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MEETING NOTICE:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement will meet at **9 a.m., Thursday, May 1** at the WCA headquarters, 2410 Centre Ave., SE, Albuquerque, NM. Download agenda at: <http://www.workerscomp.state.nm.us/advisory.php>

Save the Date!

Settlement Week
is scheduled for
October 27 - 31,
2014.

Potential Impacts of the Patient Protection and Affordable Care Act on the New Mexico Workers' Compensation System

By Richard Adu-Asamoah, Ph.D.

In recent months there has been a flurry of analyses on the potential impact of the Patient Protection and Affordable Care Act (PPACA), also known simply as the Affordable Care Act (ACA) or by its nickname "Obama Care." While the majority of these analyses have concentrated on broad health care issues, some of which may be described as speculative, a select few (publications by the NCCI, WCRI and the IAIABC) have concentrated on the potential impact on state workers' compensation (WC) systems. Workers compensation in the states is not a homogenous system and the impact of the ACA on a state's workers' compensation system may reflect the inherent differences.

The rollout and full implementation of the ACA, and the decision by Governor Susan Martinez to approve Medicaid expansion and the creation of state health care exchanges are likely to influence the extent to which the ACA will impact workers' compensation in New Mexico over time. It is estimated that up to 172,000 uninsured New Mexicans are expected to receive medical coverage by the end of 2014; current estimates of New Mexico residents that lack health care insurance are around 415,000.

New Mexico also has atypical characteristics that may lead to different impacts of the ACA on its workers' compensation system when compared to other states:

a) For years, New Mexico has suffered from a chronic shortage of doctors, especially in the rural communities of the state. Thirty-two of New Mexico's thirty-three counties are designated as health professional shortage areas (HPSA), according to the U.S. Health Resources and Services Administration (HRSA). For workers' compensation, access to specialized orthopedic services may be further reduced and costs driven up. This situation cannot be corrected in the immediate term, and may aggravate any negative impact that physician shortages might have as the demand for primary care physician services expands under ACA;

b) New Mexico has a very large population that depends on Medicaid; as Medicaid is expanded through state health care exchanges, there may be additional pressures on provider groups, hospitals and other health care facilities that also serve the workers' compensation system; on the other hand, as more Medicaid participants receive more services, emergency room (E-R) utilization by WC is likely to decline, Medicaid participants may not depend much on WC and therefore costs may shift away from WC.

c) New Mexico's working population is aging but postponing retirement; notably, access to health care is particularly limited among the elderly. The U.S. Administration of Aging (USAA) predicts 33 percent of New Mexico's population will be age 60 or older by 2030. This age group is currently estimated to be 22 percent. As more people postpone retirement the pressures on the workers' compensation system may worsen.

Full implementation of the PPACA will likely lead to the following:

1. Comprehensive insurance coverage, including several overlapping essential workers' compensation (WC) coverage in New Mexico, such as
 - i) Ambulatory patient services,
 - ii) Emergency services,
 - iii) Hospitalization,
 - iv) Prescription drugs,
 - v) Rehabilitative services and devices,
 - vi) Laboratory services,
 - vii) Preventive and wellness services and chronic disease management, and focus on quality of care and/ or outcomes;
2. Coverage of pre-existing conditions;
3. Minimum surcharge for smoking (high among working age individuals) and age;
4. Greater number of lower income insureds (who otherwise might seek and extend treatment under WC) and small businesses may force provider emphasis and focus toward enhanced efficiency

Potential Impacts of the Patient Protection and Affordable Care Act on the New Mexico Workers' Compensation System

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that may lead to less dependence on WC;

5. Fees and utilization in WC may decline if PPACA is effective and efficient; electronic medical records will reduce operational and documentation costs.

6. PPACA will expand the use of preventive services in private insurance plans, Medicare, and Medicaid.

The potential impacts of the PPACA on New Mexico's Workers' Compensation System are mixed.

General Assessment:

◆ Immediate impact on WC remains unclear; most impacts are not likely to be immediate but medium and long term.

Positive Impact:

◆ PPACA may result in reduced burden on providers for indigent care in WC as the now insured lead to providers shifting from loss to income.

◆ Increased wellness—a healthier and better conditioned population is likely to lead to less frequent and fewer severe accidents on the job, decreased WC claims and costs, fewer emergency room visits, and decreased need to over-treat.

◆ Decreased incentive to file questionable WC claims— increase in population with medical coverage, and increased fraud detection supported by government funding

will shift costs for non-WC claims away from WC payers.

Negative Impact:

◆ Less lucrative WC cases for providers, and fewer than adequate providers in WC may decrease access to care, increase indemnity costs as prompt access to physicians is reduced, and delay return to work.

◆ Successful PPACA may cause cost shifting in the medium term as providers increase utilization of WC to offset the below cost fees in Medicare and Medicaid.

◆ Increased Pharmacy and DME medical costs due to new taxes and assessment fees passed on to workers' compensation payers— impacts are potentially identical to estimated national increases in costs of 1.5 percent and 2.3 percent, respectively.

The net impact of ACA on New Mexico's WC system is therefore unclear.

How Should New Mexico Address Negative ACA Impacts on Workers' Compensation System?

○ It is estimated that New Mexico is short about 2,000 physicians and roughly 400-600 primary care specialists; Medicaid expansion may worsen the impact of physician shortages; the working elderly should have easily accessible medical care. These situations need immediate attention, and can be helped with better coordination of existing health care resources, and expanded use of middle level health care professionals.

○ Medium term solution to the shortage problem is to train and use more physician assistants (PAs) and registered nurses (RNs) in selected specialized areas of care to facilitate access to appropriate treatment for injured employees and to begin the process of medical management on the spot.

○ In the long term, integrated set of medical management capabilities should be developed that can be leveraged across New Mexico's health care and workers' compensation systems.

○ Train and educate in-house registered nurses (RNs) who can help coordinate implementation of cost-effective treatment plans that enable injured employees to return to work as soon as possible.

○ Develop and use predictive modeling capabilities that promote the development of claim management tools, nurse triage models and chronic pain intervention programs.

○ Develop specialized auditing procedures that review the more complex medical bills to identify savings opportunities that an automated review system cannot.

○ Develop and implement rehabilitative treatment and care systems in the state to aid early return to work.

References:

Krohm, Gregory, "Update on the Implications of the Patient Protection and Affordable Care Act for Workers' Compensation." NCCI, December 9, 2010 at: <http://www.iaiaabc.org/i4a/pages/index.cfm?pageid=3788>

New Mexico Department of Health and Allied Agencies, Report #13-03. "Adequacy of New Mexico's Healthcare Systems Workforce." May 15, 2013.

Shuford, Harry, National Council on Compensation Insurance (NCCI) Regulatory Webinar. "How Affordable Will the Affordable Care Act Be for Workers' Compensation?" January 29, 2014.

Victor, Richard A., WCRI Annual Issues & Research Conference. "Impact of the Affordable Care Act on Workers' Compensation." March 12-13, 2014.

NM Workers' Comp. Adm. Quarterly Bulletin

Darin A. Childers Director
Diana Sandoval-Tapia, Editor/Designer

The Bulletin is published in January, April, July and October by the Economic Research Bureau of the New Mexico Workers' Compensation Administration. The Bulletin is available free of charge. Send changes of address and requests to receive the Bulletin to Diana Sandoval in the Economic Research Bureau, New Mexico Workers' Compensation Administration, diana.sandoval@state.nm.us.

Suggestions for articles are welcome; call Diana Sandoval-Tapia at (505) 841-6052.

Recent issues of the Quarterly Bulletin can be viewed on the Internet at <http://workerscomp.state.nm.us/research/index.php>.

What is the Advisory Council?

The Advisory Council on Workers' Compensation and Occupational Disease Disablement is a task force created by statute, comprised of six members, three representing workers and three representing employers. The primary role of the Council is to advise the governor and legislature on the status of the workers' compensation system in New Mexico. The Advisory Council meets several times a year on an irregular schedule. Scheduled meetings of the Council are announced on the WCA website, <http://www.workerscomp.state.nm.us/advisory.php>

Governor Appoints New Mexico Workers' Compensation Administration General Counsel

Rachel A. Bayless was appointed by Gov. Susana Martinez and Workers' Compensation Administration (WCA) Director Darin Childers to be the agency's general counsel. She assumed her position on February 17, 2014.

Of her appointment, Bayless said: "As general counsel, I will strive to provide competent, thorough, and quality legal advice to the Workers' Compensation Administration and its Director, while simultaneously reinforcing the mission statement of the Workers' Compensation Administration."

A native New Mexican from Clovis, N.M., Bayless graduated from Eastern New Mexico University in 2001, *summa cum laude*, with a bachelor of business administration and a minor in political science. She received her J.D. and graduated *magna cum laude* from the University of New Mexico, School of Law in 2005, where she received clinical honors for the District Attorney Clinical Law Program, and was nominated to the Order of the Coif.

After law school, Bayless worked for the Second Judicial District Attorney's Office as an assistant district attorney. In the Metropolitan Court Division, Bayless was responsible for prosecuting various misdemeanors ranging from speeding citations to third offense DWIs and domestic violence. As a prosecutor in the Crimes Against Children Division, she was responsible for prosecuting felony offenses involving sexual and physical abuse of children.

In the private sector, Bayless worked as an associate attorney at the firm of Madison, Harbour & Mroz, P.A., from 2008 to 2011 and then as a staff attorney for the Law Office of Eva K. Blazewski from 2011 to 2014. Her experience included insurance defense, personal injury defense, representing employers and insurers in workers' compensation matters, and some plaintiff's work.

Bayless is licensed to practice in the state and federal courts of New Mexico and the United States Court of Appeals for the 10th Circuit.



WCA General Counsel
Rachel A. Bayless

2013 WCA Annual Expenditure Reports

The filing season for the 2013 New Mexico Workers' Compensation Administration Annual Expenditure (AER) reports has come to a close, with carriers and self-insurers reporting a combined total of \$311.3 million in expenditures for the year.

Most companies required to file did so in a timely manner, with more than 96 percent of reports received on or before this year's March 15 deadline. A full 100 percent of expected reports were received within two weeks of the closing date. Overall, the newly designed filing system was a success, with few filers reporting difficulties in completing their required reports.

During the "off season," staff in the Economic Research Bureau will work on small changes, tweaking the new system to further improve the process for future years.

Anyone who may have any questions about AER filing, or may need to update company contact information can contact the Economic Research Bureau at (505) 841-6000.

2014 New Mexico Legislative Session Wrap Up

The 2014 Session of the New Mexico Legislature was a 30-day "short" session; short sessions are primarily intended to focus on financial budgetary issues. Nonetheless, there were several bills introduced this year that potentially could have impacted New Mexico Workers' Compensation law. Of those introduced, only three were passed, signed by Gov. Susana Martinez and will become law (the last is only a language change).

◆ HM 40 – FIRST RESPONDER PTSD STUDY

HM 40, introduced by Emily Kane (D-Bernalillo Co.), requests the WCA conduct a study on the effect of Post Traumatic Stress Disorder (PTSD) on first responders, and review the current presumptions in the Occupational Disease and Disablement Law (ODDL) via a task force with public participation. The memorial requires the WCA to prepare a report to the legislature with its findings. The bill passed and was signed by the governor.

◆ SB 9 – ONE-STOP BUSINESS PORTAL ACT

SB 9, introduced by Mary Kay Papen (D-Dona Ana), requires certain agencies to post relevant information on a consolidated state website in order to facilitate convenient access to service for business owners. It would require the WCA to post information that allows business owners to access workers' compensation information, including requirements and filing and renewal deadlines, and to pay their worker's compensation assessment. Completing and filing documents electronically through the portal will also be required, as will the assignment of an agency representative to communicate with the business representative electronically. The Portal Act also permits an agency to promulgate rules to further set out the requirements of the Act. The bill passed and was signed by the governor.

◆ SB 44 – USE OF "HIGH SCHOOL EQUIVALENCY CREDENTIAL"

The bill, introduced by Gay G. Kernan (R-Chaves, Eddy, Lea), calls for substitution of the use of "high school equivalency credential" in place of "general equivalency diploma" and all iterations of GED in all New Mexico statutes, including 52-1-26.3. The amendment changes GED and adds gender neutral language in this section. The bill passed and was signed by the governor.

Other legislation introduced, but on which action was indefinitely postponed, included two similar bills in the House and the Senate that attempted to deny workers' compensation benefits to workers injured on the job where drug or alcohol use was the *sole contributing factor* in the work-place accident.

Susana Martinez
Governor

Darin A. Childers
Ex Officio

Kevin J. McGinley
Chairperson

James Magoffe
Vice Chairperson

State of New Mexico
ADVISORY COUNCIL ON WORKERS' COMPENSATION
AND OCCUPATIONAL DISEASE DISABLEMENT

Scott Le Fevre **Melinda Joy Pattison** **Dain Symes** **Tom Willis**
Member **Member** **Member** **Member**

PO Box 27198, Albuquerque NM 87125-7198

February 4, 2014

The Honorable Susana Martinez
Office of the Governor
490 Old Santa Fe Trail
Room 400
Santa Fe, NM 87501

The Honorable Mary Kay Papen,
President Pro Tempore and
Members of the Senate
State Capitol Building
Santa Fe, NM 87501

The Honorable W. Ken Martinez,
Speaker of the House and
Members of the House of Representatives
State Capitol Building
Santa Fe, NM 87501

Honorable Governor Susana Martinez and Members of the 2014 Legislature:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement having met in a full Council of seven members on January 30, 2014, submit the following endorsements to the Legislature:

The concept of clarifying the Alcohol and Drug policy for determining workers' compensation benefits and to consolidate three parts of the Workers' Compensation Act that have created ambiguity in determining benefits when alcohol and drugs may be a factor in a workers' injury. The New Mexico Court of Appeals has declared these sections of the Act are ambiguous and have requested a legislative fix. We support Governor Susana Martinez' House Executive Message NO. 16, dated: January 23, 2014, to open discussion to attempt to resolve this important issue.

The Workers' Compensation Administration Fund is supported by a quarterly fee that is assessed against each employer and worker in New Mexico who is required or elects to have coverage to fund the operations of the Workers' Compensation Administration. From FY 2007 to FY 2014, \$18,758,000.00 has been removed from the fund to support other agency's programs. The Advisory Council stands firm in its belief the fund should be exclusively reserved and not be diverted from its intended purpose to support the workers and employers of New Mexico through the Workers' Compensation Administration.

Respectfully yours,

Kevin J. McGinley, Chair
James Magoffe, Vice Chair
Scott Le Fevre, Member
Melinda Joy Pattison, Member
Dain Symes, Member
Tom Willis, Member

NOTICES, EVENTS & HOLIDAY CALENDAR

Meeting Notice

The Advisory Council on Workers' Compensation and Occupational Disease Disablement will meet at **9 a.m., Thursday, May 1** at the WCA headquarters, 2410 Centre Ave., SE, Albuquerque, NM.

Download agenda at: <http://www.workerscomp.state.nm.us/advisory.php>

Brown-Bag Lunch

The Workers' Compensation Administration General Counsel's Office will host a brown-bag lunch session at **11:30 a.m., Thursday, May 22**, on "Workers' Comp Law: What's Fraud Got to do With It?"

Holiday Closure

The Workers' Compensation Offices in Albuquerque and all its field offices will be closed on the following upcoming holiday(s):

Memorial Day, Monday, May 26

Request for Comments

Workers' Compensation Administration Director Darin A. Childers is considering the reappointment of Judge Leonard J. Padilla to a five-year term, pursuant to NMSA 1978, Section 52-5-2 (2004). Judge Padilla's term expires on **Aug. 31, 2014**. Anyone wishing to submit written comments concerning Judge Padilla's performance may do so until **5 p.m., Monday, June 2, 2014**. Comments may be addressed to WCA Director Darin A. Childers, c/o Human Resources, PO Box 27198, Albuquerque, NM 87125-7198, or faxed to (505) 841-6813.

Notice of Public Hearing

The New Mexico Workers' Compensation Administration will hold a public hearing on the rules at **1:30 p.m., Thursday, Aug. 7, 2014**. Public comment will be open from **July 17 through Aug. 18, 2014**. The WCA will publish final rules by **Sept. 30, 2014**, in an effort to be included in the bound statute books issued by Lexis Nexis.

Public comment for the health care providers' fee schedule (not yet complete) will be accepted from **Oct. 1 through Oct. 31, 2014**. The final fee schedule will be effective **Dec. 31, 2014**.

Settlement Week 2014

The Workers' Compensation Administration has scheduled "Settlement Week 2014" for the week of **Oct. 27-31, 2014**. Mark your calendars now!

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