

# MARSH



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**Florida Educational Risk Management Association**

## **WHAT'S NEW WITH WORKERS' COMPENSATION**

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# What's New In Workers' Compensation

- Legislative Update
  - Emma Murray v. Mariner Health
    - What is a reasonable attorney's fee?
    - Good news and bad news: It cuts both ways
    - Impact on Workers' Compensation litigation
      - Short term
      - Long Term
      - Employer/Carrier/Servicing Agent Control

# What's New In Workers' Compensation

- Legislative Update (Continued)
  - 2009 Legislative Amendments
    - No more “Reasonable”
    - Other Proposals
    - Potential Impacts and Responses
  - Current Best Practices for Risk Managers
    - Contact/Coordinate/Communicate
    - Caveats
    - Return to Work

# What's New In Workers' Compensation

- Rule Change – Rule Chapter 69L-5 FAC
  - Repeals and replaces all current rules for self insured employers
  - Major collateral changes for non-public entities
  - Public Entities effected by reporting, records and misclassification of data

# What's New In Workers' Compensation

- Rules (Cont) 69L-5
  - Required Filings, Records Maintenance and Audit and Possible Penalties
  - Maintenance of Payroll Records and Possible Penalties
  - Loss Data Filings and Possible Penalties
  - Maintenance of Loss Data
  - Certification of Servicing for Self-Insurers
  - Drug Free and Safety Program Credits
  - Self Insurance Process for Government Entities

# What's New In Workers' Compensation

- Claims
  - Aging Workforce and the Economy
  - Continued escalation of Medical costs
  - Escalating costs associated with Pharmaceutical care
  - Provider Bill Review
  - CMS, Section 111 Reporting

# What's New In Workers' Compensation

- Aging Workforce and the Economy
  - 78 million Baby Boomers
  - Global Economic meltdown of 08/09
    - Boomers working past retirement age
      - 45% of older workers now have to work past retirement<sup>1</sup>
    - Injuries suffered by older workers take much longer to heal and cost at least one-third more<sup>2</sup>
      - Co-morbidities related to age and health such as diabetes, obesity and depression impact resolution and recovery
    - The sheer number in this group indicate a significant increase in the number of injuries
      - Resulting in more costs
    - Moral Hazards associated with job destruction

# What's New In Workers' Compensation

- Continued escalation of Medical Costs
  - 1986 Medical Costs made up 40% of Workers' Compensation loss costs
  - 1997 that number had risen to 48%
  - 2008 a staggering 60%<sup>3</sup>
    - recent increases are driven in large part by facility expense
  - Workers' compensation costs rise at twice the rate of group health<sup>4</sup>
    - driven by severe overutilization of physical medicine services

No signs of slowing down

- Pharmaceutical care
  - Recent estimates pharmaceutical care makes up 14.2% of total medical costs<sup>5</sup>
  - As claims age, pharmacy consumes greater percentage of costs
    - by year 3 post injury, RX represents 80% of medical spend<sup>5</sup>

# What's New In Workers' Compensation

- Provider Bill Review

- Process only works if

- Utilization Review
- Network discounts
- Pre-certifications
- Case Management

results/recommendations make their way into the system

- Very few PBR systems/vendors/applications adequately connect PBR with medical management systems<sup>6</sup>

- Most are not seamlessly connected with medical management (UR, pre-cert, case management, etc.)<sup>6</sup>
- Standard PBR services do not effectively address facility bills

# What's New In Workers' Compensation

- CMS, Section 111
  - RRE – Responsible Reporting Entity
  - Registration 5/1/09 – 9/30/09
    - Testing 7/1/09 – 3/31/10
    - Production – 4/1/10
  - Penalties
    - \$1,000 per day/per claim

For a copy of the user guide, visit:

<http://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPUserGuide031609.pdf>

# What's New In Workers' Compensation

What can you do.....?

- Track the loss costs as they relate to diagnosis groupings and age
- Offset healthcare costs through Quality of Life Health Programs
  - Behaviour based wellness programs
    - Traditional return on investment for wellness programs are 3:1 (for every \$1 spent, you can expect to save \$3 in absenteeism and lowered health payments<sup>7</sup>)
  - Good workplace design
  - Industrial hygiene
  - Occupational Safety Strategies
    - Ergonomics
  - Smoke-free worksite
  - Provide health food choices in cafeterias and vending machines
  - Fitness centers
  - Educate injured workers on need to continue physical therapy program beyond MMI

# What's New In Workers' Compensation

- Require that your PBR provider coordinates with case management and includes specialty bill review to capture costs savings for outlier services (i.e. facility use)
  - When negotiating new contracts ensure clarity about semantics
    - What, exactly is a “bill”
    - What is a duplicate bill
    - What is a “rule”
    - When does the clock start and end for turn around time
    - Whose responsibility is it to ensure DRG (diagnostic related groups) groupers comply with and is consistent with FL regulations, etc.
    - Identify results, costs, throughput, efficiency measures, “savings” and other metrics
- Establish a Pharmacy Benefit Management system to reduce price and utilization
- Contact your broker for assistance with CMS, Section 111 Reporting Requirements.

# What's New In Workers' Compensation

Lynch, Tom. (2009) Aging America: The Iceberg Dead Ahead. *IAIABC Journal*, Vol 46, No. 1

- <sup>1</sup> Jacobe, D (2008). *Fewer Americans Expect a Comfortable Retirement*. Gallop, May 8.
- <sup>2</sup> Shuford, H., & Resptrepo, T. (2005). Thinking About an Aging Workforce – Potential Impact on Workers' Compensation. *NCCI Research Brief*, February.
- <sup>3</sup> Shuford, H. & Restrepo, T. (2008). *Analyzing the Shift in the Medical Sare of Total Benefits*, *NCCI Research Brief*, Winder 2009.
- <sup>4</sup> Robertson, J., & Corro, D. (2006). Workers' Compensation vs. Group Health: A Comparison of Utilization. *NCCI Research Brief*, November.
- <sup>5</sup> PMSI's 2009 Annual Drug Trends Report . [www.pmsionline.com](http://www.pmsionline.com).
- <sup>6</sup> Paduda, J. (2009). *First Annual Survey of Workers' Compensation Bill Review*. Spring, 2009.
- <sup>7</sup> Travelers. *Loss Insights & Trends*. 1<sup>st</sup> Quarter/2008.

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