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PRESIDENT'S MESSAGE

As I write this message for our AASCIF spring newsletter I cannot help but feel some conflict between the natural rhythm of the seasons—the rebirth, growth, and hopefulness that I feel every spring—and the many sources for deep concern that challenge us these days. In today's world, we are more immediately connected and impacted by what is going on someplace else in the world than ever before. There are many forces at work that contribute to imbalance. While our shared corner of the world is workers' compensation in our respective states, a line of insurance that is enjoying an extended period of health and improved affordability for businesses, I am mindful that the relative stability we have enjoyed for the last 10 years is not something we should take for granted.

As I consider how various factors have negatively impacted the affordability and availability of other lines of insurance, I am reminded of one of the critical roles we all play in our respective jurisdiction's workers' compensation systems. One of the many purposes we serve is to help create stability in our workers' compensation markets.

Stability is quite a challenge in today's rapidly changing world. Some definitions of stability actually include concepts like, "the quality of being unchanging." Today, that sounds like a recipe for some rather serious instability! With the speed of change in our environments, and with technology regularly creating new ways to do what we do, our organizations actually need to be excellent at change to maintain our ability to have stabilizing influences on the markets we serve. A better way for us to look at stability is through the lens of physical therapy, an appropriate lens for workers' compensation where the most frequent types of injuries we help people recover from are musculoskeletal. In the world of physical therapy, stability is the ability to control your body during movement. It is the ability to control forces, which might be unbalanced, in order to remain balanced.

When we are fulfilling our purpose, we do exactly that: We move to respond to our market's needs. We adapt to the needs of a changing environment. In the spirit of spring, we regularly begin new growth cycles to meet the needs of our stakeholders; in doing these things, we keep our balance and remember that we are here to help make our respective systems work better. We help make new business possible. We help people recover from unexpected hardship.

Just thinking about these things that we all do, the role that we jointly play in our workers' compensation, helps me get excited about the future. I hope you join me in that enthusiasm!

Vern Steiner, President & CEO of the State Compensation Insurance Fund
AASCIF President



FEATURES From AASCIF

DON'T BE SCARED, BE PREPARED: A PROACTIVE APPROACH TO ENSURING COMPLIANCE WITH THE NEW SECTION 111 CIVIL MONETARY PENALTY RULEMAKING

Co-Authored by Kathy Piunti and Ciara Koba

Submitted by the AASCIF Claims Committee

On December 11, 2023, the final rulemaking that specifies how and when non-group health plan (NGHP) reporting entities will be penalized civilly for failure to comply with Section 111 reporting requirements became effective. This rule was highly anticipated by the carrier community and was a refreshing read for those that had reviewed the original proposed rule. The rule is clear and concise. In sum, the new regulations provide that civil money penalties (CMPs) will only be levied in instances of non-compliance based on timely reporting of total payment obligation to the claimant (TPOC) and assumption of ongoing responsibility for medicals (ORM). Most importantly, the rule will become applicable on October 11, 2024, which means that from that date forward, each responsible reporting entity (RRE) will be held accountable for ensuring that all records are reported timely per the regulation.

The Centers for Medicare and Medicaid Services (CMS) has also made a significant effort to communicate with the stakeholder community via in person meetings, an email question box, question and answer sessions via webinar, alerts, and updates to the NGHP Reference Guide.

“It is refreshing and also reassuring that CMS has made themselves available to the carrier community as we all continue to audit and improve our own internal business processes and procedures to ensure compliance with the Section 111 guidelines,” said Kathy Piunti, who serves as the director of claims for Chesapeake Employers’ Insurance Company, which has worked hard and committed significant resources to ensuring compliance with the Section 111 reporting requirements.

There is a lot of information available to carriers to assist them with proactively ensuring they avoid CMPs. However, it can be overwhelming. We have compiled the best practices and action items that carriers can work through immediately to ensure compliance with the Section 111 guidelines.

Stay Present

It can be very overwhelming to audit thousands of claims for reporting compliance. Therefore, carriers must stay present and focus on what their teams are doing today to ensure compliance. Focus on implementing a seamless compliant workflow and system with appropriate checks and balances. Once this is implemented and operable, carriers can then tackle gaps and deficiencies that may exist in historical or legacy claims.

Run a Mock Audit

Perform a diagnostic review of your claims processes, systems, and features to ensure that your system is set up for success. Independent diagnostic reviews in coordination with carrier input on risks and known exposures can make a huge difference in the long-term success of any Section 111 reporting program.

Follow up the diagnostic review with claim remediation to ensure that the carrier is insulated from CMPs and any contingent liabilities associated with unpaid conditional payment obligations to traditional Medicare, Medicare Prescription Drug plans, and/or Medicare Advantage programs.

Implement a Quality Assurance Program

Ensure that quality assurance is a key part of your compliance program. Ensure that annual maintenance and updates are done on your system technology. Additionally, ensure that training programs and updates are available to your team members.

Finally, a proactive approach should help to reassure carriers that they are on the right path to full compliance and avoidance of CMPs. If you have any questions about how to implement these best practices, or would like to speak with Kathy Piunti or Ciara Koba more about these strategies, please reach out to info@allankoba.com.

EMBRACING THE FUTURE: THE RISKS AND REWARDS OF AI IN COMMUNICATIONS AND BRAND MANAGEMENT

By Mindy Carrothers

Submitted by the AASCIF Communications Committee

In the dynamic world of corporate communications, artificial intelligence (AI) is transforming how businesses interact with their audiences. AI technologies such as chatbots, content generation tools, and sentiment analysis programs are becoming fundamental components in enhancing communication strategies.

These tools are particularly relevant in sectors like ours, where timely and effective communication is paramount. At Pinnacol, we've found that integrating AI into communications and brand management opens exciting possibilities to improve efficiency and customer satisfaction as we also learn to navigate the associated challenges that come up.

Rewards of AI in Communications

Enhanced Customer Experience:

AI can significantly boost the customer experience. Chatbots, for instance, ensure 24/7 availability, offering instant responses to customer inquiries that might require longer wait times. Additionally, AI's capability to analyze customer data allows for personalized content and recommendations, creating a more tailored experience that anticipates customer needs. By automating routine tasks, AI frees up customer experience and communications professionals to focus on more complex issues, thereby increasing productivity and enhancing the quality of customer interactions.

Improved Efficiency:

Internally, AI can streamline processes and enhance productivity. Tools equipped with AI can summarize lengthy documents and reports, accelerating content creation and decision-making processes without compromising on detail. AI also improves knowledge management within the company, organizing vast amounts of data and making it easily accessible to employees. AI-powered translation tools can remove language barriers, fostering a more inclusive work environment.

Data-driven Insights:

AI tools excel in processing large volumes of data to extract valuable insights. Through sentiment analysis, it can help gauge customer sentiment from interactions and feedback, identifying trends and areas for improvement. Predictive analytics enable the ability to anticipate customer needs before they become pressing issues, an effort to improve retention and satisfaction proactively.

Risks of AI in Communications

Bias and Fairness:

One of the significant challenges with AI is the risk of perpetuating existing biases. AI systems learn from large datasets; if these data contain biases, the AI's decisions will reflect them. Implementing monitoring and mitigation strategies to ensure fairness and objectivity in AI-driven communications is crucial. Using AI alone without a communications professional may result in different messaging outcomes than intended.

Misinterpretation and Mistrust:

Transparency is essential when deploying AI tools. Customers should be aware when interacting with a chatbot rather than a human. This clarity helps manage expectations and builds trust. Users could misinterpret AI-generated responses, potentially leading to mistrust in AI capabilities and the brand.

Privacy and Security Concerns:

The extensive data required to train AI systems can pose significant privacy and security risks. It's important to have robust security measures to protect sensitive information and comply with data protection regulations to maintain customer trust. Organizations should establish guidelines for the secure, responsible, and ethical use of AI tools and ensure compliance with data privacy regulations, company policies and the organization's core values.

Job Displacement Potential?

While AI can automate many tasks, there is concern over job displacement within the communications sector. Using AI as a tool that augments human capabilities rather than replacing them is an important part of an organization's policy. Offering retraining and upskilling opportunities can help employees transition into more strategic roles, thereby mitigating the impact of automation.

Responsible AI Implementation

The appropriate teams at your organization should work together to ensure AI is implemented responsibly. Some factors to consider include:

Clear AI Governance:

Developing clear internal guidelines for ethical AI use is essential. Organizations should establish transparent policies on how AI is utilized in communications, ensuring all stakeholders understand the tools' purpose and scope.

Human Oversight:

Incorporating a human-in-the-loop approach is crucial, especially in handling sensitive interactions. Systems should flag unusual AI behavior or decisions for human review, ensuring that AI enhances service quality without compromising it.

Focus on Augmentation:

AI is a tool that enhances rather than replaces human capabilities in communication. Continuous employee training ensures that the workforce can effectively leverage AI technologies.

AI offers significant opportunities to enhance communication strategies for communicators and marketers. While the benefits are substantial, it is crucial to approach AI integration thoughtfully and responsibly, recognizing potential risks and continuously adapting to new developments. With careful implementation and ongoing commitment to ethical practices, AI can significantly enrich how we communicate with stakeholders, setting a standard for innovation and efficiency for communicators.

GENERATIVE ARTIFICIAL INTELLIGENCE (AI) AND THE THORNY INTERSECTION WITH COPYRIGHT LAWS

By Tim Wahlin, Chief of Injury Services, North Dakota WSI
Submitted by the Law Committee

In the ever-evolving realm of technology and creativity, the intersection of copyright law and generative artificial intelligence (AI) has sparked a heated debate. With the proliferation of AI-generated content, from artwork to music, questions surrounding copyright infringement, fair use, and derivative works have become increasingly complex. This article explores the dispute and legal issues surrounding the use of copyrighted materials in generative AI creations.

The Rise of Generative AI

Generative AI refers to algorithms that produce original content, often mimicking human-like creativity. These algorithms analyze vast amounts of data to learn patterns and generate new outputs. While generative AI has led to groundbreaking innovations in various fields, its use in generating content raises significant legal questions.

Copyright Basics

To understand the conflict, we first must confront a basic understanding of copyright law. Copyright is a form of intellectual property law that grants creators exclusive rights over their original works, including literary, artistic, musical, and other creative expressions. These rights typically include the exclusive rights to reproduce the work, distribute copies, perform or display the work publicly, and create derivative works based on the original.

The purpose of copyright law is to provide creators with incentives to produce new works by granting them control over the use of their creations. This control allows creators to benefit financially from their works and protects them from unauthorized exploitation by others.

Fair Use Doctrine

The fair use doctrine is a crucial aspect of copyright law that allows for the limited use of copyrighted material without the copyright holder's permission. Fair use is considered a defense against claims of copyright infringement and is codified in the

copyright laws of many countries, including the United States.

When determining whether a particular use of copyrighted material qualifies as fair use, courts typically consider four primary factors:

1. **Purpose and Character of the Use:** This factor examines how the copyrighted material is being used and whether the use is transformative. Transformative uses involve adding new expression, meaning, or value to the original work, rather than merely copying it verbatim. Courts often favor transformative uses, such as commentary, criticism, parody, or scholarship, when assessing fair use.
2. **Nature of the Copyrighted Work:** This factor considers the nature of the copyrighted material itself. Works that are more factual or informational in nature, such as news articles or scientific research, may be more likely to be deemed fair use than highly creative or fictional works.
3. **Amount and Substantiality of the Portion Used:** This factor examines the quantity and significance of the copyrighted material used in relation to the work as a whole. While using a small or insignificant portion of a copyrighted work may weigh in favor of fair use, using the "heart" or most essential parts of the work may tilt the balance against fair use.
4. **Effect on the Potential Market for or Value of the Copyrighted Work:** This factor assesses the impact of the use on the market value or potential market for the copyrighted material. If the use of the copyrighted material harms the market for the original work or the copyright holder's ability to profit from it, fair use is less likely to be found.

Judging Fair Use

It's important to note that fair use is not a straightforward rule but rather a flexible and fact-specific doctrine. Courts weigh and balance these four factors on a case-by-case basis, considering the unique circumstances of each use. No single factor is determinative, and courts may also consider additional relevant factors as necessary.

Ultimately, fair use is a nuanced legal concept that requires consideration of the specific context and purpose of the use in question. While it provides an essential mechanism for promoting creativity, commentary, and innovation, determining whether a particular use qualifies as fair use can be complex and often involves subjective judgment. As such, creators, users, and courts must navigate these issues with

careful attention to the underlying principles of copyright law and the equitable balance between the rights of creators and the public interest in access to information and expression.

Fair Use Challenges Posed by Generative AI

The emergence of generative artificial intelligence (AI) presents unique challenges to the traditional application of fair use principles in copyright law. Generative AI algorithms have the capability to analyze vast amounts of data and create new content that may resemble existing copyrighted works. This raises questions about how fair use applies to AI-generated content and whether such content qualifies as transformative or derivative under copyright law.

1. **Transformative Nature:** While fair use traditionally favors transformative uses that add new expression, meaning, or value to copyrighted works, determining the transformative nature of AI-generated content can be complex. Generative AI may produce outputs that incorporate elements of existing works but also introduce novel elements or interpretations. Courts must grapple with whether AI-generated content sufficiently transforms the original material to qualify for fair use protection.
2. **Amount and Substantiality:** Generative AI algorithms may generate content by analyzing and synthesizing large datasets, potentially incorporating significant portions of copyrighted material. This raises concerns about the amount and substantiality of the copyrighted material used in AI-generated works. Courts must assess whether the use of copyrighted elements in AI-generated content exceeds what is permissible under fair use principles.
3. **Market Impact:** The proliferation of AI-generated content could impact the market for original works and the potential value of copyright holders' intellectual property. If AI-generated content competes with or diminishes the market for original works, copyright holders may argue that fair use does not apply. Courts may need to consider the economic implications of AI-generated content on the market for creative works when assessing fair use claims.

4. **Human Involvement:** Another challenge arises from the level of human involvement in the creation of AI-generated content. While AI algorithms autonomously generate content, human developers design and train these algorithms, select input data, and make creative decisions throughout the process. Determining the extent to which human input contributes to the creative process and the resulting output is essential in evaluating fair use claims.

Conclusion

Generative AI presents novel challenges to the application of fair use principles in copyright law. As AI technology continues to evolve, courts, policymakers, and stakeholders must grapple with the implications of AI-generated content for copyright protection and fair use. Balancing the interests of creators, users, and the public in the digital age requires careful consideration of the transformative nature, market impact, and human involvement in AI-generated works. By addressing these challenges thoughtfully and collaboratively, we can ensure a fair and equitable legal framework that fosters innovation while respecting the rights of copyright holders.

Authors note: Initial drafts of this article were produced using generative AI. Old Dog, and a new trick. Why not?

AIC ISSUES MODEL BULLETIN ON INSURERS' USE OF AI

By Trish Marlar, Associate General Counsel, The Beacon Mutual Insurance Company; Kathy Bray, Senior Vice President & Chief Legal Officer, SFM Mutual Insurance Company; and Kate Daly, Corporate Counsel, SFM Mutual Insurance Company

Submitted by the AASCIF National Issues Committee

Overview

In December 2023, the National Association of Insurance Commissioners (NAIC) adopted a model bulletin, “Use of Artificial Intelligence Systems by Insurers” (the Bulletin).ⁱ Developed by the NAIC Innovation, Cybersecurity, and Technology (H) Committee, the Bulletin encourages insurers to use Artificial Intelligence (AI) Systemsⁱⁱ innovatively to promote safe and stable insurance markets, while reminding them of their obligation to comply with applicable insurance laws and regulations. The Bulletin explicitly seeks to avoid prescribing certain practices or documentation requirements. Rather, it focuses on expectations regarding licensed insurers’ (insurers) use of AI and advises insurers on the types of information and documentation that may be requested during an examination or investigation regarding an insurer’s use of technologies and AI Systems.

As of late March 2024, seven states, including Alaskaⁱⁱⁱ, Connecticut^{iv}, Illinois^v, New Hampshire^{vi}, Nevada^{vii}, Rhode Island^{viii}, and Vermont^{ix} have adopted (or principally adopted) the Bulletin^x.

Expectations

The Bulletin’s guidance relies on the NAIC’s 2020 “Principles of Artificial Intelligence,” which emphasize the importance of the fair and ethical use of AI; accountability; compliance with state laws and regulations; transparency; and a safe, secure, and robust system. A central focus of the guidance is mitigating potential risk of “Adverse Consumer Outcomes” which is defined by the Bulletin as “a decision by an Insurer that is subject to insurance regulatory standards enforced by the Department that adversely impacts the consumer in a manner that violates those standards.” The Bulletin reiterates insurers’ obligations to comply with applicable insurance laws and regulations and specifically references the Unfair Trade Practices Model Act; the Unfair Claims Settlement Practices Model Act; the Corporate Governance Annual Disclosure Model Act; the Property and Casualty Model Rating Law; and the Market Conduct Surveillance Model Law.

AIS Program Considerations

To mitigate the risk of Adverse Consumer Outcomes, the Bulletin provides that all insurers are expected to develop, implement, and maintain a written program (an “AIS Program”) for the responsible use of AI Systems that make, or support decisions related to regulated insurance practices. The Bulletin affords insurers discretion in developing an AIS Program, which should reflect, and be commensurate with, the insurer’s own assessment of the degree and nature of risk posed to consumers by the insurer’s AI System(s). Considerations in developing an AIS Program include:

- the nature of decisions being made, informed, or supported by the AI System
- the type and Degree of Potential Harm to Consumers resulting from the use of AI Systems
- the extent to which humans are involved in the final decision-making process
- the transparency and explainability of outcomes to the impacted consumer and
- the extent and scope of the insurer’s use or reliance on data, Predictive Models, and AI Systems from third parties

AIS Program Guidelines

The Bulletin provides several guidelines, foremost of which is that an AIS Program should be designed to mitigate the risk that an insurer’s AI System will result in Adverse Consumer Outcomes. An AIS Program should also:

- address governance, risk management controls, and internal audit functions
- be tailored to, and proportionate with, the insurer’s use and reliance on AI and AI Systems
- address the use of AI Systems across the insurance life cycle, including product development and design, marketing, use, underwriting, rating and price, case management, claim administration and payment, and fraud detection
- address all phases of an AI System’s life cycle
- address the AI Systems used with respect to regulated insurance practices whether developed by the insurer or a third-party vendor and
- include processes and procedures providing notice to impacted consumers that AI Systems are in use and provide consumers with access to appropriate levels of information

The expectation is that senior management is responsible for developing and overseeing the AIS Program, with accountability to the board of directors.

AIS Program Governance

The Bulletin states that an AIS Program should include a governance framework (which may be part of an insurer's existing governance structure, e.g. an existing Enterprise Risk Management ("ERM") program) that prioritizes transparency, fairness, and accountability in AI Systems. In connection with an AIS Program governance framework, an insurer should consider certain items:

- policies, processes, and procedures, including risk management and internal controls, to be followed at each stage of an AI System lifecycle
- compliance documentation requirements with the AIS Program policies, processes, procedures, and standards that could be requested by state insurance regulators and
- the insurer's internal AI System governance accountability structure, such as: formation of internal committees with representation from appropriate disciplines; scope of responsibility and authority, chains of command, and decisional hierarchies; independence of decision-makers and lines of defense at successive states of the AI System life cycle; monitoring, auditing, escalation, and reporting protocols and requirements; and development and implementation of ongoing training and supervision of personnel

Predictive Models are called out separately in the Bulletin, with specific guidance applicable to the development of processes and procedures for designing and using such models.

Risk Management and Internal Controls

The Bulletin also states that an insurer's AIS Program should document the insurer's risk identification, mitigation, and management framework and internal controls for AI Systems generally and at each state of the AI System life cycle. Risk management and internal controls are expected to document:

- oversight and approval process for the development, adoption, or acquisition of AI Systems, including the identification of constraints and controls on automation and design to align and balance function with risk
- data practices and accountability procedures (e.g. data currency, lineage, quality, integrity, bias analysis and minimization, and suitability)
- management and oversight of Predictive Models (including their algorithms)

- validating, testing, and retesting to assess the generalization of AI System outputs upon implementation, including the suitability of data used to develop, train, validate and audit the model
- protection of non-public information, particularly consumer information, including unauthorized access to the Predictive Models and
- data and record retention

Predictive Models are again separately addressed for documentation of risk management and internal controls, requiring a narrative description of the model's intended objectives and how it is developed and validated to ensure that AI Systems relying on any such model correctly and efficiently predict or implement the model's goals and objectives.

Third-Party AI Systems and Data

Every AIS Program should address the insurer's process for acquiring, using, or relying on third-party data used to develop AI Systems and AI Systems developed by a third party. The Bulletin outlines considerations for standards, policies, procedures, and protocols relating to third-party data and third-party AI Systems to include, as appropriate:

- due diligence and methods used by the insurer to assess the third party and its data or its AI Systems to ensure that decisions made or supported by such AI Systems that could result in Adverse Consumer Outcomes will meet the legal standards applicable to the insurer
- where appropriate and applicable, contract terms with third parties that provide audit rights to the insurer and/or entitle the insurer to receive qualified auditing entity audit reports and require the third party to cooperate with the insurer regarding regulatory inquiries and investigations related to the third-party services or products provided to the insurer and
- performance of contractual rights regarding audits and/or activities to confirm the third-party's compliance with contractual and applicable regulatory requirements

Regulatory Oversight and Inquiries

The Bulletin is clear that, notwithstanding an AIS Program, insurers should expect that in the context of an investigation or market conduct exam the relevant regulator may ask about the following: the insurer's development, deployment, and use of AI Systems, or any Predictive Model; the insurer's AI System or application and its outcomes from the use of those AI Systems; and any information or documentation that the regulator deems relevant. Those inquiries may relate to the insurer's

governance framework and risk management and internal controls, including as described in the Bulletin. The Bulletin provides several examples of the types of information and/or documentation that a regulator may request, including:

- information regarding the insurer's AIS Program
- information and documentation relating to the insurer's pre-acquisition/pre-use diligence, monitoring, oversight, and auditing of third-party data or AI Systems and
- information and documentation relating to or evidencing the insurer's implementation and compliance with its AIS Program, including documents relating to the insurer's monitoring and audit activities respecting compliance

Insurers should also expect that if an investigation or examination concerns data, Predictive Models, or AI Systems collected or developed in whole or in part by third parties, the regulator will request certain types of information and documentation, including:

- due diligence conducted on third parties and their data, models, or AI Systems
- contracts with third-party AI Systems, models or data vendors (including as to certain terms identified in the Bulletin)
- audits and/or confirmation processes performed regarding third-party compliance with contractual and applicable regulatory obligations and
- documentation pertaining to validation, testing, and auditing, including evaluation of Model Drift

Conclusion

As Artificial Intelligence develops more quickly than the legislative and regulatory framework in which it is operating, the Bulletin provides a framework for governance and risk oversight of AI Systems, while allowing insurers to retain flexibility in how those systems will be governed and managed consistent with applicable laws.

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References

ⁱThe Bulletin is available at: https://content.naic.org/sites/default/files/inline-files/2023-12-4%20Model%20Bulletin_Adopted_0.pdf

ⁱⁱAny capitalized terms used in this article are defined in the Bulletin. Because this article provides a summary of the Bulletin, the authors would encourage the reader to consult the Bulletin for additional detail that may be omitted here.

ⁱⁱⁱAlaska Division of Insurance, Bulletin B 24-01 Re: The Use of Artificial Intelligence Systems In Insurance (February 1, 2024).

^{iv}Connecticut Insurance Department, Bulletin No. MC-25, Re: The Use of Artificial Intelligence Systems in Insurance (February 26, 2024).

^vIllinois Department of Insurance, Company Bulletin 2024-08 The Use of Artificial Intelligence Systems in Insurance (March 13, 2024).

^{vi}State of New Hampshire Insurance Department, [Bulletin #INS 24-011-AB, Re: Use of Artificial Intelligence Systems by Insurers \(February 20, 2024\)](#).

^{vii}State of Nevada Department of Business and Industry, Division of Insurance, Bulletin #24-001, Re: Use of Artificial Intelligence Systems by Insurers (February 23, 2024).

^{viii}Rhode Island Department of Business Regulation, Insurance Division, Insurance [Bulletin Number 2024-03, Use of Artificial Intelligence Systems by Insurers \(March 15, 2024\)](#).

^{ix}Vermont Department of Financial Regulation, Insurance Division, Insurance Bulletin No. 229, The Use of Artificial Intelligence Systems in Insurance (March 12, 2024).

^xWhile California, Colorado and New York have not adopted the Bulletin, the NAIC State Adoption Map reflecting "Use of AI Systems by Insurers" recognizes that these three states have adopted other insurance-specific regulation or guidance. <https://content.naic.org/sites/default/files/inline-files/2024%200315AI-Model-Bulletin.pdf>

WHOLE PERSON HEALTH IN WORKERS' COMPENSATION SYSTEMS: THE INNOVATIVE SOLUTION TO HOLISTICALLY ADDRESSING THE HEALTH OF THE WORKFORCE

*Ana' Brown, Ph.D. Ohio Bureau of Workers' Compensation
Submitted by the AASCIF Safety & Health Committee*

Humans are multidimensional beings. Once again, for those far in the corners of the reading gallery, humans are multidimensional beings!

Why is it then, that we ignore this truth when we move into workers' compensation spaces? We tend to minimize the various factors and nuances that impact the everyday human experience when approaching individuals in the workplace. Yes, even those of us employed by workers' compensation systems are likely to reduce the human experience and focus our perspective on a narrow set of parameters and environments.

Let us take a step back, however, and start with the basics of what we know. The words "workers' compensation" typically illicit thoughts of specific activities and outcomes. At the core of its creation and history, workers' compensation systems address claims. A member of the workforce who is injured while performing their line of work seeks out workers' compensation for support with the medical costs associated with sed injury or illness.

Subsequently, employers will also flock to workers' compensation systems for support in navigating the workplace injuries and illnesses of their workforce members. This has resulted in a robust system of employer policies, rebates, claims, and the like. With time, workers' compensation systems expanded to include a focus on safety as a maintenance and preventative measure. If workers are safe, they are less likely to experience an injury or illness within the workplace.

For a workers' compensation system to be effective and impactful there needs to be a focus on providing support for employers through policies and affiliated programs; claims management and maintenance for injured workers; and safety measures for the workplace. All these features are an integral part of the gears that keep the workers' compensation system in motion, and it appears to be a well-oiled machine.

More recently, we are also seeing evidence of workers' compensation systems and workplaces opening their aperture, to include an additional focus on innovation and technology. There is documented evidence that the trends in the use of wearable technology within the workplace to promote worker safety, productivity, and health are increasing (Patel et al., 2021).

The focus on workplace safety coupled with innovations and technologies is again, beneficial. For example, the Ohio Bureau of Workers' Compensation (Ohio BWC) reported that in 2022 the Ohio total recordable cases incidence rate of non-fatal occupational injuries and illness for both private and public-sector industries was estimated to be 2.3 cases per 100 full-time equivalent workers. This rate was lower than the national rate of 3.0 cases per 100 full-time equivalent workers.

Interestingly, despite these measures being in place (i.e., employer policies, claims management, and safety and technology resources), the rate and number of workplace injuries and illnesses throughout the United States is not only continuing to occur but is in some instances, increasing. The U.S. Bureau of Labor Statistics reported a total of 5,486 fatal workplace injuries in 2022—a 5.7% increase from 2021. Additional reports from the Bureau of Labor Statistics also noted that employers reported 2.8 million injury and illness cases in 2022, which was a 7.5% increase from 2021.

If we choose to explore this data with a more magnified lens, we'll also see interesting cases where not only some industries and professions are more prone to illnesses and injuries – but these groups also have more extensive ramifications. Take, for instance, the Bureau of Labor Statistics' description of those working within transportation and material moving occupations. Specifically, between 2021–2022, half of those who experienced an illness or injury in these occupations required one or more days away from work, with a median of 21 days away from work. The other half of this group required at least one day of a job transfer or restriction, with a median of 20 days in these working conditions.

For employers or those in human resources and fiscal roles, it may be easy to see the potential economic impacts of these outcomes. As a result, our response is typically to do what we have been doing—increase workplace safety measures, improve the claims process, and introduce innovations and technologies aimed at improving worker safety and health. As noted, these practices are helpful, but they do not quite explain the nuances and subtleties of the workers' compensation picture.

To narrow our focus only on workplace safety, claims, and technology does not fully explain how some workers'

compensation systems such as the Ohio BWC have lower incidence rates of non-fatal occupational injuries and illnesses compared to the national data while other systems do not. To narrow our focus, does not fully explain, why those working within transportation and material moving occupations, may need up to 21 days to recover from an injury or illness before returning to work. To narrow our focus does not explain how workplace fatalities resulting from unintentional overdoses increased by 13.1% in 2022. In risk of redundancy, narrowing our focus does not fully explain why in 2022 the fatal injury rate for Black or African American workers (4.2) and for Hispanic or Latino workers (4.6) was higher than the all-worker incidence rate of 3.7. There is also the unexplained relevance of ongoing rates of presentism and absenteeism.

What then can help explain these differences, both the good and the bad? And that brings us back to the top of the article... Humans are multidimensional beings.

Humans, yes, our workforce, are social-emotional, spiritual, and physical beings. Our lives extend through and beyond the occupations we hold and our working environments. To approach the workers' compensation system and the workforce in a vacuum that removes the social-emotional and spiritual elements of humans (with an emphasis only on the physical) is to develop a very limited picture of the workforce. To do this is akin to providing resources to an injured worker without or employer knowing the extent or circumstances of an injury—how can we ensure that injury is being treated or the workplace is being properly assessed for safety hazards?

The best approach to maintaining and improving the well-oiled machine of workers' compensation is to once again, open our aperture wider and fill this gap with whole-person health approaches for the workforce and injured workers. The principal tenant of whole-person health places the individual at the center and acknowledges that each person has a mind, body, and spirit. The needs and wants of the mind, body, and spirit of each person, continue regardless of that person's environment (i.e., in and outside of the workplace). These needs as well as the Social Determinants of Health (i.e., non-medical factors that impact our health and well-being) will in some form impact the work that we engage in, how we go about this work, and how we navigate challenges resulting from the work.

Connecting whole-person health to workers' compensation spaces may be a difficult bridge to build for some. Let's consider though, tobacco use among workers. Research notes that businesses pay an average of \$2,189 in workers' compensation costs for those who smoke, compared to \$176 for those who do not. The workers' compensation implications from this data are clear.

Tobacco use is complex. Those who engage in the use may do so as a coping mechanism (mental and emotional health); there are financial implications (financial well-being) and social impacts (e.g., smoke-free recreational areas). The use of tobacco products is rarely isolated to only personal environments—it will occur within the workplace (e.g., smoke breaks). Further, the Centers for Disease Control and Prevention notes that those who smoke also have an increased risk for immune system complications and acute respiratory infections. It is not unfounded that if an individual who smokes is injured while working, this person because of their tobacco use may have a longer and more complex recovery than their counterparts who do not smoke and experience the same injury. Taking this concept, a bit further, to only address a worker who smokes for example, from the lens of safety, claims, and technology means that inevitably this worker will be safe but may not be well.

We do our workforce a disservice when we do not examine the everyday non-medical factors our workforce members experience and how these factors influence workers' health and well-being and workplace safety and productivity. To illustrate, providing medical claims benefits for a musculoskeletal injury is beneficial but does not address the negative mental health impacts an injury has on a worker.

It is essential to begin to incorporate whole-person health approaches into workers' compensation spaces. The work is significant and complex but case studies such as the Better You, Better Ohio! wellness program established through the Ohio BWC is a promising example. Better You, Better Ohio! was established in 2018. This health and wellness program is offered at no cost to small employers (250 employees or less) in 13 high-risk industries, throughout the state of Ohio. The program started by addressing health risks such as tobacco use, unhealthy weight, and physical inactivity. In 2020 at the height of the COVID-19 Pandemic, leadership determined to shift the focus of this program to one that incorporated whole-person health. Over time, the program offerings for Better You, Better Ohio! have expanded to include mental health education and awareness; access and support for social and community resources; and addressing the health needs most important to the individual such as stress management. All of this is in addition to addressing standard health risks prevalent in the Ohio population such as type II diabetes.

To date, more than 30,000 members of the Ohio workforce and over 3,000 of Ohio's injured workers participate in the program. Members have expressed a 98% satisfaction rate; and are actively engaged, completing on average 3.5 activities (e.g., health coaching) per participant. The benefits are manifesting in profound ways among the population. For example, for members who were identified as high risk for missing days of

work due to illness (i.e., 5 or more missed days), there was a 43% risk reduction after program participation. Further, of the members responding to a recommendation for depression screening 25% reduced their risk in one year.

Better You, Better Ohio! is and continues to be a success and asset to the Ohio workforce and ultimately the Ohio workers' compensation system. At Ohio BWC, Better You, Better Ohio! has served as the foundation for the increasing health and wellness work stemming from the institution. Ohio BWC recognizes that the Ohio workforce should be safe, and safety will positively contribute to the health of the workforce.

However, for the workforce and injured workers to have holistic health, those individuals must not only be safe, but they must also be whole and well. To achieve this, the health and wellness work emerging from Ohio BWC is centered around placing the whole (mind, body, spirit) employee first. This is coupled with ongoing collaborations with claims management, safety services, innovation and technology, and external stakeholders. There is also a commitment to meeting the unique needs of the Ohio workforce population. As an example, Ohio BWC is currently piloting a Whole Person Health Cancer Screening Initiative for firefighters throughout the state. This initiative provides cancer education and screening as well as support toward holistic well-being.

The cutting-edge health and wellness initiatives rising from the Ohio BWC are a solid example of how workers' compensation systems can address the multidimensional nature of humans and still hold to the historical core of workers' compensation.

AROUND AASCIF

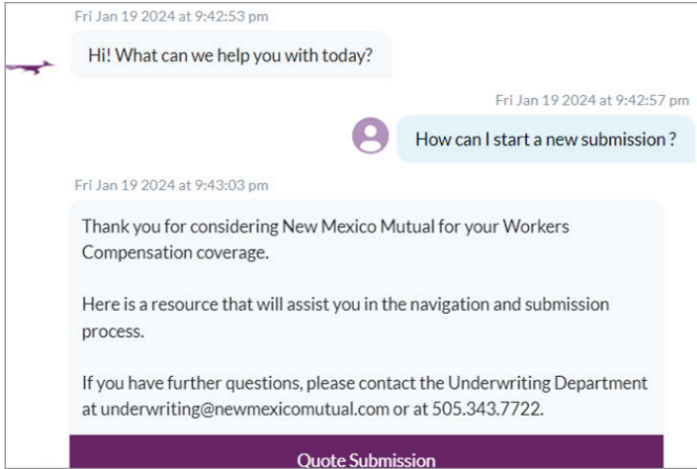


NEW MEXICO

Chatty about Chatbots

New Mexico Mutual is thrilled to announce the launch of a chatbot on our quoting platform, Roadrunner. This chatbot is designed to provide real-time support to agents to answer commonly asked questions while submitting or finding information for accounts, resetting passwords, navigating around the platform, and much more.

In April, we'll also be launching another chatbot on our website (NewMexicoMutual.com) for our policyholders and providers to inquire about claims, billing, bill status, general policy questions, and more. We believe that the introduction of these two chatbots will significantly enhance our stakeholder's overall experience with New Mexico Mutual, making it more intuitive and efficient than ever before.



New Mexico Mutual Transforms Business on Guidewire Cloud to Better Serve New Mexico Employers

New Mexico Mutual has successfully migrated Guidewire InsuranceSuite to Guidewire Cloud to power its core business and simplify IT operations. The company has been a Guidewire self-managed customer since 2005. Recently, it migrated its self-managed installations of Guidewire DataHub and InfoCenter onto Guidewire Cloud as its enterprise-wide data management and business intelligence systems.

“Migrating to Guidewire Cloud has enabled us to transfer system maintenance to Guidewire so we can stay current with their latest technology and innovations enabling our IT staff to focus on the tasks that will deliver value to our agents and customers as we adapt to changing market demands,” said Gina Hickman, vice president and chief financial officer, New Mexico Mutual. “We look forward to further exploring the analytics and digital capabilities and functionalities offered on Guidewire Cloud as we leverage them to help us achieve our strategic goals.”

Read more about this upgrade [here](#).



NEW YORK

NYSIF Accelerates Workers' Compensation & Disability Benefit Payments to Injured Workers

NYSIF Delivers Nearly 800,000 Faster Payments to Injured Workers and Beneficiaries

Direct Deposit Enrollments Rise 46% in Last 18 Months

Faster Benefits Access Helps Workers Keep More of Their Money

The New York State Insurance Fund (NYSIF), the state's largest workers' compensation insurer, announced the results of its 18-month-long effort to bolster enrollment in direct deposit and fast-track workers' compensation and disability benefit payments, helping injured workers gain quicker access to their benefits and saving them money.

"When a worker suffers an injury, it is often a life-altering event that breeds uncertainty and anxiety for them and their families," said Gaurav Vasisht, executive director and CEO of NYSIF. "NYSIF's campaign to enroll injured workers in direct deposit and deliver faster payments helps workers struggling to stay afloat, easing them toward greater financial stability and reducing their reliance on payday lending, check cashing, and bank overdraft fees, which strip billions from workers each year and contribute to income inequality."

Launched 18 months ago, NYSIF's program involves two key components. First, at the onset of a claim, NYSIF informs injured workers about the advantages of direct deposit, including receiving benefits faster, as well as the convenience of avoiding a trip to the bank. Second, the initiative speeds up direct deposit payments, which could take several days to clear, by using same-day ACH, giving workers access to benefits within 24 hours of payment instead of several days.

Since the program began, NYSIF has issued approximately 778,000 faster payments to workers and beneficiaries, and its direct deposit enrollment has jumped 46%. The initiative has enabled tens of thousands of injured workers to access their benefits quickly instead of waiting an average of 7 to 10 days for a mailed paper check to arrive and clear once deposited. Workers previously enrolled in direct deposit also benefit from the initiative, receiving their funds up to three days sooner through same-day ACH.

Mario Cilento, president of the New York State AFL-CIO, said "Workers' compensation is a lifeline to injured workers and their families, who simply can't afford unnecessary delay in the delivery of desperately needed wage replacement. We commend NYSIF, and its highly-skilled union workforce, for once again innovating and setting an example for the industry on how to deliver benefits to injured workers as efficiently and effectively as possible."

The results announced today are part of NYSIF's broader effort to accelerate workers' receipt of benefits and access to essential claims information. It comes four months after the launch of NYSIF's claim mobile app, which enables injured workers with a smartphone to instantly access claims information, including the status of their check, claim managers' contact information, virtual prescription cards, upcoming appointments, and a link to enroll in direct deposit.

Since its launch, the app has been downloaded more than 4,000 times, with more workers signing on daily. Injured workers without smartphones continue to access traditional methods of communication, including telephone and email. NYSIF's faster payments and mobile app allow it to serve injured workers more effectively.

SASKATCHEWAN

Saskatchewan WCB Releases 2023 Provincial Workplace Injury Statistics

The Saskatchewan Workers' Compensation Board (WCB) released the 2023 provincial workplace injury statistics. The total injury rate for 2023 was 3.95 per 100 workers, an almost 9% decrease from 2022. From 2009 to 2023, the WCB's total injury rate has decreased by 57.62%. The 2023 total injury rate is the lowest in the province's recorded history.

"Through the WorkSafe Saskatchewan partnership with the Ministry of Labour Relations and Workplace Safety, as a province, we are on the right track as we see our total and time loss injury rates continue to come down," said Gord Dobrowolsky, chair of the WCB.

For the fourth year in a row, 90% of Saskatchewan workplaces had zero fatalities and zero injuries last year. In addition to the total injury rate decrease in 2023, the time loss injury rate also dropped to 1.78 per 100 workers. This represents a decrease of 12.75% from the 2022 rate of 2.04 per 100 workers.

"We believe every workplace incident is preventable," said WCB CEO Phillip Germain, "and serious injuries represent approximately 11–14% of our total claims. Serious injuries account for more than 80% of our claim costs in the province's compensation system each year. We will not rest until Saskatchewan records no workplace fatalities and the lowest serious injury rate in Canada. We believe we are on the right track to get there."

Last year, WorkSafe Saskatchewan, a partnership between the WCB and the Ministry of Labour Relations and Workplace Safety, launched the 2023-2028 Fatalities and Serious Injuries Strategy. Building on the success of the first strategy, this document lays out a new approach to fatalities and serious injuries in Saskatchewan's workplaces. The strategy is a multi-year plan that uses customer feedback and engagement, as well as claim and injury data. It outlines two key streams of work from the WCB and the Ministry to reduce serious injuries and fatalities—a regulatory and enforcement stream, and a prevention and learning stream.

"By working together with stakeholders, including employers, unions, researchers and safety associations," said Germain, "the WorkSafe Saskatchewan partnership is committed to

continuing to bring our injury and fatalities rates down and keeping all workers safe on the job."

In 2023:

- Total claims accepted decreased by 6.80% to 16,143 from 17,321 in 2022. The total number of workers covered increased to 409,158 in 2023 from 400,392 the previous year.
- Accepted no time loss claims decreased to 8,870 in 2023 from 9,156 in 2022.
- Accepted time loss claims (excluding current-year fatalities) decreased to 7,256 from 8,148 in 2022.

There were 29 workplace fatalities in 2023 compared to 39 in 2022. This is a decrease of 25.64%. These deaths occurred in a variety of Saskatchewan industries. Of the 29 fatalities in 2023, 10 fatalities were due to occupational disease (five of which resulted from exposure to asbestos) and nine fatalities were due to motor vehicle collisions. The remaining 10 fatalities resulted from medical complications due to workplace injuries, and from heart attacks and traumatic events.

Learn more about the strategy at worksafesask.ca/fatalities-and-serious-injuries.

WCB Announces Next Term Board Appointees

The Saskatchewan WCB is pleased to announce the next term board appointees to serve the workers and employers of the province. All members are appointed by the Saskatchewan provincial government to carry forward the viewpoints of workers and employers.

Gord Dobrowolsky is reappointed for a five-year term and will continue to serve a chair of the board. From Prince Albert, Sask., Dobrowolsky has extensive board experience, having served as the vice-chair of the Saskatchewan Liquor and Gaming Licensing Commission, a member of the Saskatchewan Executive Council for six years, and the chair of the Prince Albert Parkland Health Region for four years. Dobrowolsky also served as a volunteer board member for six years on the Victoria Hospital Foundation in Prince Albert.

Larry Flowers, who is from Saskatoon, Sask., was reappointed as a full-time board member as the WCB employer representative for four years. Flowers brings strong and varied business experience to the board, which includes work in the agriculture, manufacturing, mining, finance, and non-profit sectors. Since 1989, Flowers has worked as an internal and

external business strategist, implementing strategic human resources, training, safety and business solutions.

Judy Henley was appointed as a part-time board member in 2022 and is reappointed for four years as a full-time board member representing labour. Henley brings to the WCB a wealth of experience in local, provincial and national leadership roles. As a health-care worker, and member of the Canadian Union of Public Employees (CUPE) 5430, she has been active in CUPE since 1985. Having served in many leadership roles within CUPE at the local, provincial, and national levels, she also spent 20 years as secretary-treasurer of CUPE Saskatchewan. In 2020, Henley was elected as the new president of the Saskatchewan division of CUPE. Henley was a member of the 2016 Committee of Review. She has extensive board experience relating to investments, pensions and benefits.

Dion Malakoff is new to the WCB and has been appointed as a part-time board member for four years as a labour representative. Malakoff has extensive experience and was appointed as the executive director of the Saskatchewan Provincial Building and Construction Trades Council in 2017. The Saskatchewan Building Trades is composed of affiliated unions representing organized construction workers in the province. Malakoff entered the Canadian Boilermaker apprenticeship program in 2000 and became a journeyman in 2003. He has worked as a welder/fitter, foreman and general foreman prior to joining the staff at Boilermakers Local 555 where he was a business representative and then assistant business manager. During this time, he was involved with training and labour-management relations. Malakoff has recent WCB experience as a member of the 2022 Committee of Review.

These board appointees join part-time board member Jack Brodsky, whose appointment is set to expire in 2026.

All board members are appointed by the Saskatchewan provincial government and ensure a strong governance framework for the WCB. They provide strategic direction to leadership, and effective oversight of financial and operational performance. Board members also approve policies, oversee risk management and engage with customers and partners. The full-time board members perform their appeals and adjudicative function.



WASHINGTON

Washington State Department of Labor & Industries Gears up to Support New Workers' Comp Laws

Washington State lawmakers approved a number of bills related to workers' compensation as the legislative session wrapped up recently. The Washington State Department of Labor & Industries (L&I) is now working on implementing the new laws, including:

Substitute House Bill 2127 (Workers' Compensation Incentives)

L&I successfully initiated and supported this legislation, which increases return-to-work incentives for workers and employers. It expands existing incentive programs such as the Stay at Work, Preferred Worker, and Job Modifications programs. Some of these programs hadn't seen increases for more than a decade and hadn't kept pace with inflation and the cost of living.

It also introduces a new incentive for workers to receive funds for basic-skills training during their recovery from injury.

House Bill 1927 (Reducing Wait for Partial Wage Replacement)

This bill reduces the number of days a worker needs to be disabled to receive a partial wage replacement. Injured workers become eligible for benefits when they are unable to work for more than three days after the injury. These first three days are considered a waiting period. Currently, workers don't get paid for the first three days unless they are still disabled 14 days after the injury. Under the new law, workers don't get paid for the first three days unless they are still disabled seven days after the injury.

Substitute House Bill 2382 (Uber/Lyft Death Benefits)

This bill honors the memory of five Transportation Network Companies (TNCs) drivers who have died since 2020. TNCs, such as Uber and Lyft, provide on-demand rides using online applications. The bill also provides death benefits when a TNC driver is logged into the system and available for work but is waiting for a ride to be assigned. Drivers must be in the vehicle or within immediate proximity of the vehicle.

Substitute Senate Bill 6197 (Death Benefits for Police and Firefighters)

Law enforcement officers and firefighters (LEOFF) members' death benefit is administered by the Washington State Department of Retirement Systems, but L&I pension adjudicators make the eligibility determination. The bill removed the statute of limitations requiring that claims be filed within one year (two years for occupational disease).

Senate Bill 5886 (Safety Training for Firefighters)

This bill expands the Firefighter Injury and Illness Reduction (FIIRE) program to include participation in safety training or assessments and safety interventions. Previously, the law was limited to purchasing gear and equipment.