that year or earlier. Insurance companies have to set aside reserves for accidents that have happened but where claims have not been settled. Workers compensation claims may not be settled for many years, if the accident victim needs increasingly more treatment, for example. Accident year results, in that they include only losses from a specific single year, may present a better picture of the industry's performance at a given point in time.

Reducing Costs: Workers compensation system costs are rarely static. Reforms are implemented and then, over time, one or more element in these multifaceted systems get out of balance. Soon employers and legislators complain that the cost of coverage is hurting the state's economy by reducing its ability to compete with other states for new job-producing opportunities.

In the 1980s, with a view to increasing competition within the insurance industry in order to bring down rates, legislation was introduced in more than a dozen states to change the method of establishing rates from administered pricing, where rating organizations recommended rates that included expenses and a margin for profit, to open competition. Now insurers base their rate filings on more of their own company's specific data, rather than using industrywide figures in such areas as expenses and profit and contingency allowances. Rating organizations still provide industrywide data on "losses"—the costs associated with work-related accidents, which help small companies that lack access to large amounts of data.

More recently, states have begun to disband Second Injury Funds. Set up mostly after World War II, these funds were designed to protect employers that hire disabled workers from having to bear the full cost of the first disability when an injury that further disabled the worker occurred in their workplace. Many believe that these funds are now unnecessary in that passage of the Americans with Disabilities Act has made the protection they afford to disabled workers redundant. The Act protects injured workers from discrimination by employers. At least 10 states have repealed laws covering Second Injury Funds.

The aim of the workers compensation system is to help workers recover from work-related accidents and illnesses and to return to the workplace. A fast return to work is desirable from the employer and insurer's viewpoint, lowering claim costs for the insurer but benefiting the worker too.

Research shows that the faster the insurer receives notice of an injury and can initiate medical treatment, the faster the injured worker recuperates and returns to work and the less likely he or she is to seek out an attorney for help in dealing with a claim. Studies also suggest that most people want to return to productive employment as soon as possible. Electronic communication has enhanced procedures to speed up the "first notice of claim" filing process to the workers compensation administrative office.

There are two important aspects to facilitating the return-to-work process. One involves getting the most effective medical care as soon as possible and reducing the emotional stress that may follow an accident. To help get medical treatment to the injured worker faster, some insurers help employers file promptly a "first notice of injury" with the state agency responsible for overseeing the workers compensation system, a step which triggers the claim process.

The other is to encourage employers to improve communications, first about the workers compensation system in advance of accidents—people who know what to expect and who receive medical attention promptly will recuperate faster and are less likely to turn to an attorney for help—and second when injured workers are off work, so that they feel that they are still part of the workplace team and are anxious to return. Insurers have also strengthened communications among all the parties involved in the case so that each knows how treatment is progressing.

Another aspect of the return-to-work process is successful reintegration into the workplace. Insurers help employers assess the injured workers' needs and capabilities and encourage them to let workers know, in advance of any injury, that they will try to modify work activities to accommodate those who are permanently disabled.

Long absences from work can have a lasting negative impact on workers' future employment opportunities and thus on their economic well-being. A study of injured workers in Wisconsin by the Workers Compensation Research Institute found that the duration of time off work and periods of subsequent unemployment are lower for injured workers who return to their pre-injury employer than for those who change employers.

Another factor pushing up costs in some states is the amount of attorney involvement. Workers compensation programs were originally intended to be "no-fault" systems and therefore litigation-free. Attorney fees are either set by law or subject to approval of the courts or regulator. Computations may be based on an hourly rate, a percentage of the total award, a specific percentage according to the level of the hearing on the case, or a sliding scale with percentages decreasing with the size of the award. Many states have caps on attorney fees.

Although attorney involvement boosts claim costs by 12 to 15 percent, because claimants must pay attorneys' fees there is generally no net gain in the actual benefits received. Overall, attorneys are involved in 5 to 10 percent of all workers compensation claims in most states—but in as much as 20 percent in systems where the number of disputes is high and in roughly a third of claims where the worker was injured seriously.

The involvement of an attorney does not necessarily indicate formal litigation proceedings. Sometimes, injured workers turn to attorneys to help them negotiate what they believe is a confusing and complex system. Increasingly, states are trying to make the system easier to understand and to use.

The workers compensation system plays a major role in improving workplace safety. An employer's workers compensation premium reflects the relative hazards to which workers are exposed and the employer's claim record. About one-half of states allow what is known as "schedule rating," a discount or rate credit for superior workplace safety programs.

In addition, a majority of states now provide for optional medical deductibles in workers compensation insurance policies as a cost-saving measure and, in some states, allowable deductible amounts were raised. (Deductibles reduce premiums because they lower an insurer's administrative expenses, which, for small claims, make up a disproportionately large portion of the cost of settlement.) Deductibles also encourage greater safety-consciousness on the part of the employer who must pay the deductible amount.

In some states, insurers must provide accident prevention services to employers. In others, employers are required by law to set up safety committees and other programs to deal with unsafe conditions in the workplace and assign specific responsibility for creating, monitoring or overseeing workplace safety to a governmental agency.

Some businesses are taking a more radical approach to bringing costs under control through coordination of workers compensation, healthcare and disability benefit plans. The integration of workers compensation and other employee benefit programs is a broad concept that ranges from a simple marketing approach that promises savings from using the same insurer for both coverages to programs that offer a managed care approach to the management of all types of disability, regardless of whether they are work-related.

Besides limiting overlapping programs and streamlining administration, proponents say such a change addresses the increasing difficulty of distinguishing between work- and nonwork-related injuries and illnesses, such as injuries due to repetitive motion and stress claims.

It also improves productivity since nonwork-related disabilities are managed with the same focus of getting the employees back to work as work-related cases, and at the same time addresses the potential for reporting injuries that occur outside the workplace as work-related to reduce the employee's out-of-pocket costs. Workers compensation pays for all reasonable medical treatment without deductibles and co-payments, as opposed to healthcare, where the policyholder incurs some out-of-pocket costs.

Residual Markets: Residual markets, traditionally the market of last resort, are administered by the NCCI in 29 jurisdictions. In some states, particularly where rates in the voluntary market are inadequate, the residual market provides coverage for a large portion of policyholders. In 1993 they represented about 26.5 percent of the total workers compensation market (excluding employers who are self-insured). Since that time, the NCCI has taken steps to reduce the size of the residual market by creating financial disincentives to obtain coverage from it.

Terrorism Coverage: Since the terrorist attacks of September 11, 2001, workers compensation insurers have been taking a closer look at their exposures to catastrophes, both natural and man-made. According to a report by Risk Management Solutions, if the earthquake that shook San Francisco in 1906 were to happen today, it could cause as many as 78,000 injuries, 5,000 deaths and over $7 billion in workers compensation losses.

Workers compensation claims for terrorism could cost an insurer anywhere from $300,000 to $1 million per employee, depending on the state. As a result, firms with a concentration of employees in a single building in major metropolitan areas, such as New York, or near a “trophy building” are now considered high risk, a classification that used to apply only to people in dangerous jobs such as roofing. Faced with the possibility of a huge death toll costing millions of dollars and the threat of insolvency as a result, all but the largest insurers are limiting coverage. This is forcing some employers to raise their deductibles, in effect self-insuring part of the risk, and to deal with several insurers to reduce the potential maximum loss for each.

Additional Resources

Issues Report, a yearly overview of the workers compensation system, National Council on Compensation Insurance.

"Property/Casualty Insurance Facts," Insurance Information Institute, annual publication.

"Analysis of Workers' Compensation Laws," U.S. Chamber of Commerce, annual publication.

Publications from the Workers Compensation Research Institute, Cambridge, MA. http://www.wcrinet.org

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