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Labor Management Decisions

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Special Report:

The New World of Workers' Compensation

Also in this issue:

The New World of Workers' Compensation

Farm safety has commanded a lot of attention recently. Regulatory devices such as Senate Bill 198, industrial safety orders, and the new EPA worker protection standard, some major attention getters, are designed to help prevent occupational injuries and illnesses. Despite them, however, people do sometimes get hurt or sick in connection with employment, and it is our public policy to look after them.

The main vehicle for doing so, in all the United States as in other industrialized nations, is the workers' compensation (WC) system. It operates on a "no fault" basis and is set up to be the full and exclusive remedy for workplace injuries. Employers have to have WC insurance, but it protects them from uncertain liability, as it also protects workers from costs of remedial care and foregone income while disabled. Workers' compensation insurance has been compulsory in California since 1914, and farm workers are covered by it in some 40 states. For most farmers in California, the WC insurance premium is the largest single indirect labor cost.

As their premium rates were going higher faster in the 1980s, agricultural employers, like others, increasingly came to the conclusion that something was wrong with the system. In many states with similar experience, attempts were then under way to bring rising costs under control. By the time reform discussions began in earnest here, the number of claims, expense of related medical payments, and costs of litigation had grown dramatically, and our legislators were hearing the sirens. One of the evident problems was fraud and abuse of the system — people filing claims to get benefits they did not deserve, and others helping them for a piece of the action. The legislature's first move was an anti-fraud bill effective January 1992.

More comprehensive reform was enacted in a package of seven bills last summer. Its provisions have various effective dates, only a few of which have already been reached, and they require development of many implementing regulations and procedures. There remains considerable uncertainty about the rules, no less how people will respond to them.

Unlike abundant labor laws that directly touch agricultural employers, the WC reform legislation does not key on additional mandates and prohibitions for them. Instead, it affects farmers by profoundly changing an important part of their business environment. The obligation to provide employees with WC insurance remains the same, but the legal demands on and opportunities for their insurance carriers are quite altered. The new requirements, limits, and incentives will translate into a different insurance market for farmers. For now they form a complicated picture that is worth trying to comprehend.

As employers prepare to make their choices under the new WC structure, they need to understand basic elements of the reform statutes, development of regulations, and adjustments being made by insurance carriers. Because the WC system affects every agricultural employer and worker, this issue of *Labor Management Decisions* is devoted to a closer examination of the reforms enacted in 1993 and their implications.

People from a variety of perspectives who are knowledgeable about the emerging changes present their views in these pages. We invite readers to contribute, for publication in subsequent issues, additional thoughts and accounts of experience with the unfolding realities of WC reform.

Editors of this special report are Howard R. Rosenberg, Norman J. Hetland, and Betsey H. Tabraham.

Looking Forward from the Rules

Workers' Compensation 1995

Daniel P. Marshall

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Employers will confront a brave new world of workers' compensation insurance in 1995. The reform legislation of 1993 that repealed the "minimum rate law" also repealed a host of other parts of the system.

- Where we have had uniformity of rating and classification, we will see individual insurers establishing rates, and writing and applying their own rating systems.
- Where we had a floor ("minimum") rate set by the insurance commissioner, we will have no floor; some rates will fall dramatically.
- Where we had dividends paid in arrears, we will have vigorous, up-front, cost-based price competition.

Winners and Losers?

This is the last year of the old, highly regulated system. During phase-out in 1994, insurers and employers are bound by the old rules but will jockey for position under the new ones. The new system for 1995 is "open rating," which will present previously unmet challenges to California's employers.

Larger employers with good safety records have always been desirable clients for insurers, which competed heavily for their business. Under minimum rate, larger employers were highly profitable; a good loss history usually produced a hefty dividend a year or two after the policy year ended. Those large employers will continue to be the big winners in the new system.

Conventional wisdom holds that medium to small employers will lose out under the new system. Just how much premiums will change under open rating is obviously unknown, but as in any competitive setting (and as in health insurance), the market clout of a small business is hampered by its size. So even disregarding the particulars, it can be said that premiums of individual small businesses will be higher than those offered to their larger competitors.

Why is this to be so? Under open rating, each carrier determines its own rating plan — a written document that assigns a rate to each risk. A rating plan may have a number of factors that increase or reduce the premium. The minimum rate law provided a floor below which a carrier could not price a policy; a floor for the rate offered to the best risks provided some downward price pressure for the bad risks (such as the individual small business). Open rating has no floor. The most desirable risks will be priced at rock-bottom rates, linked in some way with their cost to the insurer, and insurers' rating plans will so provide. Not all businesses can or should be written at the lowest rate, so this means there will be a tendency to price small business policies at their actual, higher cost.

Some carriers plan to offer high-premium employers a deductible workers' compensation insurance policy, where the employer pays a part of any medical costs in exchange for a lower premium. Retrospective rating plans — where premiums may vary from year to year based on the employer's loss experience — will probably be available to large employers. Insurers will require substantial amounts of capital in a business that requests a deductible or retrospective plan, and small businesses just do not have access to substantial capital.

Insurers Face Changes, Too

Specific rate predictions aside, it's a completely new horse race for insurance companies and employers. If insurers that have depended on the benign competition structure of the minimum rate do not price carefully and intelligently, they may require regulatory attention from the insurance commissioner.

Insurance companies that have policies in other states besides California can be expected to do well under open rating. The new law will allow them to balance their loss exposure in California workers' compensation with profits from other lines of insurance in other states.

Under the old rate law, some smaller, California-only insurers that found a niche market and served their clients well have prospered. But because California-based insurers that write nothing but California workers' compensation will be unable to shield potential losses with profits from other lines, they might leave the starting gate of the workers' compensation marketing race at a disadvantage.

Observers of the insurance industry expect that some carriers will not survive open competition and will leave California. At the same time, however, some companies are showing new interest in entering California, probably because the wide extent of rate deregulation under the new law is a profit opportunity for a smart company. Since November 1993, six more companies have applied for a license to write workers' compensation for California employers.

The Department of Insurance will make all appropriate efforts to ensure that the new players remain solvent and do not endanger California businesses in their push for profits. It is the department's hope that the market will remain healthy and diversified, despite the turbulence we can initially expect.

The State Fund

Although it competes in the insurance marketplace, the nonprofit State Compensation Insurance Fund is actually a unique state agency, chartered under state law. As California's "carrier of last resort," it must insure the employers that cannot obtain insurance elsewhere. For example, it insures most of California's individual small employers, which on average are substantially less profitable for a workers' compensation insurer than are larger employers.

State Fund also writes policies for a significant amount of larger, profitable businesses. Under the minimum rate, the Fund was able to subsidize some costs of its burden of insuring small employers by competing for and insuring larger businesses. In an openly competitive setting, and with marketplace pressures driving down rates dramatically for traditionally more profitable accounts, small employers in the Fund will probably see rates rise to reflect more closely the higher costs they represent. Small employers whose policies are now written by private insurers — due to the overall subsidy in the minimum rate system — will find themselves clients of the Fund, as private carriers seek out more lucrative risks.

The New Landscape: Surcharges, Dividends, and Experience Rating

The Department of Insurance has all the new reform laws under active review to determine what industry regulation will be needed.* The department is also meeting with industry groups and the WCIRB to obtain their views on the proper scope of regulation. Thus far, opinions from insurers range from "just tell us where to file" to suggestions of a comprehensive set of rating rules. Our goal is to have regulatory requirements that strike a balance between the flexibility consistent with the legislation and the legitimate regulatory purpose of ensuring financial soundness and equitable application of rating plans. The department should complete draft regulations by early summer.

Surcharges and dividends prevalent in the minimum rate environment will become much less of a factor. In fact, surcharges will probably become just part of a base rate, not separate, stated charges. Company rating plans will reflect factors such as business location, previous loss history, and insurer-established subclassifications in addition to the traditional uniform classification and payroll level. In the short run, at least, dividends paid long after policy expiration will give way to up-front price competition.

Experience rating will continue, but as the law now reads, it will be significant only during 1994, the last year of the minimum rate. One of the first actions taken by Insurance Commissioner John Garamendi in reaction to the reform legislation was to require the adjustment of experience rating for 1994 policies to *exclude* the kinds of claims that, after July 16, 1993, are no longer compensable (certain "stress" claims, and the like). Although those claims filed before July 16, 1993, technically remain in the system, they are not valid predictors of future loss experience and they will not continue to affect the experience modification. In 1995 and beyond, with an insurer's rates being something of a moving target and no classification-wide rates generally employed, experience rating — although it will still

*Under the new law, insurers' rates are not required to conform to rates set by a central rating organization, such as the Workers' Compensation Insurance Rating Bureau of California (WCIRB), nor are insurers required to adhere to a uniform classification plan. Under the new system, only when a carrier's rates are so low as to threaten its solvency or when its market share approaches 20 percent (exclusive of the State Fund's 20+% market share) can the commissioner disapprove a company's rate. This is truly minimal regulation.

be calculated and applied as the law requires — will be less relevant to the bottom line price of an insurance policy.

Controlling Losses

Every employer should be aware that his or her insurance carrier is now required to provide free loss control services under a loss control plan certified by Cal-OSHA. The insurance commissioner has long been a strong supporter of services to help employers reduce workplace hazards and prevent employee injury. The loss control requirement resulted in part from a department study, which showed that in several high-risk industries, modest preventive measures significantly reduced workplace accidents.

Numerous studies have shown that managed health care yields real savings over care for the same conditions obtained through nonmanaged plans. But getting care through a health care organization does not alone solve the problem of high workers' compensation medical costs. Commissioner Garamendi is a proponent of 24-hour, universal health care system, where the circumstances of the injury are immaterial to obtaining treatment. Such a system may offer the best way to control costs. It cuts administrative costs and delivers care more efficiently than fee-for-service care, the norm in workers' compensation.

An Approach to the New Market

Agricultural employers should certainly be active market participants in the new workers' compensation environment. In a market where rates are directly tied to losses, loss control is vital to keep insurance costs down. Employers should take care to review their workplace practices and take advantage of the insurer's loss-control services. Be aware that an insurer may cancel your policy if you fail to follow recommendations of the loss-control representative.

Smaller employers could explore ways to band together into groups to enhance their ability to negotiate a lower price.

There is opportunity in the marketplace right now:

- Overall workers' compensation losses have fallen dramatically in the last two years, primarily because the Department of Insurance and district attorneys have received the funds to aggressively attack fraud, and insurers are required to report and investigate fraudulent claims.
- There is evidence that carriers are already beginning to position themselves to move into open rating aggressively in 1995. This means that new insurer policyholder arrangements and new business relationships are not only possible but are being developed every day.
- While some carriers are slow to write new business, waiting to marshal their resources for 1995, others are positioning themselves competitively and are actively seeking clients.
- A smart buyer is an active buyer who seeks opportunity in a changing market.

In the upcoming horse race, the horses may look alike but they may be vastly different. Inquire, negotiate, and find ways to use the open market to find your best price for workers' compensation. □

DIR Regulations Implement Wide-Ranging Reforms

Richard Stephens

Mr. Stephens is the communications manager of the California Department of Industrial Relations' Division of Workers' Compensation in San Francisco.

Since passage of the seven workers' compensation reform bills by the state legislature last summer, the California Department of Industrial Relations (DIR) has been drafting regulations to implement provisions of the new laws under its jurisdiction. Some of the regulations are now in effect; others are still being revised. They cover such diverse elements of the workers' compensation system as managed health care organizations, industry medical councils, loss control service certification, the Cal-OSHA targeted inspection program, Cal-OSHA consultation, self-insurance, and Workers' Compensation Appeals Board procedures.

Managed Health Care

For years, California employers have been contracting with health maintenance organizations (HMOs) and other health care providers for insurance covering non-job-related injuries and illnesses of employees and their families. The reform legislation encourages use of the same cost-effective approach for injuries and illnesses covered by workers' compensation insurance.

Greater use of managed health care organizations (HCOs) is expected to benefit both employers and employees. Available evidence shows that, as HMO-type HCOs become familiar with the kinds of injuries and illnesses most common in the industries they serve, medical care for compensable claims is improved, less expensive, and less time-consuming. Managed care brings down costs. DIR has not estimated what the statewide savings will be, but they should be substantial.

The State Labor Code still gives employees the option of predesignating their current personal doctor or another health care provider for treatment of work-related injuries and illnesses. But there is an incentive for employers to arrange things so that employees' personal doctors are also their providers of workers' compensation medical care. So, in many cases, the same organization will provide for all of an employee's health needs, both work- and nonwork-related. New regulations from DIR outline standards and procedures for certification as a health care organization that employers or insurance carriers will be able to contract with to treat workers injured on the job.

In February, DIR's Division of Workers' Compensation mailed out about 100 application packages to qualified medical care providers interested in becoming certified as HCOs offering medical and other occupational health services for work-related injuries and illnesses. To be eligible, applicants must be one of the following: (1) a pre-authorized, full-service "Knox-Keene" health care service plan licensed by the State Department of Corporations, or (2) a disability insurer licensed by the State Department of Insurance, or (3) a Workers' Compensation Health Care Provider Organization licensed by the State Department of Corporations.

Loss Control Services

The Division of Occupational Safety and Health held public hearings during March on permanent regulations spelling out how Cal-OSHA will certify insurers' loss control consultation services. The new law requires that carriers writing workers' compensation insurance provide some services to all employers and additional services to those whose insurance premiums are high because of high injury and illness rates. These services are intended to help employers recognize, evaluate, and control significant preventable health and safety hazards and other potential sources of workers' compensation losses.

A key part of certification is submission by the insurance company of an "Annual Health and Safety Loss Control Plan" to the division, showing how it will select employers "targeted" for the higher level of service, establish loss reduction goals for those employers, and evaluate the effectiveness of consultations provided. Emergency regulations on certification went into effect January 10, and the permanent regulations are scheduled for release in early April.

Targeted Inspection and Consultation Programs

Targeted employers will also be subject to special inspections by a new unit of occupational safety and health investigators being established within the Division of Occupational Safety and Health. In addition, these employers will be able to avail themselves of free consultation provided by a greatly expanded Cal-OSHA Consultation Service, which is organizationally separate from the targeted inspection program. The consultation services are offered to employers to pinpoint health and safety problems, then recommend corrective measures to bring them into compliance with applicable Cal-OSHA standards.

Funding for the division's new activities — certifying insurance companies' loss control services, conducting inspections of targeted employers, and providing free consultation services to those employers — will come mainly from two sources. An application fee will be required from insurers when filing to have their loss control services certified, and an annual assessment will be made on businesses who employ workers in high-risk occupations. Regulations clarifying how the assessments will be collected are being drafted.

Group Self-Insurance

The reform legislation allows smaller, private sector employers operating in the same industry to self-insure their workers' compensation liability as part of a group. This cost-effective option was previously reserved for large employers and public agencies. Public hearings on group self-insurance have been held, and regulations are being formulated. They will go into effect within the next few months.

Self-insured employers will be permitted to pay DIR assessments by a direct billing from the department's Office of Self-Insurance Plans, based on workers' compensation indemnity paid to injured employees.

Rehabilitation, Evaluation, and Administration

An important set of regulations developed by the Division of Workers' Compensation implements numerous changes in the administration of claims and the vocational rehabilitation benefit. As specified in the reform legislation, there is now a set maximum for vocational rehabilitation expenses in all cases.

The Division of Workers' Compensation has also created a fee schedule for interpreters, and it has revised rules governing audits of claims administrators, permanent disability evaluations, and fees for obtaining documents or records from the division. Other subjects covered by the DWC include:

- **Medical-legal evaluations.** Regulations clarify how the reports by medical providers who evaluate work-related injuries and illnesses in workers' compensation cases will be obtained and paid for.
- **Treating-physician evaluations.** The reform legislation places greater reliance on evaluations by the treating physician. A treating physician's opinion is presumed correct in most cases where there is conflicting information from a nontreating evaluation physician. The responsibilities of the treating physician for reporting evaluations used to determine the compensation payable to injured employees is specified in the new regulations.
- **Claim form.** A mechanism is provided to dismiss old claims that are not being pursued but are adversely affecting the premiums of employers against whom the claims were filed.
- **Benefit notice.** New rules specify the information that must be sent to inform injured employees about the status of their claims. Claims administrators are permitted flexibility to create personalized letters or notices providing the required information.
- **Fraudulent and misleading advertising.** Laws against fraudulent and misleading advertising that encourage the filing of workers' compensation claims are clarified, and a mechanism for enforcement is provided.

Conclusion

The new legislation, which was designed to reduce costs for employers and improve benefits for injured workers, represents "the most extensive reform of the state's workers' compensation system in modern memory," according to DIR Director Lloyd W. Aubry. As the regulations implementing the reforms near completion, the process of informing all those who will be affected has begun. □

Moving Ahead on Implementation

Molly Hillis

Ms. Hillis is chief consultant to the California Senate Committee on Industrial Relations. Until late 1993 she was principal staff liaison to the Assembly Committee on Finance, Insurance, and Public Investment, which drafted the seven workers' compensation reform bills enacted last July.

Since passage of the worker's compensation (WC) reform package last summer, the state Division of Workers' Compensation (DWC), in the Department of Industrial Relations (DIR), has been busy drafting regulations covering every aspect of the revised laws. Of central importance are regulations pertaining to medical-legal procedures, vocational rehabilitation, and certification and operation of managed health care organizations (HCOs and other extended-care providers). Individually and collectively, these regulations provide a great deal of clarification as to the nature and application of the reform laws.

The most important action still pending is a sizable increase in DWC staffing to implement the various provisions of the reform. A formal request by DIR for more than 250 new positions is currently under consideration in the Senate Budget Committee.

Otherwise, the regulation-drafting process is coming to a close. Initial disagreement about the role of the state Department of Corporations in certifying HCOs and other managed care organizations has been resolved; three types of entity have respectively different routes to certification. Confusion about medical-legal reporting provisions has also been substantially reduced. Few regulatory issues remain, although many administrative procedures are yet to be developed.

As of August 1, managed health care organizations will be eligible for certification to start providing WC-related services. So the onset of the more significant aspects of the workers' compensation reform is not far off. Evaluation of the impact of the reforms will have to await accumulation of the record of rate filings, claims, and handling of disputed cases involving injuries after January 1, 1994. Since the DWC system is still processing cases originating before this year, compilation of data on cases affected by the reform will take a while. □

Insurers Facing Needs to Adjust

Responses to Reform Are Under Way

Jan Vick

*Ms. Vick, Information Officer, Communications Department, State Compensation Insurance Fund, summarized the main provisions of the reform legislation in our last issue (*Labor Management Decisions*, Fall 1993, page 9). Here she describes how the changes are beginning to affect insurance carriers and their policyholders.*

The dust from the 1993 workers' compensation reform legislation continues to settle. The legislation promises to bring major changes to the workers' compensation system, and all carriers will have to change some of the ways in which they do business. At the State Compensation Insurance Fund, committees have been studying and interpreting the statutory changes, redefining internal procedures, and revising computer programs to accommodate the new law. These actions by State Fund, the state's largest workers' compensation insurer, will affect more than 250,000 of California's employers.

Rate Reductions and Pricing

In the last six months, the legislature has reduced premium rates by 7 percent, and the state insurance commissioner has reduced them by another 12.7 percent. The most far-reaching change, however, will be in the way California determines rates, both in 1994 and after the minimum rate law is repealed January 1, 1995. During 1994, State Fund is carefully evaluating the most effective plan for pricing accounts. This will be a year of testing several rating plans and choosing the one that will keep the Fund competitive while offering fair rates to all policyholders. Both employers and insurers will be facing a whole new world of pricing in 1995.

The Workers' Compensation Insurance Rating Bureau (WCIRB) must provide a schedule of pure premium rates for all industry classifications by October 1, 1994. Pure premium rates are based on the actual losses for each classification, without any overhead factored in. Insurance carriers will file their own rates and include their costs of doing business in these rates. Carriers will now have the freedom to structure their rates to attract a particular segment of the market, if they desire. All carriers must file their rates with the insurance commissioner 30 days in advance of their use. The commissioner may approve or deny the filing at any time during the ensuing 30-day period.

All insurance carriers, including State Fund, are in the midst of determining just how risks will be priced under open rating. Some employers, especially large ones with a good loss history, will see increased competition for their business. Others may see their premiums go up.

All employers should look carefully at what each insurance carrier is telling them, as well as at the past experience of the insurance company. Under open rating, the current or future solvency of a company may be an issue: Are the rates charged by the company sufficient to meet the obligations of claims?

Services provided by the insurer can also be of importance to the employer in searching for a carrier. Dividends, which have played a prominent role in the insurance industry in the past, will be less important than the rates offered by companies. A provision for dividends was built into the minimum rates but is not in the pure premium rates. Medical cost containment programs and managed-care programs will also continue to be important in controlling claims costs. Anti-fraud programs have saved millions of dollars over the past few years and will continue to be very important under open rating.

Experience Modification

As a result of the new legislation, the threshold for psychiatric claims was raised after July 16, 1993. In addition, it is more difficult for an employee to file a

claim after termination, resignation, or layoff after July 16, 1993. In announcing the 12.7 percent rate reduction for January 1994, the insurance commissioner directed the WCIRB to remove claims in these categories from calculation for all experience-rated employers.

The WCIRB and insurance carriers are currently reviewing their records for claims in the 1990, 1991, and 1992 policy years that will be excluded from the experience modification calculation for 1994. The WCIRB plans to have the changes in the experience modifications completed over the next several months.

Loss Control Services

Insurance carriers and state regulatory agencies have had to make massive changes in a very short time. Part of the legislation pending implementation is a mandatory inspection program for high-hazard industries and a Cal-OSHA high-hazard consultation program. These programs are designed to reduce accidents in industries with the highest incidence of preventable occupational injuries. It may be funded by an assessment of those employers with an experience modification rating higher than 125 and by a certification fee for each carrier's loss control consultation service program.

By law, the program will include priority inspections of high-hazard industries. The Division of Occupational Safety and Health within the Department of Industrial Relations may direct employers to submit a safety plan and establish a joint labor-management health and safety committee. The division has not yet established a list of targeted industries. As part of the program to reduce occupational injuries, the division will offer consultation services to identified high-hazard employers. Services may include developing educational materials, conducting workplace surveys to identify health and safety problems, and developing plans to improve employer safety and loss records.

Repetitive motion injuries have played an increasing role in rising workers' compensation costs. The wear and tear on joints and ligaments has become recognized as a hazard in some kinds of occupations. The Occupational Safety and Health Standards Board has been directed to adopt standards for ergonomics in the workplace before January 1, 1995.

Insurance carriers will be required to provide a minimum level of loss control services to employers. The Department of Industrial Relations will certify each insurer's program. State Fund is developing a management system for loss control services provided through the district offices. Written notification to all policyholders on the availability of loss control services is being drafted, and criteria are being developed to target loss control services to specific policyholders, as mandated by the new legislation.

State Fund has safety materials available to policyholders to assist them in establishing effective injury and illness prevention programs. Posters, signs, and employee pamphlets on safe work practices are also available, as well as safety newsletters for specific industries, containing loss control information, legislation, and suggestions to help reduce on-the-job accidents and injuries. All services and materials are available to State Fund policyholders at no additional cost.

Workplace surveys of business premises will be expanded as a result of the new legislation and the open rating system that goes into effect in 1995. These workplace surveys will assist State Fund in pricing a business correctly and will help the employer identify existing and potential hazards. Larger employers will have an opportunity to affect their premiums by instituting on-going safety programs and return-to-work programs for employees who are injured on the job. The goal of all loss control services is the reduction of on-the-job injuries and improved safety in the workplace.

State Fund will continue to review loss records with policyholders and to discuss those parts of a claim that affect premiums. Policyholders can take advantage of this service by contacting the nearest district office. These services are provided in addition to the Loss Analysis sent to policyholders on a periodic basis.

The seasonal nature of agriculture makes it vitally important that farm employers have good loss control programs in place. Proper training of all employees at the beginning of hire and periodically during the period of employment is an important factor in reducing farm injuries. If a contractor acts in obtaining workers for the farmer, that does not mean that safety programs can be overlooked. The farmer still has an obligation to ensure that employees have a safe working environment, and has a right to expect that employees are thoroughly trained in handling the equipment and chemicals used in agriculture.

Managed Care and Cost Containment

The 1993 legislation provided for extended employer control of medical care by using Health Care Organizations (HCOs) to provide medical treatment for occupational injuries and illnesses. HCOs must be certified by the Administrative Director of the Division of Workers' Compensation. A self-insured employer, a group of self-insured employers, or an insurer may contract with an HCO to provide medical services for work-related injuries. Regulations implementing this provision, which becomes operational on August 1, 1994, were

published in January. Employers should contact their insurance company to determine its participation in this program to find out how it is participating in this aspect of workers' compensation reform.

State Fund has expanded its managed care program through a recent agreement with Beech Street, a preferred provider network, to provide a host of integrated cost containment services, including hospital and physician preferred provider networks, medical services utilization management, and an integrated automated medical bill review program. A pilot program will be tested in four State Fund district offices initially and expanded if successful.

A second pilot program has been initiated with Medfocus Radiology Network to review the medical need for specialized diagnostic tests. The savings from both of these programs are anticipated to be significant and to lead to their implementation statewide.

As a vocal supporter of reform, State Fund is looking forward to full implementation of the legislation. The next two or three years will see major changes in workers' compensation pricing, services to policyholders, and claims adjusting. When the dust finally settles, State Fund anticipates a much healthier workers' compensation system in California. □

Loss Control Services In the New Era

Bob Wagner

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While the reduced regulation of premium rates beginning next year may prove to be the most significant provision of the 1993 reform package, the increased regulation of loss control services is a major feature with more immediate implications. Effective April 1, 1994, insurance carriers are required to provide every customer they insure with services designed to reduce exposure to workers' compensation losses and control significant health and safety hazards.

Insurers have previously tended to focus their assistance on larger customers whose premiums could support such attention. Now, as mandated by AB 110, all insured employers are entitled to loss control service (LCS), at no fee in addition to the insurance premium. Not all employers are to get the same level and types of assistance, and the services offered will vary from carrier to carrier. Every insurer is required to file with the Department of Industrial Relations an annual plan detailing its goals, methods, and budgets for LCS.

Regulations proposed by DIR contain some guidelines for these services but leave carriers with a lot to decide in designing their service plans. The latest text issued by DIR has enough vagueness to challenge the most creative insurer. It contains, for example, a major exception to the LCS requirement: that insurers need not provide services to "any insured whose place of employment does not pose significant preventable health and safety hazards to workers. Criteria for determining that a place of employment does not pose significant preventable health and safety hazards must be clearly identified in the annual plan."

The minimum level of LCS for non-excepted employers must include: (1) a workplace survey including discussions with management and, where appropriate, non-management personnel; (2) review of injury records; and (3) development of a plan to improve the employer's health and safety loss control experience, including modifications to the employer's injury and illness prevention program.

Considerably more must be provided to "targeted employers": (1) effective evaluation of the employer's operations, including comprehensive on-site consultation, discussions with management and non-management personnel, and review of relevant records; (2) identification of the factors most related to the losses experienced, including first aid and other post-injury response procedures, workplace health and safety standards, management policy and practices, communication of the company's loss control policy, training, worker participation in health and safety efforts, record keeping, and the overall injury and illness prevention program; (3) formulation of recommended loss control measures; (4) a written report of the consultation provided, its findings, and the loss control measures formulated; and (5) ongoing evaluation of the targeted employer to determine impact of the consultation.

Who is a "targeted employer"? One the insurer identifies as being among those with the greatest workers' compensation losses and most significant preventable health and safety hazards. The DIR regulations say that an insurer's method for targeting shall use an effective combination of such factors as type and rate of occupational injuries and illnesses, number of claims per payroll or premium dollar, severity of claims, experience modification rating or similar comparison to other employers, the insurer's previous evaluations of the employer, and Cal-OSHA citation history.

An insurer must have its loss control services certified by DIR, and certification depends on submittal and acceptance of an annual health and safety loss control plan. This annual plan is to include a budget, the method for selecting targeted employers, one- and three-year loss reduction goals for targeted employers, identity and basic characteristics of each targeted employer covered, and a detailed description and evaluation of LCS provided to targeted employers during the previous year.

An application for certification (or annual recertification) must also delineate size, experience, and qualifications of insurer staff or consultants who will perform the loss control consultations. And, for the privilege of having an application evaluated, the insurer is assessed a fee of .0125 percent of its total direct premiums written in the previous year. That may look like a small number, but it turns into a huge amount of revenue for Cal-OSHA to use in its Targeted Inspection and Consultation program. For every million dollars of premium written, the fee at this rate comes to $125.

The difficulty of developing a loss control plan is especially great this year, because DIR has not set specific parameters for its contents and there is not yet any certification experience to go on. We carriers will not have a good idea of what is acceptable until we get the response to our first applications and plans. Like other carriers, however, Zenith has put together a plan based on the guidelines available. DIR will be granting provisional certification for four months this year upon receipt of applications.

It appears that insurers will have to shift some loss control expenditures from larger accounts to those that have high claims experience. Though LCS will be more evenly distributed across customers, service plans will probably still weight it toward larger employers, other things equal. Smaller employers who negotiate in groups with insurance carriers should be able to obtain more services and lower premium rates than they could individually. Insurers may form employer alliances from within their clientele to facilitate education and loss management. There will be an emphasis on education and prevention. Farm employers can expect insurers to offer mass mailings, hazard alerts, and regional seminars, as well as individual consultations.

The new loss control requirement, especially with its differential standards and costs for serving targeted employers, adds to carriers' reasons for being careful in selecting the business they want to write. Some carriers have decided to be so selective that they have already left California. More will leave, but enterprising newcomers will arrive. Most will be trying hard to avoid adverse experience accounts.

The primary function of a loss control consultant is, of course, to help policyholders eliminate hazards and unsafe behaviors that lead to adverse experience. Information that consultants pick up while working with employers, however, has been used by underwriters in assessing policyholder risk. Under the new open rating system, there may be a greater call for consultants to inform underwriters about unsystematic management, unusually risky conditions, or negative attitudes about safety. The insurance industry argued successfully against a proposed provision in the workers' compensation reform package that would have required loss control consultants to report findings about the workplace back to Cal-OSHA.

In the post-reform era it will be even more important than it has been for employers to have good loss records if they want to maintain their insurance options and keep their premiums as low as possible. Farmers who represent high risks will pay more initially, but if their carriers provide effective loss control service and they take advantage of it, they should be able look forward to more favorable rates in later years. □

Seeing California in Broader Context

The California Reform from a National Perspective

John F. Burton, Jr.

Mr. Burton is Director, Institute of Management and Labor Relations at Rutgers University, Piscataway, New Jersey. Some of the ideas expressed in this article are further developed in his "National Health Care Reform and Workers' Compensation" in the November-December 1993 issue of Workers' Compensation Monitor, *a newsletter that he has published for seven years.*

California is one of the last states to move away from minimum rates and toward more competitive pricing of workers' compensation (WC) insurance. Until four or five years ago, minimum rates in California were set more or less at a level that provided a comfortable profit margin for insurance carriers. Since then, however, the state insurance commissioner has been resisting rate increases.

Past WC losses tended to be greater in southern California, so that carriers writing more policies in the north generally fared better. Under the new system, there will probably be explicit premium rate differences within the state reflecting this long-standing variance. Even under minimum rate systems, though, carriers were always figuring out ways to offer differing rates through specially created subsidiaries and by other measures. So the new deregulated order in California may not actually display much more geographical variation than the regulated one did. Location-related factors, however, will continue to be important.

The first wave of WC deregulation in the early 1980s did bring down rates and costs. Michigan was among the states where reductions were greatest. By the late eighties, however, insurance commissioners in still-regulated states were in effect anticipating deregulation by delaying or denying proposed rate increases. If they had been approving these increases, ensuing deregulation might well have resulted in rate rollbacks for these states, too. But after so many stalled rate increases, deregulation presented carriers with an opportunity to adjust their rates upward and recoup some of the revenues foregone when commissioners denied their earlier requests. Thus the unintended result of deregulation in some states was an *increase* in rates.

Other deregulated states have benefited from centralized compilation of databases on loss experience. The widely varying rates that deregulated carriers came up with in Michigan, for example, prompted a scramble to develop better data on the relationships between these diverse rates and actual losses.

The rapid rise in workers' compensation expenses nationwide has been driven largely by increases in health care costs. In the eighties, WC costs rose even more rapidly than health care costs generally. The non-occupational health care "system" had also been getting squeezed on costs — and reacting to that squeeze. WC had lagged behind in the use of cost containment strategies such as health maintenance organizations and preferred provider organizations, which made it easier to shift costs into the WC system.

A slowdown in WC cost increases over the last couple of years may be attributable to carriers getting a better handle on medical expenses. There clearly has been a step-up in efforts to contain costs through disability management and making greater use of health maintenance organizations. Unfortunately, the statistical data continue to lag experience, and this keeps the WC industry from adjusting rates right away in response to new claims cost realities.

In whatever form the Clinton national health plan ultimately emerges, the workers' compensation system will certainly be affected, and the industry has to be concerned. From the industry's viewpoint, the worst case would be a complete merger of all health care programs — which is *not* in current versions of the plan, although study of its potential has been called for. Carriers fear that under such merging they would lose their ability to manage rehabilitation programs and ensure quick returns to work, which would then jeopardize their control of medical costs. These fears may be exaggerated.

At the other end of the scale of possibilities, leaving the workers' compensation system intact and completely separate from non-occupational insurance would entail sizable risks as well. Health care insurance carri-

ers might feel even greater pressure to look for WC deep pockets and any other means for diverting or displacing costs into the WC system. WC programs based on fee-for-service providers would be especially vulnerable to such cost shifting.

Between these two extremes could be various compromise plans linking WC and other health care. Almost certainly, however, coordination and control of any such plan would come up for prolonged debate. □

No Telling Now What Reforms Will Bring

John H. Lewis

Mr. Lewis consults with labor and management on workers' compensation reform, and with carriers on improvements in programs and laws. He also advises on implementation of joint projects such as the "983 program" in the construction industry, which he originated. Based in Coconut Grove, Florida, he works frequently with California clients.

As in any business, workers' compensation (WC) insurance carriers look for ways to make profits. Their premium rates, dividend programs, and marketing decisions reflect their judgment as to where and how they can best do so. As was the case with airline deregulation, the upcoming (1995) relaxation of WC insurance rate regulation is likely to encourage carriers to concentrate on the more profitable sectors and deemphasize or ignore the rest. They will seek market segments where rates can be set at attractive levels, and avoid those in which rates are less adequate and risks are greater.

As a consequence, it is highly likely that implementation of greater price competition in the California WC insurance market will result in lower rates for some employers but higher rates for others. For example, small to medium-size employers with high risk profiles — such as those in labor-intensive industries utilizing casual or transient workforces — may well see their rates increase. Large, stable employers with less hazardous working conditions and lower risk workforces are likely to see their rates decline, at least initially.

The changes may create problems for insured agricultural employers. Many carriers may prefer to concentrate on other markets — those without many of the WC problems inherent in agriculture. If so, lack of competition may result in fewer options for insuring and higher rates.

Before the 1993 reforms, the California WC insurance system was considered unique. Most other states had rate regulation, but their structure was not as rigid as California's, permitting some downward flexibility in rate setting by individual carriers. Over the past 10 or 15 years, many states — including most of those with the highest levels of WC activity — have moved to more flexible, open rating systems, as will be the case in California in 1995.

However, other important factors are changing as well. Claim volume in California has dropped dramatically, for reasons that are not fully understood. Some observers cite changes in the economy, while others point to implementation of the anti-fraud provisions of 1991 law changes. Interest rates have also fallen, resulting in reduced returns on invested premiums. Since investment return is an important component of insurance company profitability — in some instances helping to offset concerns over rate adequacy and volatility of underwriting experience — lower investment return can easily translate into more conservative pricing and marketing decisions by carriers.

On the receiving side of the WC system, California has historically been among the states with the lowest benefit maximums. The 1993 reforms will raise California's relative position among the states somewhat. However, this position will still remain significantly lower than many states in most benefit categories.

Workers' compensation reforms are always the result of pressures from various sources, such as employers demanding lower costs, employees seeking better benefits, and insurance carriers looking for stability and profitability. But to outside observers, even those familiar with WC issues and problems, it is often difficult to understand the reasoning of the various parties. It is equally difficult to appreciate how each will react to changes such as the 1993 reforms. As a result, even ballpark estimates of what will happen to WC insurance rates are nearly impossible to calculate.

In short, everything is up for grabs. A system that has prevailed in California for over 80 years is now being changed in unprecedented ways. Unfortunately, reforms everywhere have a history of overestimated savings and underestimated costs. What seems likely on Sunday looks quite different on Monday. When Monday comes in California, we will find out how accurate the prognosticators were. □

Adjustment of WPS Training Requirement To Be Considered

The U.S. Environmental Protection Agency will redraft a portion of its worker protection standard (WPS), a federal regulation designed to reduce the risk of pesticide-related illness and injury to agricultural workers throughout the nation. A major requirement that the WPS makes of employers is to provide general pesticide safety training not only to workers who directly handle pesticides but also to those who enter treated fields for production tasks after the restricted-entry period. This requirement was scheduled to take effect on April 15, but Congress recently voted to delay the enforcement until January 1, 1995.

One reason for the delay is that EPA had not completed development of its authorized training materials. Another is that grower, worker, and enforcement agency representatives had expressed strong concerns about some of the WPS provisions as they stand. This delay will allow employers time to develop their programs and train their employees before enforcement begins.

Katherine (Kay) Rudolph, in the San Francisco regional office of EPA, is working on adjustments related to the timing of training. She has asked for comments about two key parameters:

1. The "grace period" allowed between a worker's first entry into a treated field and receipt of the required training. The WPS currently states that workers must be trained before they accumulate 15 days of entry (work) into treated areas where a restricted-entry interval has been in effect within the past 30 days. These 15 days are cumulative — that is, they need not be consecutive and may accrue over several periods of employment over many seasons or years. After October 20, 1997, this grace period is presently scheduled to go down to 5 days.

2. The length of time after which a previously trained worker must be trained again. The WPS essentially states that a training in general pesticide safety is good for 5 years. The training requirement is considered met if the worker has been trained within the last 5 years *or* is a currently certified pesticide applicator *or* is currently trained as a handler working under supervision of a certified applicator.

Suggestions for changing these provisions to enhance their workability and effectiveness are requested. Send comments to Kay Rudolph, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105. Fax: 415/744-1073. E-mail: Rudolph.Kay@EPAMAIL.EPA.gov. □

Resources

Publications

EPA Heat Stress Guide. *A Guide to Heat Stress in Agriculture*, is now available through Gempler's, Inc., safety products company. The 56-page illustrated manual, applying recognized heat stress management principles to agricultural conditions, was written to help pesticide applicators and agricultural employers to protect their workers from heat-induced illness. It is a complete reproduction of the official EPA version. Prices of Order No. HW77 are $3.50 each for 1 to 11 copies; $2.95 each for 12 to 24, $2.50 each for 25 to 999, and $1.95 each for more than 1,000. To order from Gempler's, phone 800/382-8473. The identical EPA version can also be purchased from the U.S. Government Printing Office at the address in the following listing.

WPS "How to Comply" Manual. The complete, official Environmental Protection Agency version of *The Worker Protection Standard for Agricultural Pesticides — How To Comply — What Employers Need To Know* has been published by Gempler's, Inc., in its *Reference Guide for EPA's Worker Protection Standard* (Order No. EPA-HTC). The 156-page reference guide, printed on newsprint, also includes technical information (not from EPA) on pesticides and a product guide to Gempler's safety equipment. The first copy is free; additional copies can be ordered from Gempler's at $1.00 each for 1 to 24 down to $.35 each for 1,000 copies or more. Gempler's also offers the complete EPA "How to Comply" manual in a 144-page version (Order No. HW40) without the additional sections at $1.50 each for 1 to 11 copies, down to $.55 each for 1,000 or more. To order, phone 800/382-8473. The identical EPA version, on heavier stock, is available for $8.50 from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

Personal Protective Guides for Pesticide Handlers. The U.S. EPA and USDA have developed a guidance package of documents to support training of pesticide handlers under the EPA worker protection standard. Steve Sutter has assembled the complete set to assist in distribution to agricultural employers and WPS trainers. Send $3.50, payable to "County of Fresno" to Steve Sutter, Area Personnel Management Farm Advisor, UC Cooperative Extension, 1720 S. Maple Ave., Fresno, CA 93702. Write "PPE Guides" on the check margin.

Human Resources Instructor's Manual. *Labor Management in Ag: Cultivating Personnel Productivity*, compiled by

Gregory Encina Billikopf, presents cases, role-plays, and other ***teaching materials*** contributed by labor management specialists from the United States and Canada. Subjects include selection, promotion, performance appraisal, wages and benefits, communication and supervision, training, discipline, turnover, the family farm, and labor relations. Because supplies are very limited, the manual can be sent only to those who teach or plan to teach agricultural human resource management in classes or workshops. To obtain a free copy, write on your university or consultant letterhead to Gregory at UC Cooperative Extension, 733 County Center 3, Modesto, CA 95355 or FAX (209/525-4969). A free copy of the Spanish pesticide safety teaching game, *La loteria de los pesticidas*, may also be requested with the book.

Labor Management on California Farms, by Howard R. Rosenberg, Jeffrey M. Perloff, and Vijaykumar S. Pradhan, Department of Agricultural and Resource Economics, University of California at Berkeley. This report, submitted to the California Employment Development Department (EDD), Labor Market Information Division, describes how California farmers engage and manage the labor they need to operate their businesses. Based on a statewide survey, it discusses recruitment, hiring, supervision, communication, pay, legal compliance, and reporting practices on a broad cross-section of farms.

The EDD commissioned this study to improve understanding of the employment-related needs of farms, particularly as they may have been affected by the landmark immigration reform of 1986. A total of 924 responses received before a May 7, 1993, cutoff date were included in the analysis presented. Most survey results in the report, containing 42 pages of text and 32 pages of tables and figures, are aggregated by farm size, region, and main commodity produced. Crops are classified as animal products, nuts, grapes, tree fruit and other fruit, vegetables, nonedibles (chiefly cotton), and other (mostly grains, other edible field crops, ornamentals, and nursery products).

The findings tell of a complex industry comprising diverse production firms and relationships among them. As in their products, respondent farms exhibit much variety in their organizational and management arrangements. Human work is an essential production input that farmers may procure from not only their own employees but also external suppliers—farm labor contractors, custom harvesters, pest control operators, and independent contractors.

A 4-page summary of the report can be ordered (no charge) by writing to Rosenberg at 320 Giannini Hall, Berkeley 94720, or by calling 510/643-6359. A Spanish version of this summary will soon be available. The full report is pending clearance for publication by EDD. Copies can be requested by writing to Occupational and Special Reports Group, Labor Market Information Division, Employment Development Department, 7000 Franklin Blvd., Building 1100, Sacramento, CA 95823.

A Review of Farm Accident Data Sources and Research, BLA-125, 20 pages, by Jack L. Runyan, Agriculture and Rural Economy Division, Economic Research Service, U.S. Department of Agriculture. The study examined national sources of farm accident data and reviewed selected farm safety studies on the nature and causes of farm injuries and illnesses, health and safety of youth, farm safety education, and methods of data collection. Cost is $9 per copy. Phone 800/999-6779.

Audio Cassette

Audio cassette of safety talk for field workers, in Spanish. A concise, Cal-EPA-accepted, pesticide safety talk in Spanish is now available from Steve Sutter to help agricultural employers begin planning and implementation of field worker training in conformance with the EPA worker protection standard. To obtain the 9-minute recording with English-Spanish script, send a check for $4, payable to "County of Fresno," to UC Ag Personnel Management Program, 1720 S. Maple Ave., Fresno, CA 93702. For information, call 209/456-7560. □

Events

Workers' Pesticide Safety Training in English and Spanish. *Tuesday, April 12, 8:00 a.m. to 10:00 a.m. (English session); 10:00 a.m. to noon (Spanish session).* Madera: Women's World, Madera District Fairgrounds, 1850 West Cleveland Avenue at Highway 99. The training, conducted by UC Cooperative Extension and Madera Farm Bureau, is free, and attendance certificates will be issued. For information, call 209/675-7879.

Agricultural Employers' Seminar. *Thursday, May 12, 8:00 a.m. to noon.* Parlier: UC Kearney Agricultural Center, 9240 South Riverbend Avenue. The free meeting will provide updates on ergonomics, the worker protection standard, and new Cal-OSHA regulations related to workers' compensation. It is being sponsored by UC Cooperative Extension in cooperation with AgSafe. Phone Steve Sutter in Fresno, at 209/456-7560, to preregister. □

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We welcome readers' opinions, news items, and other information. Letters will be published as space permits.

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