



## Report to the Governor

From the Superintendent of Insurance  
Summarizing Workers' Compensation  
Data and Recommending Improvements  
in Data Collection and Development of a  
Research Structure for Public Policy

March 2008

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## **Executive Summary**

On March 13, 2007, Governor Spitzer signed the Workers' Compensation Reform Act ("Reform Act") into law. Highlights of the new law include raising the maximum benefits payable to injured workers; initiation of return to work programs to help workers return to gainful employment; strengthening penalties for fraud and abuse; and providing a maximum number of years that a permanently partially disabled, non-scheduled<sup>1</sup> ("PPD NSL") claimant can collect workers' compensation indemnity benefits.

Pursuant to the Reform Act, the Governor directed the Superintendent of Insurance ("Superintendent") to issue a Report by March 1, 2008, and annually thereafter, summarizing the available data and making recommendations to improve and refine the data collection systems going forward. In a March 13, 2007 letter the Governor stated that "[t]here cannot be accountability without data" and "[t]he State cannot make policy determinations if it lacks basic information." Further:

The Superintendent of Insurance is directed to take the steps necessary to gather all data on a regular and ongoing basis necessary to make appropriate policy judgments and determine whether to approve rates. This effort must include data regarding: wage loss, the type of injury, and age of beneficiaries; medical costs, including testing and imaging fees; frictional costs (including costs of lawyers, IMEs<sup>2</sup> and law judges); indemnity benefits paid and medical care provided; the time for adjudication of claims, including the time from filing to classification as permanently partially disabled; the time for payment of claims and the provision of care; information necessary for the Superintendent to make evaluations regarding premium amounts; flags that can serve as fraud indicators; the size of the workers' compensation market; and any other data deemed by the Superintendent – in consultation with interested parties – necessary or advisable.

In accordance with the Governor's March 13<sup>th</sup> letter, this Report provides a detailed data description of the current workers' compensation system, sets out a framework for benchmarking the system, identifies major data limitations and the currently available data for the benchmarks and recommends a structure for improved and integrated data collection and for policy research using such data.

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<sup>1</sup> Permanent Partial Disability Non-Scheduled claims involve a permanent partial injury that is not covered by the statutorily scheduled body part losses.

<sup>2</sup> Providers who meet eligibility requirements to conduct independent medical examinations of persons suffering injuries or illnesses which are the subject of claims under the Workers' Compensation Law.

In preparing this Report, the New York State Insurance Department (“NYSID”) consulted with numerous parties involved in the workers’ compensation system, including representatives from organized labor, private insurance carriers, the State Insurance Fund (“SIF”)<sup>3</sup>, the Workers’ Compensation Board (“WCB”) and representatives of other state’s workers’ compensation systems. The data, on which the conclusions below are based, predate the Reform Act, and do not reflect any changes that may have been brought about by the Reform Act.<sup>4</sup>

Key findings in this Report include the following:

### **Overall**

- New York State has a competitive market for workers’ compensation coverage;
- Overall claims are decreasing;
- The combination of decreasing numbers of claims and slightly increasing total cost trends result in costs per claim growing significantly.
- Indemnity and medical costs per claim --- the two components of claim cost-- are both rising.
- The combination of decreasing numbers of claims and slightly increasing total cost trends result in rising average per claim costs for both indemnity and medical costs.

### **Indemnity, Medical and Frictional Costs**

- In most other states, medical costs are a higher percentage of total costs than indemnity costs. According to National Council on Compensation Insurance<sup>5</sup> (“NCCI”), in 2003 medical payments made up 55% of total benefit costs nationally and indemnity payments represented 45% of total benefit costs. In contrast, in New York State indemnity costs are higher at 62% and medical costs are lower at 38%.
- New York State’s average medical cost per indemnity claim is growing moderately faster than indemnity. From 1997 to 2003, medical costs per indemnity claim increased by 58% compared to a 52% growth in indemnity cost per claim.
- The driving forces behind rising costs are PPD NSL claims. Based on 2003 policy year data projected by CIRB to 5.5 years, PPD NSL claims are estimated to represent 83 % of PPD costs and 74 % of total indemnity costs.<sup>6</sup>
- Back and neck injuries represent almost 40% of total medical payments.

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<sup>3</sup> SIF is a New York State agency whose activities include a) providing workers' compensation insurance coverage to private and public employers; b) providing disability benefits and employer liability insurance coverage; and c) acting as the third party administrator for New York State government employees. SIF must offer workers' compensation insurance to any employer requesting it, making the SIF an "insurer of last resort" for employers otherwise unable to obtain coverage

<sup>4</sup> The terms used in this summary are defined in Appendix B

<sup>5</sup> The National Council on Compensation Insurance is an association of workers' compensation insurers which serves as the workers' compensation rating organization in about two-thirds of the states. The group establishes standards for use in rate making, develops policy forms, collects statistics, and provides statistical support and services.

<sup>6</sup> CIRB refers to the Compensation Rating Board that is a private unincorporated association of insurance carriers responsible for collection of workers' compensation data and development of workers' compensation rates and rules regarding the proper application of these rates to workers' compensation policies. CIRB also administers various individual risk rating plans such as the Experience Rating Plan and the Retrospective Rating Plan.

- One indicator of high frictional costs in New York State is the relatively high percentage of claims using independent medical examinations (“IME”). In New York State, for 2004 claims with three years of development, 37% of claims used an IME. For 13 other states studied by WCRI, only 17 % used IMEs. Since 2004 the percentage in New York has declined to 32%.

### Section 32 settlements

- Workers who enter into a Section 32 settlement, demonstrate as poor results as PPD NSL claimants for return to work and remaining at work. In the first quarter after their injury, 52 % of these workers have returned to the workforce. This percentage continues to decline to 24% remaining in the workforce by 8 quarters after injury.
- Workers who agree to a Section 32 settlement have significantly lower pre-injury wages (\$19,627) than the pre-injury wages of all workers compensation claimants (\$34,344).
- Section 32 claimants use a higher percentage of their benefits to pay legal fees (12%) than any other category of claim.

### Claims Administration

- The average length of time from injury to first indemnity payment is significantly longer than in many other states. In New York State, a first indemnity payment has been made within 21 days on 29% of claims. In 14 other states studied by the Workers Compensation Research Institute (“WCRI”),<sup>7</sup> the median percentage of claims where a first indemnity payment is issued within 21 days is 41%.
- The percentage of claims that are controverted has grown modestly over the 6 years preceding 2006, from 15% in 2000 to 17% in 2005. The timeframe to resolve these claims has been declining, 348 days in 2000 to 240 days in 2004 but it is still long. The proposed improvements in processing controverted claims were designed to reduce these timeframes significantly to an average of 90 days for claims covered by the Streamlined Docket. .
- The number of appeals resolved in four months or less has risen from 37% in 2000 to 54% in 2007. However, the average time to resolve an appeal in 2007 was 5,6 months.

### Return to Work

- The percentage of PPD NSL claimants that return to work and remain at work is low. While, 68% of these injured workers have returned to work by the first quarter after the injury, this percentage drops steadily until the 13th quarter after the injury, where it levels off at approximately 20%.

### Data Limitations

- The two primary data sources for claims adjudication (WCB) and claims cost (CIRB) can not be cross-walked. As a result, the costs of PPD NSL can not be easily tracked and they are the driving factor behind medical and indemnity claim costs. Therefore, these costs have to be estimated in part.
- Although medical costs are projected to be the faster growing portion of the workers’ compensation system, New York State does not collect the detailed medical information on cost or utilization of procedures, diagnosis, types of health care

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<sup>7</sup> The Workers Compensation Research Institute is an not-for-profit research organization providing information about public policy issues involving workers' compensation systems

providers and other information essential to understanding the factors behind growth. This data is also essential for the evaluation of quality of medical care.

- Basic financial information at the claims level is not collected from the one-third of the workers' compensation system covered by self-insured public and private employers.

#### **A. Overview of Marketplace**

Employers in New York State have the benefit of a marketplace that provides three options for workers' compensation insurance: self-insurance, coverage by private carriers or coverage by SIF. In 2005, 35% of the market is self-insured, 43% was covered by private carriers and SIF covered the remaining 22%. The self-insured sector constitutes a significant and growing share of workers' compensation coverage in New York State. Both SIF and the private carriers have lost market share over the past five years. During that time period, the relative share of premium of SIF and the private carriers has varied within a 5% range.

In 2006, the size of the New York State workers' compensation system was approximately \$5.5 billion. This estimate is based on the direct written premium of \$4.1 billion for SIF and the private carriers in 2006, plus an additional \$1.4 billion, representing an additional 33% to estimate the self-insured sector based on available market share information

#### **B. An Analysis of Claims and Benefits Costs to the Workers' Compensation System**

##### **1. Medical Costs**

In New York State, medical costs are a relatively modest share, constituting 38% of total system costs. Overall, these costs are moderate in comparison to other states. A primary reason for its lower medical costs is the medical fee schedule. In a WCRI study,<sup>8</sup> New York State's fee schedule ranked as the 11th lowest medical fee schedule of all the states. For physical services (therapeutic physical medicine, chiropractic and osteopathic manipulations), New York State ranked as the second lowest of the states.

However, medical costs are the fastest growing component within the New York State system. This Report focuses on the growing costs for PPD NSL injury claims that are ultimately driving the increasing medical costs. However, to understand fully all the drivers within the medical system, as well as to ensure that claimants are receiving quality medical care it is essential to improve the collection of detailed medical information at the claim level and medical service level.

##### **2. Indemnity Costs**

New York State ranks third highest in the nation in terms of indemnity cost per case. The average indemnity cost per claim of \$32,040 is almost twice the national average of \$18,996. A primary cause of these high costs is the lifetime indemnity benefits for PPD NSL claims. The Reform Act capped the duration of PPD NSL benefit payments to eligible injured

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<sup>8</sup> "Benchmarks for Designing Workers' Compensation Medical Fee Schedules", Workers Compensation Research Institute, 2006

workers. In 2003, this small group of claimants represented 74 % of total indemnity costs.<sup>9</sup> The duration cap should reduce costs to the system over time. However, current data limitations render it impossible to accurately track the full costs of the workers' compensation system.

### C. Slow Claim Resolution

New York State's workers' compensation system is slow to resolve claims. The Governor's March 13, 2007 letter directed the New York State Insurance Department ("NYSID") to examine the resolution of disputed cases at the WCB and to design methods for resolving them within ninety days of a dispute. The Superintendent sent his recommended changes to the process and draft regulations to implement these changes on June 1, 2007. In this Report, these proposed changes will be referred to as the "Streamlined Docket." This Report addresses data limitations and makes recommendations for collecting additional data on the time for processing both controverted and non-controverted claims.

The proposed Streamlined Docket focused on controverted claims.<sup>10</sup> A claim is controverted when the payor challenges one of the following three items:

- Whether the accident was work-related;
- Whether the claimant notified his or her employer within the statutory time limit; and
- Whether there is a causal relationship between the accident and the resulting injury or disability.

During deliberations over the controverted issues, the claimant does not receive any indemnity payments. Delays in indemnity benefits cause economic hardship. The claimant may also have trouble receiving appropriate medical care. In order to receive medical treatment, the doctor may require the claimant to sign a release stating if the treatment is not covered by workers' compensation, the worker will pay for the treatment. Many claimants are not willing to risk being held liable for the cost of treatment so treatments are delayed. Delays in medical benefits can affect the worker's long term medical prognosis and the ability to return to work.

According to available data, the average number of days necessary to determine the liability for a controverted claim in 2005 was 240 days. The goal of the proposed Streamlined Docket is to reduce this time to 90 days to cases covered by the Streamlined Docket. The average number of hearings on claims that require at least one hearing is 5.6 hearings. The average time to classify a PPD NSL is 4.5 years.

Due to data limitations, it is difficult to fully evaluate the different factors that contribute to these delays. This Report shows there are equally significant delays in providing timely benefits to claimants with non-controverted claims. Non-controverted claims often require at least one hearing to resolve disputes over medical care or average weekly wage, and have an average of 3.6 hearings.

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<sup>9</sup> Based on CIRB data for 2003 projected for 5.5 years development.

<sup>10</sup> Unrepresented claimants and complex claims including many occupational disease claims are excluded from certain requirements of the Streamlined Docket.

## **D. Evaluating and Establishing Benchmarks for the Workers' Compensation System**

This Report outlines a recommended framework for evaluating New York State's workers' compensation system. To monitor the quality of New York State's worker's compensation system, it is important to benchmark at least the following nine areas:

- A. Workers' Compensation Insurance coverage rates
- B. Timeframes for delivery of indemnity benefits to injured workers
- C. Timely access to quality medical care for injured workers
- D. Adequacy of benefits
- E. Workplace safety
- F. Return to Work
- G. System costs
- H. Timely and equitable claim resolution
- I. Performance of major players in the system

For some benchmark areas, such as controlling system costs, it is relatively easy to choose a number of measurements that can be used to track system performance. On the other hand, it is much more difficult to develop quantitative measurements that accurately measure other benchmark areas such as "access to quality health care." In these cases, qualitative measures are proposed.

## **E. Recommendations for Industry Wide Data Collection**

This Report addresses the following two questions. First, how can New York State improve the scope and quality of data on the workers' compensation system? Second, how can New York State ensure that the enhanced data is used to effectively monitor and improve the workers' compensation system? In response, this Report delineates short and long-term recommendations to address the significant data limitations identified throughout the Report and to create a central data collection warehouse. The data warehouse can then serve as the foundation for research necessary to address public policy issues.

### **1. Short-Term Recommendations**

These recommendations can be implemented in tandem with the long-term data improvement project. Short-term recommendations include adding new fields to existing data collections, linking existing data sources, and implementing new procedures to ensure consistent use of data fields across the WCB claims system.

### **2. Long-Term Recommendations:**

To address the significant gaps in data, it is recommended that the following major areas of data be collected and retained to support system monitoring and research regarding the workers' compensation system:

- Detailed medical payment data;

- Detailed medical billing data; and
- Financial claim level data from the private and public self-insured employers

Another long term recommendation is that both the private and public self-insured entities be required to submit detailed claim data on a regular basis to the WCB.

### 3. Ongoing Research

To ensure the success of the reforms, this Report recommends that there be a centralized data collection organization that would provide the foundation for an on-going research function about the workers' compensation system. It is recommended that the organization would take the form of an independent data warehouse and research division at WCB that reports directly to the WCB Chair. This structure is designed to encourage the division's independence and enhance its authority.

WCB and NYSID have limited authority to obtain data from two major segments of the market: (a) self-insureds and self-insured trusts; and (b) SIF. WCB oversees self-insureds and self-insured trusts in certain respects beyond claims administration. However, its authority to make data calls on those entities is limited. To support effective benchmarking and other system and public policy research projects, the WCB should be granted new statutory authority to collect from self-insureds and self-insured trusts, including their members, workers' compensation data. WCB and NYSID, the agency that generally regulates insurance carriers, should each have new statutory authority to collect from SIF workers' compensation data. In addition, new legislation should give WCB, through its research division, the authority to request from other state agencies data relevant to workers compensation.

To assist the data warehouse and research division, it is further recommended that a research advisory committee be established with representatives from the Legislature, WCB, Department of Labor ("DOL"), NYSID, labor, business, academia, and the insurance industry. The chairperson of the committee would be designated by the Governor. The committee would advise the research division on areas where further research is needed. Together, the research division and the advisory committee would explore the potential of building a partnership with a university in New York State, preferably a public one, to undertake specific research projects on workers' compensation.