NC Workers' Comp NEWS

A publication of the North Carolina Association of Self-Insurers

winter 12

Market hardens for workers' comp

All indications are rates are rising or are poised to rise in workers' compensation after one of the longest soft markets in recent memory.

Recently and over the past year or so, the National Council on Compensation Insurance filed for rate increases of 7.3% in South Carolina, 10.5% in Virginia, 2.9% in Georgia, 8.9% in Florida, and 0.4% in Tennessee. Rates in North Carolina went up 0.6% in April 2011.

NCCI says rates are expected to rise in about 20 of the 30 states it covers. The group reports calendar year combined ratios nationally deteriorated from 101 in 2008 to 110 in 2009 to 115 in 2010.

> "Even though rates are firming in workers' compensation, the impact of the hard market will be muted for a while because rates are rising only by single digits."

The Council of Insurance Agents & Brokers also reports an unmistakable trend. In the fourth quarter of 2010, workers' compensation rates declined -3.4%, and declined -1.6% again in the first quarter of 2011. But rates increased 2.6% in the second quarter, 4.1% in the third quarter, and 7.5% in the fourth quarter of 2011.

Standard and Poor's sees nothing but poor underwriting results for the industry. "All signs are pointing to more unprofitable years ahead for the U.S. workers' compensation insurance industry, even as the rates are improving in certain states," it noted in January 2012.

"Continued high unemployment in the U.S., a sluggish economic recovery, potential for higher inflation on future claims payments, adverse reserve developments, and a volatile investment environment with historic low investment yields could add up to many years of unprofitability for the workers' compensation industry," it added.

Indeed, Standard & Poor's noted, "making workers' compensation profitable may be mission impossible. This industry has a dismal track record of underwriting results as illustrated by only three years of underwriting profits over the past two decades (1991-2010)." Insurers traditionally have relied on investment income to shore up the bottom line but investment yields have seldom been lower.

"Sustained high unemployment goes hand in hand with reduced payrolls, which are the basis of measuring workers' compensation exposures. The U.S. lost almost 9 million jobs in the last recession and has only gained back 2.6 million thus far. As payrolls shrink, insurers' exposures decline, which leads to lower premium income," Standard & Poor's said.

Even though rates are firming in workers' compensation, the impact of the hard market will be muted for a while because rates are rising only by single digits. Some observers add they do not yet expect a revival in the self-insurance market because many employers do not have adequate financial reserves to meet regulatory requirements for self-insureds.

Well-known consultant Joe Paduda says the bottom line question is not "when will the market harden?" rather it is "how fast and how much are rates going to increase?"

"TPAs are hoping the answer is "very soon and a lot", and most insurers are as well - especially the ones who have reserve deficiencies," he writes on his blog Managed Care Matters.

INSIDE THIS ISSUE

President's Note

Sponsors and Exhibitors

We hope all of you interested in attending our 2012 annual conference in Wrightsville Beach have received the conference brochure and registration details. We still have room for sponsors and exhibitors. For details, please contact our executive director Moby Salahuddin or visit our website at www.ncselfinsurers.com

As I mentioned in my previous column in the fall issue, one issue we are grappling with as an association is how much of a price differential we should maintain between members and non-members when setting registration fees and exhibitor fees for the conference. Since members pay $350 in annual dues, it does not make sense for us to charge them the same fees as non-members, who obviously don't pay any dues.

For this year's conference our board of directors settled on registration fees of $225 for members and $400 for non-members. Exhibitor fees are $650 for members and $800 for non-members. We have also decided to restrict our quarterly newsletter to members only.

These policies are not set in stone and we will visit and revisit them as appropriate. Our goal is to increase membership and obviously one way of doing that is to make membership more attractive. As American Express likes to say, Membership has its privileges! We look forward to seeing you in Wrightsville.

With very best wishes,

Jay Norris

CASE LAW UPDATE

By Joe Austin

Death Benefits

Under the Workers' Compensation Act, an employer is liable for payment of death benefits if death occurs "within six years [of the injury or disease], or within two years of the final determination of disability, whichever is later." Because of the wording of the statute, the time limit for death claims does not begin to run unless the Industrial Commission has entered an award determining the extent of any permanent disability. Thus, as illustrated by a recent decision from the Court of Appeals, the period of limitations on a death claim might never start, even though the employee is treated as being permanently disabled.

In *Shaw v. U.S. Airways*, the employee was injured in 2000, and the employer voluntarily started compensation. Although a hearing took place in 2005, there was never any issue regarding the employee's right to ongoing compensation, and the employee continued to receive compensation, without dispute, until he died in 2008. The widow then filed a claim for death benefits. The employer argued that the claim was not timely, but because the Commission never entered an order making a final determination of disability, the period of limitations on the death claim never began to run.

Thus, in claims where employees are receiving ongoing compensation after reaching MMI, employers should consider whether to ask the Commission to make a final determination of disability, in order to ensure that the period of limitations for a death claim does begin to run. While the costs of pursuing adjudication by the Commission are not insignificant, they pale in comparison to potential exposure for payment of death benefits.

Refusal of Suitable Work

An employer is entitled to terminate compensation when an employee refuses suitable employment, but frequently, the refusal is not blatant. Our courts have adopted the doctrine of constructive refusal to deal with those cases. In *Keeton v. Circle K*, the employee attempted to return to work after an injury, but began a medical leave 11 days later, at which point the employer reinstated compensation. The employer terminated the employment over six months later, and subsequently requested a hearing, asserting that the employee was no longer disabled. Based on testimony from the employee's physicians, the Commission ruled that the employee had been capable of returning to the position with the employer, but constructively refused that work by failing to keep in touch with the employer. The employee argued that she did not know what her physicians would say until their depositions were taken long after she had been terminated. The Court rejected the employee's argument, indicating that it was the Commission's prerogative to determine whether the employee's actions amounted to a refusal of suitable work.

Joe Austin leads the workers' compensation practice group at Young Moore and Henderson in Raleigh. A graduate of Davidson College, Joe received his law degree from Wake Forest University.

Child support enforcement

Feds seek help from insurance industry

The federal Office of Child Support Enforcement is enlisting insurers, self-insurers, and third-party administrators to help it collect child support from delinquent parents.

Interested parties can sign up for free for the office's Insurance Match program which maintains a database of individuals who owe child support. The child support enforcement office says 53 of the 54 states and territories are participating in the program, housed at the U.S. Department of Health and Human Services.

The American Insurance Association, which supports the program, adds the federal agency is currently matching delinquent individuals in collaboration with 443 insurance companies (including TPAs) through ISO and the U.S. Department of Labor. State workers' compensation agencies in 15 states are also participating in the program.

Here is how organizations can participate, according to the Office of Child Support Enforcement:

Send insurance claims data to the Child Support Enforcement office for comparison with individuals delinquent in their child support obligations (claims that do not match will be discarded immediately).

Receive an electronic file from the agency of delinquent individuals for comparison with insurance claims, payments, settlements, and awards, and return the matches to the agency.

Authorize an agent (e.g., Insurance Services Office or another third-party processor) to work with the federal agency to conduct the data match.

Some states require insurers to determine if a claimant owes child support prior to making a payout. The Insurance Match program would be particularly attractive to employers active in several states as the program will help them meet requirements in all states except Massachusetts.

Additional information is available at HTTP://WWW.ACF.HHS.GOV/PROGRAMS/CSE/

Don't ignore ICD-10 conversion, group warns comp agencies

One of the biggest changes in healthcare is perhaps no more than two years away, yet state workers' compensation agencies, mono-line insurers, and bill review companies have largely ignored the issue, warns the International Association of Industrial Accident Boards and Commissions (IAIABC).

ICD-10 is the abbreviated term used to refer to the International Classification of Diseases, Tenth Revision. ICD-10 is a huge step up from the current ICD-9, which is more than 30 years-old and outdated. The change to a new coding system will have wide-ranging systemic effects on how hospitals and physicians do business. At the least, it will require a reassessment of clinical, financial and administrative work processes.

Indeed, it is because of the immense complexity involved in making the switch to ICD-10 that the American Medical Association recently succeeded in getting an extension to the implementation deadline of October 1, 2013. The Centers for Medicare & Medicaid Services has said it will extend the deadline but has not announced the new timeline.

As the AMA explains, ICD-10 codes provide greater specificity to identify disease etiology, anatomic site, and severity. The new codes allow for identifying the body system, root operation, body part, approach, and device involved in a procedure.

The number of diagnosis codes will increase from 14,000 under ICD-9 to 68,000 under ICD-10, while the number of procedure codes will expand from 4,000 to 87,000. This has implications for clinical documentation, physician practice management systems, electronic health records, quality reporting, public health reporting, and for contracts with insurers.

Although hospitals and physicians are required by the federal government to adopt ICD-10, workers' compensation is exempt and could carry on under ICD-9. That would be a huge mistake, IAIABC warns. "Given the small percentage of workers' compensation clients that medical providers see, maintaining an electronic billing system with two coding sets would be impractical and costly," the group notes.

continued on page three

coming up

March 28–30, 2012
North Carolina Association of Self-Insurers. Annual Meeting & Educational Conference. Holiday Inn Resort, Wrightsville Beach.

April 11–13, 2012
Members-Only Forum. South Carolina Self-Insurers Association. Litchfield Beach & Golf Resort.

April 15–18, 2012
RIMS 2012 Annual Conference & Exhibition. Pennsylvania Convention Center, Philadelphia.

NC Workers' Comp News is produced quarterly by the North Carolina Association of Self-Insurers. To be added to our distribution list, please contact Moby Salahuddin, executive director, at MSALAHUDDIN@SC.RR.COM

www.ncselfinsurers.com

NCASI
NORTH CAROLINA Association of Self-Insurers
The employers' voice in workers' comp

Don't ignore ICD-10 conversion, group warns comp agencies

(continued from page two)

"Delayed bills from workers' compensation carriers who cannot accept ICD-10 might force providers out of the system and restrict quality care to injured workers. This would cause more than a few headaches for state agency CEOs, insurance executives and medical providers. Also, states will be required to report to CMS using ICD-10 codes, as CMS will no longer accept ICD-9 codes after the transition," IAIABC added.

The IAIABC is urging state agency directors to understand how ICD-10 will impact their state agency and stakeholders. According to its recent survey, only 13 of the 27 responding jurisdictions' had formally evaluated how ICD-10 would impact their agency administration or operation.

Although only a small number of people have heard of ICD-10 and fewer yet understand it, ICD-10 is seen as the foundation which will support other major changes transforming healthcare. According to the American Health Information Management Association, ICD-10 is inextricably linked to initiatives such as meaningful use, value-based purchasing, payment reform, quality reporting, and accountable care organizations.

"Electronic health record systems being adopted today are ICD-10 compatible. Without ICD-10, the value of these other efforts is greatly diminished," the association warns.

Healthcare organizations have been bracing themselves for the mammoth change, and for spending millions of dollars to update their coding system. What affects healthcare is bound to affect workers' compensation, since as much as 50%-60% of comp costs are because of medical care.

"The impact that people haven't yet got their head around is that this is not an IT problem, and it's not a medical records coding problem. This is a business challenge that will make you operate differently," Bill Hannah, chief financial officer of special projects at Piedmont Hospital in Atlanta, told Becker's Hospital Review.