

August 24, 2004

Senate Select Committee Members on Workers' Compensation
House Committee on Business and Industry

Re: Proposed Legislative Remedies For The Texas Workers' Compensation Crisis

Dear Honorable Members:

My name is Ron Gaiser and I am a nationally certified Rehabilitation Counselor and a Licensed Professional Counselor in Texas. I am currently President of ONECOMPSM Health Systems, a totally integrated work injury management company. I spent 15 years with two different railroads, nationally developing work injury management programming to achieve two goals: 1) take exquisite care of the injured worker and, 2) provide appropriate cost containment for the employer. These are not contradictory goals.

There are fundamental flaws in Texas Workers' Compensation systems and most other states. Allow me to state those flaws as I suggest actions to correct them.

- 1. The first flaw is that the claim of an injured worker is between that worker and the insurance carrier. In fact, the employer is not allowed to manage or directly participate in the claim. This undermines the fundamental employer/employee relationship.*

The correction is to encourage employers through EEO and ADA complaint Return-To-Work, Fitness-For-Duty, and Leave-of-Absence Policies and Procedures to set up objective evidenced based Return-To-Work programs. The philosophy is that work is therapeutic and necessary for recovery; "Not Working is Not an Option". As part of this employer driven initiative to return workers safely to their jobs, employers should be allowed to contract directly or through their carriers for medical provider services. Just like group health, the employee should be directed to a network provider. Let the free market determine the providers with the best services and outcomes.

Discounting fees is not a proven method for finding providers with best practices and outcomes, nor has it proved successful in providing overall medical cost containment. A medical management process must be established to document outcomes for these providers and to match medical/functional information with return-to-work

objectives. These proven processes exist, but they have been difficult to incorporate with the burdensome rules of the Workers' Compensation system and the resistance from carriers. Medical Management by process, not discounts, has been proven to reduce costs.

2. *This brings me to the second fundamental flaw; the incentives for the parties involved in Workers' Compensation are disaligned. Third party administrators charge varied fees, but they all come down to the more open files, the longer they are open, the more cost involved. Adjustors typically carry 200 to 300 files, and most have no medical management training. Therefore additional case management fees often come into play. The carriers operate on a cost plus model. The more costs in a typical three-year cycle, the more the modifier increases, and correspondingly the costs. Until recently the carriers made their money arbitraging their cash flow in the stock market, now they must make a profit on the insurance product side.*

Realigning the incentives can best be done by better injury management processes, not by a cost plus model. The incentives for the employer and the employee are quite different. The shorter the time between injury and resolution the cheaper the costs psychologically, emotionally, physically, and certainly financially. In order for these incentives to be aligned the employer driven initiative already discussed is imperative, but more needs to be done:

Early reporting of injuries is critical. It should be mandatory that all injuries be reported immediately, (no later than end of first shift) in order to be covered. The employee should have thirty days to seek treatment if deemed necessary. This would eliminate confusion regarding compensability as well as fraud and abuse.

3. *The last flaw I wish to point out is the lack of scientifically, functionally based information in the Work Injury Management Process.*

As previous witnesses have discussed what post offer/post injury testing is, I will only address it from an injury process management view. It is important to use post offer testing to set baselines for comparison in the event of future injury. It is recommended that the same protocols used for post offer tests be used in fitness-for-duty testing, to return workers to their jobs or to establish accommodations. The AMA guidelines should be used for impairment ratings to settle cases. By using objective functional testing for comparison to pre-injury status, more accurate impairment rating will result. In addition, it keeps the post injury focus on function and return-to-work, not litigation. It is interesting to note that a study funded by the California Commission came to the same conclusion in 1993 and it was never enacted.¹

It is apparent, Texas Workers' Compensation law and administrative rules as they stand today are not good for employees, as evidenced by the over-utilization of medical care that has led to abysmal return-to-work rates. They are not good for employers as evidenced by that return-to-work rate coupled with the tremendous escalation in all Workers' Compensation related costs (both direct and indirect). They are not good for government entities, as evidenced by our self-funded with tax dollars approach. It is a major contributor to the school-funding crisis. Lastly, they are not good for business as companies are leaving Texas as they are able to find better Workers' Compensation options elsewhere. This is why we need to continue our non-subscription option as an attraction to out of state companies, and responsible in state companies who want to adopt a best practices approach to work injury management regardless of the current Workers' Compensation system.

By adopting these changes, particularly by adopting an injury process management system, tied to post offer and post injury functional testing we can "do the right things for the right reasons" and achieve the congruent goals of taking exquisite care of the injured worker, while providing appropriate cost containment for employers.

Thank you for allowing me the opportunity to submit. I look forward to speaking with you in the future to discuss the proposed initiatives.

Best regards,

Ron Gaiser, M.Ed., CRC, LPC
President/ C.O.O.
ONECOMP

RG/djb

ⁱ California Department of Insurance web-site lists a study reported by Cynthia Robinson in 1993 called, "Lowering Workers' Compensation Insurance Costs by Reducing Injuries and Illness at Work."

Among many other very important discoveries, discussions and recommendations in that study, there are two very important specific recommendations made. Section 1.6 of Recommendations (3) of the Recommendations for the California Department of Insurance Section mentions, "Employers should improve hiring practices..." and in Section 1.8 it further states that "Employers should utilize nondiscriminatory pre-placement testing for physical capacity, in conformance with the criteria and protocol established by the National Institute for Occupational Safety and Health.