NCSI Scoop
NATIONAL COUNCIL OF SELF-INSURERS
Q3 2019

Once again, California is making news!

As the 2019 legislative calendar closed last week, the California Legislature passed AB 5 which is a bill that will grant employee status with all related benefits to a variety of contract workers in the state. The bill outlines the test as established by the California Supreme Court decision in *Dynamex,* to determine when workers should be deemed employees versus independent contractors.

Those in the gig economy have been very closely following this issue as they have based their business models on the platforms of independent contractors which removes issues such as minimum wage, work comp coverage and health care benefits.

Of interest is that AB 5 has several statutory exemptions from the test outlined in Dynamex. The list includes attorneys, architects, construction sub-contractors, service providers and certain medical providers. As reported by Workers' Comp Executive, the bill is widely seen as a major victory for organized labor. The new law is expected to upend many industries around the state, including thousands of small businesses, franchises and owner/operators in the trucking industry.

This bill was signed by California Governor Gavin Newsom on September 18th and it is expected to impact up to a million workers in the state. In his signing statement, Governor Newsom stated "The hollowing out of our middle class has been 40 years in the making, and the need to create lasting economic security for our workforce demands action," Newsom wrote. "Assembly Bill 5 is an important step. A next step is creating pathways for more workers to form a union, collectively bargain to earn more, and have a stronger voice at work — all while preserving flexibility and innovation."

There are already plans to launch a ballot initiative to exempt certain companies from AB 5…so it remains to be seen how this will play out!

For more information on AB 5 and the actual language of the bill, click here.

Melisa Yopp joins the NCSI Executive Committee

Melisa Yopp, Director of Workers' Compensation and Network Development at Tyson Foods, has joined the Executive Committee of NCSI acting as a self-insured employer representative.

Melisa has nearly 22 years of experience with Tyson acting as the Senior Workers' Compensation Specialist until she was promoted to her current role in 2010. Prior to joining Tyson Melisa was Director of Nursing – Long Term Care at Baptist Memorial Hospital

Melisa has an ASN in Registered Nursing from Union University, a BA in Healthcare Administration from Graceland University and a JD from University of Arkansas School of Law in Fayetteville.

We look forward to Melisa bringing a lot of energy and knowledge to the Executive Committee and welcome her with open arms!

WHAT'S NEW

Innovation Helps in Return-To-Work Strategies

Okay…maybe this is not so "new", but it bears repeating. As we all know, successful return to work is key to controlling costs on workers' compensation claims…but to have a true impact, progressive strategies must be in place.

As reported in Risk and Insurance, injuries and accidents have a lasting impact on a person, especially when they happen on the job. Work-related injuries not only affect the health and wellness of a person but also their livelihood. What happens, then, when an injury keeps a worker from returning to the job?
Data shows that three months after a disabling injury, the likelihood of a worker ever returning to work is around 90%. That probability drops to 32% at one year and even lower to 5% at two years. Time is not on the employee's side when it comes to disability, and the health consequences to the individual can be significant.

Enter the company's return-to-work strategy. To see how you can implement a successful and innovative return to work program read here.

MESSAGE FROM PHIL & JILL

I have to wonder why so many employers choose to no longer participate in workers' compensation educational forums or associations. Workers' Compensation associations, like this one or other state self-insurance associations, are interesting as to how and why they were formed and their status today. Decades ago, these self-insured associations were created and managed by self-insured employers that were actively engaged in their workers' compensation programs. Employers created these associations to enable them to network and learn from one another…they would invite subject matter experts to their meetings to discuss critical case law matters or legislative changes. Many of the state self-insurance associations are managed by individuals, like Jill Dulich at NCSI and myself in California, that truly understand why employers need to be engaged and what happens when they are not engaged and often don't understand the most basic questions to ask the company that is managing their program.

Over the years it seems that employers have 'lost interest' in workers' compensation matters for a variety of reasons. In the almost 40 years that I have been involved in workers' compensation I have never seen a valid reason as to why an employer chose not to be involved in their workers' compensation exposure, with the usual reason being, "this is not our core competency". While it may not be your core competency to process claims, it is your responsibility to educate yourself on the ins and outs of what your company is spending millions of dollars for on workers' compensation matters.

I urge you to reach out and participate in your local self-insurance association and the National Council of Self-Insurers. Not participating is like not voting and expecting those that do vote will do so in your interest. Please participate and continue the tradition of employers actually being engaged in the process. ***Phil Millhollon, NCSI President***

As summer slowly fades into the sunset, we look forward to a wonderful autumn and the holidays rapidly approaching! Is it just me or do they seem to come a little faster each year? Well, so much for dreaming of sugar plums and candy canes…back to work!

You will note that there is an article this quarter regarding MSA management in the NCSI Scoop. There will be another excellent article next quarter that will outline necessary vendor types that will be a can't miss read! That is because this continues to be a driving challenge in the workers' compensation arena. I am pleased to advise that NCSI is working in partnership with NAMSAP on drafting language for submission to CMS regarding criteria around review of $0 MSAs.

At last year's NAMSAP Conference, Steve Forry, CMS's Director of MSP Operations, indicated his interest in discontinuing CMS review and approval of $0 MSAs in denied claims (CMS already has a policy on criteria for a $0 MSA based upon resolved medical treatment). NAMSAP advised CMS that a mere discontinuance of such reviews without providing criteria for when Medicare's interests have been appropriately considered in these denied cases would leave parties uncertain as to whether the compromise settlement indeed appropriately protected Medicare's interests. Mr. Forry asked NAMSAP to draft a proposal for their review which would lay out such criteria. The draft language is currently in its' second iteration and the final language is expected to be completed by year end 2019.

This will create a standard framework within which CMS and all claims administrators can work and NCSI will publish the criteria once is has been finalized. We may be calling on members to do some grassroots work to insure adoption by CMS. Thank you in advance for your assistance. ***Jill Dulich, NCSI Executive Director***

MSA Amended Reviews Promote Case Closures

Two years ago, CMS rolled out a policy that enabled submission of a new Medicare Set-Aside even if an MSA had previously been approved. The purpose of this "Amended Review" is to provide parties who have not settled an opportunity to update the MSA to better reflect the anticipated future medical care (Note, an Amended Review is voluntary, thus parties can still settle with an approved MSA from years ago, even if it no longer accurately reflects anticipated future medical care).

Pursuant to the CMS WCMSA Reference Guide, a one-time request for an Amended Review may be made if the following criteria are met:

- CMS issued a conditional approval/approved amount at least 12 months--but no more than 48 months--earlier.
- The case has not settled as of the date of the request for re-review.
- Projected care changed so much that the submitter's new proposed amount would result in a 10% or $10,000 change (whichever is greater) in CMS's previously approved amount.

Keep in mind that just the absence of recent medical care will typically be insufficient to obtain a modification to the MSA. Updated medical records or treating physician statements supporting a change in treatment and/or medications are critical to ensuring CMS will agree to the amended MSA.

When the MSA is successfully amended, settlement of medicals in the case often follows.

Daniel M. Anders, Esq., Chief Compliance Officer, Tower MSA Partners

Tower MSA PARTNERS
Measurably Better

Safety council launches toolkit to combat opioid abuse

As reported in Business Insurance**,** the National Safety Council has launched a toolkit to help employers address the opioid crisis, the nonprofit announced Wednesday.

In February, the NSC released a survey indicating that 75% of respondent employers said they had been directly impacted by opioid misuse, but just 17% said they were well prepared to address the issue.

The Opioids at Work Employer Toolkit, available on the NSC website, provides information for employers to help them identify the warning signs of opioid misuse and recognize signs of employee impairment. The toolkit also comes with strategies to help employers educate workers on opioid use risks, and develop drug-related human resources policies, as well as information on how to support employees struggling with opioid misuse.

The NSC also partnered with Lake Forest, Illinois-based Stericycle Inc. in the development of the toolkit, and offers Stericycle's medication mail-back envelopes to employers, which allow workers to dispose of up to 8 ounces of unused or expired drugs by sealing them in the envelope and dropping them in any mailbox.

To learn more click here.

NCSI Board of Managers Member Denise Evans of Staffmark talks Transparency in PBMs

Pharmacy Benefit Manager Programs…Most employers just want a program to save them money and provide quality customer service for their employees. The big question is how to make sure your Pharmacy Benefit Manager (PBM) is doing just that. Employers are starting to realize their PBM programs are not transparent and they are not happy about it for a very good reason. It's time we educate ourselves on how to make sure we have the most cost-effective program without losing the customer service qualities we need for our claimants; as well as the ease our claims adjusters require.

My education started out in a presentation where rebates were suddenly brought to our attention. Finding out that pharmacy benefit management companies were receiving drug manufacturer brand rebates all these years and were not being transparent in disclosing those rebates to their clients was enlightening to say the least. Nor were they providing any details on the amounts or types of rebates they were receiving. After thinking back to the different PBM discussions I sat in at conferences, I cannot remember anyone ever mentioning brand rebates until lately. Was I not paying attention? Did I happen to fall asleep?? Nope, I don't think so--since about a week after I learned of the rebates I ran into another large national employer at the airport and when this topic came up, he also said he was just hearing about this and had never heard of it before. Interesting…. where have all of those rebates been going?? I don't know about you but in my mind a portion of those rebates should be credited back to the claim. So right away, we knew this BPM presentation was different--they actually informed us of the rebates and since they work to obtain them, we would just pay them a percentage of the recovery. Sound familiar?? Isn't that what TPA's do when it comes to subrogation recovery?

While researching this subject, I recently read an article by a PBM and was amazed at the backtracking they are doing trying to justify not informing us all along. It seems some PBM's actually have stated it would be hard to process refunds to clients after months have passed since it would not benefit the employers because it creates a negative impact on their workers' compensation duration analysis. Say WHAT?? It doesn't matter how long it takes to get the rebate check: six months, a year, who cares? It only takes an adjuster two seconds to apply the rebates directly to the claim file and—bingo-- bring down the average cost of our claims. I would have to wonder about any PBM who is going around stating that is the reason they never provided them in the past. Clearly, they do not understand workers' compensation!

Only the Third Party Administrators (TPA's) care about claim durations as it allows them to have adjusters work more claims files and the TPA can have less adjusters. The mistake is not realizing employers care about the bottom line! Employers collect recoveries and reimbursements all the time, even after the claim has closed. Subrogation recoveries can take years to obtain. Do they not know workers' compensation claims have a very long financial tail? Shouldn't rebates all along be handled just like subrogation? This employer says "yes" and when we receive our rebate checks that is exactly where they get credited - right back on the claim file--open or closed it really doesn't matter.

Enough about rebates, let's tackle the other aspect of pricing. This employer prefers transparency. How anyone could ever state transparency is not the way to go is surprising to me. Staffmark now receives direct network pricing on all prescriptions as well as the shared rebates. Our medication fees and administrative fees are kept separate so all costs are transparent and understandable. No more talk about "spread pricing". When PBM's talk about how, with a spread model, it's up to the PBM to negotiate better pricing. I feel this leaves employers completely in the dark on actual costs, since we never really know what they have negotiated. At least with our bill review companies they share what was negotiated and once again we share in the percentage of savings with them. Why continue to allow PBM's to operate completely differently than all of the other savings programs workers' compensation departments have in place? Maybe if employers had demanded pricing transparency sooner, we would not have been so surprised by this.

Our PBM provides us with details showing exactly what our PBM paid the pharmacy. No hidden fees or costs. We pay a small administration fee for generic drugs only. Our data shows we are obtaining 22% more savings with this pricing model than our previous PBM. An added bonus was the jump we saw with in-network penetration generated by their real-time processing due to the extensive national and local pharmacies they have in their system. A surprise benefit they provide is the ability to take an out of network bill and reprocess the bill in network for additional savings.

Employers today are looking for every amount of savings they can obtain and should demand transparency when it comes to their workers' compensation programs. Are you obtaining the best savings possible on yours? We made the switch and now we can see the savings and rebates impacting our average costs of claims. ***Denise Evans, Staffmark, Director of Claims,*** Denise.evans@staffmark.com

Staffmark Group

Arizona Self-Insurers Association continues to fight the good fight!

Although the Arizona Legislature doesn't start until January, the Arizona Self-Insurer's Association (ASIA) has been battling several fronts with presumptions, laws and proposed changes in the claims process.

There has been quite a fight with the current firefighter cancer statute over the past several months. Enacted in 2001, the firefighter presumption statute has been amended several times to expand the types of cancers included and the process by which claims are accepted. This spring, the media began a full-court press highlighting several cases that were denied by the employer. This attention caught the eye of both the Arizona Governor and the Attorney General, with the latter sending two publicized letters to the Industrial Commission admonishing them for their handling of these denied claims. We anticipate several bills in the Legislature on this issue allowing for full acceptance of all cancer claims presented, with a possible retroactive date going back to 2017. ASIA is currently working with several insurance and industry groups to look at alternatives to fill the perceived gaps with the existing statute. However, since 2020 is an election year and this issue is getting continual media exposure (both the largest state newspaper and several TV stations), we anticipate the criteria for accepting cancer claims will become quite liberal.

Arizona has recognized mental claims since 1980 with an 'unusual, unexpected or extraordinary' standard. Law enforcement has attempted to negate this standard and pass PTSD presumption laws for the last several years - 2020 may be the year one will finally go through. Two years ago, business and labor compromised, in lieu of a presumption bill, and Arizona implemented the first 'traumatic event counseling' statute in the country. This language created a preventative program that allows for expanded counseling services with no out of pocket expenses for the employee. Last year, the number of allowed visits was increased, and requirements were placed for employers to report the number of employees using the program by August 30, 2019. This information will be provided to the Legislature and the Governor's Office before October 1, 2019. We anticipate this data will be used to support a PTSD presumption law for first responders in January. The media has picked up on this issue as well and has been running continual stories regarding officers with denied PTSD claims. ASIA has been meeting with members of the Legislature and other stakeholders to look at potential reasonable alternatives.

There are several additional rumors regarding potential legislation, including how Independent Medical Evaluation (IME) doctors are selected and limits on physicians distributing medications from their office. ASIA has been meeting with the Industrial Commission and stakeholders throughout the summer to come up with solutions on these issues. The ASIA Board has also been hard at work preparing for their annual statewide conference on October 24, 2019, as well as the golf tournament on November 15, 2019. For more information on ASIA or the 2019 ASIA Conference, please visit our website at www.azselfinsurers.org. If you have questions or wish additional information on legislative issues, please contact the ASIA Lobbyist, Russell Smoldon at rsmoldon@b3strategies.com or Susan Strickler, President at susan@aciponline.org.

CALENDAR OF EVENTS

For more information on these and other upcoming evening, please visit www.natcouncil.com.

OCTOBER 7 | California Self Insurers Association 2019 Employer Summit, 8:30 am – 4:45 pm, San Francisco Airport Marriott Waterfront, 1800 Old Bayshore Highway, Burlingame, CA 94010

OCTOBER 16 | Michigan Self Insurers Association 2019 Fall Conference, 8:00 am – 5:00 pm, Laurel Manor, 39000 Schoolcraft Road Livonia, MI 48150

OCTOBER 24 | Arizona Self Insurers Association 2019 Annual Conference, 8:00 am – 4:00 pm, Pera Club, 1 E. Continental Dr., Tempe, Arizona 85281

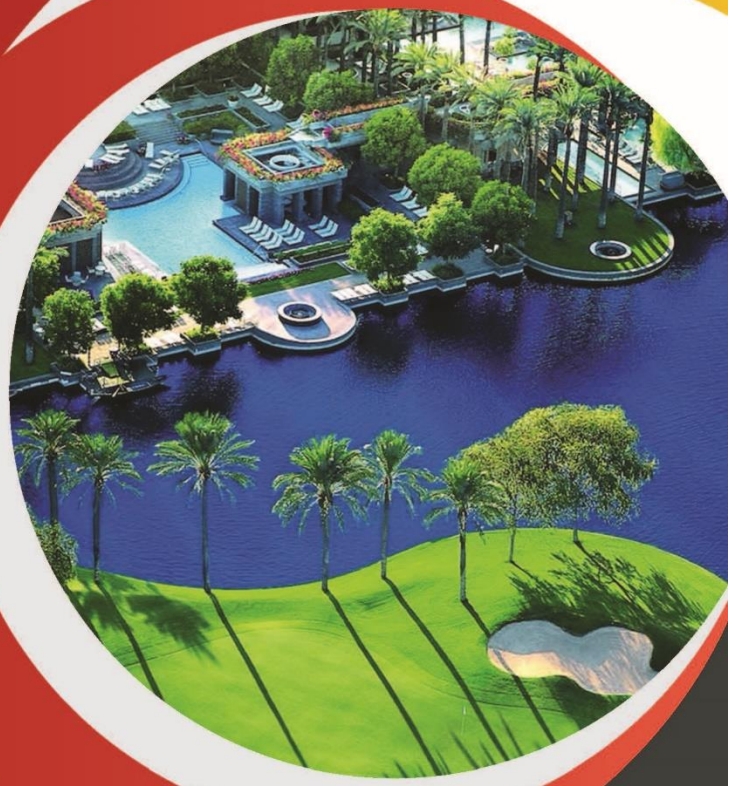
OCTOBER 24 & 25 **| Workers' Compensation Association of Nebraska Symposium**, 8:00 am – 5:00 pm, Embassy Suites, 1040 P Street, Lincoln, NE 68508

OCTOBER 30 | Georgia Employers' Workers" Compensation Association Fall Conference, 8;15 am – 3:30 pm, Shepherd Center, 2020 Peachtree St NW, Atlanta, GA 30309

DECEMBER 10 & 11 | Virginia Self-Insurers Association 2019 Annual Meeting, 8:00 am – 5;00 pm, The Williamsburg Lodge, 310 South England Street, Williamsburg, VA 23185

NCSI
NATIONAL COUNCIL OF SELF-INSURERS

Meet Us at the Oasis...



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NCSI 75th Annual Conference

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