# Does the Workers' Compensation System Need a Prescription Change? By Jon L. Gelman*

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The delivery of medical benefits to injured workers is becoming more costly and difficult to administer. The medical care costs in workers' compensation claims are now increasing at double-digit rates. Overall, in excess of one-quarter of all dollars that Americans spend go to medical care. Emerging factors that were not existent in 1911 now influence the workers' compensation program: an aging national population; a shifting workforce; the increased use of prescription drugs; lack of affordable group health insurance and unreliable economic investments due to a politically unstable world; deregulation of insurance carriers; the decline of a manufacturing base; and an increased Federal effort to recoup benefits . The manner and method of the diagnosis, treatment and cure of diseases have change dramatically. Recent research indicates that many medical conditions do not the result from a single contributing cause, but as a consequence of a multitude of risk factors, making it difficult to focus liability on a specific event or exposure. This has caused an increase in disputed claims and scientific evidence challenges. The purpose of this article is to report developing trends in the United States in the delivery of medical benefits for injured workers.

The workers' compensation system was conceived as an administrative process to provide benefits, in a summary fashion regardless of fault, to injured workers who suffer work related diseases and conditions as a result of employment. The program was implemented by individual States and included the provision of adequate medical care to the injured worker as soon as possible following the accident or manifestation of the illness. Coexistent with the right of medical care is the requirement for the payment for medications. The employer is required to furnish to the employee reimbursement for all medication that is necessary for the employee's medical care and that is ordered by the authorized treating physician. Medical monitoring, on occasion, may be ordered for latent medical conditions.
Medical costs are spiraling. The National Council on Compensation (NCCI) reports that workers' compensation medical costs throughout the nation are rising at a rapid pace.

The total costs for workers' compensation are now apportioned almost equally between medical and indemnity. However, the trend is toward the payment of rising medical costs at a pace that will represent a majority of the workers' compensation allocation.

The individual States are struggling to make an antiquated workers' compensation system function properly. New Jersey has reported that the workers' compensation medical delivery system has created "...a real emergency." The New Jersey Task Force on Medical and Temporary Disability Benefits its final report of December 10, 2002, reported: "A worker unable to work because of injury often has no income, without medical treatment, no prospect of going back to work. No situation affects a petitioner and petitioner's family more dramatically. This is a real emergency. The most persistent complaint about the current system is its sluggishness in responding to these emergent situations. This is the chief weakness and the chief source of dissatisfaction among injured workers'."[Emphasis added]

The issues in New Jersey have been mirrored throughout the country. In Florida, Governor Jeb Bush proposed and the Legislature enacted a workers' compensation plan that reduced benefits by controlling claims and medical expenses. In West Virginia, Governor Bob Weiss reported that the State faced a near-bankrupt workers' compensation system that was costing taxpayers millions of dollars a day and the viability of the system remains in economic jeopardy. Subsequently, the West Virginia legislature enacted major reforms to the workers' compensation system. In Missouri, Governor Bob Holden was facing a loss of manufacturing-based industries that resulted in 40% of their jobs being lost between 2001 and 2002. He fought valiantly against legislative proposals to put fault back into the workers' compensation system. In California, workers' compensation presented as a major issue that resulted in a gubernatorial recall. The proposed California reform measures are based upon workers' compensation payments and issues representing medical treatment.

Several major options are under consideration throughout the country to reduce medical costs. Some critics have proposed a national workers' compensation system would limit transactional costs, establish a uniform State benefit program and contain medical costs by establishing one tier pricing.

The Federal government is not unfamiliar with the administration and distribution of benefits. Since 1882 the federal government has been providing benefits to injured workers and their widows: in 1900 the postal workers compensation system was established; in 1908 the Federal government established a program for those who work in hazardous environments; and, in 1932 the Social Security Administration was established. However, the Social Security Act did not embrace workers' compensation in 1932 since the primary goal of the law was to reduce unemployment.

The federal programs have produced a dismal result over the last few years. The Federal Victims Compensation Fund, enacted following the horrific tragedy of September 11th, 2001, has a very strict eligibility criteria and a limited recovery scheme.

The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA) was enacted following an aborted vaccination program after the government reluctantly disclosed available medical research concerning potential fatal cardiovascular reactions. A risk

analysis demonstrated that this program may not have been needed at all but was merely implemented to sway public opinion. Ultimately, the federal government halted the Smallpox Vaccination Program and funded $100 million for the purpose of cleaning up the legacy of adverse medical reactions and to ease the burden placed upon the victims and their estates that were struggling to obtain benefits under State compensation programs.

The Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (P.L.106-398) was enacted into law in October, 2000 with strong bipartisan support. EEOICPA established a program to provide compensation to employers of the Department of Energy (DOE), its contractors and subcontractors, companies that provided beryllium to DOE, and atomic weapons employers.

The proposed Federal Compensation Fund for asbestos claimants has been bottlenecked by bureaucratic regulations. After years of on going litigation and approximately 60 major asbestos company bankruptcies, the Republican administration has introduced the Fairness in Asbestos Injury Resolution Act of 2003. Organized Labor and asbestos victims have opposed the bill . Despite the sponsors desire to craft a bill acceptable to all parties, the legislation is a restrictive measure that fails to provide fair, timely and certain compensation to victims of asbestos-related disease, while relieving manufacturers, employers and insurers of all liability. The proposed Federal law unfairly shifts the burden and risk of paying for asbestos related disease to victims and their families.

While federalization may not be the panacea, the target remains to limit the cost of medical expenses. The costs of maintaining duplicate medical delivery systems for workers, major medical and workers′ compensation, continues to represent an unnecessary and costly duplicate expenditures in administration and management.

It has been suggested that the mandatory workers′ compensation plan and an optimal major medical healthcare system be combined into an Integrated Health Care (IHC) plan. Presently, the administration of two separate insurance programs appears to represent a mere duplication of costs. In 1999 healthcare administration costs totaled at least $294.3 billion in the United States or $1.059 per capita. The New England Journal of Medicine reports that United States employers spent $12.2 billion dollars on internal administrative costs related to healthcare benefits and $3.7 billion in healthcare consultants for a total of $15.9 billion or $57 per capita. It is reported that a single payer system operated such as Canada, resulted in employers spending $3.6 billion for private insurance and $252 million to manage the healthcare benefits or $8 per capita. A system with multiple insurers is also allegedly costlier than a single-payer system.

In 1993 the Oregon Legislature enacted the ″Combined Healthcare Coverage Pilot Program″. This consisted of a 5 year test under which healthcare insurance and workers′ compensation providers created single plans that combined standard healthcare coverage with the major portion of the mandatory workers′ compensation coverage. While the initial response to the program by insurers and employers was very positive and 7 pilot plans were approved in 1994, they ultimately were withdrawn by their sponsors. Initially, there was a $336,000 grant in 1993 from the Robert Wood Johnson Foundation to provide funding for this pilot program. The goal of the program was to facilitate easier, more efficient access for injured workers to obtain medical care. Another obvious reason

for the system was an attempt to reduce adversarial tension between an injured worker and their employer and ideally reduce litigation. The program did not take hold because of political and legal considerations including a proposed national C
Clinton Healthcare Reform System. California and Oregon proposed universal health insurance. Legislation in the State of Oregon allowed insurance companies other options to offer partially integrated group healthcare coverage in workers' compensation insurance outside of the pilot program.

Global and national factors have now caused increased attention to establishing a full time healthcare plan for America's working families. The safety net of a healthcare insurance program is now failing. Only two-thirds of the 41 million Americans now employed have health insurance. While those who do not have health insurance are covered by workers' compensation insurance if they are injured as a consequence of the employment, they lack benefits if the claim occurs outside of employment. The increase in the transactional costs for maintaining the delivery of what appears to be duplicate medical benefit systems is a major component of the cost of their operation. The consequence of contested medical claims reduces the ability to provide an efficient and effective delivery system without delay. Immediate access of an injured worker to a medical system may be necessary to provide curative treatment within the window of medical opportunity for an effective cure. Furthermore, savings from instituting a single-payer system could be invested in increased research and development of medical treatments and cures for major diseases resulting from occupational illnesses and injuries.

The workers' compensation system was enacted in 1911 with the noble mission as a social remedial system providing an efficient and certain system of benefits to injured workers. While the system struggles to continue to work for employees, the rapidly evolving landscape is demanding increased attention to reconsideration of an IHC system in light of the consequences of the program's costs and the consequences of being uninsured for healthcare benefits. The participants in the current program, including not only the employees, but the employers who bear workers' compensation costs and the purchasers of products or services to which it is passed on, will be require a more balanced and certain medical delivery system. The lack of healthcare coverage takes an enormous toll on the uninsured, which results in avoidable deaths each year, poorly managed chronic conditions, undetected or under treated cancer and untried life-saving medical procedures. An Integrated Health Care plan must be reconsidered and reevaluated to reduce costs so that a healthcare safety net can be maintained for workers and their families.

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