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10 Challenges Ahead for Workers' Compensation

By [Andrea Wells](#) | May 5, 2014

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Today's challenges are also tomorrow's opportunities depending on the viewpoint. Those same opportunities could also remain tomorrow's challenges. This special report highlights 10 current workers' compensation issues and offers opinion on why they could be tomorrow's challenges for the line.

Wage & Salary Stagnation



Average U.S. base salary increases for 2014 held steady at 3 percent for the second year in a row, but pay raises still are roughly one percentage point below pre-recession levels, according to the annual Compensation Planning Survey by Buck Consultants.

Low to moderate pay wages haven't helped the workers' compensation market.

"Salary stagnation or low growth of wages will have a telling impact on the workers' comp industry in the future for the simple reason that payroll growth is necessary in order to have premium growth," says John Leonard, president and CEO of MEMIC, a Super Regional workers' compensation specialist insurer based in Portland, Maine.

"If you consider that payroll is one of the basic components of developing a premium for a risk, once you have no growth or low growth that has a capping effect, so to speak, in terms of premium growth."

Therefore the problem for tomorrow's workers' comp market will be not enough premium growth to cover the costs associated with the medical component of the claim dollar, Leonard says.

"We have seen over the past 20 to 30 years, a shift in terms of the split between medical cost and indemnity costs as outlined in a claim dollar. It used to be that 60 percent of a claim dollar was attributable to indemnity payments and 40 percent was attributable to medical. Now, in many jurisdictions, you're seeing that medical is 60 percent or more of the claim dollar and 40 percent is part of the indemnity dollar," he says. "So if, in fact, there is a slow

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or no wage growth, we're going to see a continuing imbalance in terms of the growth of the medical component with no growth on the indemnity side."

Technology and Innovation



When it comes to technological innovations, the health care industry's advancements dwarf anything that's developed in the workers' comp industry for years, says Thomas Lynch, founder and CEO of Lynch Ryan & Associates Inc., a management consulting firm for workers' compensation cost control based in Wellesley, Mass., and publisher of the blog WorkersCompInsider.com.

"The P/C insurance industry is very slow to innovate and is lagging behind other industries, as well as other parts of the insurance industry, in adoption and rapid movement to technology usage and innovation," he says.

In Lynch's view, the workers' comp industry is way behind and it must catch up.

"For example, there's a huge move now in the Veterans Administration called the Blue Button Project, where if you're a patient you have a portal. You can go in and you can see all your medical records. You can communicate with your doctors. It's a great back and forth system."

There's nothing quite like it the workers' comp industry, he says. "That kind of patient back and forth could really be a benefit in, wellness programs, in claims administration."

The workers' comp industry also lags in providing mobile claims reporting technology.

"Even now, today, the usual way is that when you have a claim, you'll go online and file a report online or you'll make a phone call. Why couldn't you take out your smartphone, have a voice activated app that could allow you to report directly into your carrier's system which would, in real time, display for a claims adjuster?" he says. "Why can't you, at the same time, take a picture of the incident on your smartphone and include that with the report – the whole claim reported and done in five minutes. We can't do that now and yet we can do it in other areas."

Jonathan Gruber, professor of economics at the Massachusetts Institute of Technology (MIT), believes the workers' compensation system must align itself with the rest of the changing health care system to avoid increased costs.

Gruber, who was involved in creating Obamacare and the Massachusetts health insurance system, said that while workers' compensation carriers should see fewer claims as a result of more Americans obtaining health insurance, there are other forces at play that could mean higher costs and other challenges for workers' compensation.

"As more people have health insurance there is less need for them to have injuries covered by workers' compensation and this should lower workers' compensation costs," he said.

However, that effect could be offset by employers moving to high-deductible plans and limiting provider networks as well as by health plans capping reimbursements to medical care providers.

"Other payors are going to get tougher at a quicker rate than workers' compensation is and that is a challenge for this group and the workers' compensation community," Gruber says.

"Workers' comp and the rest of P/C has to get its act together, has to rededicate itself to delighting the customer, to having a dynamic relationship with the customer, and understanding that the customer is the most important thing in its universe," Lynch says.

Opioid Abuse

The biggest issue facing the workers' compensation industry and for years to come is long-term use of opioids, says Joseph Paduda, principal of Health Strategy Associates LLC, a

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national consulting firm specializing in managed care for workers' compensation and group health.

"There are probably more than 200,000 workers' comp claimants who have been on a high dose of opioids for more than six months. The vast majority of those are addicted," he says.

While the industry is doing a better job of preventing inappropriate use of opioids on the front end for new claims, there are few success stories with long-term users.

Aside from addiction concerns, hundreds of workers' comp claimants die each year as a result of opioid poisoning, Paduda says.

"We – the workers' comp industry – have become the addiction creation industry."

The concerns over opioid addiction will plague the industry for many years to come.

First, claimants addicted to opioids are not going back to work. "Therefore, their claims are going to continue and that runs up employers' costs, and taxpayers' costs, quite significantly," according to Paduda.

The other, more troubling challenge associated with opioid abuse is the societal cost.

Aside from the thousands of opioid overdoses, and the hundreds of deaths, evidence shows drug diversion from workers' comp related injuries.

"The data indicates that about 19 percent of claimants who are prescribed opioids, when they're drug tested, there's no evidence of the drug in their urine," he says. That means that those opioids prescribed to workers' comp claimants are getting in the hands of people who are going to use them for illicit purposes.

Another societal concern: opioid addiction is leading to a dramatic rise in heroine usage.

"It's a problem that is challenging the workers' comp industry, but it's also bleeding over into and having a very definite negative impact on society as a whole," Paduda says.

So far the workers' comp industry has moved slowly in addressing the crisis. In Paduda's view, a lot of players have yet to fully understand the financial impact of opioids.

"I've talked to actuaries and claims people both payers and also at large research organizations. I don't know anybody who's done research that separates out the impact of opioids from non-opioids," he says. "When the actuaries calculate how much more expensive claims are when the patient has opioids than when they do not, and they have a similar type of claim, I think there's going to be some jaws dropping and some clamor for action," he says. But that has yet to happen.

Marijuana in the Workplace



The use of medical marijuana is a highly publicized development that could present a number of concerns for workers' compensation in the coming years.

First is the issue of legality, the experts say, because marijuana is considered an illegal substance under federal law, listed as a Schedule I drug under the Controlled Substances Act. However, 20 states and the District of Columbia have legalized marijuana for medical use and several others are considering legislation.

The real issue when it comes to workers' comp, according to MEMIC's Leonard, is that so far there's no proof that using medical marijuana to treat injured workers works.

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“In other words, there’s a lot of commentary regarding it but there’s no empirical evidence to support that it actually is effective in treating conditions that we see in workers’ compensation,” he says. “It’s somewhat of a mystery right now to many of us who handle this line of insurance.”

While there’s a lot of talk so far there is no claim activity. “Medical marijuana is a tempest in a teapot,” says Paduda. No one has had any claims.

“It is probably one of the most widely discussed issues right now in the area of workers’ compensation,” Leonard says. “We are the fourth largest workers’ comp carrier in New England and all six New England states currently legalize the use of medical marijuana, and yet, we have not been hit with a single claim.”

Leonard says that doesn’t mean there won’t be an influx of medical marijuana claims in the future. If and when those claims begin to come in, the workers’ comp industry will have much to consider.

“We’ve got conflicts all over this issue,” he says. “I can only forecast that over the next couple of years, you’re going to see an awful lot of commentary regarding the use of medical marijuana in the workplace. Many of us at this point in time simply haven’t had the experience or the insight to clearly outline how it’s going to impact the workers’ comp industry.”

Manufacturing



The United States is once again a “rising star” of global manufacturing thanks to falling domestic natural gas prices, rising worker productivity and a lack of upward wage pressure, according to a recent report by the Boston Consulting Group. The report found that while China remains the world’s No. 1 country in terms of manufacturing competitiveness, its position is “under pressure” as a result of rising labor and transportation costs and lagging productivity growth.

The United States, meanwhile, which has lost nearly 7.5 million industrial jobs since employment in the sector peaked in 1979 as manufacturers shipped production to low-cost countries, is now No. 2 in terms of overall competitiveness, BCG found.

The biggest factor driving the U.S. rebound, according to BCG: cheap natural gas prices, which have tumbled 50 percent over the last decade as a result of the shale gas revolution.

Also contributing to the country’s attractiveness, according to BCG, is “stable wage growth” – a euphemism for the fact that, in inflation-adjusted terms, industrial wages here are lower today than they were in the 1960s even though worker productivity has doubled over the same period of time.

The trend is great for the U.S. economy but MEMIC’s Leonard sees some challenges ahead for the workers’ comp line as a result of new workers entering into the manufacturing process.

“The reality of it is studies confirm that new workers are more subject to injury than experienced workers,” Leonard says. “There is a potential for an uptick in terms of frequency brought on by the expansion of manufacturing for that simple reason alone, the influx of new and perhaps untrained workers taking on these jobs as the economy expands.”

While Lynch agrees the rise in manufacturing will lead to higher loss costs for workers’ comp due to the increased exposures that come with more workers, he also predicts a future with higher-educated workers in manufacturing that could result in few injuries overall.

Many business leaders realize that manufacturing is the future, he says, and have invested in technical trade schools that develop students with advanced technology skills suitable for tomorrow’s manufacturing jobs.

"Manufacturing in the U.S. means advanced technology yet we were not turning out high school graduates who could compete for the jobs that that advanced technology was going to require," he says.

Now, vocational high schools are popping up across the country with high-tech programs that cater to advanced manufacturing concepts. That means a "better educated workforce, which means that we'll have fewer injuries," he says.

Affordable Care Act



Most research surrounding the Affordable Care Act's (ACA) impact on the property/casualty markets points to modest changes, at best. However it's still far too early to estimate the ACA's effect on the workers' compensation line, according to MEMIC's Leonard.

"We hear arguments that it should create a more healthy workforce, which would benefit us; it would have an impact on cost shifting," Leonard says.

However, the other side of that story could be more people inclined to file for non-work related injuries through the worker's comp system.

"A lot of people injured over the weekend, they simply hold off until Monday to make sure that it is qualified as a workers' comp injury (also known as the Monday Morning Syndrome)," he says. "But again, I think the jury is still out. We haven't had enough experience with the ACA to clearly determine trends that will have either a positive or a negative impact on workers' comp results."

A bigger concern is the expectation that Medicare might start reducing its reimbursement rates as a result of ACA rules. If that happens, medical providers could start feeling a pinch, says Harry Shuford, NCCI chief economist. "Combined with the growth in Medicaid – where reimbursement rates are quite low – there is some concern that providers might start to find ways to get their patients' injuries covered by workers' comp, a concept called cost shifting," he says. "That is potentially a bigger concern, but right now the whole thing is uncertain."

At least for the near term, the ACA is not likely to have a material impact on the workers' comp market, according to NCCI. The longer-term impact could bring some positive results, Shuford says.

"The most important impact will be the ACA's efforts on what they are calling comparative effectiveness – essentially doing scientific research to determine best practices for treating injuries and illnesses," Shuford says.

Shuford says there's considerable diversity in how doctors treat common workplace injuries.

"Our data shows that for a standard diagnosis, a rotator cuff or a knee injury, if you look across the states the percentage of those injuries that require surgery can vary from one-third to almost two-thirds depending on the state you are in. That suggests that there is not clarity in terms of what is the most appropriate way to treat these injuries. Is surgery a good thing and if so when is it a good thing?"

The initiatives in the ACA on identifying best practices through comparative effectiveness could result in significant positive implications for workers' comp in the future, Shuford says.

Workplace Safety



One area of the workers' comp system that has seen tremendous change over the past 30 years and will continue to see change in the future is workplace safety.

"People may not notice but safety in the workplace has continually improved since the 1972 passage of OSHA," Lynch says. On the

other hand, there are still pockets in various industries where bad things happen because people are trying to cut corners.

One trend over the past several years that Lynch says will continue in the future is increased prosecution of the worst offenders. "OSHA is focusing on working with the Justice Department and people are going to jail for doing things that are willfully unsafe in the workplace – where people are getting killed," he says.

There have also been more advances made in auto safety than anywhere else, he notes. Those efforts have led to safer workers on the roads.

Workplace safety is not something that happens overnight. "It's a multi-generational effort to change a culture of unsafe workplace practice. To change that takes a long time," he says. "On one hand we've come far, and on the other hand we still have a ways to go with keeping workers safe. We will always have this kind of problem."

Terrorism Risks

Absent Congressional action, the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2007 will expire on Dec. 31. The possible expiration of the federal backstop has driven the issue to the top of priority lists of a wide swath of stakeholders, including the workers' compensation industry.



"TRIA is absolutely essential to the continuation of worker's comp insurance," says MEMIC's Leonard. "There's no question, but it has to be renewed in some form."

"The expiration of the federal backstop would likely result in the scenario that played out both in the insurance industry and across the broader economy in the period between the 9/11 attacks and the enactment of TRIA in 2002," wrote Tim Tucker, NCCI Washington Affairs Executive, in his April report titled "The Future of Terrorism Insurance Backstop."

"Carriers limited capacity or excluded the terrorism risk from property coverage altogether. Regarding workers' compensation, the inability of carriers to exclude any peril resulted in growth in the residual market," Tucker wrote.

"The problem that we have with TRIA right now it's viewed as an insurance industry problem. That's not the entire story. This is an economic problem for the United States," Leonard says. "Absent the renewal of TRIA, it will have a major impact on the economy of the United States going forward."

The federal terrorism backstop is essential to the workers' comp industry because in many cases, "we cannot simply terminate a policy," he says. "We cannot reduce the coverages handed to us by statute. You cannot, in workers' comp, tell somebody that your injury isn't covered because it resulted from a terrorist attack. That's just not the way the statute reads. We cover you for any and all workplace injuries" – terrorism related or not.

Workers' comp could be in trouble without the federal backstop for terrorism coverage. "It would be catastrophic to the insurance industry and it would have a major negative impact on the U.S. economy," he says.

Workforce Demographics

While many in the workers' compensation world discuss the aging workforce and health challenges such as obesity impacting the bottom line, NCCI's Shuford sees the younger generation as a growing concern.

"When you talk about age demographics, I actually think we need to be more concerned about young people than old people, particularly young men," he says. "They are not participating in the labor force the way that they used to. Their labor force participation rates are down. Many of them are not even looking for work. Many do not have job skills or can't

pass a criminal background check or a drug test. We are simply not getting the flow of young and vibrant workers into the workforce like we used to."

That's a concern for everyone, he says.

"As a nation and as an industry we need to be thinking about that every bit as much as we think about older workers," Shuford says. "Our own research shows that for the older people that are still in the workforce, their injury rates are about the same as workers in their mid-30s to mid-40s and the average cost of a claim is the same as it is for workers in their mid-30s and mid-40s."

That means older workers – at least those still in the workforce – do not appear to be imposing a significant burden on the workers' comp system.

"Our research suggests that what we ought to be worried about is not the older workers but instead the middle aged workers. Over the last 15 years what we have observed is injuries that used to be prominent amongst older workers – rotator cuffs and knee injuries are now becoming very prominent in workers in their mid-30s to mid-40s." Those injuries tend to be high cost and often permanent disabilities.

"Everybody talks about the aging baby boomers putting pressure on the workers' comp system when in reality we need to be concerned with middle aged workers," Shuford says.

Mobile Workforce



The use of telecommuters – or the mobile workforce – has grown by nearly 80 percent since 2005, according to Global Workplace Analytics, a San Diego-based consulting and research firm that focuses on the business case for emerging workplace strategies.

While telecommuting grew by 3.8 percent from 2011 to 2012, the size of the overall the non-self-employed workforce actually declined 1.5 percent, according to Global Workplace Analytics statistics. "For the period from 2005 to 2012, the telecommuter population grew by 79.7 percent while the non-self-employed workforce grew by only 7.1 percent."

A mobile workforce presents both challenges and opportunities for businesses and their workers' compensation insurers.

"If you consider that in 2013, 26 percent of all automobile crashes in the United States involved the use of a cellphone that brings home the idea that if you're working in a building, the employer can control a lot of things. But once you leave that building and get into your own little car or your employer's car and you drive somewhere, that arm of control isn't quite there like it used to be," says Lynch.

According to Lynch, the jury is still out on whether growth in the mobile workforce will continue.

"Companies are beginning to realize that it might be more in their best interest to bring people back together, in a cohesive work environment, rather than having them off site so much," he says.

"For example, if your commute is from 20 feet from your bedroom to your home office, that's really nice and all that but when you get up from your desk and you step around a corner and you trip on your son's skateboard and you land on your face and get hurt, what does that mean for workers' compensation?" he jokes.

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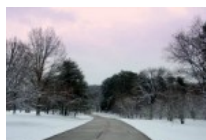
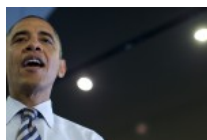
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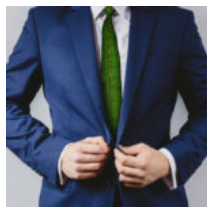
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