

February 2, 2004

Assemblyman Ray Haynes  
66<sup>th</sup> District, California

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

Dear Honorable Mr. Haynes:

It is my understanding that Governor Searzenenegger and his new administration are considering changes to the California Workers' Compensation System. I would like the opportunity to present a model currently being used in the state of Texas. The model incorporates best practice policies, procedures and processes that have proven to be successful in significantly reducing workers compensation costs. This model could be of tremendous value to the state of California as they evaluate reform measures necessary to "fix" the system.

Managing work injury through employer program design, return to work, fitness for duty, leave of absence policy, and procedure and process, can provide aggressive solutions that should be incorporated into the proposed reform. Based on the model and experience being presented, we can provide these as well as data that will validate the success of the model we're proposing.

The challenges associated with reducing workers' compensation costs must be addressed by approaching services aimed at recovery and return to work of the injured employee. When done effectively, workers' compensation costs can be drastically reduced, with the additional benefits of a safer work environment, increased worker productivity, and reduced turnover.

Based on Governor Schwarzenegger's agenda highlights regarding reform of Workers' Compensation, I'd like to propose the following initiatives for consideration as possible legislative remedies:

- 1.) *The first initiative would be to propose a new ruling addressing injury reporting, network provider services, and the reduction of judicial involvement.*

- a. *Employers should be allowed to contract directly or through their carriers for medical provider services. Just like group health, the employee should go to a network provider. Let the free market allow the employer to pick the providers with the best services and outcomes.*
- b. *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 regardless of the severity of the injury. The employee should have thirty days to seek treatment if deemed necessary. This would eliminate confusion regarding compensability as well as fraud and abuse.*
- c. *Finally, 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.<sup>1</sup>*

- 2.) *The second initiative would be to investigate having a non-subscriber option in California. Texas has nearly 50% of its employers as non-subscribers, and they are reporting 40-80% savings in their first year.*

The infrastructure to establish a non-subscriber option already exists under Federal ERISA Guidelines. This option reestablishes the employer/employee relationship in work injury that is missing in the statutory Workers' Compensation System. The key elements of non-subscription are:

- a. *employers can set the benefits that fit their industry/culture, and*
- b. *they can set the rules to receive those benefits.*

Using this proposed model, employers would have much better control of their injury costs and employees would have comparable or better benefits than in the current system. Surveys show that worker satisfaction with employer treatment, medical coverage, and income benefits are relatively high. Eight-five percent of companies with greater than one hundred employees were satisfied when insured outside of the workers' compensation system. As an indication of the success for this approach, less than 1/10<sup>th</sup> of one percent of all non-subscriber injury claims result in attorney involvement and even fewer of those claims result in litigation. This coupled with the 40-80% savings makes non-subscriber under a Federal ERISA Plan something every state should consider.

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

Best regards,

ONECOMP

Peter K. Gallaher  
Chief Executive Officer

PKG/cng

Enclosures

cc: Ron Gaiser

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1. 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.