
Future Indirect Effects of the New Federal Healthcare Law on Workers Compensation

By: Paul T. Barta

With the United States Supreme Court recently upholding the majority of the provisions of the Patient Protection and Affordable Healthcare Act (PPACA), many questions are left unanswered. One area of concern is the impact of the PPACA on state workers' compensation programs and employers' and insurers' responsibilities related to the same.

The PPACA affects many areas of healthcare both directly and indirectly. Not only does the PPACA mandate that individual citizens purchase healthcare insurance, but it also increases individual states' Medicaid roles and costs (although states may opt out of the Medicaid portion under certain circumstances). However, the PPACA does not directly address how this new healthcare system affects workers' compensation. In fact, the issue of workers' compensation and general liability insurers' roles are left largely unaddressed.



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Despite the omission of workers' compensation from the PPACA, there will ultimately be indirect effects. The issue is largely understanding when and where those effects are most likely to occur, given the current statutory framework. It is clear that those parties who have traditionally been the primary payers/obligors in the workers' compensation and/or general liability context will remain so. However, we do anticipate that workers' compensation will be affected in the following manner.

First, for those states that do not opt out of the increased Medicaid rules imposed by the PPACA, we anticipate that those states will make an increased effort to investigate and recoup those costs that Medicaid has paid and which they believe are the primary responsibility of workers' compensation insurers or general liability insurers. Without a doubt, states' financial burdens are going to be increased if the PPACA remains unchanged. Commensurately, states will likely attempt to offset those increased costs, potentially through seeking reimbursement for expenses which in the past have traditionally been considered questionable. It is possible, if not likely, that within the next six years we will see the States developing new reporting requirements which will be aimed at identifying potential reimbursable costs earlier in the process. Should such requirements be developed, they will undoubtedly increase costs on employers and insurers and make resolution of claims somewhat more difficult as state agencies will be less likely to waive or forego liens on claims with questionable work-relation.

Second, and perhaps more indirectly, we may see a change in how treatment recommendations are made. The PPACA is still largely a statutory framework which allows for development of subsequent recommended protocols through delegated rule-making committees. Much discussion in the past has focused on the possibility of ultimate implementation of evidence-based protocols for physicians, at least to the extent that those physicians expect to be

reimbursed for treatment provided to patients. While this is not currently the law, given some of the cost models taken into consideration when the PPACA was enacted, the development and implementation of evidence-based protocols remain a definite possibility. While the PPACA does not directly apply to workers' compensation, it stands to reason that if specialists are being required to apply evidence-based protocols in their general practice, this will likely bleed over into their treatment of workers' compensation claimants. Theoretically, this could have a beneficial effect on Nebraska workers' compensation claims as it could take some of the subjectiveness out of treatment recommendations.

Third, some legal commentators have speculated that after full implementation of the PPACA, we may see less filing of marginal (questionable work-relation) workers' compensation claims. This speculation is based on the theory that in cases of questionable work-relation, uninsured claimants may have incentive to attempt to link their conditions to their employment. As such, should these previously uninsured claimants now have health insurance, the theory is that these claimants may forego claiming work-relation. However, as there currently is no wage-replacement component in the PPACA, we continue to believe that the primary incentives for claimants with questionable claims remain in place.

Finally, from a claims handling perspective, we will likely see changes in the manner in which medical records are maintained. The PPACA contemplates the development and implementation of potential cost saving measures. Many commentators have suggested that a nationalized scheme will undoubtedly result in implementation of standardized systems for maintenance of medical records. Should particular formats be mandated under the PPACA, we may see some initial difficulties in the solicitation and receipt of causation and impairment reports should those not fit within the record maintenance guidelines.

Therefore, we would recommend to all workers' compensation practitioners that they stay informed regarding the rules which will subsequently be developed to implement the PPACA along with state efforts to implement the mandated changes in state Medicaid programs. It is likely that we will begin to see these indirect effects within the next two to six years. Baylor Evnen will continue to monitor these developments and, should they have the potential to affect employers' and insurers' workers' compensation duties and costs, provide periodic updates.