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Daniel Weintraub: Squeezing the middlemen out of workers' comp

By Daniel Weintraub -- Bee Columnist
Published 2:15 a.m. PDT Thursday, April 17, 2003

Next to balancing the budget, the most difficult challenge California lawmakers will confront this year is the state's deeply troubled system for compensating workers injured on the job. Both problems might grow worse before they get better. But unlike on the fiscal front, there are signs that lawmakers are beginning to get serious about fixing workers' compensation.

They'd better. After years of declining and then fairly flat rates, workers' comp premiums are soaring again, saddling businesses large and small with huge increases they can ill afford. Fewer and fewer insurance companies are willing to do business in California, and the state-sponsored fund of last resort is overwhelmed and might soon stop writing new policies.

If that happens, you will see a crisis to rival any in California's recent crisis-riddled past. Companies cannot legally do business without workers' comp insurance coverage. If they can't get it, they must

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shut their doors. That is perhaps the one prospect that could send business and labor marching arm and arm on the Capitol.

The very nature of workers' compensation makes its costs difficult to control. On-the-job injuries are often tricky to assess, and to treat. The worker is entitled to the benefit of the doubt and in most cases, gets it. Doctors and others involved in the system have great leeway to do what they deem appropriate for the injured party. The insurance companies pass through most of the costs and so have little incentive to keep them in check. The lawyers get their cut. And in the end the employer, with little ability to affect the outcome, foots the bill.

The cost of the system has been rising steadily in recent years even as the number of claims from injured workers has declined. That's a sure sign of trouble.

Republican and Democratic lawmakers, Insurance Commissioner John Garamendi and Gov. Gray Davis all have promised proposals to address the problem.

Among them, Garamendi favors the most radical solution. He has long proposed scrapping workers' compensation as we know it and combining its health care elements with a universal plan that would end distinctions among the causes of injury and illness and treat all medical ailments under one umbrella. But this idea for "24/7" coverage for all is probably too sweeping to win acceptance from the many competing interest groups with a stake in this issue.

Short of such a fundamental overhaul, a number of lawmakers are proposing more modest changes that might start to rein in some of the costs. Among

them:

* **Disability definition.** According to the California Chamber of Commerce, California is the only state that allows employees to receive benefits for permanent disability based only on subjective complaints of pain. A worker who reports a lower back strain, for example, can receive a permanent benefit payment even if no doctor can independently confirm the extent of the injury. A measure by Sen. Tom McClintock, R-Simi Valley, would require a doctor to certify such injuries based on "objective medical findings."

* **Rehabilitation.** California's system of vocational rehabilitation now costs more than a half-billion dollars per year with unproven results. Studies show that the state's injured workers tend to miss more time from the job than employees in most other states, and critics say many workers waste time and money retraining for jobs they will never perform. A bill by Sen. Chuck Poochigian, R-Fresno, would eliminate the mandatory nature of vocational rehabilitation and also end the ability of injured workers to forgo rehab in exchange for a \$10,000 cash payment.

* **Surgery centers.** Most medical procedures in workers' comp cases are subject to fee schedules, but a major exception is surgery performed in

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outpatient centers. In mainstream medicine, these centers are seen as cost-savers because they are so much less expensive than full-service hospitals. But the opposite is true in workers' compensation cases because hospital fees are controlled while surgery center charges are not.

A bill by Sen. Richard Alarcon, D-Sun Valley, would establish a fee schedule for surgery centers, based on what Medicare pays for the same procedures. Alarcon claims his measure, which also revises fee schedules for other aspects of workers' comp medical care, would save more than \$1 billion a year. It is the only major bill on the table endorsed by business, labor and the insurance industry.

Republicans have also proposed legislation that would delay the next phase of a dramatic increase in benefits approved by the Legislature and the governor in 2002. But that bill, which increased maximum weekly benefits from \$490 to \$840, was a top priority for organized labor and a hard-fought victory. There is almost no chance that Democrats will vote to repeal or even defer the increases.

Nor should they. California employers pay premiums that are among the highest in the country. Truly injured workers, meanwhile, receive some of the lowest benefits. It's past time to refocus the system and eliminate the leeches who live in the middle, sucking out the money for themselves before it ever gets to the people who need and deserve all the assistance they can get.

About the Writer

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