

NCSI goes virtual !



As we have worked to navigate through these trying times, the NCSI Executive Committee decided that we should jump into the virtual world and continue to provide the outstanding education that we have been known for. Our first foray was a webinar that we held on May 21st and we hope that those of you who attended enjoyed this webinar that we did on national issues surrounding the COVID 19 pandemic which was presented by Max Koonce and Buz Minor. There was terrific information presented including this [link](#) to the Sedgwick Workers' Compensation Reference Guide on COVID-19 compensability. In addition, Buz provided this very useful [link](#) to the Cleveland Clinic report on creating a safe workplace after COVID 19. Both are invaluable tools.

Sadly, as we previously advised in our NCSI Alert, we made the very difficult decision to cancel the in-person Annual Meeting that was scheduled to be held August 5-8 in Scottsdale, AZ. We were especially disappointed since the Program Committee worked so hard to create an agenda that was exciting and cutting edge. I would like to thank the committee for their amazing efforts.

But...the good news is that we are moving 8 of the 13 sessions to a virtual webinar series that you can all enjoy from the safety and comfort of your home or office. Thanks to our speakers that agreed to present in this virtual world and additional thanks to the balance of our speakers who agreed to be moved to our 2021 program.

We will be providing a series of eight sessions, with each session containing 2 presentations. We will kick off our first session on September 22nd and it will include Max Koonce of Sedgwick speaking on the transformation to the claims process and David Duden of Origami Risk sharing how Analytics meets Nudge Theory. Both of these presentations will be amazing and you will not want to miss them!

We are working with our presenters to confirm all of the dates for the sessions and below is the schedule that you can look forward to:

- Session 1 *September 22, 2020 9:30am – 11:30am PST*
 - Transformation to the Claims Process – Max Koonce
 - Analytics meets Nudge Theory – David Duden and Henry Svendblad
- Session 2 *October 8, 2020 9:30am – 11:30am PST*
 - New Cost Driver Frontier – Joe Paduda
 - Managing Vendor Relationships – Catherine Puls

- Session 3 *November 3, 2020 9:30am – 11:30am PST*
 - Behind the Curtain of the MSP Industry – Ben Basista and Michele Hibbert
 - Managing a Successful MSA Non- Submission Program – Jake Reason
- Session 4 *December 1, 2020 9:30am – 11:30am PST*
 - When your Excess Carrier Fails you – Al Haverkamp
 - Obtained legally, Leveraged Wisely – Dalene Bartholomew, Joanne Thomas, Debbie Ehsan

Please be aware that these dates may be subject to change. As we confirm the schedule, we will send out an Alert that will include dates and prices as well as a link for registration. You will have the ability to select each session as an “ala carte” or you can purchase the entire series. The presentation materials will be provided to all attendees immediately following the conclusion of the sessions.

And to end our year, we will conclude with a virtual social hour in early December! We will have a New York Mixologist demonstrating hosting ideas as well as showing us how to make those much-needed special holiday drinks! This will be available **ONLY** to those that attend the webinars either individually or as a series and will be free of charge. What a great way to start your holiday season and end 2020!!

Watch for more news as we move into the virtual world and we hope to see you there!

WHAT'S NEW

Workers' Compensation Prescription Drug Regulations: A National Inventory, 2020

On June 16, 2020, the Workers' Compensation Research Institute released their report on prescription drug regulations. As they report, across the country, states are grappling with an array of different regulatory strategies, overseen by different agencies, to address drugs prescribed to workers for their injuries.

This report provides policymakers and system stakeholders with a basic understanding of the different strategies adopted by all 50 states and the District of Columbia, and points to the regulations for those seeking more detail.

It also provides information on some of the most prominent prescription drug issues stakeholders are concerned about today, such as the following:

- Rules for Limiting and Monitoring Opioid Prescriptions
- Medical Marijuana Regulations
- Workers' Compensation Drug Formularies
- Prescription Drug Monitoring Programs
- Price Regulations for Pharmacy- and Physician-Dispensed Drugs
- Drug Testing Regulations

As Business Insurance states, the report found all but six states have limits on how many opioids can be prescribed and for how long. All but one state has in place a statewide, mandated prescription drug monitoring program; Missouri made its PDMP optional, but data shows that 80% of the state's population lives in a municipality that keeps track of prescriptions, according to the report.

While most states have in place prescribing guidelines, only 15 have drug formularies, or approved drug lists, for workers compensation, according to the report.

The report also shows a lag in drug abuse treatment options, as only 17 states definitively include “mental health services” for “drug rehabilitation” in workers comp statutes.

The tables in this report were compiled from completed surveys of two agencies for each of the 50 states and the District of Columbia as of January 1, 2020.

You can purchase or, if you are a member of WCRI, can review the report [here](#).

Research Questions:

- What strategies is my state using to limit and monitor opioid prescriptions?
- How are states regulating uses of medical marijuana?
- Which states have adopted a drug formulary for workers' compensation?
- Across the nation, how different are workers' compensation maximum prices?
- Which states allow physicians to dispense prescription drugs?

Workers' Compensation Prescription Drug Regulations: A National Inventory, 2020. Karen Rothkin with the assistance of Elizabeth Hopkins. June 2020. WC-20-26.

Federal Lawsuits by AGs, Cigna Charge Widespread Generic Price Fixing

As reported in [WorkersCompensation.com](#) and [workcompcentral.com](#), civil lawsuits were filed last week by 50 states and Cigna alleging 26 drug makers, along with 10 individuals, conspired to fix pricing on generic drugs going back to 2016. According to a report from STAT, the suit is the third case that has been filed against the drug makers by state attorneys general. The suit has been filed in Connecticut, and Cigna's lawsuit has been filed in Pennsylvania.

Most states' workers' compensation laws now require that generic versions of medications be used when possible, a way of shaving costs for insurers and employers. But those generic drugs may not have been as low-priced as they should have been, according to two federal lawsuits — one backed by attorneys general in all 50 states — that were filed last week. Both allege that dozens of pharmaceutical companies engaged in price fixing.

The complaint filed in U.S. District Court in Connecticut states that collusion has been rampant among manufacturers of generic topical creams for years.

A separate suit, filed in the Eastern District of Pennsylvania by Cigna, the global insurance company, charges that some of those same companies and others conspired to rig bids and vastly inflate prices in violation of federal antitrust laws. More than 130 medications were listed in the suit, including antibiotics and pain relievers often prescribed for injured workers.

The suits could have significant implications for workers' compensation insurers and self-insurers, and suggest that carriers have been paying too much for generic meds for years, said Brian Allen, vice president of government affairs for Mitchell International, the claims management and software company.

“Collusion on pricing at the manufacturer level would impact all of us, including states with fee schedules,” he said.

Because most states' workers' comp fee schedules are based on average wholesale prices, artificially setting prices and reducing competition “will inflate any cost basis used to determine reimbursement, since the manufacturer price is the organic starting point for all of the reimbursement determinations that follow through the supply chain,” Allen said.

You can read the entire WorkersCompensation.com article on the WorkersCompensation.com website [here](#). You can also read the entire workcompcentral.com article [here](#) on the WCC website. There are links to both articles in the email that we sent with this newsletter.

MESSAGE FROM PHIL & JILL

Well, we hoped that we'd be able to have our annual conference but, as Jill has already mentioned, you know that it has been cancelled. The social distancing aspect of the conference would have been a challenge. The conference room would have been increased to a football field sized room and the hospitality suite may have resembled a drive through window...but we would have pushed through somehow. And, maybe our provider partners would tour the hotel in golf carts to let us know about their services, or better yet have a company sponsor each hole and have a table of information and some beverages at each tee box...ah yes, very different times.

And now we will be zooming our way forward with Zoom Webinars, and they will be great. The Education Committee has spent quite a bit of time discussing which sessions are the most relevant and Jill has worked with the speakers to determine those that are able to convert to a webinar format. I would like to thank Kris Tefft with the Washington Self-Insurers Association for his valuable insights gained from his "cyber conference" at WSIA and assisting with NCSI hosting a series of webinars in place of our in-person conference.

Be sure to watch for our Webinar announcements, and I hope that many of you will be able to participate. Educating the workers' compensation community is still a priority for NCSI and we believe the Webinars will fill that while we look forward to getting together again. Until we meet again, I hope that you are able to enjoy the summer weather and get out in some fresh air and exercise. We could all use a break. *Phil Millhollon, President*

I was so looking forward to getting together with everyone and enjoying the camaraderie and networking that the NCSI Annual Meeting has been known for over the past many years as well as enjoying the wonderful venue that the Executive Committee had selected. But alas, that was not meant to be.

The NCSI is comprised of leaders in our industry, and with that leadership comes responsibility. After careful consideration of current circumstances related to COVID19, we have made the difficult but responsible decision to cancel the 2020 Annual Meeting in-person conference in support of the health and safety of our expected participants. Canceling the conference was in the best interest of our member's and supporter's well-being and we felt we had no choice.

The effort to keep business going in the middle of the pandemic has been huge. I personally feel we have all learned we could do things differently, and still get our jobs done. Lots of emergency orders and directives have been issued as well as creative thinking, allowing these changes in procedures and new ways to make things happen. As we return to the new normal, the bad news is that the conference can not be held in person.

But with the advent of amazing technology and a little knowledge on the part of the NCSI staff (me 😊), we are pleased to announce that with the dedication of our amazing speakers and presenters, we will be offering select sessions as a webinar series which we will produce and distribute throughout the remainder of the year. This way our members will still receive a fantastic education from industry experts. The webinar series will include 8 of the 13 sessions that are on our agenda! We are very excited about continuing our educational efforts and hope that you will be able to join us for most, if not all, of our sessions!

I cannot wait until we can all be together again and we will see you LIVE and IN PERSON in Denver next June 5 – 9. You won't want to miss this event as we will be celebrating the 75th anniversary of NCSI! AND we will be returning to the planned venue of the Hyatt Regency Scottsdale Gainey Ranch June 13 – 16 in 2022 so get that on your calendar now! See you soon!! *Jill Dulich, Executive Director*

UWC reports on the Comments that Were Filed on CMS Proposed Civil Monetary Penalty Rules and When Will CMS Respond?

Doug Holmes, of UWC, reports that many comments were submitted in response to proposed rules released by the Centers for Medicare and Medicaid Services (CMS) on February 18, 2020. There has been very little communication from CMS about how it plans to respond to the comments. In checking recently, Doug states that he has not seen anything from CMS on finalizing the rules. He also checked with a number of the TPAs that manage Section 111 reporting and WCMSAs. Nothing being disclosed by CMS – they have been busy with the Coronavirus.

The process of developing rules goes back to December of 2013 with the first rules proposal that was met with a wave of opposition and comments that prompted CMS to reconsider and seek comments in response to the posting in February of 2020. Penalties have not as yet been imposed based on the statutory language. Over 80 comments in total have been submitted primarily from a broad spectrum of insurance trade associations, self-insured employers, TPAs, state funds and individuals. The National Council of Self-Insurers was an active participant in this process.

See comments at this [link](#).

A review of comments shows a number of concerns, including:

- The proposed rules appear to be unconstitutional
- Many commenters requested that the rules be withdrawn
- The rules process did not comply with the Unfunded Mandates Reform Act of 1995
- The statement of impact on small employers was insufficient to meet requirements

Areas of comment also included:

1. A more complete definition is needed detailing situations not subject to penalty
2. Safe Harbors for reporting should be expanded
3. Thresholds for imposition of penalties with respect to timeliness and content of reports should be more flexible
4. The amount of the penalty is excessive and does not fit with the reporting error
5. A contradiction between Section 111 reports and amounts identified in conditional payment recovery should not be errors subject to penalty
6. CMPs should not be imposed retroactively
7. Clarification is needed with respect to appeals procedures
8. There should be expanded use of Telehealth
9. One commenter requested clarification that the CMPs would not apply to Medicare Advantage and Prescription Drug Programs
10. CMS should take administrative notice of reports to other federal agencies (e.g. Longshore)
11. The statute of limitations should be three years

Given the number of comments and the detailed concerns identified it normally would take some time for CMS to respond and file rules in final form. The agency has been focused on the Coronavirus and recent emergency matters that may have taken key staff away from finalizing the rules.

However, the agency is in the position now after completing the rules posting and comment period to move ahead to finalize or withdraw the rules in response to the comments. We hope CMS chooses to withdraw the rules, reaches out more broadly to the stakeholders, and develops rules that take notice of the comments submitted.

COVID Costs



Mark Pew, a frequent NCSI presenter and strong NCSI supporter, is the senior vice president of product development and marketing for Preferred Medical and is a passionate educator and agitator. Mark is a recognized thought leader in workers' compensation and award-winning speaker, blogger, author and jurisdictional advisor. Also known as the RxProfessor, he is focused on the intersection of chronic pain and appropriate treatment, particularly as it relates to the clinical and financial implications of prescription painkillers, non-pharma treatment modalities and the evolution of medical marijuana. He is a strong champion for the industry to #PreventTheMess and #CleanUpTheMess with a specific focus on the BioPsychoSocialSpiritual treatment model.

Mark shares his thought on the true "costs" of COVID 19 below...

The costs of COVID-19 are obvious to those paying attention: more than 122,000 deaths (as of June 22), a historic rise in mental health problems (depression, substance abuse, post-traumatic stress disorder and suicide), more than 45 million newly unemployed people (as of June 18), and a 52.8 percent contraction in second quarter U.S. gross domestic product. Each of those are aggregate numbers with intensely personal stories embedded within them. The term "unemployment" is an unfortunate statistic until you are the one suddenly without a job or a small business owner whose life savings have been lost. As tragic as death is to the individual and those they know - including the healthcare providers that were likely the last faces seen - it is even more tragic when it is someone you know.

Every cost, or more accurately "loss" in this scenario, involves a grieving process. The five steps are denial, anger, bargaining, depression and acceptance. While the above are big issues, the process of grieving encompasses everything, great and small, tangible and intangible. For example: no sports, no in-person church or movie theaters, masks (or not), limited access to friends during shelter-in-place, no handshakes (maybe forever), restricted access to government-defined non-essential services and medical care. It can seem as though your locus of control has been eliminated as normalcy has been upended.

But there is one positive loss to come from this pandemic - the loss of assumption. So much of daily life, both for individuals and businesses, assumes a status quo. While change is constant it is usually incremental as what happened yesterday likely will be repeated today. Some, like sunrise and sunset, are assured even with COVID. But every individual and business has been disabused in 2020 of the idea that what you've always done will always work. In many cases since March, none of what we've always done will work now (and maybe into the future). Those able to move through the stages of grief quickly will find a way to survive, if not thrive, in whatever is to come. Those stuck in any stage prior to acceptance must move on or forever be left behind. In that sense, your locus of control remains as you evolve into the new reality.

In a world full of cost / loss, if we all learn to not assume anything it will be a positive step forward. Let us all act as though there is no such thing as status quo because we now know there isn't.

NCSI member Ben Basista of Dickey McCamey provides part 2 on MSA vendors



Dickie McCamey

ATTORNEYS AT LAW

MSA/MSP Vendor Qualifications; The Industry and Its Professionals

When I am provided the opportunity to stand in a room full of people and present on the topic of Medicare Secondary Payer (“MSP”) compliance, I always make it a point to tell the attendees that the information being provided is “MSP compliance according to me”. I say that, or some version of the phrase, to make sure that nobody thinks that I am trying to represent that my word is the only word on the subject.

The MSP industry is dotted with talented professionals across multiple disciplines. My words are based on my experiences and opinions as a lawyer, MSP professional of almost two decades, and industry voice. However, I fully acknowledge the fact there are other professionals in the MSP industry with slightly different practices and beliefs as how to approach MSP compliance. As a result, I like to give the people attending my lecture about the MSP their deserved respect by not preaching a one size fits all method on the subject. And to be honest, I think that I may just be smart enough and self-aware enough to know that there are things that I may not know.

I signed off of my last article for NCSI: Choosing an MSA Vendor; How and Who, by asking readers to reach out with questions or comments about my opinions, recommendations and conclusions. And to also tell me where I may have erred. I am happy to say that of the three choices, people only reached out with comments. One comment in particular was that mention should have been made about the qualifications that an individual or entity must have to be a Medicare Set-Aside (“MSA”)/MSP compliance vendor/provider.

The commenter was correct in bringing up my omission. Assessing the qualifications of an MSA/MSP Compliance professional could be a pretty important factor for a company in choosing an MSA/MSP Compliance vendor. The answer is short... there are NO baseline qualifications that an individual must hold to prepare an MSA, submit an MSA for approval, or to be generally employed in the MSP industry. Thank you and good night!

Kidding aside, while there are no baseline qualification requirements, per se, there are industry certifications as well as areas of compliance that do demand professional qualifications, even if they are not MSP-specific.

*****Due to the length of this article it has been attached in its entirety in the email that contains this newsletter.**

CALENDAR OF EVENTS

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

SEPTEMBER 15 | California Self-Insurers Association 2020 Annual Meeting and Educational Conference, 7:30 a.m. - 5:00 p.m., Disney Grand Californian Hotel and Spa, 1600 Disneyland Drive, Anaheim, CA 92802, (714) 635-2300

SEPTEMBER 20 - 22 | Missouri Self-Insurers Association 2020 Annual Meeting, 8:00 a.m. - 5:00 p.m., St. Charles Convention Center 1 Convention Center Plaza, St. Charles, MO 63303, (636) 669-3000

OCTOBER 1 | Illinois Self Insurers Association 2020 Annual Meeting, 8:00 a.m. - 5:00 p.m., Chicago Marriott Oak Brook, 1401 W. 22nd Street, Oak Brook, IL 60523, (630) 573-8555

OCTOBER 14 | Michigan Self Insurers Association 2020 Annual Meeting, 8:00 a.m. - 5:00 p.m., Laurel Manor Banquet and Conference Center, 39000 Schoolcraft Rd., Livonia, MI 48150, (734) 462-0770