



Lessons to learn:

Collaboration and innovation
are top strategies used by states
seeking to improve workers'
compensation programs

New York state efforts still mixed,
but moving forward



The quest to reform and improve historically complex, often antiquated and frequently costly workers' compensation programs at the state level has met with mixed results in recent years; but there have been notable successes. Several states – specifically California, Oklahoma, Minnesota and Texas – have become the standard-bearers for advocating and passing innovative reform strategies.

One critical contributor to their success were leaders across all sectors who recognized that it was in everyone's best interest for costs to be reasonable and predictable and for injured employees to access the quality medical care and benefits necessary to ensure optimal outcomes. Achieving those goals has not been easy for any of the states endeavoring reform, and for many, it remains elusive. It also remains a goal all participants in workers' compensation systems believe is both necessary and well worth the effort.

To build a better comp system, in 2007 New York instituted a series of wide ranging reforms of its own. While some of the state's efforts have begun to show positive results, many of the outcomes remain disappointing to employers, employees and legislators alike.

The questions then become, what are the obstacles preventing greater success and more importantly, what can employers in New York learn from successful efforts in other states?

A look at New York's workers' compensation marketplace today

The New York workers' compensation system costs roughly \$6 billion a year, making it one of the most expensive in the nation.¹ To address spiraling costs, inequities and below par outcomes, in 2007 New York passed sweeping workers' compensation legislation. It covered a wide range of areas, including:

- Increasing indemnity benefits from the low cap on weekly benefits set in the early 1990s with a promise to adjust rates every July tied to a consumer cost index
- Shorter maximum durations in permanent partial disability awards
- New medical treatment guidelines and procedures
- An accelerated administrative hearing process
- The closing of the New York Second Injury Fund
- New requirements for pre-funding permanent disability awards
- A pharmacy fee schedule capping drug prices at 80% to 82% of the average wholesale price with a \$4 dispensing fee

The efforts were necessary and important, and many were sound strategies that theoretically should have worked. Yet some have fallen far short of hopes and even objective goals. While at one time New York enjoyed one of the lowest indemnity costs in the nation, since reform, expenditures have doubled – from an average of \$400 to \$900.

Several independent reports have noted that New York may soon have the highest average total workers' compensation claim costs in the United States.² What's more, New York employers and taxpayers pay the fifth-highest premiums in the nation. Currently the state is paying more for expenses than actual benefits.³ Equally concerning to employers is that overall costs continue to increase. The New York Compensation Insurance Rating Board (NYCIRB) proposed an overall average loss cost increase of 16.9%.⁴

Hard lessons for NY employers

So what happened to the well-intentioned efforts of New York? Multiple factors are contributing to rising costs, including:

1. Continued rise in medical costs, specifically prescription drugs
2. The time from accident to classification has steadily increased, resulting in longer durations of temporary disability benefits and an overall increase in indemnity costs
3. The closing of the reopened case fund as part of the business relief act of 2013 has transferred those costs to carriers and employers
4. Weekly temporary disability rates have doubled since 2007

Perhaps what should be most troubling to all participants in the New York workers' compensation system is that it is not just employers paying the tab for shortcomings in the industry – it is employees and state taxpayers. Utilizing data from OSHA, The Work Loss Data Institute publishes a report card of workers' compensation outcomes in every state. When it comes to injury outcomes, New York has consistently been given an F for the past 10 years.

Despite the disappointing results to date, New York must be applauded for endeavoring to fix a broken system. For example, the 2007 reforms introduced changes in medical care. There are now greater efforts to focus on effective utilization and management of physical rehab chiropractic services; surgery (spinal fusions); and pain management. Of equal importance, there is much greater scrutiny of large loss claims involving pain treatment.

New York is also joining other states in stepping up its oversight by issuing pain treatment guidelines in draft form. The state also passed a narcotic monitoring system that applies to all prescribed narcotic use in healthcare. Additionally, the Internet System for Tracking Over-Prescribing (ISTOP) just went into effect. ISTOP represents New York's adoption of a strongly recommended strategy of detailed monitoring of prescribed narcotic use.

What's more, New York recently engaged in a comprehensive "business process re-engineering" initiative to evaluate and "re-imagine" the state's workers' compensation system. While the focus will primarily be on ways to improve operations, advocates see considerable promise in the effort.

Solving problems through advocacy

As New York struggles to construct more meaningful workers' compensation outcomes, a lesson in effecting innovative workers' compensation reform efforts can be found in multiple other states. Texas, Oklahoma and California have all recognized the need for change and as a result, advocated for new and improved methods of delivering needed benefits.

For example, California continues to take steps to address ongoing problems as well as new concerns. After reform efforts were instituted in 2004 it was discovered that, as written, the state's workers' compensation legislation was not always realizing the intended results. Injured workers had the ability to contest the denial of medical treatment requests via the utilization review process by having the matter evaluated by an administrative law judge. In 2012, a new law was passed instituting an independent medical review (IMR) panel. Judges and non-medical personnel are now no longer involved in a utilization review denial of a medical treatment request. Most importantly to employers, the California Workers' Compensation Institute (CWCI) reports that 94.1% of UR decisions result in approval of medical treatment requests. Of the remaining 5.9% of the treatment requests that were denied or modified, only 1.2% were overturned by IMR.

There is an important lesson for New York in this example. In New York, both parties must agree to have disputes regarding utilization review decisions evaluated by the medical director. Rarely does this agreement occur. As a result, disputes under evaluation continue to be decided by a workers' compensation board judge, not by a trained physician.

Oklahoma has the sixth highest insurance premium rates according to a 2012 study. Employers lamented that high workers' compensation costs were one of the primary reasons they were unable to hire and grow their

businesses. To address the problem, several advocacy groups, including the Oklahoma Injury Benefits Coalition, began work on reform efforts. Despite setbacks, the Coalition never gave up and on the third attempt, substantive reform were passed in 2013.

By comparison, while the indemnity rates in New York have doubled since 2007, Oklahoma's newly enacted legislation reduced benefit rates by 30%. In addition, the maximum weeks in which TTD, TPD and PPD benefits can be paid were all reduced. The reform package also included an option for employers to provide an alternative coverage to a traditional workers' compensation plan. Texas has been providing a similar option for many years. However, in Texas employers have exposure to civil suits when opting out of workers' compensation. Oklahoma employers who provide an alternative option for their employees will continue to enjoy exclusive remedy. A recent constitutional challenge of the alternative option was thwarted with the Oklahoma Supreme Court upholding the Senate Bill 1062. NCCI predicts this bill will immediately decrease costs by 12.9%.

As the results of these efforts indicate, New York could well consider going even further than its current initiatives. For example, New York did take an important step toward controlling drug costs through its cost caps and even more importantly through the promising ISTOP program. However, such efforts still do not address the need to prevent inappropriate utilization. Recognizing the importance of appropriate use, in 2013 Texas implemented a closed formulary – one based on the ODG's scientific and peer reviewed literature. Within the first few months, the percent of narcotic transactions for legacy claimants decreased by 69.5% and it continues to decrease in 2014. What's more, the percent of narcotics transactions for new claimants has consistently remained below 3%, compared to an 18.1% transaction rate prior to legislation.

A collaborative action plan for New York

Clearly New York is a unique and distinctive jurisdiction; few states have the depth or breadth of complexity when it comes to the employer marketplace, legislative challenges or union demands. Nevertheless, there are still significant lessons to be learned from the experiences of other states. Some of the key takeaways include:

- Develop strong, effective statewide provider networks. Utilizing networks of credentialed and quality providers has a significant effect on virtually every area of interest to employers, including lower costs, return-to-work and even employee satisfaction. New York does provide some control – primarily a managed care program that allows for 30-days of provider control for employers in counties that offer the program. However, current use of the program is somewhat anemic. Until other reforms are passed, employers need to revisit the state MCO program and utilize it more fully.
 - Steer employees to the top networks and the top providers within those networks. It is not enough to simply build a network. Steps must be taken to ensure employees are aware of who the top providers are as well as how, and when to access. Employers should monitor to ensure optimal utilization and intervene if needed.
 - Ensure that laws and rules are consistently applied so that employers can better plan and predict costs. Employers note that one challenge they face in New York is ongoing inconsistencies in how rules are applied, resulting in higher payouts and determinations of permanent disability for some – but not others. Such findings make it difficult for employers to set aside needed funds. California had similar experiences prior to 2004, yet reform efforts have addressed this issue resulting in greater consistency for employers and greater fairness for employees.
- Create an environment of competition based on quality workers' compensation provider options for employers. Texas has never required employer participation in workers' comp programs. However, by 1989, amid growing public complaints about high insurance costs for employers and low benefit rates for injured workers, the Texas legislature adopted the Texas Workers' Compensation Act. Participation remained voluntary – employers could opt out, but would be subject to civil action. To encourage participation, workers' comp programs worked diligently to create attractive and cost effective solutions. The result was greater competition and higher participation in the state program.
 - Consider labor-management carve-outs. About 10 states enacted laws in the 1990s that permit collective bargaining over a defined range of workers' compensation benefits, selection of provider, and dispute resolution (such as mandatory arbitration). The programs are variably called – collectively bargained workers' compensation agreements – or more simply – alternative dispute resolution agreements. New York enacted such legislation in 1995; use is still rare, but in cases where it has been implemented the results have been promising.
 - Understand the employee's perspective and goals. A key challenge in states that allow provider control is securing employee support and buy-in. Employees want choices, fair compensation, assurances their employer will protect them if injured and most want to get back to their job quickly. Highlighting the benefits of quality networks, creating programs with employees in mind, as well as frequent communication and collaboration directly with workers will help to generate greater dialogue and support for reform efforts.

A call to action – a promise of support

Employers in many states, including Texas, Florida, California and Oklahoma, have formed employer coalitions to support legislative changes that will improve workers' compensation for all. Typically, these organizations, working with other businesses, local chambers of commerce and employer groups, create an agenda for change and work to develop the legislative and public support for those issues. New York has the same opportunity to have a more effective impact on the quality of healthcare and control costs more efficiently through collaboration with all constituents.

New York must tackle this complicated and multi-faceted issue one step at a time. But it can be done, as evidenced by results from California, Texas and other states.

At Sedgwick, we are here to support our customers with operations in New York, as well as other employers and even competitors in efforts to help improve the workers' compensation system. We have played a pivotal role in supporting coalitions in several states that have been able to develop a new collaborative approach to workers' compensation reform efforts.

New York is clearly interested in transforming its workers' compensation system. The stepping stones are in place. There is more to be done and it will take a concerted effort from all. We encourage employers to work together to form coalitions involving all industries, union representatives and chambers of commerce. We urge all parties to go beyond narrow special interests, to truly listen to the concerns of others and to keep the focus on what is best for employees, employers and all the people of New York.

Sources and citations:

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- 9 Texas Dept. of Insurance. Workers Compensation Research and Evaluation Group. Insurer Carrier Formulary Closed Formulary Data Call Results on Legacy N-Drug Claims as of August, 2013



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