*Project S E.N.S.O.R. News

Volume 28 No.1 Winter 2016-2017

Overview of Workers' Compensation: Trends, Issues and Roles of Physicians

On October 5, 2016, the U.S. Department of Labor issued a report: "Does the Workers' Compensation System Fulfill its Obligations to Injured Workers?" www.dol.gov/asp/WorkersCompensationSystem/WorkersCompensationSystemReport.pdf The purpose of the U.S. Department of Labor's report was to take a careful look at the current state of workers' compensation across the United States. To understand the current trends and issues in workers' compensation, it must be understood that workers' compensation is structured uniquely in each state, with no minimum Federal standards to which a state must adhere.

The report concluded that: "Despite the sizable cost of workers' compensation (employers costs are $91.8 billion dollars per year), only a small portion of the overall costs of occupational injury and illness is borne by employers (overall cost estimated at $206 billion). Costs are instead shifted away from employers, often to workers, their families and communities. Other social benefit systems – including Social Security retirement benefits, Social Security Disability Insurance (SSDI), Medicare, and, most recently, health care provided under the Affordable Care Act – have expanded our social safety net, while the workers' compensation safety net has been shrinking. There is growing evidence that costs of workplace-related disability are being transferred to other benefit programs, placing additional strains on these programs at a time when they are already under considerable stress" and that "the current situation warrants a significant change in approach in order to address the inadequacies of the systems. We need to identify best practices in order to provide better benefits to injured workers, increase the likelihood that workers with occupational injuries or illnesses can access the wage replacement benefits they need until they can go back to work, and reduce costs to employers."

When the OSHA Act was passed in 1970, there was a provision that set up a National Commission on State Workmen's Compensation Laws. The Commission endorsed 84 recommendations, including 19 essential recommendations. Michigan's compliance with the essential recommendations as compared to the average compliance in all states is shown in Table 1.

Table 1. Compliance in Michigan Compared to Other States with the National Commission's 19 Essential Recommendations, U.S. Department of Labor: 1972, 1980, 2004

	1972	1980	2004
Michigan	11	10	9.75
Average Compliance	6.79	12.1	12.85

(Adapted USDOL, Report, 10/5/16)

Michigan's compliance has decreased over time while compliance has generally increased in other states. The 19 essential recommendations included: compulsory coverage with no exception for small employers or farm workers; allowing employee choice to file where hired or where injury occurred; full coverage for work-related illnesses; adequately weekly benefits; no arbitrary limits on duration of wage replacement benefits; and full medical and rehabilitation benefits without limit on duration.

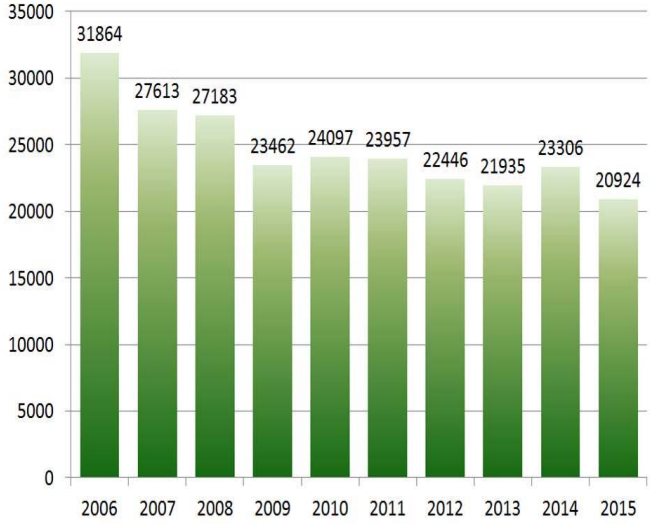
The report recommended specific policy areas for further exploration:

1) Whether to increase the federal role in oversight of workers' compensation programs, including the appointment of a new National Commission and the establishment of standards that would trigger increased federal oversight if workers' compensation programs fail to meet those standards.
2) How to strengthen the linkage of workers' compensation with injury and illness prevention, including by facilitating data sharing among state compensation systems, insurance carriers, state and federal Occupational Safety and Health Administration (OSHA), and state health departments.

3) Whether to develop programs that adhere to evidence-based standards that would assist employers, injured workers, and insurers in addressing the long-term management of workers' disabilities to improve injured workers' likelihood of continuing their productive working lives.
4) Whether to update the coordination of SSDI and Medicare benefits with workers' compensation, in order to ensure, to the extent possible, that costs associated with work-caused injuries and illnesses are not transferred to social insurance programs.

Workers' Compensation claims in Michigan have been steadily dropping, as shown in Figure 1.

Figure 1. Claim Trends: Lost Time Claims Over 7 Days



Highlights of the Michigan Workers' Compensation System

Workers who are injured or become ill from work receive wage and medical care benefits regardless of fault, but he or she only receives certain limited benefits. To be covered under workers' compensation, an injury/illness must "arise out of and in the course of" the employment. This means that the worker must be on the employer's premises and/or engaged in activities that further the interest of his or her employer. In general it is said, "the employer takes the worker as it finds him." Therefore work does not have to be "the cause" of the disability. It is enough if the work significantly contributes to, combines with, or aggravates a preexisting condition, although there is the requirement that the aggravation caused pathological changes such as radiographic changes and not just increased pain. To receive workers' compensation a health care provider has to state "within a reasonable degree of medical certainty" (51% or more likely) the injury/illness was caused or aggravated by work.

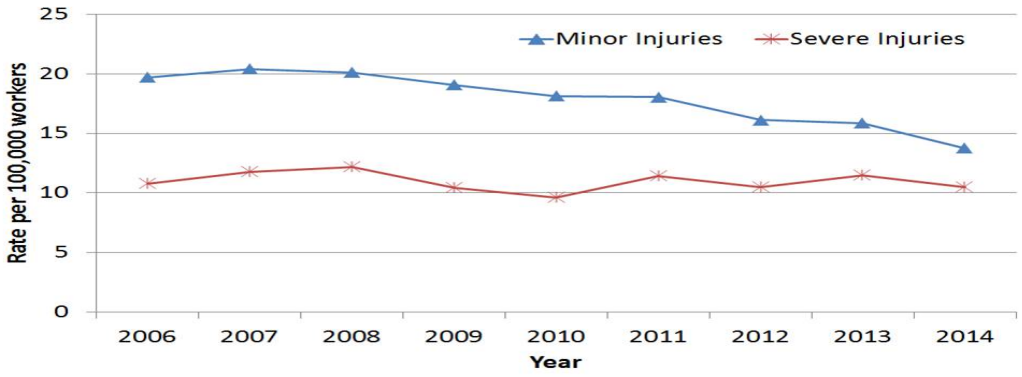
Under Michigan law benefits are equal to eighty percent of the worker's take home pay with a maximum based on the state average weekly wage. The maximum weekly wage replacement for 2016 was $842. Workers are entitled to unlimited medical care related to their disability without co-pays or deductibles. Workers must receive treatment for the first 28 days from the health care provider selected by the company after that the worker can choose any provider. If a worker refuses an offer of reasonable employment, benefits are suspended. Potentially, a worker could receive wage loss benefits for the rest of his or her life. This rarely happens, however. In the vast majority of cases, the worker returns to work in ninety days or less. In more serious cases, some dispute often arises after benefits have been paid for a year or two. These disputed cases are most often settled through a "redemption." The worker receives a single lump sum payment and all liability for the employer is terminated.

If an employer denies a workers' compensation claim, the worker commonly hires an attorney and requests a hearing. Hearings are held before Workers' Compensation Magistrates. There is an appeal to the Workers' Compensation Appellate Commission and, on issues of law; parties may seek permission or "leave" to appeal to the Court of Appeals and the Supreme Court. About two-thirds of the cases that go through the Michigan workers' compensation system never involve any disputes or litigation. Even these cases, however, require informed input from treating physicians. Most likely, the input will be sought in the form of a copy of the medical records or a request for a written report. The request will usually come from the employer or its insurance company or third party administrator. If there is a dispute in the case, the opinion of treating physicians is likely to be sought from the attorneys involved in the case. If it appears that the case will go before a magistrate, the parties may arrange the deposition of the treating physician. This means that the parties will come to the doctor's office at a time convenient for the doctor and take his or her testimony under oath. No judge is present during the deposition. Instead a court reporter records everything that is said and a transcript is typed up and handed to the judge at the time of trial. In disputed cases, and sometimes in cases when there is no dispute, the parties may send the worker for a second opinion. These evaluations are usually referred to as "independent medical examinations." In some cases, insurance companies or employers use these routinely as a way to monitor the progress of a case. In other cases, these are used specifically to prepare for upcoming litigation.

Costs have also been decreasing. Workers' Compensation payments in Michigan in 2015 for wage replacement and medical care costs were $1.057 billion. Costs in 2006 were $1.447 billion. There are probably multiple reasons for the decrease; prevention of injuries and illnesses, management of work-related injuries, changes in workers' compensation eligibility related to the requirement for the injuries or illnesses to cause pathological changes, and requirements for claimants to demonstrate that there are no jobs available.

Data from hospitalizations in Michigan where workers' compensation is the payer from 2006 to 2014 are shown in Figure 2.

Figure 2. Annual crude rate of work-related inpatient hospitalizations for severe and minor traumatic injuries per 100,000 persons age 16 years and older, Michigan, 2006-2014



Although there has been a reduction in hospitalizations for minor work-related injuries, there has been no decrease in the rate of hospitalizations for severe work-related injuries. This decrease in hospitalizations for minor but not severe injuries suggests that changes in the management of injuries or illnesses is a more important factor in the decrease in hospitalization rates and costs than changes in the workplace to prevent the injuries.

Workers' Compensation awards for illnesses is much less common than for injuries. Less than half of individuals in Michigan with silicosis or work-related asthma apply for workers' compensation. If they do apply, individuals with silicosis have >80% chance of receiving compensation while patients with work-related asthma have a 50% chance of receiving compensation.

Whenever possible, it is in the best interest of both the worker and employer if the physician can work with all parties involved to find a reasonable way in which the patient can return to gainful employment. If a case is contested it can take years for the case to be decided. During that time, the worker generally has no personal income or health insurance.

Dr. Rosenman is available at 1-800-446-7805, for questions regarding patient care and Workers' Compensation issues.

Sign up now to receive your copy of PS News in your email inbox!

To receive your quarterly PS News electronically, send us an email today at: Ruth.VanderWaals@hc.msu.edu and ask to be signed up for our newsletter email distribution list. Please include your full name, physical mailing address and telephone number so we can remove you from the printed mailing list.

*Project SENSOR News

Michigan State University
College of Human Medicine
West Fee Hall
909 Fee Road, Room 117
East Lansing, MI 48824-1316
Phone (517) 353-1846

In this issue: v28n1 Overview of Workers' Compensation: Trends, Issues and Roles of Physicians

*P*S *Remember to report all cases of occupational disease!*

Printed on recycled paper.

The Project SENSOR News is published quarterly by Michigan State University-College of Human Medicine with funding from the National Institute for Occupational Safety and Health and is available at no cost. Suggestions and comments are welcome.

(517) 353-1846
MSU-CHM
West Fee Hall
909 Fee Road, Room 117
East Lansing, MI 48824-1316

Michigan Law Requires the Reporting of Known or Suspected Occupational Diseases

Reporting can be done by:
Web
www.oem.msu.edu
E-Mail
ODREPORT@ht.msu.edu
FAX
(517) 432-3606
Telephone
1-800-446-7805
Mail
Michigan Occupational Safety & Health Administration (MIOSHA)
Management and Technical Services Division
P.O. Box 30649
Lansing, MI 48909-8149

Reporting forms can be obtained by calling (517) 322-1817
Or
1-800-446-7805