

Workplace Injuries & *2009 NJAJ Meadowlands Seminar Guide*

Workers' Compensation System: A Poster Child for Health Care Reform

By Patrick B. Reddy

Most in the debate over health care reform, amidst the question of whether a public option will bankrupt the government, aggressive nationwide “tea parties,” and even the question of how health care reform should involve tort reform, is the abyss of the federal and state workers’ compensation systems.

Has the president or any member of congress from either party considered the impact workers’ compensation has had on our nation’s health?

Since widespread workplace tort injury reform was enacted at the turn of the last century, employers have seen their bottom lines decrease, and workers have accepted far less compensation than they would receive if they were allowed to file suit against their employers for negligence.

The result? Assuming a claim is

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accepted, a worker is provided with free 100 percent health care coverage for the conditions related to their injury. There are no co-pays, no deductibles, and no paying for prescriptions.

This system is not just a statewide phenomenon. There are no less than three separate federal workers’ compensation systems ranging from injuries at sea (the Jones Act, 46 U.S.C. Section 30101 et seq.), to railroad injuries, and to injuries at shores and harbors (the Long Shore and Harbor Workers’ Compensation Act, 33 U.S.C. Section 901 et seq.).

In all of these systems, the question is not how much should the worker receive in terms of compensation (though this is still heavily litigated in some states), but where and when the worker will receive health care benefits to make the injured worker whole. There is no question of pre-existing conditions preventing health care (most systems require pre-existing conditions to be incorporated into the on-the-job injury treatment). Similarly, a worker cannot be denied coverage because of age, duration of employment, or the existence of unrelated health issues (such as heart disease,

diabetes, or obesity).

The workers’ compensation system should be the poster child for health care reform. Employers, governments and workers do complain about the system, and it is certainly fraught with problems. But the system works. And it works without bankrupting the government or employers.

The system prevents the disease caused by underlying injury from disabling the worker, allowing the worker to return to work more quickly. Only in rare circumstances is the worker unable to return to any form of work. Compare this to the 50 million Americans who are underinsured and who forego treatment or incur massive debt because they become hospitalized.

Also compare workers’ compensation to the Social Security Disability system, and the Medicare and Medicaid systems, which cover the youngest, oldest and poorest persons in our society.

All of these systems require pay-from-paycheck funding (FICA taxes), and pooled funding from various state and federal sources to keep the systems alive.

The systems are beguiled by taxation, borrowing and misappropriation.

Instead, the workers' compensation systems have separate funds, and separate insurance rates actually tailored to the risk associated with the particular insured industry. Commonly referred to as a "tax," workers' compensation premiums collected by the state and federal governments go directly, and only, to paying for injury claims and maintaining the system. If a particular employer has an increased number of claims, their rate goes up. If a particular industry is prone to catastrophic accidents, their rate is higher. Traditionally "safe" industries are rewarded by lower premiums. Office-based industries such as law offices, accounting firms and banks tend to have lower premiums. Heavy industry such as manufacturing and transportation tend to have higher premiums.

In addition, many states have private or self-insurance systems that allow employers to control and manage their claims. In these states, employers have direct involvement in managing, and an incentive to minimize injury to reduce the cost of claims. The government oversees the claim management, and makes the ultimate decision regarding the treatment of the injured worker.

The fear that health care reform will create a government behemoth ignores the

steady, manageable workers' compensation systems. If it is possible to create over 50 such "health care" systems that tend to work, affordable nationwide health care reform is possible.

If all Americans paid something into a health care system, costs would be contained and recovered. No longer would the question about health care coverage be whether the individual is covered, but how much the individual must pay based upon the individual's employment and other factors. Employers already pay into the workers' compensation system. Those "taxes" will necessarily go down as workers find themselves covered with 100 percent health care benefits — regardless of whether they were injured at work or develop a nonspecific debilitating disease such as cancer. The health care system would seek reimbursement from the workers' compensation system, and the workers' compensation system would prevent health care costs from escalating when the injury or disease is work-related.

The focus would be realigned to where it should be — making people healthier. Private health insurance companies will survive. Just as some states allow private employers to use self-insurance, private health care companies would coexist with government systems in a constant competi-

tion that will make both systems better and fair.

With all of its flaws, the workers' compensation system does work. But it needs and is constantly undergoing improvements. With a viable public option for health care coverage, the work injury system can be improved in conjunction with a system that covers all individuals in need of health care regardless of the cause of the injury or disease.

It makes less sense to continue to manage and improve the multitude of workers' compensation systems in a vacuum. Without a viable public option, work injuries will continue to be the sole source of health care for many workers. Having some public care available encourages fraud. Currently, underinsured workers have an incentive to seek an on-the-job injury as their sole source of health care benefits.

A comprehensive public system would remove worker incentives to claim work injuries to care for nonwork-related conditions. The costs associated with preventing such fraud would be significantly reduced. Similarly, the incidences of fraud pertaining to nonwork-related tort injures such as automobile accidents would be reduced. The question of getting back to good health would be separated from the question of getting paid.■