

NCSI kicked off the virtual Annual Meeting with their first Webinar!



Since we, like so many others, were unable to hold our Annual Meeting in person, we moved forward with our Webinar Series and had our first webinar on September 22nd with Max Koonce of Sedgwick speaking on the transformation to the claims process and David Duden of Origami Risk and Henry Svendblad sharing how Analytics meets Nudge Theory. Both of the presentations were excellent and provided a tremendous amount of information that could be applied to programs immediately.

Kicking off the second in the series is Joe Paduda, renowned blogger and nationally recognized expert in medical management and pharmacy. Joe will discuss how external forces are driving up employers' workers' compensation hospital costs, yet few third-party administrators or self-insurers are paying attention—much less implementing effective solutions. In most states, employers pay 3-8 times Medicare's cost for facility costs – and these are increasing. **This session shows why – and how – hospitals and health systems target workers' compensation to recoup revenue lost to cuts in Medicare and Medicaid – and outlines approaches to mitigate those efforts.**

In the second half of this webinar session, Cathy Puls of Lockton Companies will discuss Vendor Relationships. We all believe that we know what is best for our program and who is best to assist us...**but do we really have the tools that we need to make those critical determinations? And how do we effectively measure the performance of those providers?**

As more and more companies/vendors have stepped forward to provide services to assist in claims management, Cathy will show you how to tell if the proposed service or company is effective? How you can tell if they are impacting the cost of risk positively or negatively? If the proposed service is even manageable within your program? How does a self-insured vet a proposed partner? Once chosen, what is the best way to implement their services into your program? How do you measure the effectiveness of the services being provided?

You won't want to miss either of these sessions!

We still have three sessions to look forward to and you won't want to miss them. **You can register [here](#) for the events.** In order to get the member rate, you will need to log in with your username (your email address) and your password. If you do not remember your password, you can select "forgot password" and you will get a link to change it. Please be

aware that this email link will come from a MemberClicks email address so may go to your spam or junk folder so be sure to check there! And, for security purposes, the link has a limited time period for access so please change your password quickly!

Below is the schedule for the remaining webinars:

- Session 2 **October 8, 2020 9:30am – 11:30am PST**
 - New Cost Driver Frontier – Joe Paduda
 - Managing Vendor Relationships – Catherine Puls
- Session 3 **November 3, 2020 9:30am – 11:30am PST**
 - Behind the Curtain of the MSP Industry – Ben Basista and Michele Hibbert
 - Managing a Successful MSA Non- Submission Program – Jake Reason
- Session 4 **December 1, 2020 9:30am – 11:30am PST**
 - When your Excess Carrier Fails you – Al Haverkamp
 - Obtained legally, Leveraged Wisely – Dalene Bartholomew, Joanne Thomas, Debbie Ehsan

You will have the ability to select each session as an “ala carte” selection. The presentation materials will be provided to all attendees immediately following the conclusion of the sessions. We also have sponsorship opportunities available!

And to end our year, we will conclude with a **virtual social hour on December 4th from 3:00 to 5:00PM PST!** We will have a “Home for the Holidays” drink theme with a New York Mixologist demonstrating hosting ideas as well as showing us how to make those much-needed special holiday drinks!

Our mixologist is Jessie Negron and here is her story...

I am Puerto Rican born in New York City, half raised in Florida, I like to think I got the best of both worlds. I currently reside in The Bronx, New York! I have been bartending now for 2 years, yeah, I am a newbie! Bartending was actually something I started doing with the intention of it being temporary until I could figure out what I wanted to do with my life. In that time, I was introduced to craft bartending by one of my colleagues, saw the art in creating a cocktail and fell in love! Now here I am!

This special social event will be available **ONLY** to those that attend the webinars either individually or as a series and will be free of charge. What a great way to start your holiday season and end 2020!!

Watch for more news as we move into the virtual world and we hope to see you there!

WHAT'S NEW

NAMSAP 2020 ANNUAL CONFERENCE GOES VIRTUAL

BE PART OF THE EVOLUTION, NAMSAP's 17th Annual Educational Conference, To Be Held October 6-7th

Baton Rouge, LA. (August 3, 2020) -- The [National Alliance for Medicare Set-Aside Professionals](#) announced that the 17th Annual NAMSAP Educational Conference, **BE PART OF THE EVOLUTION**, will be held virtually for the first time, October 6-7, 2020.

This year's conference will be a new and exciting virtual experience. NAMSAP invites attendees to be part of the EVOLUTION as the Alliance embarks on this new format and reveals its new brand.

This conference is designed for all insurance, healthcare, financial services, and litigation professionals, and their teams, whose business involves any aspect of Medicare Secondary Payer compliance. Conference offerings will span from beginner to advanced topics. NAMSAP's conference is designed to help attendees broaden their knowledge base, share experiences, collaborate with others, learn from CMS representatives and contractors, and drive better case outcomes. Attendees will walk away with smart strategies, actionable tactics, eye-opening inspiration, and real connections with people shaping the future of the Medicare Secondary Payer world.

For early registration options and other information, visit NAMSAP.org.

About NAMSAP

The National Alliance of Medicare Set-Aside Professionals (NAMSAP) is the only non-profit association exclusively addressing the issues and challenges of the Medicare Secondary Payer Statute and its impact on workers' compensation and liability settlements. Through the voluntary efforts of our members, NAMSAP is a forum for the exchange of ideas and is a leading resource for information and news in this constantly evolving area of practice. The collective knowledge of our members and NAMSAP's resources will provide attorneys, nurses, settlement planners, claims professionals, and others with the ingredients essential to their success.

#

Contact: Julie Fuselier, Executive Director, **NATIONAL ALLIANCE OF MEDICARE SET-ASIDE PROFESSIONALS (NAMSAP)**, 225-454-6164, julie@namsap.org

Study Reveals Surge in "Mega" Comp Claims Over \$3M

WorkersCompensation.com and WorkCompAcademy.com reports that the surge in workers compensation "mega claims" of at least \$3 million continues as medical treatments and technologies advance, according to a report by Business Insurance about research by ratings bureaus around the country.

While mega claims comprise a statistically small percentage of all workers comp claims, claims are reaching the mega threshold more quickly, primarily because of the associated costs of technological advances in medicine. Experts say that upward trend is likely to continue.

Overall, mega claims account for upwards of \$2 billion in workers comp costs each year, according to research compiled by the National Council on Compensation Insurance, California's Workers Compensation Insurance Ratings Bureau and other states that pooled their data to report on mega claims trends across the country.

The study includes data from 43 states and the District of Columbia. It found that more than 4,500 claims from these states and D.C. incurred losses in excess of \$3 million (at 2018 cost levels) from 2001 through 2017. Of those claims, 57% cost between \$3 million and \$5 million, 33% between \$5 million and \$10 million, and 10% in excess of \$10 million, with mega claim counts for 2017 at a 12-year high, according to the report released on Aug. 25.

While fewer than 50% of mega claims reach the \$3 million threshold by 18 months from policy inception, these claims are reaching that number more quickly than in the past, the study found.

The types of claims most likely to develop into mega claims include spinal cord injuries, brain injuries and severe burns. Presumption laws - such as those covering a range of cancers for firefighters or heart conditions for law enforcement officers - can also lead to claims cresting the mega threshold.

Then there are the "massive claims that shouldn't be that big," said William Zachry, San Carlos, California-based workers compensation consultant and board member of California's State Compensation Insurance Fund. "We've seen an increase in the severity of claims, but not an increase in the severity of the injuries."

These claims, which Mr. Zachry refers to as "jumper claims," are those that cost millions of dollars not due to a severe injury, but such issues as a worker's lack of coping skills, plaintiffs' attorneys adding multiple body parts to the claim, repeat surgeries, overprescribing and poor care, leading the worker to believe he or she is disabled.

"If you can identify and intervene very early, it is possible to really change the dynamic, change the outcomes," he said.

Source: WorkCompAcademy.com

Comp Gurus Take Issue with AMA's Call for Loosened Opioid Regulations

As reported in WorkCompCentral, several experts on opioid addiction stated that the prescription opioid crisis is far from over, despite recent reports suggesting otherwise, panelists said during the International Association of Industrial Accident Boards and Commissions annual conference.

"It's flattened out, maybe gone down a little bit, but it's too early to call it a victory," especially with the spike in substance abuse during the COVID-19 pandemic, said Brian Allen, vice president of government affairs at Mitchell International.

Mark Pew, senior vice president at Preferred Medical, agreed, saying many injured workers who began opioids before the crisis hit have yet to find a better solution for pain.

Allen, Pew and others at the IAIABC's virtual convention were reacting to recent statements from the American Medical Association. The AMA's Opioid Task Force report, released last month, noted that U.S. opioid prescriptions dropped by 37% from 2014 to 2019.

In a June letter to the National Center for Injury Prevention and Control, American Medical Association CEO Dr. James Madara stated flatly, "the nation no longer has a prescription opioid-driven epidemic."

As the addictions and overdoses appear to now be driven more by illicit and synthetic forms of opioids, Madara and the AMA task force called for lawmakers and regulators to roll back some of the restrictions that were placed on opioid pain medications. These included prior authorizations and step therapy, found in several states' workers' comp formularies.

The report cites "inappropriate administrative burdens or barriers that delay or deny care for FDA-approved medications used as part of a medication-assisted treatment for opioid use disorder."

Instead, physicians should be allowed to rely on evidence-based care as they see fit. Madara's letter urged the U.S. Centers for Disease Control and Prevention to revise its opioid guidelines.

The statements have created a stir in the workers' comp industry and beyond, and many news and opinion pieces have addressed them in recent weeks. Read the entire article [here](#).

Source: WorkCompCentral

Employers grapple with COVID-19 presumption laws

Business Insurance reported that employers nationwide are following the legislative push to accept COVID-19 claims by presumption in workers compensation, changes that aren't necessarily guaranteeing that such infectious disease claims will be greenlighted but instead promise a surge in litigation and confusion, experts say.

Given the new laws' many nuances, employers are "worried about staying on top" of the presumption trend, said Ralph Touch, Fleetwood, Pennsylvania-based senior vice president of claim operations at Gallagher Bassett Services Inc.

"For the very first time we have the entire insurance industry learning new laws on the fly," he said. "These are very big changes, and they are happening quickly. We are applying a disease (to workers compensation) that you could get walking down the street.

"There's no (case law) history, we don't have time to understand the implications of judicial rulings, and we have to make decisions."

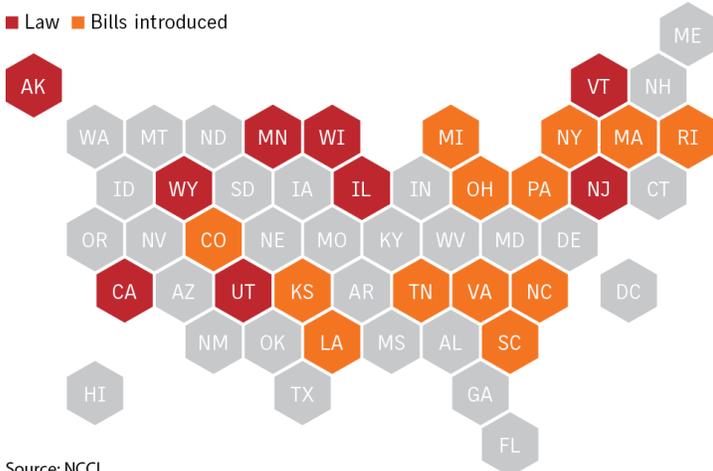
As of Tuesday, lawmakers in nine states had passed such laws that clear the red tape for some workers to have their illnesses covered as a compensable work-related injury, and lawmakers in 13 states are considering or have considered such presumption bills, according to the Boca Raton, Florida-based National Council for Compensation Insurance, which is tracking the legislative trend. Read the entire article [here](#).

Alaska, California, Illinois, Minnesota, New Jersey, Utah, Vermont, Wisconsin and Wyoming have presumption laws in place, according to NCCI. Many of the laws, such as those California Gov. Gavin Newsom signed on September 17th and Illinois enacted in early June, are "rebuttable," meaning an employer can contest whether a worker was infected at work.

However, on Thursday September 24th the Virginia Senate killed H.B. 5028, which would have provided death and disability benefits for certain employees who contract COVID-19 and their families. It was previously passed by the House of Representatives on September 4th. As written, the presumption, which fell in line with legislative trends nationwide, would have applied to firefighters, emergency medical services personnel, law-enforcement officers, first responders, health care providers and school employees.

THE COVID-19 PRESUMPTION WAVE

Since the coronavirus pandemic began, lawmakers in numerous states have introduced legislation to make COVID-19 an occupational disease by presumption. To date nine states have such laws in place, and 13 states are considering presumption bills. Many of the laws and proposals are "rebuttable," meaning an employer can contest whether a worker was infected at work. Some only apply to prescribed types of workers — labeled "essential" in many states — or only apply to those in health care or working as first responders.



Source: NCCI

Some only apply to specific types of workers, labeled "essential" in many states — such as the one enacted in New Jersey on Sept. 14 — or strictly apply to those in health care or working as first responders. Vermont's law only applies to "frontline workers" whose jobs put them at "elevated risk."

Will the presumption trend continue? Experts say to expect more states to take legislative action, as a number already have executive orders or other directives in place allowing for presumption, as California did before the matter became law.

“Employers were not shocked,” said Benjamin Ebbink, Sacramento-based partner with Fisher Phillips LLP, of the most recent state to sign on — California. He called the California law “complicated” in that it allows for debate over where the virus was contracted — as many of the new laws do — and requires that there be a proven outbreak in the workplace.

There’s “a lot of room for litigation and dispute,” he said. “Attorneys on both sides are going to dispute” over COVID-19 claims. The changes are also putting workplace safety in the spotlight, said Harry DeCourcy, Walnut Creek, California-based shareholder with Littler Mendelson P.C.

“Everybody is trying to do the right thing” regarding taking safety precautions, he said. Presumption laws are “just going to provide more monetary incentive to do so.” Under the Illinois law, the rebuttal can include details on workplace safety measures in place as a pushback to workers who say they contracted the virus on the job.

“Most of my clients have been pushing back against COVID claims mostly in the idea that it is not clear that it is related to work, even with the rebuttable presumption,” said Rich Lenkov, capital member and head of the workers compensation practice at Bryce Downey & Lenkov LLC in Chicago.

“It is very difficult to prove that you got it at work,” he said, adding the three-month-old presumption law “hasn’t resulted in the massive amounts of claims that we would think, largely because of the difficulty in proving” where one was infected.

MESSAGE FROM PHIL & JILL

Where does the time go? Nowhere apparently, here we are at the end of September and it seems that time is frozen here in the Twilight Zone. Early on in this new Covid-19 world we got through the day by sharing the meme of the day, be it a political meme or one directly related to Covid-19. The novelty of that wore off fairly quickly, and then we hoped that the distraction of summer activities such as baseball would save us which never happened because baseball just isn’t the same right now and cardboard fans are no fun, but they do fill the seats...sort of. And when I watch the SF Giants home games, I see more of Bill Zachry than I ever have...albeit in his cardboard persona...but there he is, a faithful fan sitting stoically behind home plate.

Now we are headed into fall and at least in my neighborhood people are arguing about Halloween and how can the kids make it because you can’t zoom candy to one another!!! Actually, there isn’t much nowadays that people aren’t arguing about. But, through all of this the workers’ comp system trudges forward...perhaps with less claims, but it is still happening. What is not happening are the conferences where we could actually sit and converse with our colleagues. As Jill has mentioned, we really miss those opportunities, but we must continue our education opportunities and Jill has done a great job of lining up some terrific webinars.

I would urge that for those of you have yet to register for one of our webinars, please do so at your first opportunity. It’s very easy to isolate ourselves in our Covid bubbles, but it is critical that you continue to learn. And before you know it, we will be sitting together again having a drink and looking back on these days and most likely, complaining about the conference chicken we are eating. I, for one, look forward to some conference chicken dinners and seeing some of my workers’ comp friends again. Be safe everyone...I’m looking forward to getting together again. And we will...*Phil Millhollon, President*

It continues to be interesting times. Just when we think things may get a little bit more back to normal...whatever that actually means...everything changes again. With the three P’s front and center, politics, protests and the pandemic, it can be challenging to figure out our own personal priorities. Then you add the horrific fires that are being fought in the western US and it all almost seems surreal. I know so many that have suffered losses during these times from loss of loved ones and friends, loss of homes, loss of jobs, businesses and lengthy careers as well as a nearly loss of self. Just one of these would be difficult to weather but combined they affect all of us on a profoundly personal level. It is not any

easier when we cannot gather to support, listen and console one another and have to largely resort to calls and virtual get togethers. I don't know about you, but for me it just is not the same.

Compounding all of this in our little world is the constant string of change in our industry with new laws and changing presumptions that the claims staff needs to be on top of every minute. But we work compers are a strong and sturdy lot. We have all dealt with endless modifications and decisions being made by legislators and administrations to "fix" the perceived problem on issues that many of them barely understand...at least not like we do! But that is the way of the world and we must carry on.

Can we just unplug 2020 and try to reboot? Not sure if it would work but I am willing to try it!! 2020 has definitely been the year of change and challenge and my hope is that you are all taking good care and staying well and safe.

I personally cannot wait until we can all be together again and we will see you LIVE and IN PERSON in Denver next June 5 – 9. You won't want to miss this event as we will be celebrating the 75th anniversary of NCSI. AND we will be returning to the planned venue of the Hyatt Regency Scottsdale Gainey Ranch June 13 – 16 in 2022 so get that on your calendar now! See you in 2021 and here's hoping for calmer seas ahead! *Jill Dulich, Executive Director*

ADVOCACY **IN ACTION**

Fight Unemployment Fraud! - United States Department of Labor OIG Provides



Doug Holmes, of UWC, reports that unemployment Insurance Fraud has become a significant problem because of the volume of regular unemployment compensation and pandemic unemployment claims filed due to COVID-19. On September 21, 2020 the United States Department of Labor Office of Inspector General (OIG) released the Unemployment Insurance Fraud Consumer Protection Guide with links to state workforce agencies and tips to avoid and respond to fraud. See the link below.

Employers, employees, state workforce agencies and UI claimants should review the guide and take action to respond quickly and effectively against fraud.

[Unemployment Insurance Fraud Consumer Protection Guide](#)

MEMBERSHIP **NEWS**

Montana Self Insurers Association is back in business!



The Montana Self Insurers' Association (MSIA) has two announcements to make. First, Peter Strauss has been named Executive Director and second, we're back as part of the NCSI! Long time MSIA Director

George Wood had served on the NCSI Board from 1972 to 2007 and was President from 2002 to 2004. NCSI is glad they are back and look forward to working with MSIA.

Strauss retired from Montana State Fund and brings over 35 years-experience in workers' compensation, from over 30 different jurisdictions. Strauss represented private carriers and NCCI across the country. Strauss was responsible for state public policy relationships for NCCI throughout the western US and worked with NCSI, NAIC, IAIABC and others. Strauss was one of the operations Vice Presidents for MSF for over 13 years and retired after creating their new insurance regulatory compliance system. Strauss has been active with WCRI and CWCI, has taught workers' compensation and has been a speaker at state and national association meetings. Personally, Strauss is active with Big Brothers Big Sisters, is a member of Board of Directors for the local division of Glacier Bancorp, Inc. and is an active member of the National Ski Patrol. With his retention, MSIA has been asked to serve on task forces and committees to bring their perspectives to workers' compensation issues in Montana. MSIA membership has already started to grow.

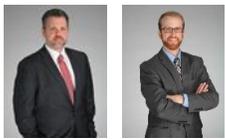
Current MSIA Board members are Annette Hoffman (ret.) SCL Health, Jamie Haun, Rosauers' Supermarkets, Ann Komac, MT Municipal Interlocal Authority, Donna Haeder, NorthWestern Energy and Michael Marsh, Midlands Claims Service.

Strauss asks what's stopping you from living and working in paradise and being part of MSIA? COVID has changed the way we live and work. We have learned we can work remotely and work from home. If you have a choice where to live, and can do business from where you live, why aren't you living and working in Montana?

Caution - - Too much pristine mountain air and quiet can lead to higher quality family time and a better life balance. The opportunity to visit Yellowstone or Glacier National Park for a weekend can lead to a new appreciation of the wonders of nature. Too much fly fishing, mountain biking, hiking, skiing or hunting lead to permanent smiles.

With an educated workforce, good communication systems, reasonable property values and low taxes, your business belongs in Big Sky country.

NCSI member Ben Basista and Nathan Gruz of Dickie McCamey Report on MAO Recovery



Welcoming “Downstream Actors” to Medicare Advantage Litigation: MAO/DA Litigation, Liability and Protection Efforts

The Eleventh Circuit's recent decision in *MSP Recovery Claims v. Ace American Insurance Co.* extended the long, complicated and expanding chapter of Medicare Secondary Payer Act (MSP) litigation over who can sue under the statute's private cause of action double damages provision. However, while this particular chapter may have more momentary clarity, the full story has yet to be written.

The present litigation involves the MSP's “double damages” provision. The basic premise of the MSP is that Medicare should not be made to pay for medical costs when some other payer, such as a workers' compensation or automobile insurer, has primary payment responsibility for those costs. Medicare can pay for these medical costs on a conditional basis, in which case the primary payer is obligated to reimburse Medicare in a timely manner. If the primary payer does not reimburse Medicare within the statutory timeframe, Medicare is allowed to seek double its conditional payment under the MSP's “double damages” right of action.

In the Third Circuit's landmark 2012 decision *In re Avandia Mktg.*, 685 F.3d 353, Medicare Advantage Organizations (MAOs) were found to have the same right as Medicare to sue for double damages under the MSP's "private cause of action." MAOs are private insurance plans that provide Medicare coverage under Medicare Part C. In their 2016 holding in *Humana v. Western Heritage*, 832 F.3d 1229, the Eleventh Circuit considered the same issue and agreed with the Third Circuit, finding that MAOs could bring suit for double damages when primary payers failed to reimburse conditional payments and expanded MAO rights beyond the ruling from *In re: Avandia*. With two federal Circuit Courts in agreement, a new avenue for recovery actions under the MSP, and a new headache for primary payers, was born.

The Humana decision also meant that assignees of MAOs could bring double damages lawsuits against delinquent primary payers. However, an open issue after Humana was whether "downstream actors" that contracted with MAOs could seek double damages under the MSP. A quagmire of litigation in the years following Humana hinged on this very question. The common actor in these actions was a law firm based out of Miami that had formed a dizzying number of "recovery" entities. These entities were essentially collection agencies that purported to hold the right to sue insurance companies for double damages under the MSP based on a contractual agreement with an MAO or a company that had contracted with an MAO.

*****Due to the length of this article it has been attached in its entirety in the email that contains this newsletter.**

CALENDAR OF EVENTS

For more information on these and other upcoming evening, please visit www.natcouncil.com.

SEPTEMBER 29 | Montana Self Insurers Association 2020 Annual Meeting, 8:00 a.m. – 11:00 p.m., Virtual Meeting via Zoom Presentation by Alex Swedlow, President California Workers Compensation Research Institute Join Zoom Meeting <https://us02web.zoom.us/j/83661706641?pwd=N3VqeG1udzILZ1hLbW9laUpTVFhMdz09> Meeting ID: 836 6170 6641 Passcode: 400978 (346) 248-7799

OCTOBER 1 | Illinois Self Insurers Association 2020 Annual Meeting, 8:00 a.m. - 5:00 p.m., Chicago Marriott Oak Brook, 1401 W. 22nd Street, Oak Brook, IL 60523, (630) 573-8555

OCTOBER 4 -7 | Florida Association of Self Insurers 2020 51st Annual Educational Conference and Trade Show, 8:00 a.m. - 5:00 p.m., The Ritz Carlton Naples, 280 Vanderbilt Beach Rd., Naples, FL 34108, (239) 598-3300

OCTOBER 14 | Michigan Self Insurers Association 2020 Annual Meeting, 8:00 a.m. - 5:00 p.m., Laurel Manor Banquet and Conference Center, 39000 Schoolcraft Rd., Livonia, MI 48150, (734) 462-0770