REGULATORY UNCERTAINTIES CHALLENGING WORKERS COMPENSATION INSURANCE IN THE U.S.

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Abstract

The United States is undergoing one of the most active and comprehensive periods of regulatory change in its 238-year history. The Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) provides a governmental backstop to support the insurance industry in the event of another major terrorism attack. TRIPRA is scheduled to expire in December of 2014 unless Congress acts to extend it. Major health care reform through implementation of the Patient Protection and Affordable Care Act (PPACA), beginning in 2010 and with additional provisions of the bill enacted over the next several years, is expected to fundamentally transform the health care industry in the U.S. In this study a discussion and analysis of the impact of these two major pieces of legislation on workers compensation insurance is conducted. In addition, an examination of the continuously aging workforce effect on the workers compensation system is considered.

บทคัดย่อ

ประเทศสหรัฐอเมริกาในปัจจุบันกำลังประสบกับการเปลี่ยนแปลงอย่างมากทางด้านกฎข้อบังคับในรอบประวัติศาสตร์ 238 ปี กฎข้อบังคับการประกันภัยก่อการร้าย (TRIPRA) ได้ขอให้ทางรัฐบาลช่วยเหลือในกรณีเหตุการณ์การก่อการร้าย TRIPRA นี้จะมีผลบังคับจนถึงแค่เดือนธันวาคม พ.ศ. 2557 ถ้าไม่ได้รับการขยายเวลาจากสภานิติบัญญัติในเรื่องกฎข้อบังคับการคุ้มครองดูแลคนไข้ (PPACA) และเงื่อนไขเพิ่มเติม ซึ่งเริ่มต้นตั้งแต่ปีพ.ศ. 2553 ได้มีขึ้นเพื่อปฏิรูปธุรกิจสุขภาพในประเทศสหรัฐอเมริกา ในการศึกษานี้ได้กล่าวและวิเคราะห์ถึงผลกระทบของทั้งสองกฎข้อบังคับในการประกันภัยและระบบคุ้มครองลูกจ้างอีกด้วย

INTRODUCTION

The workers compensation system in the United States has experienced numerous changes and challenges during its 100 year-plus history. One of the risk exposures facing the workers compensation insurance industry is regulatory risk. This risk includes changes in regulations and laws that could substantially increase the expenses necessary to operate a business or alter the competitive environment.

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The Americans with Disabilities Act of 1990 (ADA) is one such example. The ADA requires that employers make "reasonable accommodation" for workers with disabilities, but no legal standards for the definition of "reasonable" are provided. The law is also ambiguous in its definition of disability. Traditional government policy toward the disabled has historically focused on three groups: the legally blind (numbering 400,000), the deaf (numbering 1.7 million), and the absolute wheelchair-bound (numbering 720,000). To go from these relatively small numbers, to the frequently cited figure that one-in-six Americans (approximately 43 million) are disabled requires the addition of a large number of less immobilizing physical impairments and mental disabilities. Entrepreneurial lawyers have taken advantage of these gray areas of the ADA to apply the law to areas detached from its original intended scope. In fact, there are now seen relatively few lawsuits under the ADA that involve hiring discrimination. However, a considerable number of suits claim discrimination against those who are already employed, and many allege disabilities acquired on the job (Guyton, 1999).

Indirectly, monetary policy by the Federal Reserve Bank aimed at keeping interest rates at historical lows in an attempt to facilitate the sluggishly recovering economy has also affected the profitability of workers compensation insurance companies. With an average combined ratio of 110.3 percent from 2000-2012, workers compensation insurance companies paid out over $110 in claims and expenses for every $100 in premium collected.[1] Obviously, earnings on premiums collected are critical in making up this persistent underwriting loss, which increases the sensitivity of workers compensation coverage to investment returns. A very low interest rate puts more pricing pressure on this type of insurance than was seen a decade ago or prior to the financial crisis.

Over the past decade the United States has seen a number of sweeping, comprehensive legislative changes such as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which established the Federal Insurance Office (FIO). The FIO has responsibility for monitoring all aspects of the insurance sector. It is also charged with detecting actions within the sector that could potentially lead to a systemic crisis expanding to the broader financial system. A number of these wide-ranging regulations were motivated by the financial crisis and subsequent "Great Recession" of 2007-2009.[2]

In this paper I examine two specific pieces of legislation, one that will expire at the end of 2014 -- unless Congress proactively decides to extend it -- and the other which is in the middle of being implemented and which fundamentally transforms about one-sixth of the American economy. The two laws of interest n this paper are the Patient Protection and Affordable Care Act (PPACA) and the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA). This study analyzes specifically the impact of the uncertainty

[1]Unless indicated otherwise, all monetary figures provided in this paper are in U.S. Dollars.

[2]For an in-depth discussion of the impact of the Great Depression on insurer strategies and insured behavior see the Query and Henry paper in the Volume 15 (2011) issue of *The Journal of Risk Management and Insurance*.

associated with these two laws in relation to the workers compensation system in the United States.

In addition to these key regulatory issues, the implications of a demographic issue that is of great interest to workers compensation insurance companies is also discussed. This demographic issue, an aging workforce, is not exclusive to the American labor market. According to a report by the Royal Bank of Scotland, Korea is expected to have the world's oldest workforce by 2045; the average age of a Korean worker is predicted to hit 50 that year, up from around 35 now. Other developed countries are dealing with similar issues relating to aging populations.

The importance of workers compensation insurance products to the insurance industry in the United States is irrefutable. Most firms purchase the workers compensation policy from private insurers, although self-insurance is also allowed in most states. A few states also offer a monopoly state fund or a competitive state fund arrangement. According to the National Association of Insurance Commissioners (NAIC), workers compensation is the fourth largest line of insurance in the U.S., trailing only Personal Automobile Insurance, Homeowners Insurance, and Other Liability Insurance, with Net Written Premiums (NPW) of nearly $52 billion in 2012.

Workers compensation is not a structure unique to the United States, as some form of compensation for work-related injuries and illnesses are in place in Australia, Brazil, Canada, Germany, Japan, Mexico, and the United Kingdom, among others. In Thailand, the Workmen's Compensation Act states that the employer must provide compensation or benefits at minimum rates prescribed by the law for employees who suffered injuries and illness or death during or as a result of performing their work duties. The four types of compensation benefits offered include: (1) the compensation amount or indemnity, 2. the medical expenses, 3. industrial rehabilitation expenses, and (4) funeral expenses (MSNA Ltd).

The next section of the paper provides a brief history and overview of the workers compensation system in the United States. This is followed by a discussion of terrorism risk and the consequences affecting workers compensation premiums. The third section examines health care reform, currently being implemented over a number of years (with numerous delays), and potential positive and negative influences as they relate to workers compensation claims. The third topic covered is the aging workforce and its impact on the workers compensation system, followed by the conclusion.

HISTORY AND DESCRIPTION OF WORKERS COMPENSATION IN THE U.S.

Workers compensation may be best described as a social insurance program that provides cash benefits, medical care, and rehabilitation services to workers who are injured or ill due to job-related accidents or disease. Prior to the workers compensation system,

under the common law of industrial accidents, workers injured on the job had to sue their employers and prove negligence before they could collect damages. Three common law defenses were available to employers to defeat lawsuits from injured workers: (1) Contributory negligence doctrine, (2) Fellow-servant doctrine, and (3) Assumption-of-risk doctrine.[3]

To reduce the growing problem of work-related accidents and litigation issues, workers compensation laws were passed. The first comprehensive workers' compensation law in the United States was passed in Wisconsin in 1911; similar laws had already been enacted in Germany and Great Britain a few decades earlier. By 1948 all the states in the U.S. at that time had passed workers' compensation legislation. Workers compensation is based on the fundamental legal principal of liability without fault. In other words, under workers compensation the employer is held absolutely liable for job-related injuries or disease endured by the workers, without regard to who is at fault. Workers compensation is the oldest no-fault insurance system in the country, providing a variety of benefits for work-related illnesses and injuries.

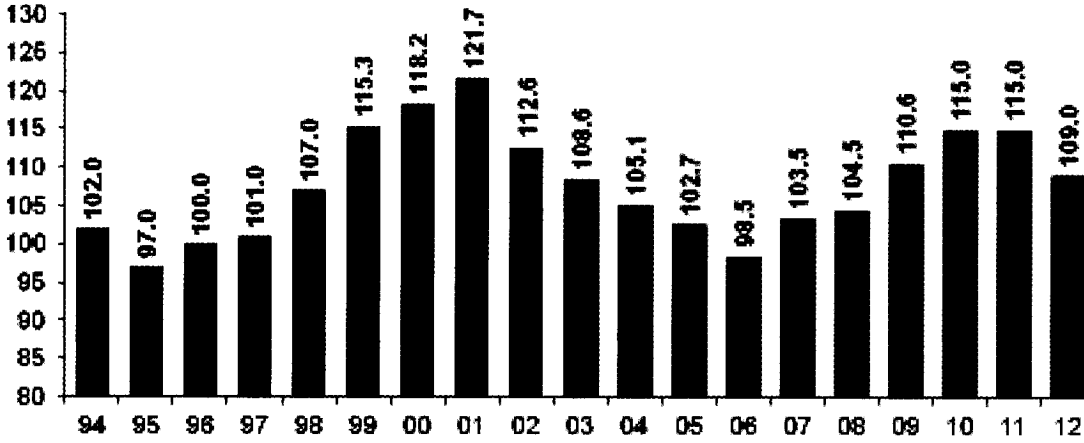
In the U.S., the workers compensation system is somewhat decentralized, with primary administrative and legislative responsibility controlled by the states. Among the benefits provided by workers compensation insurance is the cost of medical care and rehabilitation, if necessary, for workers injured on the job. They are also compensated for a portion of lost wages. Death benefits are provided to a worker's dependents in the event of a work-related fatality, including terrorist attacks.

The central tenet is that of "no-fault" insurance; industrial accidents are accepted as a fact of life and the system exists to deal with their financial consequences in as expeditious a manner as possible. In this respect the workers compensation system may be viewed as the exclusive remedy for on-the-job injuries and illnesses suffered by employees. As a component of the social contract entrenched in each state's law (except Texas), the worker gives up the right to sue their employer for injuries instigated by the employer's negligence. In return, the employee receives workers compensation benefits regardless of fault, assuming that it happened in the workplace as a result of and within the course of work-related activities (Zeiler, 2013). From the employer's perspective, by participating in the system they have the notable benefit of tort exemption for injuries covered by workers' compensation. Employees can sue third parties who may be responsible for their on-the-job injuries, but any proceeds from such suits must first go to reimburse their employer's compensation insurance carrier.

[3]Under the contributory negligence doctrine, an injured worker cannot collect damages from the employer if he contributed in any way to the injury. Under the fellow-servant doctrine, if the injury resulted from the negligence of a fellow worker, the injured worker could not collect. Under the assumption-of-risk doctrine the injured worker couldn't collect if that person understood and recognized the danger inherent in a particular activity or occupation.

Workers compensation insurance has undergone several underwriting cycles that have been more volatile than in most other property-liability lines. As Table 1 illustrates below, while the combined ratio has hovered above 100 for most of the past decade, underwriting results have been improving of late.

Table 1: Workers Compensation Combined Ratio: 1994-2012



Sources: A.M. Best (1994-2009); NCCI (2010-2012P) and are for private carriers only; Insurance Information Institute.

Terrorism Risk and Workers Compensation

Before the terrorist attacks on U.S. on September 11, 2001, typical commercial insurance policies included coverage of terrorism-related losses, basically free of charge. Today, coverage for terrorism is largely offered separately at a price that is more in line actuarially with the current risk environment. After the terrorist attacks on the World Trade Center and the Pentagon, there was concern about the capacity of the insurance industry to handle multiple risks of this magnitude without serious repercussions to the entire industry. The Terrorism Risk Insurance Act (TRIA) was signed into law in 2002 to provide a governmental backstop to cover catastrophic acts of terrorism. The law was extended in 2005 for two years. In 2007, the program was extended for another seven years and is now called the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA). Under the program, owners of commercial property, such as shopping malls, office buildings, factories and apartment buildings, must be provided the chance to purchase terrorism insurance coverage.

Opponents of renewing TRIPRA claim that terrorism-related risk is not historically more severe than other insurable risks such as natural catastrophes, and using a federal backstop staking public money to protect the insurance industry is essentially a form of corporate welfare. Subsidizing the terrorism risk insurance premiums for commercial policy holders when the private market is capable of underwriting this risk, they argue, is a government bailout of the insurance industry (Rhee, 2013).

Those in favor of the Act include the insurance industry and a number of large property owners. They contend that TRIPRA is still crucial to sustaining a workable terrorism insurance marketplace. Supporters also cite the challenge in modeling and price risk, and point out that the United State is rife with attractive targets for terrorists. In addition, a number of terrorist plots have been thwarted over the years. Finally, proponents of TRIPRA point to the modification of the federal backstop that has shifted financial responsibility more definitively to insurance companies. For example, a terrorism event must hit aggregate industry insured losses of at least $100 million, up from just $5 million in the original Act.

Responsibility for oversight of the terrorism program falls under the purview of the Federal Insurance Office. TRIPRA includes the following key features:

- 20 percent of an insurer's direct earned premium is set as the deductible
- Definition of acts of terrorism has been broadened, and is no longer limited to acts committed by foreign persons or interests
- The federal share of costs is capped at $100 billion USD
- Policyholder surcharges mandatory to recoup federal share
- The federal reimbursement trigger is set at $100 million USD
- Federal share of compensation is set at 85 percent of insured losses exceeding insurer deductibles (Llewellyn, 2013)

The possible sunset of the TRIPRA at the end of 2014 is worrisome to those interest groups involved in the workers compensation system, for a myriad of reasons. Some unique features of workers compensation insurance elevate the potential for market failure. Unlike other lines of insurance, there are not exclusions for claims resulting from acts of war. In addition, standard policies applicable to workers compensation have no limit on the aggregate covered claims amounts (other than benefit limits found in applicable state laws). Exclusions or limitations also do not apply to risk exposures from chemical, biological, radiological, or nuclear events in workers compensation. Obviously, from an actuarial modeling perspective, these events would be considered extreme in that they are associated with low claim frequency and potentially unlimited claim severity (Llewellyn, 2013).

Another issue related to the objective of limiting catastrophic claims is the aggregation of employees in one location. Traditionally, an insurer's cumulative insured employee concentration in a geographic area was assessed based on the impact of natural disasters such as earthquakes. In the era of increased terrorism, a number of organizations with large concentrations of employees, especially in major U.S. cities, are being closely scrutinized by insurance underwriters today. Improvements in catastrophe modeling allow for detailed worst-case loss scenarios. Given that insurers cannot exclude terrorism-related losses and employers are required to purchase it, the availability of such coverage without a backstop mechanism is reduced, resulting in subsequent rate increases. Businesses and organizations especially prone to this increased risk exposure include higher education, hospitals, financial institutions, hotels, defense contractors, and nuclear power

plants (Marsh, 2013).

Risk management consulting firms have used their resources to better model locations and scenarios where the probability of an effective terrorist strike is increased. Utilizing input from its expert terrorism/counterterrorism team, AIR Worldwide has pioneered probabilistic catastrophe modeling technology to identify potential types of targets primed for a terrorist attack. Targets that include a higher threat of a major attack include bridges, tunnels, government facilities, airports, corporate headquarters, and high-profile skyscrapers. RMS has developed a model that quantifies the impact of all terrorist attack permutations on potential target locations identified as high-risk. Their models use game theory to target patterns and prioritization emulating terrorist objectives. These models can simulate the impacts of chemical, biological, nuclear, and radiological attacks, and also assess the efficacy of counter-terrorism measures.

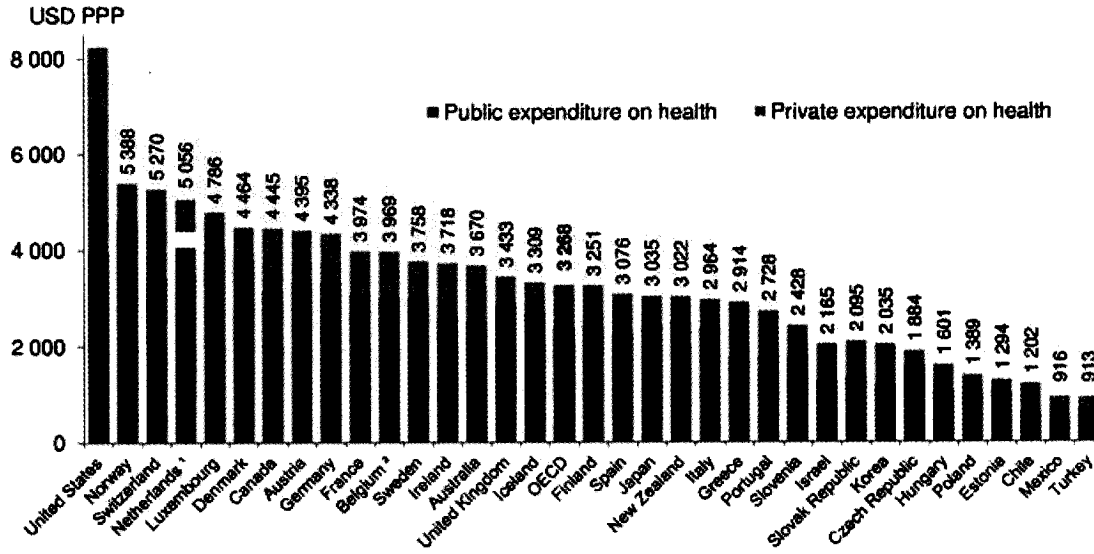
A brief provided by Marsh & McLennan Companies encourages employers to provide insurers with detailed information regarding various factors that should increase the comfort level of professional underwriters when considering a commercial insurance application or renewal. These include control of access to company buildings and other security procedures; management policies pertaining to workplace violence and employment screening; employee marital/dependency status; emergency response/crisis management procedures; number of employees working during peak shifts; percentage of the workforce telecommuting, etc. As with most types of insurance, as more transparent and relevant information is provided by the insured, the insurance company's security level in underwriting the insured's risks is augmented, mitigating the effect of asymmetric information inherent in many insurance contracts.

WORKERS COMPENSATION AND HEALTH CARE REFORM

National health expenditures grew 3.9 percent to $2.7 trillion in 2011, or $8,680 per person, and accounted for 17.9 percent of U.S. Gross Domestic Product (GDP). For comparison, the average spending as a percentage GDP of Organization for Economic Co-operation and Development (OECD) member countries is around 9.5 percent. As Table 2 below illustrates, the U.S. spends significantly more on health care than the average OECD member. Health care expenditures constitute a major portion of the U.S. economy and they are expected to increase to 19.6 percent of GDP by 2021.[4] The spending pressure is even greater for Medicare, a national social insurance program administered by the U.S. federal government that guarantees access to health insurance for Americans aged 65 and older who have worked and paid into the system. With over 10,000 persons from the "Baby Boom" generation (generally people born between 1946 and 1964) expected to turn 65 years old each day over the next 19 years, the Congressional Budget Office projects spending for Medicare to increase significantly.

[4]Centers for Medicare and Medicaid Services (2012). National Health Expenditure Fact Sheet.

Table 2: US spends two-and-a-half times the OECD average
Total health expenditure per capita, public and private, 2010 (or nearest year)



1. In the Netherlands, it is not possible to dearly distinguish the public and private share related to investments.
2. Total expenditure excluding investments.

Information on data for Issael: http://dx_doi.org/10.1787/888932315602.

Source: OECD health Data 2012.

Rising health care expenditures coupled with a large number of uninsured persons living in the United States prompted major health care reform. According to U.S. Census Bureau estimates, the uninsured population in 2011 was 48.6 million or 15.7 percent of the U.S. population. The combination of guaranteed issue and individual mandates that became effective in 2014 with expanded Medicare eligibility is projected to expand coverage for an additional 30 million lives.

No significant features of the Patient Protection and Affordable Care Act (PPACA), whose first provisions were enacted in 2010, were directed at workers compensation. While one can make the case that the workers compensation market was largely ignored when the PPACA was created, there are a number of potentially indirect effects on the workers compensation system - although they vary by state. Medical trends impact workers compensation, general liability, and auto insurance costs, which make up about five percent of healthcare revenue. Prior to the administration of health care reform, medical severity in workers compensation rose 275 percent between 1991 and 2010, almost double the rate of increase for indemnity severity (Travelers, 2014).

Concern about the impact of significant health care reform on the workers compensation system is not new. Early momentum for comprehensive health care changes during the Clinton administration in the early 1990s was met with similar apprehension (see Ballen,

1994). Ballen points out that early in the development of the Clinton health care agenda, serious consideration was given to proposals to integrate workers' compensation financing and medical care into the overall new national health care system.

If the PPACA does indeed lead to greater access to health insurance coverage, then it is logical to expect a healthier population overall. Greater access and coverage of various wellness, weight management, and smoking cessation programs are also viewed as a potentially beneficial consequence. This would actually result in two positive effects on the workers compensation system. First of all, a healthier workforce would be expected to reduce claim frequency. Secondly, a healthier workforce would be expected to generally recover from workplace injuries more rapidly, which would accelerate an employee's ability to return to work.

Intuitively, one would expect both workers and health care providers to generally prefer health insurance over workers compensation. Workers tend to dislike the lack of control within the workers compensation system, such as dealing with claims handlers, medical claim payment systems and, in some states, having to choose physicians from the employer's network of medical providers. Physicians have to deal with greater justification of treatment options, and additional paperwork. Because of administrative burdens and low fee reimbursements, some physicians will not even accept workers compensation claimants as patients (Jones, 2013).

Countering this argument somewhat is an increase in the use of deductibles, coinsurance, and co-pays by health insurers in an attempt to contain costs and mitigate usage by insureds,[5] resulting in a move to the first-dollar coverage provided under workers compensation. In addition, if 30 million people are indeed added to the rolls of the insured, the increased wait time due to a shortage of primary care physicians could cause a delay in a resolution of an open claim and timely treatment of a worker's medical condition. The supply trend of specialists is much better, so a surge of patients needing specialty care should not be as impactful.

A 2005 study by Lakdawalla, et al. of the RAND Corporation, a nonprofit global policy think tank, finds an interesting observation about workers claim filing behavior. As many as half of injured workers choose not to file through worker's compensation when they experience a job-related injury. This is commonly explained by the existence of private health insurance, an alternative source of health care that may provide a disincentive for insured workers to take the time to file a workers' compensation claim. Using data National Longitudinal Surveys conducted by the Bureau of Labor Statistics, they find that uninsured and more vulnerable workers are actually less likely to file claims than the insured. Their analysis finds that this relationship is due to employer characteristics. Specifically, whether or not employers offer health insurance as an employee benefit is

[5]Critics of the PPACA point to a lack of efforts to "bend the cost curve" of health care expenditures, which have appreciably exceeded the rate of general inflation since 1980.

significantly more important even than the insurance status of the workers themselves. These findings suggest that the workplace environment and employer incentives may have a dominant impact on workers compensation filing.

Other indirect impacts of the PPACA on workers compensation include a robust increase in pharmacy costs due to the expansion of Medicare Part D coverage for senior citizens and an absence of price controls or options to re-import pharmaceuticals. Medicaid expansion for indigent persons as outlined in the PPACA may result in states taking on additional billions of dollars' worth of unfunded costs. This will create additional stress on state budgets, many of which are already in a precarious position financially. Workers compensation administrative agencies are often one of many areas targeted for resolving budget cuts.

One area of the PPACA that workers compensation stakeholders are watching closely is the implementation of the Patient-Centered Outcomes Research Institute (PCORI). The PCORI was created under the health care reform to perform comparative effectiveness research. Before health care reform the amounts spent on objective research to determine effective medical treatments was only one-tenth of one percent of the amount spent on medical care in the U.S. By identifying the most effective medical procedures and preventive medicines, PCORI would theoretically enable injured workers to receive the best evidence-based medical treatment options, resulting in a shorter recovery time overall.

Perhaps the change in the U.S. healthcare system trumpeted most by supporters of the PPACA, is the prohibition of health insurers to refuse coverage due to pre-existing health conditions. Prior to the enactment of the PPACA, an increased incentive to commit fraud was present as people were assertive in using workers compensation to treat a preexisting condition that may or may not have been associated with a work-related injury. There may also be an effect on the usage of cost shifting strategies. The nature of an insurance policy subjects it to the concept of "utmost good faith", a principle that total honesty must exist between the two parties to the contract - the insured and the insurer (Lawrence, 2011). Claims that involve fabrications and fraud are relatively easier to identify when compared to those cost shifting claims in which causation is ambiguous. A good example of this occurrence is injuries involving an aggravation of a pre-existing injury. In these types of cases it is frequently determined by the injured worker and his/her healthcare provider that the condition was caused or aggravated by work (Luzuriaga and McElreath, 2013). By allowing those with preexisting conditions to obtain health insurance coverage, this area of fraud should decrease dramatically.

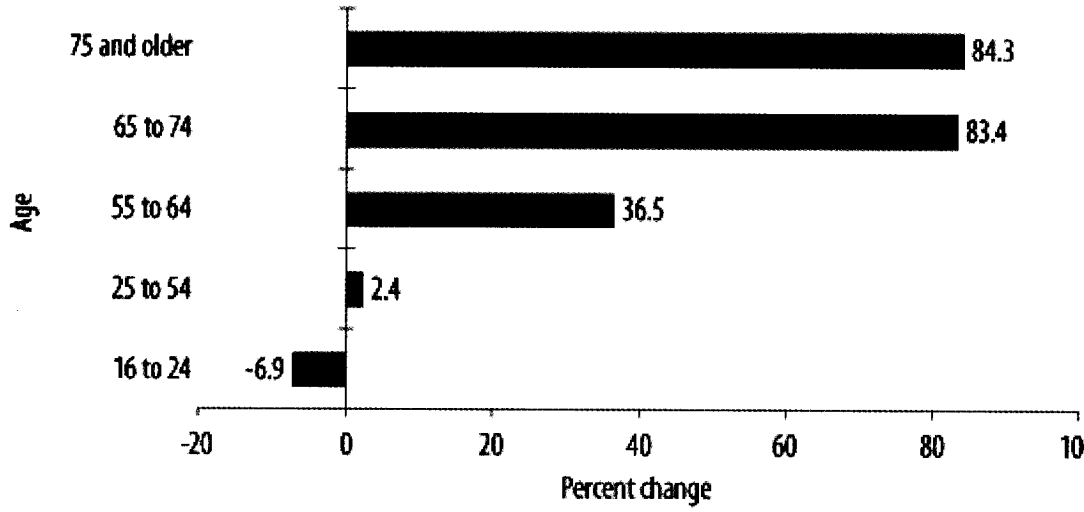
Since many provisions of the PPACA have only begun in 2014, the jury is still out on the impact of health care reform. At the time this paper was written, there had already been at least 27 unilateral changes to the PPACA, including a number of delays relating to such areas as the employer mandate. Many of the changes expected with health care reform are conjectures at this point in time. However, sound risk management principles

support the necessity of examining these scenarios prior to their actual implementation and take steps necessary, if available, to moderate any possible adverse consequences.

WORKERS COMPENSATION AND AN AGING WORKFORCE

According to the Insurance Information Institute, one out of every three Americans age 65 to 69, and one out of five in ages ranging from 70 to 74 are employed. The labor force participation rate for ages 70 to 74 has increased 50 percent since 1998. With the large group of Baby Boomers reaching retirement age, this trend is expected to continue (see Table 3 below).

Table 3: Projected percentage change in labor force by age, 2006-2016



Source: U.S. Bureau of Labor Statistics www.bls.gov

In 2008, there were 28 million workers over the age of 55. That number is expected to increase 43 percent by 2016. Reasons for the aging of the workforce are varied. As with other developed countries the average age of the general population in the United States is increasing. American workers have been delaying retirement as early as the 1990s, with the trend accelerating since the Great Recession. Levanson and Cheng (2011) measure the impact of home prices and labor market conditions on retirement decisions, and find that households which experience significant declines in home prices are more likely to delay retirement. The same behavioral response was found in households that experienced a labor loss or compensation cuts.

A more altruistic reason for older workers to continue working is motivated by a continued need to contribute to society and a desire to make a difference. A 2005 study by the think tank Civic Ventures and the MetLife Foundation finds that half of Americans ages 50 to 70 want jobs that contribute to the greater good now and in retirement. They are

also more likely to continue working when their job allows more personal control over their work hours, job autonomy, workplace flexibility, and opportunities to learn.

As with the Patient Protection and Affordable Care Act and the Terrorism Risk Insurance Program Reauthorization Act, legislative changes have impacted society and made it more attractive for seasoned citizens to return or remain in the workforce. The Senior Citizens' Freedom to Work Act of 2000 allows those who have reach full retirement age[6] as defined by Social Security, to continue to work and have unlimited earnings without causing a reduction in their Social Security benefits. Before this law was in place, those between ages 65 and 69 saw a reduction in their benefits if they had excess earnings.

The generally accepted norm in the relationship between workers compensation claims and the age of workers is that younger workers are expected to have a higher frequency of claims, but claims filed by older workers are generally more severe with a longer recovery period. Especially for soft tissue injuries, older workers tend to require more treatment for their injuries. Older workers are more vulnerable to co-morbidities such as diabetes and hypertension, which can result in higher medical costs and an extended recovery period. Studies have provided somewhat mixed results. Schwatka, et al. (2012) evaluated a database of over 107,000 workers compensation claims filed between 1998 and 2008 among construction workers in Colorado. They concluded that for every one-year increase in age, indemnity and medical costs increased by 3.5 percent and 1.1 percent, respectively. However, in a national study conducted by the National Council on Compensation Insurance (NCCI), they find that in terms of costs per worker, all groups of workers age 35 to 64 appear to have similar costs per worker. In other words, older workers generally tend to have higher costs per worker, but "older" appears to start around age 35. In addition, they find that disparities in costs by age in recent years primarily reflect differences in severities, as their study shows that differences in frequency among the various age groups have virtually disappeared. The 2012 study by Restrepo and Shuford of the NCCI's Actuarial and Economic Services Division also finds that types of injuries play a major role in the differences in severity by age. Younger workers have more back and ankle sprains, while older workers tend to experience more rotator cuff and knee injuries. Restrepo and Shuford also point to higher wages as a key factor in increased indemnity costs for older workers.

Smart employers are embracing their aging employees, and are pleased to see their most dependable, skillful and knowledgeable employees continuing to make important contributions. To best harness the value of their mature workers, companies are increasingly taking steps to keep older workers healthy on the job, prevent workplace injuries, and speed return-to-work times after injuries.

There are some suggested steps that employers can take to generally improve the frequency and severity of claims by workers. Sound management practices have proven

[6]The full retirement age ranges from age 65 to a gradual increase to age 67 for those born after 1959.

repeatedly that engaged employees show fewer sign of organizational neglect, reflected by absenteeism and less motivation. Benefits have been shown over and over again to extend to a reduction in aches, pains, and claims (Russell, 2007). Organizations should also continue to develop and train older workers, as the Bureau of Labor Statistics reports that workers age 55 and older receive only one-third as many hours of formal training as workers age 45 to 54. While there may be a perception that some organizations prefer not to expend resources on employees nearing the end of their careers, an increasing number of employers are beginning to make the connection between mature worker productivity and job attributes. For example, organizations are introducing flexible work schedules, wellness programs, part-time positions, job sharing, retraining and other strategies in an effort to retain and recruit older workers (Query, 2008).

CONCLUSION

This study examines and accentuates various challenges faced by the workers compensation insurance system in the United States, especially with respect to regulatory risks. Certain regulations passed over the past few years may have had noble intentions for improving various issues facing the United States, such as terrorism and the risk of an insurance market failure, an inefficient health care system, and an unsteady economy. Often these regulations are legislated with little regard or understanding of their impact on the workers compensation system. However, recognition of these challenges periodically, as evidenced by cyclic unsustainable losses by providers of workers compensation coverage, has triggered either offsetting legislation or regulatory tweaks that have allowed the system to continue without catastrophic consequences - up to now. It would be prudent of the global insurance industry to keep a close watch on legislative trends and to retain sufficient flexibility to adequately respond to any changes on the horizon.

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