

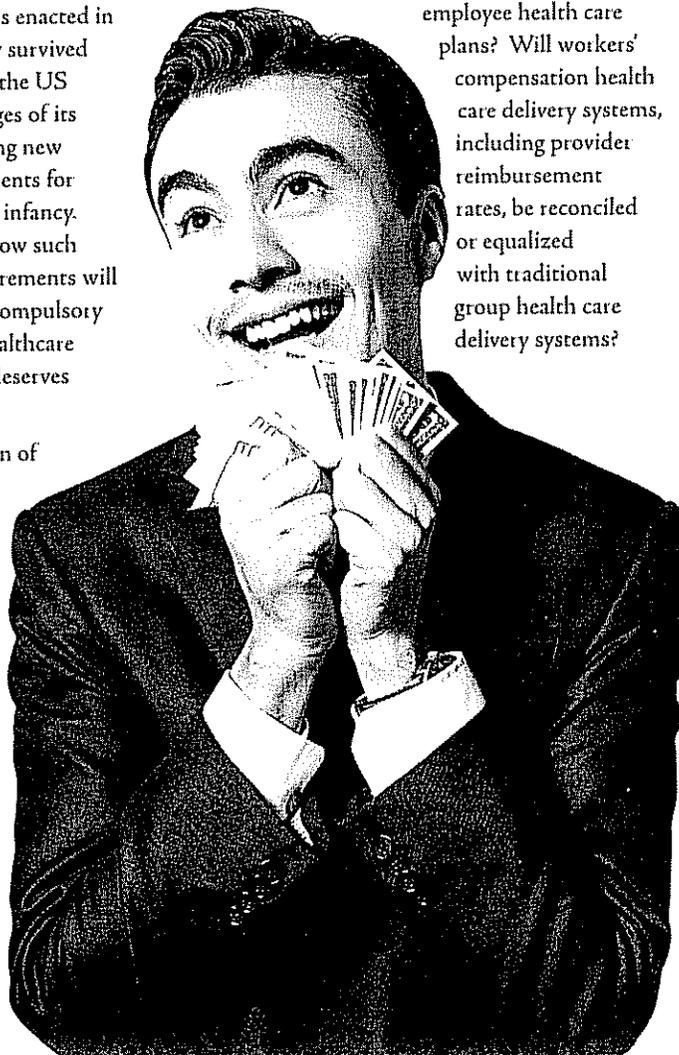
The Jury's Still Out on the Impact of the AHCA on Workers' Compensation Systems

by Chuck Davoli, WILG President 2014

Along with WILG members Hank Patterson (NC), Alan Pierce (MA), Gerry Rosenthal (FL), and NATLE-WILG research director, Roselyn Bonanti, I recently attended two conferences primarily to assess the potential impact of the new Affordable Health Care Act on state and federal workers compensation systems. My participation at both the Workers' Compensation Research Institute (WCRI) meeting on March 12-13 and the ABA midwinter Employment law – Workers' Compensation conference, March 13-15, convinces me that despite an abundance of rhetoric and opinions from a variety of economists, medical providers, insurance executives, academics, doctors and legal practitioners, determining the impact of the AHCA on workers' compensation systems is speculative at best at this point.

Although the AHCA was enacted in March 2010, and has already survived a constitutional challenge to the US Supreme Court, the first stages of its implementation – establishing new national healthcare requirements for all citizens – are still in their infancy. From WILG's perspective, how such compulsory healthcare requirements will now affect most employers' compulsory obligation to also provide healthcare benefits to injured workers deserves thoughtful analysis.

Will we see a re-visitation of prior attempts of so-called "24-7" health care plans, which provide 24-hour coverage to employees regardless of whether injuries occur on or off the job? Will new health care insurance products evolve, affording employees the ability to opt in or out of coverage, or to waive job-related coverage in exchange for participation in mutually sponsored employer/



employee health care plans? Will workers' compensation health care delivery systems, including provider reimbursement rates, be reconciled or equalized with traditional group health care delivery systems?

FROM WILG'S PERSPECTIVE, HOW SUCH COMPULSORY HEALTHCARE REQUIREMENTS WILL NOW AFFECT MOST EMPLOYERS' COMPULSORY OBLIGATION TO ALSO PROVIDE HEALTHCARE BENEFITS TO INJURED WORKERS DESERVES THOUGHTFUL ANALYSIS

Obviously, any such liability for work-related injuries assumed by injured workers would be contrary to the fundamental and underlying *quid pro quo* principles of workers' compensation systems.

Finally, how will an employer's workers compensation liability for indemnity wage replacement benefits be integrated with any new universal healthcare plans? Could we see the development and integration of ERISA type STD/LTD indemnity plans with hybrid health care plans for compliance with employer workers' compensation liability?

Could state versus federal jurisdiction become an issue in resolving future disputed workers' compensation claims if coverage is modeled like ERISA type plans?

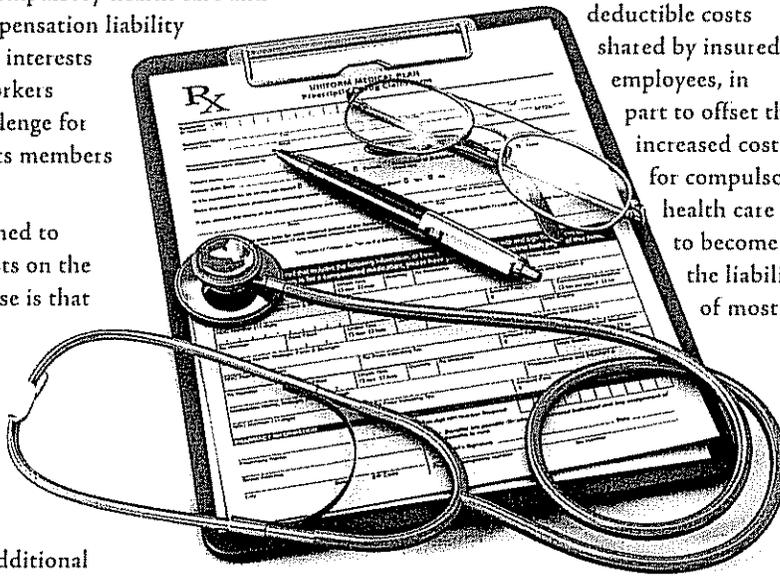
Frankly, none of the above questions were either raised or discussed at either of these first two national forums, and perhaps attention to such potential developments is an overreaction by those of us immersed in the policy arena. However, that the impact of the AHCA on workers' compensation is more likely than not an evolving topic for legal practitioners is further evidenced by the recent occurrence of same-topic panel discussions with CAAA in California. While the implications of the AHCA on workers' compensation systems was likely not even a remote afterthought during the congressional debate for its passage, balancing the interests of employers integrating compulsory health care and workers' compensation liability with the best interests of injured workers will be a challenge for WILG and its members in the future.

As I listened to the economists on the issue, my sense is that the expected impact of the AHCA is simply one of supply and demand. In short, with additional health care coverage for millions more patients, the supply or availability of medical providers, especially primary care physicians, as the traditional gatekeepers of the medical delivery system, will cause delays in treatment and the development of alternative treatment systems, such as "telemedicine" technology and greater utilization of paraprofessional medical personnel. The impact of shortages of

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qualified medical personnel will be felt mostly in rural and inner-city areas of our country. As one example of another country's universal health care system addressing the needs of its workers' compensation system, Canada reportedly merely authorizes injured workers to "go to the head of the line" of those waiting for medical care to help offset the extended time of disability from work and indemnity benefit liability to employers for delays in medical treatment caused by shortages of medical personnel.

The health care experts tell us to expect new health care plans providing for higher deductible costs shared by insured employees, in part to offset the increased costs for compulsory health care to become the liability of most



employers. Further, we should expect a partial shift back to medical provider networks and a reduction in patient choice of providers to allow health care plans to negotiate competitive provider costs between provider groups. We should also expect the shift of focus to provider treatment outcomes as a measure for

continued treatment authorization. In workers' compensation terms means that future treatment authorization could be directly tied to an injured worker's demonstrated functional improvement and return to employment expectations within set

periods of time. Finally, our health and insurance experts agree that increased attention will be focused on the impact of co-morbidity medical factors and their relationship to both causation and continued disability of injured workers. These include obesity, diabetes, high blood pressure and hypertension, arthritis, and the big one – opiate addiction.

One issue that generated consensus, but with uncertain outcome, was the inevitability of cost shifting of medical liability from new group health plans to workers' compensation health care plans. Despite the additional and often more restrictive provisions of workers' compensation medical systems (evidence-based medical treatment guidelines, employer medical peer reviews and/or employer selected providers, etc.), due to employee avoidance of deductible health care plan liability it is anticipated that injured workers may likely seek financial refuge in workers' compensation claims rather than group health plan coverage. Such a transfer of liability could open new doors to disputes over causation, the effect of pre-accident, pre-existing medical conditions, and the apportioning of disability related to any alleged work accident or occupational disease.

In conclusion, WILG and its members must pay attention to state and federal developments as the AHCA evolves, as well as closely monitor its impact on workers' compensation systems. Most likely, the AHCA is here to stay, and we must stay in front of its developing process to ensure reasonable justice and fairness for injured workers in America.

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