

WORKERS' COMPENSATION (C) TASK FORCE

Workers' Compensation (C) Task Force March 15, 2021, Minutes

Compensation Claims Related to COVID-19 (Attachment One)

Percentage of COVID-19 Claims Compared to All Workers' Compensation Claims (Attachment Two)

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Workers' Compensation (C) Task Force
Virtual Meeting (*in lieu of meeting at the 2021 Spring National Meeting*)
March 15, 2021

The Workers' Compensation (C) Task Force met March 15, 2021. The following Working Group members participated: Lori K. Wing-Heier, Chair, Anna Latham and Michael Ricker (AK); Glen Mulready, Vice Chair, represented by Kim Bailey, Cuc Nguyen and Andrew Schallhorn (OK); Alan McClain represented by Jimmy Harris (AR); Evan G. Daniels represented by Tom Zuppan (AZ); Ricardo Lara represented by Yvonne Hauscarriague, Giovanni Muzzarelli and Mitra Sanandajifar (CA); Andrew N. Mais represented by George Bradner and Wanchin Chou (CT); Karima M. Woods represented by David Christhif and Angela King (DC); David Altmaier represented by Sandra Starnes (FL); John F. King represented by Steven Manders (GA); Colin M. Hayashida represented by Randall Jacobson (HI); Dean L. Cameron represented by Michele MacKenzie, Randy Pipal and Aaron White (ID); Dana Popish Severinghaus represented by Judy Mottar and Benjamin Rekart (IL); Vicki Schmidt represented by Heather Droge and Brenda Johnson (KS); James J. Donelon represented by Warren Byrd and Tom Travis (LA); Eric A. Cioppa, Sandra Darby and Robert Wake (ME); Grace Arnold represented by Tammy Lohmann and Phil Vigliaturo (MN); Chlora Lindley-Myers, Cynthia Amann and Jo LeDuc (MO); Mike Causey represented by Fred Fuller and Michelle Osborne (NC); Marlene Caride represented by Chanell McDevitt and Mark McGill (NJ); Barbara D. Richardson represented by Gennady Stolyarov (NV); Andrew R. Stolfi represented by TK Keen (OR); Jessica K. Altman represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Raymond G. Farmer represented by Michael Schull and Michael Wise (SC); Larry D. Deiter and Maggie Dell (SD); Michael S. Pieciak represented by Kevin Gaffney and Pat Murray (VT); and James A. Dodrill and Tonya Gillespie (WV). Also participating were: Amanda Harlow-Felder and John Wells (MS); Connie Adams, Marianne Baker and Nicole Elliott (TX); and Tracy Klausmeier (UT).

1. Adopted its 2020 Fall National Meeting Minutes

Mr. McKenney made a motion, seconded by Ms. Nakasone, to adopt the Task Force's Nov. 16, 2020 (*see NAIC Proceedings—Fall 2020, Workers' Compensation (C) Task Force*) minutes. The motion passed.

2. Heard a Presentation from the IAIABC on COVID-19 Workers' Compensation Claims

Jennifer Wolf (International Association of Industrial Accident Boards and Commissions—IAIABC) said they have been collecting data regarding COVID-19 workers' compensation claims. She said the IAIABC has been working with their research and standards committee for the past several years to collect claims information related to their workers' compensation experience from states and provinces. The basic measures being collected include: 1) the number of claims received each year; 2) the number of fatalities; 3) the denial rates; and 4) the rates per 100,000 workers in those claims. Ms. Wolf said they used this model to create a data call for workers' compensation claims related to COVID-19.

Ms. Wolf said the IAIABC Claims Measures survey seeks to provide a broad overview of workers' compensation claims metrics across North American jurisdictions for injury and fatality data. She said the IAIABC's first report was published in the summer of 2020 and includes five basic measures of claims across the states and provinces. Ms. Wolf said the survey is a good reference in helping to understand some of the data reporting differences across jurisdictions. She said the data reporting differences are important and meaningful when looking at the COVID-19 workers' compensation claims that were reported.

Ms. Wolf said the IAIABC began having informal discussion sessions in April 2020 with jurisdictional administrators about their experiences and challenges related to COVID-19. She said that during those calls, there was a lot of informal sharing about the COVID-19 claims that states were beginning to see. As part of the discussion, the IAIABC began to collect and aggregate this information. The claims numbers are taken from the first report of injury data that is reported by claims administrators to the states. The IAIABC collected claims information from 19 states throughout 2020. Ms. Wolf said this information came from claims that were received from late February 2020 through December 2020. She said this data was collected through the end of January 2021, so there may still be a few claims outstanding through the end of last year. Ms. Wolf said this data provides a good snapshot of the COVID-19 claims experience for the 19 states. Across the 19 states, there were almost 260,000 COVID-19 workers' compensation claims reported. Claims reported by California, Florida and Texas represented almost 70% of the total COVID-19 claims reported.

Ms. Wolf said one of the things discussed at the IAIABC and across the workers' compensation industry is the interest in understanding the denial rate of workers' compensation claims. She said they did not calculate the median across all 19 states because not all of the states collect denial information in the same manner. Ms. Wolf said the median denial rate across 15 states was 35.4%, which is higher than the denial rate of other types of workers' compensation claims. She said as states looked

at the data more closely, they found that a significant portion of the COVID-19 claims denied were attributed to a negative COVID-19 test.

Ms. Wolf said one significant trend seen in 2020 was that states started using their first and subsequent report of injury data to create dashboards and analytic reports on COVID-19 claims. She said the California Workers' Compensation Institute (CWCI) created an interactive dashboard that is updated frequently with workers' compensation claims data. This data has several different measures and allows users to create customized views based on a number of different variables. Ms. Wolf said this interactive database is an example of how workers' compensation claims data can be used to present information in a digestible and user-friendly way. This interactive data base is being updated more frequently than many of the injury and illness reports that have been presented in the past.

Ms. Wolf said Florida, Kansas, Minnesota, Montana, Ohio, Texas, Virginia and Washington sent weekly or monthly reports to their governors or other administration officials related to COVID-19 workers' compensation claims. She said many of these reports were shared informally with the workers' compensation industry and were available publicly. Ms. Wolf said this is an example of states using the data they are collecting to provide a more up-to-date analysis. She said she believes these kinds of efforts will be replicated in the future, giving stakeholders a better understanding of workers' compensation claims experience within their states.

Ms. Wolf said the IAIABC collected information regarding the number of reported workers' compensation claims coded to COVID-19 for 19 different states. She said the chart shown does not include California, because they have by far the largest number of workers' compensation claims related to COVID-19 (Attachment One). Ms. Wolf said California saw more than 113,000 workers' compensation claims, while Texas (the second highest number of COVID-19 claims) had more than 30,000 workers' compensation cases filed. States such as Iowa and Maryland had less than 2,500 COVID-19 workers' compensation claims files.

Ms. Wolf said it is important to understand that these are claims counts generated by the first report of injury received by the states and that there are many differences in reporting requirements across jurisdictions. She said this will account for some of the differences when trying to compare across jurisdictions. Ms. Wolf said some states require the reporting of all claims, while other states require only the reporting of lost-time claims. She said, for example, Florida and Michigan only require the reporting of claims that have a lost-time component. Ms. Wolf said there are also significant variations in the waiting periods across states, which will have an impact on some of the numbers of claims being reported.

Ms. Wolf said one of the questions the IAIABC had regarding COVID-19 workers' compensation claims was whether they would see a difference in claims across states that had implemented a COVID-19 presumption versus states that had not implemented a presumption. She said there was really no discernable link between the number of COVID-19 workers' compensation claims within states that implemented presumptions than within states that did not implement presumptions. Ms. Wolf said it is important to understand that presumptions are not created equal, and they vary in scope and the industries and worker's classes they cover.

Ms. Wolf said another way to view this information is to look at how significant COVID-19 claims are in relation to all workers' compensation claims reported within a jurisdiction. She showed a chart (Attachment Two) that reflected the percentage of COVID-19 claims compared to all of the reported workers' compensation claims in 2020. The percentage varies from less than 5% of the claims in Georgia to more than 30% of the claims in Florida and Michigan. Ms. Wolf said the differences in reporting requirements could have an impact on the percentage. She said Florida only requires lost-time claims to be filed, while Georgia requires all claims be filed; this could account for one of the differences in terms of percentage. Ms. Wolf said the median across the 16 states shown was 10%, indicating that 10% of the workers' compensation claims were COVID-19 claims.

Ms. Wolf said there has been a lot of interest and discussion regarding denial rates for workers' compensation claims related to COVID-19. The denial rates range from 4% in Michigan and Missouri to as high as 63% in Colorado. She said there has been a lot of speculation that there were workers who filed claims based on exposure, or the fact they had to go into isolation or quarantine, because a colleague may have had COVID-19 and the claim represented a preemptive measure; if a COVID-19 test came back negative, this would lead to a claim denial. Director Wing-Heier said Alaska also experienced this.

Mr. Bradner asked if the IAIABC was also looking at self-insured entities in the data. Ms. Wolf said self-insured data was included in their data. She said the data for all the information she is reporting on was from all claims reported to the states by both insured and self-insured employers. Ms. Wolf said some states have seen some difference in denial rates from insured employers versus self-insured employers. Mr. Bradner asked how IAIABC was getting data from the self-insured entities and asked how comfortable the IAIABC was with the data received. Ms. Wolf said this data is based on the first report of injuries

that were reported to the state. She said all claims have to be reported to the state regardless of whether a business is insured or self-insured. Ms. Wolf said she is confident that the data includes the landscape of insured and self-insured cases.

Ms. Wolf said regarding industry classes, health care workers accounted for the largest percentage of claims, followed by first responders.

Ms. Wolf said data shared by the states suggests that the majority of COVID-19 claims are fairly low cost and had minimal medical expenses. She said wage replacement benefits generally were limited to the quarantine or isolation period. Ms. Wolf said there is a small percentage of claims that were much more severe and higher in cost. She said there is a lot of speculation regarding the cost of the long-haul COVID-19 claims and what the cost of permanent partial awards might look like because COVID-19 can result in permanent damage to the lungs and to pulmonary function.

Ms. Wolf said that Texas received a lot of their data through a special data call and that the IAIABC was not able to obtain all of the information Texas collected. Therefore, not all information is available for Texas.

Ms. Wolf said there is one emerging issue for the state workers' compensation administrations. She said as of December 2020, the IAIABC started receiving report of injury claims for people who have had adverse reactions to the COVID-19 vaccine, and they continue to receive them. Ms. Wolf believes this is contributing to the debate related to an employer's ability to require vaccines, as well as to start discussion regarding the conditions that would make these claims compensable. She said there is activity at the state level that indicates these claims are more prevalent than initially seen.

A question was asked: "If a person is forced to miss work for quarantine and they submit a claim, are they denied for a negative test result?" Ms. Wolf said this is dependent upon the state and the insurer. She said the Washington State Department of Labor & Industries (L&I) made the decision to voluntarily pay for the isolation and quarantine period, even if the COVID-19 test result was negative, if there had been an exposure and the employer required a quarantine. Ms. Wolf said there is no broad rule to answer this question.

Mr. Stolyarov asked whether Ms. Wolf had any statistics regarding the denial for claims related to an adverse reaction from a COVID-19 vaccination. He said there could be certain influences on people submitting those claims that may lead the claims to be questionable from a scientific causation perspective. Ms. Wolf said she does not believe the data is in regarding adverse reactions from vaccinations yet and that states are just now receiving information regarding these claims. She said these claims would be reviewed in terms of their link to compensability. Ms. Wolf said that there was robust debate from the regulatory community about the compensability rules there and that she believes each claim will be handled on a case-by-case basis. She said there was some discussion among some that would say if an employer made the COVID-19 vaccine mandatory as a part of an employment relationship and the individual has an adverse reaction, which results in medical treatment or time away from work, this would be a catalyst for filing a workers' compensation claim.

3. Heard a Presentation from the NCCI on Workers' Compensation Presumptions and Loss Data

Susan Donegan (National Council on Compensation Insurance—NCCI) said the NCCI has seen the workers' compensation system demonstrate agility and resiliency over the past year. She said more than 20 states considered legislation to establish workers' compensation presumptions regarding compensability for employees impacted by COVID-19. Ms. Donegan said nine states enacted legislation in 2020, while other states used the mechanisms of executive orders, emergency rules and bulletins. Most of these actions applied to first responders and health care providers, as well as other essential workers.

Ms. Donegan said the NCCI continues to see legislative and regulatory efforts continue in 2021. She said there are approximately 14 states that have various presumption bills pending and being introduced into legislatures. She said these bills have expanded or changed the presumption language to include things such as infectious diseases.

Ms. Donegan said in terms of rate and loss cost filings from 2020, the overall workers' compensation system continues to experience unprecedented results. The calendar year combined ratios are expected to be quite favorable, coming in at 86%. Both premiums and losses are down for the 2020 calendar year in a similar magnitude. Premiums are -8.1 for private carriers, and she said it looks like final numbers will be closer to -10 with the NCCI's latest data, which includes both private carrier and state funds.

Ms. Donegan said losses are at approximately a -0.6%, which includes a second-quarter anomaly with a big decline of about 16 to 20%. She said due to the lack of COVID-19 rate making data, the NCCI did not include an explicit adjustment for COVID-19 in the recent rate and loss cost filings. Ms. Donegan said the NCCI did not know whether COVID-19 would result in significant adverse loss development and loss rates, or whether the impact is going to be relatively small. She said that based

on early indications from reported data from the NCCI's second-quarter medical data call, they saw two things. They looked at the medical transaction from the second quarter to get an idea of the medical component of COVID-19 losses, as well as any significant anomalies due to treatment of injured workers. The NCCI removed simple COVID-19 testing claims from the data.

Ms. Donegan said 20% of the COVID-19 medical includes an inpatient hospital stay. Of those requiring an inpatient hospital stay, one in five required intensive care unit (ICU) treatment. The average length of an inpatient hospital stay for COVID-19 claims ranged from 7.5 days to 11 days. If the ICU was involved, the hospital stay tended to be toward the higher end. Ms. Donegan said the cost of these claims averaged \$38,000 for inpatient hospital stays and \$60,000 for those stays requiring the ICU. She said there were more COVID-19 claims from females than males, and the average age for COVID-19 claims was 46. Ms. Donegan said 16% of the COVID-19 claims had signs of comorbidity treatments.

Ms. Donegan said there was little distortion in the time to treat injuries due to shutdowns or access to health care challenges, which is encouraging. She said the NCCI was not seeing any material change in the residual market composition at this time. Ms. Donegan said the residual market is made up mostly of small policies, where a substantial portion of the policies are for construction and a small percentage of policies include front-line workers.

Ms. Donegan said some of the topics arising during this year's legislative sessions include legalization of marijuana, both medical and recreational, as well as CBD. She said there are currently numerous bills regarding these topics, as well as court cases about whether marijuana is covered under workers' compensation laws.

Ms. Donegan said there are approximately 14 jurisdictions with pending legislation regarding single payer and universal health care. She said this legislation may or may not include workers' compensation.

Ms. Donegan said there were 13 states that have introduced some form of independent contractor bill, as well as the federal rule. She said there has been nothing introduced in Congress regarding this issue. However, she said the NCCI has been hearing that there may be a bill regarding independent contractors that is similar to California's independent contractor legislation that may be used as a model in Congress to address independent contractor issues.

Ms. Donegan said the NCCI is still considering COVID-19 as an extraordinary loss event and is working with several modeling firms to evaluate this exposure. She said one possibility would be to incorporate a pandemic load into existing catastrophe loads. Ms. Donegan said she wanted state insurance regulators to know the NCCI is looking at this exposure.

Ms. Donegan said almost 30 states have received filings regarding NCCI's new Atlas manual modernization, and they have seen about 22 approvals. Some of the approvals are still pending. She said other states' bills be rolled out later this year.

Ms. Donegan said the NCCI is looking at when and under what circumstances they will bring their staff back to the office and will begin traveling again.

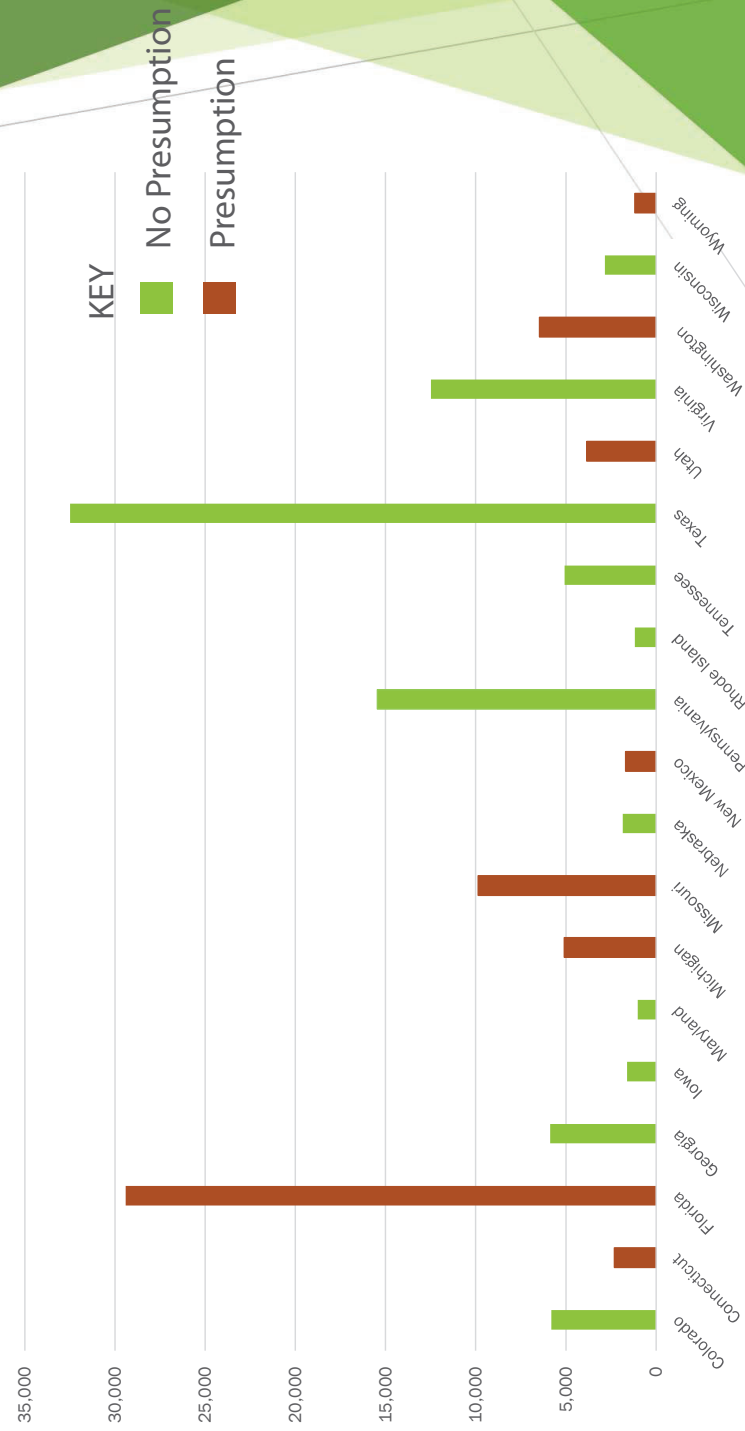
Mr. Stolyarov asked if the NCCI would be offsetting the impact of work from home in future pandemic modeling. Ms. Donegan said that whether this is included in future modeling is something they will take into consideration. She said that one of the questions that has arisen is how working from home is affecting the class codes, at home injuries and safety. Ms. Donegan said the NCCI will follow this closely.

Ms. Donegan said the NCCI had some reclassification of class codes to cover COVID-19. However, she said the rates being discussed are last year's rates, and class code presumptions were not pulled into last year's rates; they reflected the prior year. She said this is being looked at for next year too, to see the shift in the reporting from carriers. Mr. McKenney said to the extent that teleworkers were reclassified to the appropriate class, he would have thought that everything was taken care of now. He said there was a class set up for teleworkers prior to COVID-19. Ms. Donegan said this was the case and that there was also one put in for COVID-19 for a deeper look.

Having no further business, the Workers' Compensation (C) Task Force adjourned.

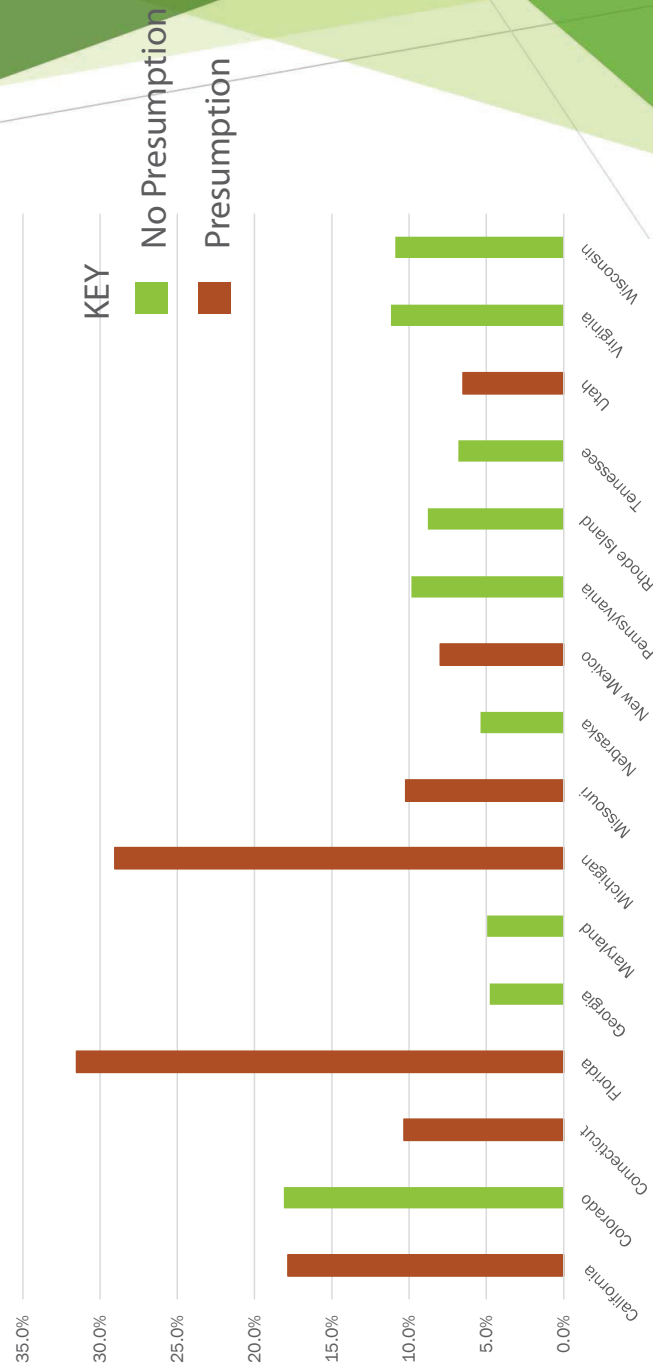
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COVID WC Claims: CY 2020



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% COVID WC Claims to Total WC Claims (CY 2020)



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