

**FLORIDA
WORKERS' COMPENSATION**

***THE
PERPETUAL
INSURANCE CRISIS***

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FLORIDA WORKERS' COMPENSATION SYSTEM **THE PERPETUAL INSURANCE CRISIS**

For the last twenty years, the words "insurance crisis" and "workers' compensation" have been synonymous. After facing double digit rate hikes in the late 1980's and early 1990's, Florida employers cried out for relief. The insurance industry unanimously declared that the root cause of the crisis was the amount of benefits paid to injured workers and excessive litigation costs. Employers desperate for relief quickly hopped on the insurance company bandwagon, and the legislature responded by systematically slashing benefits for injured workers', and enacting numerous modifications to the claims process - all as developed and demanded by the insurance industry.

It is well recognized that over the last ten years, Florida has changed from a State which adequately provided for injured workers and their families to a State which provides among the most meager benefits in the country. Despite the substantial and undeniable reduction in benefits and in direct contrast, Florida's Employers continue to pay among the highest rates in the country.

To make matters worse, the National Council for Compensation Insurance, the State's statistical agent, recently filed a request with the Department of Insurance to increase the premiums charged to Florida employers by 21.5%. The insurance industry, as is its usual practice, continues to suggest that further cuts in benefits to injured workers' will finally, and perhaps magically, solve the workers' compensation puzzle where these efforts have failed in the past. This time the insurance industry seeks to reduce or eliminate benefits to those injured workers who need them the most, i.e. catastrophically injured permanently and totally disabled individuals by drastically increasing their legal burdens while at the same time slashing fees which can be paid to attorneys who represent them to levels which would make it economically unfeasible to represent their interests.

Past reformers of the workers' compensation system have failed since their focus has always been limited solely to that of benefits provided to injured workers and the litigation process. The purpose of this study is to expand the focus of reformers by identifying and explaining significant other cost drivers of the workers' compensation system and to suggest possible solutions.

Regulation of Rates and Compilation of Data

A common misconception of the rate making process assumes that insurance companies are free to compete with each other and thereby subjecting rates to competitive pressures of the open marketplace. In Florida this is simply not the situation.

Workers' compensation rates in Florida are completely regulated and set by the Department of Insurance. In setting workers' compensation insurance rates the Department of Insurance relies primarily on the filings made by the National Council of Compensation Insurance (NCCI) which contracts with the State as the State's statistical

agent. NCCI charges a fee to all carriers and collects from the carriers the actual raw data on which their rate filings are based. Despite NCCI being the State's statistical agent and performing a governmental function, the data on which NCCI relies as a basis for their filings and recommendations to the Department of Insurance is protected from public records access and public review as part of the contract signed with the State of Florida. (See Exhibit No.1) Numerous conversations with the Department of Insurance have confirmed there is no budget or staff for the Department of Insurance to review the raw data which is submitted to NCCI for its accuracy or to determine that NCCI accurately compiles and summarizes the data in which it receives. Therefore, employers of this State are completely blinded by denial of public access and have no way to check the accuracy and veracity of the statistical data on which their rates are determined.

Lost Cost v. Full Rate

The lost cost method is used by most states in this country in which NCCI sets rates. Lost costs takes an aggregate of the total losses reported by insurance carriers as a basis for their rate filings. The carriers are permitted to apply a multiplier to their expenses so that those carriers who are interested in functioning more economically can attract a larger market share by offering lower prices.

Florida is one of only six states which follows the full rate method. Under the full rate method, NCCI takes an aggregate of the statistical data provided to them not only of total losses of the workers' compensation carriers, but also of expenses which are reported. As reported in the November 2001 Report prepared by the Florida Senate Committee on Banking and Insurance, an actuarial firm, Wakely and Associates, was engaged by The Florida Department of Labor and released a report entitled "Review of Competitive Pricing Mechanisms in Workers' Compensation Insurance". The report concluded Florida's workers' compensation rate system was among the least competitive in the country and recommended Florida adopt a system that provided for a more competitive workers' compensation rating. Using the current "full rate method" to establish rates raises several problems.

First, an aggregate of administrative costs from all carriers used as a basis to establish rates is designed to protect even the most inefficient carriers from their own excess. Carriers need not concern themselves with any amount of waste built into administrative costs since it is simply averaged into an overall amount. In fact, when one considers rate hikes are only given in the event carriers convince regulators they are paying out more than they take in it is actually beneficial to be wasteful in administrative expenses. Carriers have no incentive to scrutinize costs since they are not permitted to compete by lowering rates. They must charge the rates which are set. Those carriers which are efficient show a bigger profit which is not conducive to raising rates.

The result of prohibiting carriers in competing for business by lowering price has led to dramatic increases in advertising expenses. These advertising expenses take on many forms in the insurance business and must be added to the already inflated administrative expenses.

One example can be seen in what is paid to insurance agents. NCCI projects 10% of the premium dollar is now paid directly to agents as commissions which is up from just 3-4% of the premium dollar only 10 years ago and today is among the highest paid in the country. (See Exhibit No. 2) Along these lines NCCI has asked for an additional 6% of the premium dollar be attributed to "other acquisition expenses" which are advertising costs of the carrier, much of which is paid to agents in the form of perks, bonuses and other niceties. Obviously, if you pay agents more money they are more likely to write business with your company. Florida employers have paid dearly for this practice.

Increased spending can also be seen in the practice of giving dividends to policy holders which today NCCI projects to represent 7% of the premium dollar. Likewise, this has grown from just 3-4% of the premium dollar ten years ago.

Dividends paid to policy holders from insurance company profit as a means of competition should be encouraged. This practice works well when insurance companies are making money. However, no business can give what it does not have. Today NCCI claims insurance companies lose 27 cents for every dollar they take in. Therefore, the system does not support dividends to policy holders and is being used as a direct cost driver and a basis for rate hikes. Instead of lowering rates for all employers, we have built into the system an additional advertising cost which benefits only preferred accounts.

Underwriting Costs

Today NCCI projects underwriting costs amount to 29% of the premium dollar. To put this in perspective, NCCI recently reported that indemnity benefits (benefits paid for lost wages to injured workers, including permanent total disability benefits) amount to just 26% of the premium dollar. (See Exhibit No. 2) More money is being spent for underwriting than is being used to fund the benefits for which the workers' compensation law was intended.

Underwriting costs are business expenses paid by insurance companies, and include salaries that insurance companies pay to themselves as well as fringe benefits and other perks. The specifics of what is paid in underwriting costs by insurance carriers is protected from public review by contract between NCCI and the State of Florida. However, there are information sources that document the dramatic rise in underwriting costs, which are basically payments that insurance carriers give to themselves.

The annual statements of Associated Industries and FCCI have been reviewed for the years 1996-2000. These carriers were selected since their premium was derived during those years primarily by writing workers' compensation in the State of Florida. This contrasts with most carriers who write numerous lines of insurance in multiple states and do not breakdown their annual statement to reflect results for each state or line of insurance. During this period Associated Industries reported growth in earned premium from 40 million to 56 million per year with a rise in employee salaries and perks to Associated Industries from 7.3 million to 15 million. (See Exhibit No. 3) **This is a 100% increase in salaries and perks in just 4 years.**

FCCI reported earned premium of 275 million in 1996 which increased to 314 million in the

year 2000. During this time, salaries and employee perks grew from 19.6 million to 29 million. (See Exhibit No. 4) This again demonstrates a dramatic increase in salaries and employee perks without a comparable percentage increase in earned premiums.

An additional question which should be answered is why Associated Industries required 15 million in salaries and perks to handle 56 million in premiums, while FCCI only needed 19.6 million in salaries and perks to handle 275 million in premiums.

A similar growth can be seen in policy year results as reported by NCCI. Contained in NCCI's report is the statistical data comparing net earned premium with total losses for every state followed by NCCI during the years 1981 through 1999 in the workers' compensation system. In the year 1990, Florida reported 1.5 billion in net premium earned compared to 1.238 billion in losses paid out. Consequently, in 1990 carriers enjoyed a 19-20% disparity between what was taken in and what was paid out which is entirely consistent with the results of all other states followed by NCCI. However, by 1999 (the last year reported) earned premium had now grown to 2.24 billion with total losses reported of 1.58 billion dollars. Carriers now enjoy a disparity between premium they collect and what they pay out which has grown in their favor to well over 30%. (See Exhibit No. 5) **No other state reported by NCCI shows such a tremendous disparity.** These results reflect the dramatic reduction in benefits without significant rate reduction for employers of this state and suggest carriers may need to look within before seeking the currently requested 21.5% rate hike from Florida's employers.

Investment Income

By its very nature, the insurance industry is a depository for huge sums of money because consumers must prefund anticipated losses so that the risk can be spread among the group. A portion of this money is then invested by the insurance company. Obviously, this is true for workers' compensation carriers as well.

Throughout the 1990's investments returned high rates, and insurance companies had additional capital to utilize. During this same period in the 1990's, Florida had a dramatic drop in the rate of frequency of claims as reported by NCCI. One would think that insurance companies would then enjoy tremendous profits which would then lead to rate reductions for employers.

Unfortunately, Florida employers did not see significant reductions during most of the 1990's. However, Florida workers' compensation carriers found themselves during this period of time with significant amounts of cash which had to be accounted for. If the excess capital had been shown as profits to the insurance companies, it would be difficult for insurance companies to request rate increases which would translate to additional profits. It is perhaps the availability of that cash which lead to the dramatic rise in underwriting costs, as discussed previously.

Presently, the stock market is causing diminished returns, not only for the general public, but also for the insurance industry. Herein lies a significant reason for the most recent rate hike filed by NCCI. Of the 21.5% rate hike that was requested by NCCI, a full 10.1% is

attributable to profit and other contingencies to the insurance companies. Almost 50% of the present rate hike that is being requested is for this purpose.

Florida currently assigns a -4.1% risk factor to investment income, which means that it was assumed that insurance companies could pay out more money in losses than it received in premiums since those losses could be made up by investment income return. The most recent filing by the NCCI now asks for a rate factor of +2.5% which can be interpreted to mean that NCCI now feels that the insurance industry is losing money on investments, and needs to make even more money on premiums to make up for the short fall on investment income.

The swing in investment rates from -4.1% to +2.5% represents only a 6.6% rate hike which is less than the requested 10.1% rate hike associated with profit and contingencies. The additional, almost 4% premium hike, is attributable to commissions, taxes, and other fees that the insurance companies must pay out on a premium they collect. Therefore, for the insurance industry to realize an additional 6.6% profit they actually need to raise rates by 10.1%. The affect of the increase to commissions and dividends to policy holders can be seen here as a direct and substantial cost driver to the system.

Reinsurance Market

When an employer purchases statutorily required workers' compensation insurance and a loss is suffered (i.e. an injury occurs to an employee in the course and scope of employment) quite often much of that loss is not paid by the insurance company from which the statutorily mandated insurance was purchased. The initial insurance company is known as the "primary carrier." The primary carrier then purchases an additional insurance policy on the loss at a negotiated level. This subsequent insurance carrier is known as the "reinsurance carrier."

What is not always understood is that the primary carrier is required to provide coverage in accordance with state law. The reinsurance carrier is free to contractually limit the extent of the loss which they are willing to accept since they are not regulated to the same extent as a primary carrier by state law. Therefore, if a reinsurer elects not to insure a certain portion of the workers' compensation loss, the primary insurer cannot escape the requirements of state law and is required to bear the full risk of the loss.

Historically, workers' compensation was always thought of as a relatively stable and safe risk. This is because benefits are defined by State Law and over time general patterns can be seen in what is paid out over the years. Furthermore, as workers' compensation is generally paid out over time in accordance with scheduled payments, reinsurers are free to invest a significant portion of the premium paid into the system to receive investment income paid over an elongated period of time. Reinsurers recognized this and sought to quickly raise money to invest in the stock market throughout the 1990's by offering reduced rates and favorable terms of coverage to primary carriers. The current downturn in the market has seen reinsurers scrambling to raise rates to make up for their shortfalls which were previously permissible in light of investment returns.

Furthermore, the catastrophic events of September 11, 2001, and the constant threat of further attacks have forever changed the manner in which the workers' compensation risk is looked at. The tremendous expense associated with the tragic events of September 11, 2001, was born primarily by the reinsurance industry. So many of the people that were injured or killed were on the job at the time of the terrorist attacks and thus were in the course and scope of their employment qualifying them for workers' compensation benefits. This single event awoke reinsurers to a once unthought of catastrophic risk of loss in the workers' compensation market. Florida is obviously not unique in this problem, however, it does effect the workers' compensation market in previously unthought of ways. NCCI has reported that reinsurers are now refusing to cover workers who are injured by terrorist attacks thus leaving primary carriers to bear the entire catastrophic loss associated with terrorist attacks since they are unable to opt out of this State required coverage. In addition, reinsurers have begun examining additional factors of risk such as employees that are employed in large office buildings where a single event can cause massive loss. Additionally, reinsurers attempting to recapture profit have begun looking at only the most profitable risk and charging much higher rates for that risk they do accept. **Primary carriers are now forced to refuse coverage of employers who are otherwise profitable simply because of reinsurance constraints.** (See letter of Mitchell Weinstein, Vice President of Summit Claims Consultant attached as Exhibit No. 6). Reinsurance is causing a crisis for many employers in the State of Florida.

Benefits As Cost Drivers

The two primary classes of benefits paid to injured workers are medical benefits and lost wages. There are numerous classifications of lost wages including, but not limited to, temporary total disability, temporary partial disability, and permanent total disability. These lost wages benefits are commonly referred to as indemnity benefits.

A. Medical Benefits

A major portion of the medical benefits provided to injured workers includes payment to doctors for medical care provided. The amount of money paid to doctors for their services is paid pursuant to a fee schedule which is established and approved by the State of Florida. The Workers' Compensation Research Institute (WCRI) has done a study comparing the medical fee schedules of all states compared to the medical fee schedule approved under the Federal Medicare Program. WCRI has reported that most states on average compensate medical providers in an amount which is 25% to 60% higher than the Federal Medicare Fee Schedule. Some states compensate medical providers as much as 200% higher than the Medicare Fee Schedule. **WCRI reports the Florida Medical Workers' Compensation Fee Schedule compensates medical providers on average 17% lower than the approved Medicare Fee Schedule, and among the lowest in the country.**

The failure to adequately compensate medical providers in the workers' compensation system has made it increasingly difficult to find qualified doctors willing to treat injured workers. Other questions arise such as whether the inadequate compensation causes

those doctors that remain in the system to treat injured workers on a volume basis which reduces the amount of time and attention received. This may cause delays in the recovery of an injured worker and delays in returning to work.

When comparing Florida to other southern states such as Alabama, Georgia, North Carolina, South Carolina and Tennessee, NCCI finds that Florida pays significantly more of its total benefits to injured workers as medical care, 60.8% as compared to 50.7% for the region and 54.6% nationwide. (See Exhibit No. 7) Yet Florida is among the lowest in terms of actual dollars going to the medical care provider by virtue of the fee schedule.

Why is so much more of the benefit dollar being spent in Florida for medical care if the approved medical fee schedule is among the lowest in the country? **WCRI suggest that hospitals in Florida are paid among the highest amounts in the country.** This may be one reason that so much of our benefit is being paid for medical expenses, however, an overlooked explanation is that a portion of managed care costs are being charged off as medical costs and therefore qualify as a claims cost rather than as an administrative cost.

In most systems of medical care, managed care has been successful in lowering the amounts paid to medical care providers, and using those amounts to pay for the managed care bureaucracy. Because of the abnormally low medical fee schedules in Florida, managed care has not been successful in lowering what has been paid to doctors in the workers' compensation system but the managed care bureaucracy must still be paid for.

A recent study by the Florida Senate Banking and Insurance Committee concluded that managed care costs the workers' compensation system more than any potential savings. Indeed, this realization has led to legislation which recently amended the law to allow carriers to opt out of the managed care system, and simply provide medical care in accordance with statutory mandate of the workers' compensation system. As concluded in the Senate and Banking Insurance Report, this has led to two systems of delivery within workers' compensation which has caused much litigation expense associated with understanding the requirements of the law of medical care provided pursuant to the managed care system as well as understanding the inter-relationship between the managed care system and the delivery of medical care as statutorily mandated. Managed care was an expensive mistake demanded by the insurance industry yet the tab for cleaning it up is left to the employers of this State.

Unfortunately, the insurance industry has failed to provide a formal study to determine the portion of the benefit dollar that is expended for medical care that is associated with the managed care bureaucracy as opposed to what is actually paid to medical providers. WCRI has indicated that information necessary to do this study exists, however, this is not a study that they have chosen to perform.

B. Indemnity Benefits

On the other hand, indemnity benefits amount to just 39.2% of the claims dollar paid in Florida. This compares to 49.3% of the claims dollar being paid as indemnity across the

region as reported by the NCCI. Despite the relatively small portion of claims money being spent on lost wages, NCCI reports that Florida has an unusually high frequency of permanent total claims (5.5 to 6 times higher) as compared to the regional average. However, the raw data used by NCCI to reach this conclusion is not subject to public review as was discussed earlier and is highly suspect for reasons discussed below.

One would think that to classify a claim as total and permanent disability, there would need to have been an either an adjudication by a Judge of Compensation Claims in a disputed claim or alternatively that an insurance carrier would at least be required to file a properly coded form with the Department of Insurance and administratively accept that worker as permanently and totally disabled. However, the determination of permanent total disability as determined for frequency by NCCI is based solely on the carrier classifying someone as permanently and totally disabled in the injury code under the NCCI statistical plan as approved by the Department of Insurance. The definition of permanent and total disability for the purposes of reporting the frequency of PTD claims requires that the carrier report as permanent and total each claim that constitutes permanent and total disability as defined under the law, or **alternatively that in the sole discretion of the carrier, will ultimately result in permanent total disability.** NCCI admits that they do not audit the carriers to make sure that they have properly classified someone as permanently and totally disabled, and it is not possible to review that data since it is protected from public review. Carriers counter, they are forced to evaluate their risks in order to set their reserves. Since permanent total disability claims are the most expensive in terms of both lost wages and medical costs as they generally represent the most serious injuries, one would think carriers have been forced to maintain reserves several times higher than other states. There has been no significant evidence of higher reserves put forth by carriers however, it would be difficult to know for sure since carriers are not required to report their reserves based on an individual state or line of insurance. Finally, since carriers have almost total discretion in their ability to judge which cases will ultimately result in permanent total disability, a legislative change which makes it more difficult to prove permanent total disability may have no affect on the frequency of these claims as reported to NCCI.

A much more significant statistic as reported by NCCI shows that carriers in Florida actually pay less total dollars for permanent total disability claims than the regional average. (See Exhibit No. 8) Even assuming that carriers are reporting permanent total disability claims without any error, and assuming NCCI is accurately depicting the data they are receiving, **it is clear that indemnity benefits are not only a smaller portion of the claim dollar paid in Florida, as compared to other states in the region, but the total payout for permanent total claims is also lower.**

Exemptions

Florida law allows certain individuals to elect to exempt themselves from the provisions of the workers compensation act. Because of the number of people who chose to exempt themselves from the Employer/Carrier system, exemptions have become an increasing problem. Employers improperly classify workers as independent contractors to avoid paying the premiums on those employees. This causes less money to be paid into the

workers' compensation system.

In the year 2000, approximately 2.7 billion dollars were paid to the insurance industry for workers' compensation premiums. **Over 1 billion dollars in premiums was not paid into the system because of employees improperly classified as independent contractors and exempted from the system.** Statistically, a certain amount of these workers will get hurt every year, and when their cases are properly analyzed, they simply do not meet the legal requirements of an independent contractor, and thus, must be paid workers' compensation benefits. Since these employees were improperly classified as independent contractors, a premium was not paid into the system, but the system must pay out on their behalf.

Those employees who do honestly pay into the system are forced to subsidize those who do not by paying higher rates.

Economically, it is impossible for employers who do honestly pay into the system to compete with employers who are not paying workers' compensation premiums. Naturally, those premiums are a cost of doing business for the honest employer. Those employers who do not pay into the workers' compensation system can afford to do a service for much less money, and thereby, unfairly compete with the honest employer. This fact puts pressure on more and more companies to take improper exemptions and omit payments into the workers' compensation system. The natural consequence of all of this is to raise premiums even higher which forces a few more employers out of the system and so the process continues.

The resulting high cost of the workers' compensation system has hit small contractors or small businesses, which have generally sought to utilize the exemptions process, extremely hard. Only those businesses with the highest risk of loss seek workers' compensation coverage. The insurance industry recognizes this and fails to offer coverage to these small contractors which leave them no alternative but to seek coverage through the State JUA Fund. Since the JUA covers only the highest risk of a high risk group they must charge a 300% premium. Small contractors are now at an economic disadvantage since they can no longer compete if they are forced to pay such high premiums with no place to turn other than the State JUA Fund. Last year, the legislature eliminated exemptions on all commercial projects with a total value of \$250,000.00 or more. It is this segment of the industry which has been hit extremely hard by the law change and will continue to suffer until the overall problem is looked at so that an affordable product for all can be placed on the market.

Participation in The Department of Insurance Anti-Fraud Task Force has uncovered several other areas of concern which exacerbate the exemption problem. To begin with, insurance agents themselves often coach employees into modifying job descriptions which enables employers to be placed in slightly different codes with significantly lower premiums. Insurance agents are now required to attest that the codes were explained to employers but the law is meaningless as there is no documentation to go back and look at. State investigators are often frustrated by agents who claim they explained the codes

based on the information given by employers and employees who claim they gave the correct information but the agents simply placed them in the wrong code classification. Without written documentation it is impossible to go back and determine what was said after the fact.

The codes themselves are problematic. There are currently over 600 code classifications often with obtuse and nominal differences. More and more lines of business have sought to avoid the high cost of workers' compensation by carving out unique nuances in the codes for their limited interests. What is lost in this effort is that the risk of loss is no longer spread across an entire industry which causes high losses to certain areas of industry and results in higher rates for all.

Even insurance companies exacerbate the problem. They are required to conduct employer audits in the construction industry at least one time per year. However, some insurance companies will overlook or not enforce collection of premium on all payroll in order to keep otherwise profitable large books of business. Insurance companies are free to ignore any economic loss from not collecting all premiums due since they simply adjust for it in the rate making process by charging higher rates for all.

Possible Solutions

1. Reinsurance Fund for Catastrophic Terrorist Attacks

The first and foremost action that should be taken by the Florida Legislature is to create a reinsurance fund for catastrophic terrorist attacks. Reinsurers have raised rates up to 2000% to primary carriers in some instances. Additionally, reinsurers are denying coverage to primary carriers for certain risks and severely limiting others.

With the ever looming threat of future terrorist attacks in the United States to include biochemical attack and perhaps even nuclear attack, primary carriers are struggling with methods to leverage for such catastrophic losses. The State of Florida should consider establishing a reinsurance fund similar to that which was established for catastrophic losses due to hurricanes for the homeowners market. Many actuaries have commented, were it not for this fund, it would be difficult if not impossible to obtain homeowners insurance in the State of Florida.

The State's catastrophic hurricane reinsurance fund operates on less than 1% fixed costs while private reinsurers require 30% in fixed costs. Carriers would simply purchase coverage from the fund just as they would from a private reinsurer. This fund would encourage capital in the reinsurance market into Florida and help to bring rates under control.

2. Competition in the Rate Making Process

The State should consider some form of competition being introduced into the rate making process. The present rates as defined by the Department of Insurance could act as a

maximum rate, however, primary carriers should be permitted to provide premium discounts as dictated by competition in the open marketplace.

The State should also consider allowing the JUA to openly compete in the workers' compensation marketplace with private carriers instead of limiting it to a fund of last resort writing only the most risky part of the business. When carriers see that there is a reasonable and competitive alternative for employers, they will not be allowed to unilaterally dictate the market and will either be forced to compete or lose that source of business. The open competition will serve to maintain cost effectiveness to both private insurers as well as and State fund created. With the prohibitive rates currently charged by the JUA, one must wonder if the JUA in its current form effectively accomplishes any intended goal.

3. Allow Public Review of Skyrocketing Underwriting Costs

Combined with competition in the open marketplace, the State must consider some regulation with regard to underwriting costs. When underwriting costs are combined with direct commissions paid to insurance agents plus taxes and dividends paid to policy holders, **a full 55% to 60% of the premium dollar is spent before the first benefit is paid to the injured worker.**

In light of the recent corporate debacles involving Enron, World Com and others, investors, businesses and the general public alike have cried out for corporate accountability. Underwriting costs now represent a larger percentage of the premium dollar than lost wages to injured workers. In the face of a 21.5% requested rate hike request, the insurance industry simply cannot avoid scrutiny any longer of these so called "administrative expenses."

One approach the legislature should consider is to amend the public record law to require that any raw data or documentation on which NCCI or any other insurance regulatory bodies relies upon to seek rate increases from Florida employers, be subject to open records review and public scrutiny. The State of Florida should mandate that any portion of a contract which seeks to limit full disclosure of such data is void as against public policy.

4. Steps to Address Excessive Claims Money Spent on Medical Care

The fact that 60.8% of Florida workers' compensation claims money is being spent on medical expenses when Florida maintains the lowest medical provider reimbursement schedule in the country cannot be ignored. The State must determine if insurance carriers have used the cloak of managed care to create money making schemes hidden within terms such as overutilization and peer review. This creates unneeded expense which drives up the cost of medical claims. The State must also require expenses associated with managed care to be specifically broken down and delineated so that the percentage of medical claims expenses attributed to managed care can be determined.

There must be a study in order to document the reason for the excessive cost of hospital

care in Florida. If studies and documentation support that hospitals are grossly overpaid, consideration should be made to reducing payments and translating that into savings for employers or increasing payouts to other medical care providers who are underpaid in the system.

For too long the legislature has focused only on increasing legal burdens required to obtain medical care and these other costs drivers can no longer be ignored.

5. Eliminate Improper Exemptions

The State must resolve the exemption problem once and for all. It is generally accepted that over 1 billion dollars is not being paid into the workers' compensation system which is one fourth of the total workers' compensation system in Florida. This problem is simply too big to ignore.

Ultimately, exemptions must be eliminated and enforcement be carried out in a uniform manner. The elimination should be phased in over an agreed upon time table to allow for notice and adjustments to the system. Small contractors and small employers must have an affordable insurance product. You cannot force someone to obtain a product that does not exist.

Numerous solutions have been suggested and include allowing the JUA to compete with private carriers so that their risks can be spread across the industry. Carriers should also be required to write small contractors at the same percentage of the share of the overall market they hold. Since the risk is currently being paid by the system, bringing the additional premium into the system will only serve to reduce rates for all employers if managed correctly.

Uniform enforcement of improper exemptions will bring a significant amount of money back into the workers' compensation system as well. This will require legislative amendments which will hold agents and auditors accountable for their actions and encourage their cooperation.

Conclusions

There is indeed a brewing crisis, if not an outright crisis in Florida's workers compensation system. The question which must be determined and answered is whether the crisis is driven by the benefits and claims process or other factors which make up the complicated and convoluted workers' compensation system. As reflected in this paper, the benefits and claims process has been scrutinized and reformed in a perpetual manner for much of the last 20 years. It is the numerous other cost factors of the workers compensation system as outlined by this paper which have, for the most part, slipped under the radar screen of Florida's legislature and have now grown to crisis proportions which can no longer be ignored. The position of past and the overwhelming number of current would-be reformers of the workers' compensation system is as if to suggest that benefits and the claims process is the only significant cost driver on the workers compensation system in the rate making process. To continue to suggest that we focus on this limited aspect of the system

and will somehow be able to resolve our current crisis is absurd. If this paper is to be successful in making only one point, let it be that successful reform of the workers compensation system can only be had by evaluating and reviewing the entire system rather than simply looking at only the claims and litigation process with blinders. It is the hope of this writer that the Florida legislature will provide meaningful reform of the workers compensation system for the sake of employers and injured workers alike which can only be done by truly examining all of the cost drivers in the workers compensation system as opposed to one limited aspect of the system.

ABOUT THE AUTHOR:

Brian S. Fischer is a partner in the Law Firm of Fischer & Pfeffer, P.L. and has practiced in the area of workers' compensation since 1987. Mr. Fischer received his B.S. degree from Florida State University in 1984 and received his Juris Doctorate from the Nova University Center for the Study of Law in 1987. Mr. Fischer currently serves as Chair for the Employer Relations Committee of Florida Workers' Advocates and is involved with a group forming a non-profit organization to lobby on behalf of Florida Employers for comprehensive insurance reform. He has spent the past two years traveling the State of Florida meeting with business owners, heads of Chambers of Commerce, and various trade organizations, attending NCCI advisory meetings and has conducted numerous conferences with NCCI representatives on matters of workers' compensation. Mr. Fischer has participated in advisory conferences with WCRI and has spent countless hours conferencing with insurance actuaries and other insurance professionals. He participates with the Department of Insurance Anti-Fraud Task Force concentrating on premium fraud and has reviewed insurance company annual statements and countless other statistical documentation as provided by NCCI, WCRI, The Department of Insurance, and the Senate Banking and Insurance Committee as well as other sources.