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Prioritizing Reforms that Preserve the Quality & Efficiency of Wisconsin's Worker's Compensation System

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A key tenet of medicine is the Hippocratic Oath, which physicians vow to follow when they become doctors. One of its most important pledges is "*Primum non nocere*," which translates to "First, do no harm." It's a continual reminder to physicians to avoid any treatment that would make the patient's condition worse. The Legislature should take a similar approach when it comes to the state's worker's compensation laws.

Wisconsin's health care system is nationally recognized for its quality. The federal Agency for Healthcare Research and Quality (AHRQ) has consistently ranked it among the top five states for the quality of medical care provided, including ranking it the best state in the nation in its most recent report, which was released in 2017.[1]

Similarly, Wisconsin has been a leader in worker's compensation. It was the first state in the nation to implement a comprehensive worker's compensation program more than 100 years ago, and its current program outperforms the national average in terms of overall costs, employee satisfaction, and getting employees back to work.

Wisconsin's worker's compensation medical costs and premiums are declining. Between 2014 and 2015, Wisconsin's medical payments per claim decreased 1.2 percent, outperforming 11 of 18 states in a nationwide study.[2] During the same time period, payments to physicians and other non-hospital providers decreased 5.8 percent.[3]

The current system works for employers. Despite a workplace injury rate 28 percent higher than the national average[4], Wisconsin's worker's compensation premiums are close to average and have declined 3.2 percent in 2017 and 8.5 percent in 2018, saving Wisconsin businesses nearly $170 million.[5]

According to the Workers Compensation Research Institute (WCRI), a national, not-for-profit research organization that compares state worker's compensation programs:

- **Wisconsin costs per claim are 18 percent lower than the national average** due to fewer workers losing time from work after an injury, substantially lower indemnity payments per claim and shorter duration of temporary disability benefits.[6]

- **Wisconsin providers billed 26 percent fewer office visits and provided 13 percent fewer services per visit** than the national average for worker's compensation claims involving more than seven days of lost work time.[7] In addition, Wisconsin has 20 percent fewer inpatient stays than the average state.[8] Most medical care in Wisconsin is provided through highly integrated health systems that coordinate the services provided by physicians, hospitals and other health care providers. This results in more efficient care by ensuring that care is provided in the most appropriate setting with a focus on returning the injured employee to work as soon as possible.
- **Wisconsin employees return two to three weeks sooner than average,** which means insurers spend significantly less on indemnity costs and employers spend significantly less on wages for temporary employees that replace injured workers until they return.[9]
- **Wisconsin has the highest employee satisfaction rate among states** according to WCRI surveys, with 82 percent of employees being either "somewhat" or "very satisfied" with their overall medical care.[10] It also had the lowest proportion of workers (9 percent) reporting "big problems" accessing the providers and medical services they wanted.[11]
- **Wisconsin has a very low litigation rate.** The percentage of claims with "defense lawyer involvement" is 14 percent, which is the second lowest of the states analyzed and less than half the 30-percent average.[12]

Worker's Compensation Advisory Council Recommendations

Against this backdrop, the Worker's Compensation Advisory Council (WCAC) has recommended legislative changes to the state's worker's compensation system. Included in those recommendations is a requirement that the Department of Workforce Development implement a medical fee schedule.

A mandated fee schedule presents several primary concerns:

1. **Fee schedules focus on unit prices, not outcomes.** Private-sector payers, and even Medicare and Medicaid, are moving away from unit-price approaches in favor of quality- and outcome-based initiatives that focus on the total cost of care – from the time of initial diagnosis through the completion of treatment. Medicare's Value-Based Purchasing Program initiative rewards providers for patient safety, the quality of clinical care delivered, the efficiency of the total cost of care delivered and patient satisfaction. When ranked against these measures, Wisconsin providers consistently outperform the national average.

   By focusing on unit price, fee schedules ignore the number and appropriateness of medical services provided. For example, in Illinois, a fee-schedule state, the unit price for one physical therapy visit is 41 percent less than Wisconsin, but injured workers receive 79 percent more physical therapy visits per claim.[13] And, in terms of returning employees to work, Wisconsin significantly outperforms Illinois: On average, injured employees return to work eight weeks sooner than they do in Illinois.[14] WCRI acknowledges that there is a potential relationship between unit price and utilization by noting that "fee schedule initiatives that change the price

differentials between different types of services can also affect the mix of services provided and billed."[15]

Fee schedules also ignore the importance of quality in improving outcomes. Quality providers can have higher unit prices, but a lower total cost of care because they return patients to full functionality sooner than other providers. As a result, payers are willing to pay more for quality. A WCRI analysis of Massachusetts' worker's compensation program found that payers were willing to pay two to three times more than the fee-schedule amount for some worker's compensation surgeries, because the injured workers had better outcomes and their return to work was faster.[16]

2. **Fee schedules can create significant volatility.** They do not reflect actual market changes in pricing and do not adapt to new treatment protocols and services. It can take two years for Current Procedural Terminology (CPT) codes to be assigned to new medical services. During that interim, providers use miscellaneous "99" codes that are typically reimbursed at very low rates on a fee schedule. In addition, fee schedule increases are typically lower than the rate of inflation, which means they don't keep pace with the cost of providing care. Between 2008 and 2016, the annual Medical Price Index for Worker's Compensation (MPI-WC) for states with fee schedules averaged 1 percent per year, which was 57 percent below the rate of general medical inflation.[17] Realigning fee schedules with the market creates volatility: Almost one-fourth of the fee-schedule states studied by WCRI had double-digit price changes following fee-schedule changes.[18] In North Carolina, professional services jumped 18 percent between 2014 and 2016 after it implemented a new fee schedule for professional services.[19] The average price for office visits, physical medicine and emergency visits increased between 30 and 46 percent.[20] Similarly, fees for professional services increased 19 percent in Kentucky after that state changed its fee schedule.[21]

3. **Focusing on fee schedules detracts from a discussion on meaningful reforms.** When fee schedules are implemented, there's a temptation to focus on unit prices, because they are easy to measure, compare and adjust. That, however, pre-empts discussions on changes that could lower costs by streamlining claims administration. This includes the sometimes archaic, costly and cumbersome administrative and operational processes prevalent among worker's compensation carriers, but virtually non-existent with group health insurers. Workers and employers would be better served by reforms that streamline processes, preserve the quality of medical care provided and return workers to full functionality as soon as medically possible.

Focusing on Outcomes

The primary focus of an effective worker's compensation program should be the speed with which workers can be returned to work. Each week of work that is lost due to injury costs between $1,600 and $2,200 in lost wages, lost productivity and additional wages for temporary replacements.[22] In addition, the longer an employee is homebound, the more difficult it is to return him or her to full functionality.

Fortunately, Wisconsin excels in several key return-to-work metrics:

- **Injured employees in Wisconsin return to work three weeks sooner than the national average** in claims with more than seven days of lost time.[23] This translates to a direct savings of between $4,800 and $6,600 for the average injured employee, not including any additional medical costs incurred during the three-week period.
- **Wisconsin has the lowest temporary total disability (TTD) indemnity benefit duration** among 46 states analyzed by the National Council on Compensation Insurance. Its average duration was 44 percent less than the median duration for the states analyzed.[24]
- **Wisconsin has the second lowest percentage of injured workers who never return to work** (10 percent).[25] This is significant, because every replacement worker will cost employers an estimated $185,000 over the duration of employment.[26]

Equally important, Wisconsin health care providers achieve these goals with the highest employee satisfaction rates among the states analyzed, with 82 percent of employees being either "somewhat" or "very satisfied" with their overall medical care.[27]

Data Issues

Data can generate different conclusions, depending on how it is presented. Wisconsin, for example, compares very favorably when the analysis includes all worker's compensation claims. And its overall cost-per-claims performance continues to outperform the national average for claims that include more than seven days of lost work time, although its medical costs are higher.

Because variations in the data sets and subsets can lead to different results, it is important to understand what is being analyzed. For example:

- Fee-schedule proponents argue that Wisconsin has high medical costs for treating injured workers who lose more than seven days of work; however, these claims represent less than one in five of all worker's compensation claims.[28] Focusing on a small subset of claims can distort overall performance. Injuries that cause more than seven days of lost work time are also more complex, which results in greater variation in the medical care provided. For example, the cost of treating two workers with serious back injuries can vary considerably depending on the nature of the injuries, as well as the age and health of the patient. This variation is especially pronounced with inpatient visits. As WCRI notes: "given the smaller number of claims receiving inpatient care, inpatient measures can show large annual fluctuations."[29]
- Wisconsin's per-claim medical costs improve significantly when the analysis includes more mature claims. For example, Wisconsin's medical costs per claim are 46 percent above the national average if the claims have a maturity of 12 months or less, but drop to 19 percent above average if the claim window is extended to 36 months.[30] A separate analysis, conducted on fully mature claims, found that Wisconsin's medical costs were just 2 percent higher than the national average.[31] This may suggest that Wisconsin providers "invest" more in patients up front to get them back to work faster, which results in higher-than-average first-year costs. The gap

narrows as the claim window is extended, because providers in other states may be treating patients over a longer period of time, generating more costs than Wisconsin providers in the second and subsequent years.

- While Wisconsin has a three-day waiting period for worker's compensation claims, WCRI bases its analysis on a seven-day waiting period to conform to the majority of states in its 18-state analysis. Of the six states whose data was revised, Wisconsin saw the greatest impact, with medical payments per claim increasing 17 percent because of the adjustment.[32]
- WCRI adjusts its data to reflect variations in state economies (i.e., the percentage of manufacturing, construction and service companies). This is appropriate for setting premiums, but is not relevant for comparing the cost of treatment. A broken leg is a broken leg, regardless of whether it occurs in a manufacturing facility or an office. When comparing medical costs, the severity should be based on the patient's age, comorbidities and relevant complications.

Conclusion

Wisconsin employers and employees currently enjoy a worker's compensation system that outperforms the national average in terms of costs, efficiency and employee satisfaction. Medical costs are slowing. Between 2010 and 2015, medical payments per claim in Wisconsin grew at half the rate of the previous five-year period.[33] In three of the last four years, medical prices for Wisconsin physicians, physical therapists and other non-hospital providers grew at a rate that was at or below the rate of medical inflation, and between 2015 and 2016, prices increased 1.4 percent, which was more than half the rate of medical inflation.[34]

A comprehensive workplace strategy should focus on ensuring that workplaces are safe and making sure injured workers are returned to full functionality as soon and as medically as possible. In 2016, Wisconsin legislators addressed worker's compensation issues without impacting the medical services provided. The changes included technical fixes, improving access to retraining benefits, reducing the statute of limitations on trauma and requiring apportionment for permanent partial disability payments. Wisconsin's worker's compensation premiums declined 3.2 percent in 2017 and 8.5 percent in 2018, saving Wisconsin businesses nearly $170 million.[35]

Based on this experience, additional reforms should focus on:

1. Reducing cumbersome, archaic and labor-intensive administrative processes that are not directly related to getting injured workers back to work as soon as possible. This can be done through:
    - The use of electronic payments, which are already standard practice for group health insurers and even government payers like Medicare and Medicaid. Worker's compensation claims are currently paper-based, which results in lower processing times and drives up the administrative costs of providing care. Administrative costs, marketing and profits account for 38 percent of the premium written by worker's compensation carriers.[36] That is more than double the rate for group health insurers, which provide a wider range of medical

services to a much more demographically diverse patient population. Because of the paper-based claims-processing system, health care providers wait considerably longer for payments from worker's compensation carriers than they do from group health insurers. According to the Worker's Compensation Rating Bureau, less than a third of claims are paid in a timely fashion.[37]

- The use of electronic medical records, which will reduce the cost and waste of printing, copying and transporting paper records

2. Reducing the state's worker injury rate. The work-related injury and illness rate for private employers – 3.7 incidents per 100 full-time equivalent (FTE) workers – is 28 percent higher than the national average.[38] Initiatives involving employers and professional associations (i.e., Wisconsin Hospital Association, Wisconsin Medical Society and the Wisconsin Manufacturers & Commerce) that focus on reducing that rate will protect employees, improve productivity and reduce costs, making Wisconsin an even more attractive place to do business.
3. Implementing measures that would improve worker's compensation insurers' ability to validate the compensability of claims.
4. Promoting market-driven negotiations between health care providers, insurers and self-insured companies. These direct negotiations could lead to outcomes-based payment structures that reward providers who provide quality care efficiently. They could also provide financial incentives for worker's compensation carriers to modernize their claims and billing processes, including discounts for promptly paid claims.

Wisconsin pioneered and remains a national leader in worker's compensation with return-to-work, total costs and employee satisfaction rates outperforming the national average. Employers, labor organizations, insurers and legislators should build on the state's successful program with initiatives focused on the quality of care provided, the length of time it takes to return employees to work, and employee satisfaction with the services they receive.

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