

WORKERS' COMPENSATION

TRENDS & TACTICS TO STAY
AHEAD OF THE CURVE

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Discussion Points

- Workers' Compensation "101"
- Legislation & Case Law
- Industry Trends
 - EMR Headwinds
 - OCIP / CCIP Changes
 - Evolving Workforce
 - Suicide / Opioid Crisis
 - Vendor Overload!

Workers' Compensation "101"

Workers' Compensation is a form of insurance that provides medical and wage benefits to employees that are injured or become ill due to their job. Each state has their own individual statute and regulations for how the program will be administered. It is a "no-fault" system and in return for these defined benefits, the employee gives up their right to sue their employer for negligence.



Workers' Compensation "101"

- Survey of programs
 - # of employees
 - Deductible?
 - Multi-state?
 - EMR?
- PCG's Program:
 - ~ 10,000 hourly / salary employees
 - Large deductible
 - Multi-state (including monopolistic)
 - EMR of .52



Workers' Compensation "101"

Job Set-Up



- STEP 1 - Posting notices on each jobsite – State and Federal Posting notices as well as specific hospital/clinic information.
- STEP 2 - Contact **WC Department** and **Substance Abuse Department** to set up clinics for new jobsites. The WC Department will provide guidance on the direction of medical care at that time.
- STEP 3 - Is this an OCIP jobsite? Our internal reporting requirements still apply, but the branch will need to know how/who to report the injury to and the clinic information.
- What is an OCIP/CCIP? Owner Controlled or Contractor Controlled Insurance Programs. If enrolled all injuries will be covered under the Owner or Contractors work comp policies – check with **Branch Contract Administrator** to see if this applies.
- STEP 4 - Are you near a navigable body of water? USL&H/Longshore coverage may apply. If so, contact the **WC Department** as strict deadlines for paperwork do apply. In some states, an injured worker can file both State WC & Federal Longshore claims.

Workers' Compensation "101"

When an Injury Occurs

As an employer, once an employee reports an on-the-job injury with or without treatment, the company is on notice – we have a duty to address. Compensability/claim acceptance is not a branch / company decision.



ALL Injuries are to be reported to the WC Department within 24 hours!

**This should be completed via the PCG Incident Reporting Portal
even if first aid only or treatment is declined.**

PCG REPORTING PORTAL

Report an injury or near miss easily and get the information to all of the necessary departments from one site!

(Follow all incident reporting procedures to include notifying your Foreman or Lead.)



Scan the QR code above with your mobile device or go to www.performancecontracting.com/safety



Workers' Compensation "101"

When an Injury Occurs

- STEP 1 – Determine who will take charge of the injured worker (IW)/claim. This will likely be a foreman, superintendent, or branch safety and identified as the **Branch Claim Contact**.
Notify the **PCG Regional Claims Liaison** of the **Branch Claim Contact** name.
- STEP 2 - It is the **Branch Claim Contact's** responsibility to complete, and report claims via the PCG Incident Reporting Portal.
- The injured worker **MUST** complete the Employee Statement in their own words and sign in their own handwriting. If there are extenuating circumstances that make this not possible, contact **WC Department** for guidance.
 - If this is an OCIP/CCIP, the **Branch Claim Contact** will need to refer to the OCIP/CCIP manual for the reporting procedures and treatment information. The **WC Department** can assist with this, if needed.

Workers' Compensation "101"

When an Injury Occurs

STEP 3 – Once an injured worker requests treatment, the **Branch Claim Contact** will accompany the injured worker to the designated clinic or hospital.

- **Branch Claim Contact** will speak with the doctor after the appointment (if not allowed in the exam room) and advise of our aggressive Return to Work (RTW) program in relation to any work restrictions.
- Before the injured worker leaves the doctor's appointment, the injured worker will need a work status report outlining any restrictions and the next appointment date.
- It is the **Branch Claim Contact's** responsibility to obtain a current work status report and forward it to the **PCG Regional Claims Liaison** after every medical appointment.



CMC-Las Vegas Polaris		5650 Polaris Ave Las Vegas, NV 89118		Phone: 702-798-9697 Fax: 702-798-8078		Service Date: 04/02/2021	
Claim Number:		Work Activity Status Report		Date of Birth:		Case Date: 03/26/2021	
Patient:	Last 4 Digits of SIN: [REDACTED]	Employer Location:	PCILas Vegas Interior #5	Contact:		Vicki Simpson	
Address:	NV 89106	Address:	3824 Skyeview Ln Las Vegas, NV 89103-9877	Role:		Primary Contact	
Home:		Authorized by:	AJ	Phone:		913-310-3208	
Work:				Fax:		0-0-0000	
THIS VISIT		Visit Type:	Initial	Time In:	01:48:00 PM	Time Out:	03:44:49 PM
Diagnosis:		Lumbar strain (S39.015A)		Medications:		<input type="checkbox"/> Discontinued prescription medication to patient <input type="checkbox"/> Dispensed over the counter medication <input checked="" type="checkbox"/> Written prescription given to patient	
PATIENT STATUS							
Employee Notice: The prescribed activity recommendations are suggested guidelines to assist in the patient's treatment and rehabilitation. Your employer has been informed that the activity prescription is expected to be followed at work and away from work.							
Treatment Status: Returning for follow-up: 2 DAYS							
Work Status: Return to modified work/activity today Activity Status Comment: 5% OF THE TIME AS NEEDED. Patient may work their entire shift							

Workers' Compensation "101"

When an Injury Occurs

STEP 4 – The field level, as approved by the branch GM, determines if the injured worker is required to have a post-accident drug test – any questions should be coordinated with the **Substance Abuse Department**.

- “Every employee whose *performance or conduct* may have contributed to the cause or severity of a work-related accident/incident that results in bodily injury requiring off-site medical treatment, a fatality, and/or property damage should complete a drug test.
- If the worker is admitted to a hospital, contact will need to be made with the **Substance Abuse Department, Safety, and WC Department** by the **Branch Claim Contact**.



Workers' Compensation "101"

When an Injury Occurs

STEP 5 – The **Branch Claim Contact** is required to attend all follow-up doctor appointments with the injured worker. This does NOT apply to physical therapy (PT) or diagnostic testing. The injured worker can attend PT appointments by themselves and should make these appointment before or after working hours if possible.

- The **PCG Regional Claims Liaison** will notify the branch if an inured worker hires an attorney. After an injured worker is attorney represented, the **Branch Claim Contact** will no longer be allowed to attend medical appointments.

- **A current work status is required before an injured worker can return to work even if they are attorney represented.**

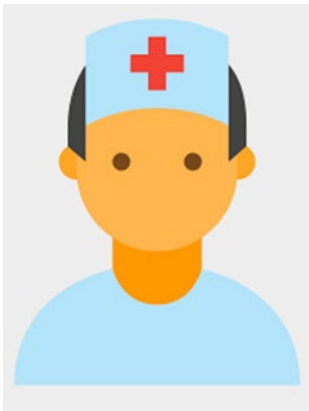


Workers' Compensation "101"

When an Injury Occurs

Step 5 (cont.) - Claims with more complex injuries or situations (including language barriers) may have a nurse assigned to attend the appointment with the IW. If a nurse case manager (NCM) is assigned, then the branch does not need to attend the doctor's appointments.

- **A current work status is required before an injured worker can return to work even if they are accompanied by a NCM.**



Legislative & Case Law Updates

Minor changes to the same old game



Legislative Changes & Case Law Updates

State Specific

- **Colorado:**
 - Mental Impairment benefits extended from 12 to 36 weeks
 - Replacement prosthetic devices must be provided
 - Minors injured in violation of Colorado Youth Employment Opportunity Act can sue in civil court
 - Fee Schedule Updates
- **Oregon:**
 - Must pay TPD for Dr.'s appointments
 - Can no longer negotiate employment release with claim
 - Can only recover 50% of any overpayments (previously 100%)

Legislative Changes & Case Law Updates

State Specific

- **Missouri:**
 - Currently Missouri has favorable laws regarding the ability to deny / limit exposure in cases involving failed alcohol / drug tests.
 - November of 2022, Missouri legalized marijuana purchase, possession, and usage for 21 and over.
 - Current legislation proposed to align WC law with marijuana legalization.
- **Federal:**
 - On Jan. 10, 2024, the U.S. Dept. of Labor announced the publication of a final rule that revises guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act. Lawsuits already filed!

Legislative Changes & Case Law Updates

State Specific

- **California Case Law:**
 - Cumulative Trauma Claims on the rise (from Risk & Insurance 3/5/24):
 - **37.5%** of all litigated claims statewide in California are cumulative trauma (CT) claims, up from 29.4% in a 13-year study period.
 - **40.6%** of litigated claims in the Inland Empire/Orange County are CT claims, a significant increase from 30.2% in 2010.
 - **49.0%** of CT claims are from workers with more than 10 years on the job, compared to a lower 26.0% CT rate for employees with less than a year of tenure.
- **West Virginia – Hood vs. Lincare Holdings, Inc.**
 - Upheld “Increased Risk Test” that claim for knee injury while walking downstairs was not compensable under WC.
 - “*Increased risk test*”—which examines whether the employment exposed the employee to a risk greater than that to which the general public was exposed—to determine if a neutral risk activity is work related.

Legislative Changes & Case Law Updates

State Specific

- **Maryland**
 - *Ledford v. Jenway Contracting, Inc.*,
 - Held that exclusive remedy applied to an adult, non-dependent child who was not entitled to WC benefits and dismissed wrongful death lawsuit on those grounds.
- **Kentucky**
 - *Farley v. P&P Construction, Inc.*,
 - Upheld that medical bills must be submitted to carrier within 45 days of treatment or can be denied.
- **NCCI Resource:**
 - www.ncci.com/Articles/pages/insightslegal.aspx

Industry Trends

- EMR Headwinds
- Evolving Workforce
- OCIP / CCIP Changes
- Suicide / Opioid Crisis
- Vendor Overload



EMR Headwinds – NCCI Expected Losses

The Good News & Bad...

Class Code 5479
Structural Insulation

- 2024 – 5.59
- 2023 – 7.05
- 2022 – 8.25
- 2021 – 8.50
- 2020 – 9.05

-38%

Class Code 5183
Mechanical Insulation

- 2024 – 2.97
- 2023 – 3.38
- 2022 – 3.7
- 2021 – 3.68
- 2020 – 3.86

-23%

Class Code 5535
Sheet Metal

- 2024 – 5.62
- 2023 – 6.85
- 2022 – 7.62
- 2021 – 7.35
- 2020 – 9.18

-39%

EMR Headwinds

Standing still is not an option!

- The Good News – Our industry is improving!
- The Bad News – If you are good and holding the line, you are falling behind!
 - Claim frequency has been flat to slightly declining – safety is key!
 - Severity is a growing concern:
 - Improved care – medevac to level one trauma center
 - Life expectancy in paralysis claims
 - Amputations – more costly, less durable prosthetics



Evolving Workforce Trends

Generational Theory Meets Workers' Compensation

- The “rub some dirt on it” era is fading!
- Workforce is changing (our point in time data):
 - Average Superintendent is 49
 - Average Foreman is 45
 - Hourly labor:
 - 18-29 – 26%
 - 30-39 – 29%
 - 40-49 – 23%
 - Over 50 - 22%

Empathy Is Vital in Workers' Compensation

Current system leading to less trust and confidence among injured workers

- Study by Healthesystems underscores gaps leading to less trust and confidence among injured workers:
 - The findings showed that 50% of workers experienced a delay in reporting their injuries and 60% of workers reported a negative experience with the medical provider assigned to them.
- Other studies, including research from The Hartford, have shown that implementing empathy training can reduce employee turnover and absenteeism, improve productivity and minimize costs associated with claims.

Empathy Is Vital in Workers' Compensation

Current system leading to less trust and confidence among injured workers

- Communication at claim onset is critical:
 - Claims process not always clear to the employee
 - Direction of medical care (which varies by state) creates confusion
 - Claim investigation by carrier and your own safety teams can create early distrust by the employee.
 - Lack of communication from employer / colleagues (unlike a “personal” injury)
 - Claim forms and state notices full of “legalese” may alienate workers

Empathy Is Vital in Workers' Compensation

Current system leading to less trust and confidence among injured workers

- Use of on-site or clinical partnerships can be beneficial
 - Prompt delivery of appropriate care is the goal
 - Early diagnostic testing can be \$ well spent
 - Determining nature and extent of injury early can allow better direction of care
 - Often provides peace of mind to an employee and builds trust that their wellbeing is a priority
 - Can mitigate further injury in some cases (doing extensive PT, when surgery is needed)
 - X-rays, MRIs, CT scans, and blood tests can provide valuable information about the employee's condition and help to guide treatment decisions

Empathy Is Vital in Workers' Compensation

Current system leading to less trust and confidence among injured workers

- What do you measure and how do you define success in WC?
 - OSHA Recordables?
 - Lost-time days?
 - Preventable claims?
 - EMR?
- Challenge Question: Should your safety professional manage your workers' compensation claim?
 - Focus on investigation, recordability, conservative care can alienate employees
 - Human Resources can also be a challenge – focus on employee benefits or HR related issues can also create expectations or fear of employee discipline



OCIP/CCIP Program Topics

Owner Controlled / Contractor Controlled Programs

- **Pros**
 - Can see enhanced safety efforts and coordination
 - On-site medical and PT services can provide proactive care – mitigate claim costs and recordable injuries
- **Cons**
 - Claims management / adjusting can be frustrating.
 - Lack of communication with you – the employer!
 - Shift from cost deducts to bid net structure
 - Doesn't contemplate all of your costs of insurance (auto, pollution, professional)
 - **Beware Cost Verification Forms!**
 - Review approved rates from OCIP / CCIP administrator. Can lock you into incorrect costs!

Opioids and Suicide in Construction



Opioids and Suicide in Construction

Awareness and Action

- Per the Construction Financial Management Association:

By the Numbers

Statistics on drug abuse in the construction industry can be alarming. The sector ranks:

- Fifth in illicit drug use at 11.6%
- Second in both heavy drinking (16.5%) and substance use disorder (14.3%)
- First in marijuana use (60.33%), heroin use (4.42%) and pain reliever abuse (22.63%)

Opioid use and abuse has been an especially challenging problem in construction. High injury rates mean workers are often prescribed opioids for pain relief. Research shows that around 15% of individuals taking these drugs become long-term users, increasing their chances of developing an addiction by more than 10 times.

A 2020 study noted that 83% of construction workers experienced a mental health issue, while the Centers for Disease Control and Prevention (CDC) found that men working in construction have one of the highest suicide rates as compared to all other industries. The rate of suicide in construction is about four times higher than the general population.

Opioids and Suicide in Construction

Awareness and Action

- **Per the CDC:**
 - Construction workers are 7 times more likely to die of an opioid overdose than workers in other industries
 - Construction workers have the highest proportion of heroin-related overdose deaths
 - Construction workers represent about 25% of fatal opioid overdoses among all workers
- **Workers' Compensation Impact:**
 - Many workers obtain their first opioid prescription from a work-related injury
 - Reducing soft tissue injuries is a critical focus to help impact this issue.
 - Opioids were never intended for musculoskeletal pain – only for surgeries, end-of-life care, or immediate relief of fractures, etc.

Opioids and Suicide in Construction

Awareness and Action

- **Workers' Compensation Impact (continued):**
 - Delays in care due to lengthy approval processes result in opioid prescriptions to address pain while awaiting therapy, diagnostic testing, surgery, etc.
 - Implementing strict controls within your program is critical to avoid unnecessary prescriptions and identify drug-seeking behavior.
 - Can mitigate potentially fraudulent claims
 - Notification protocols for notification any time an opioid is dispensed
 - Explore the deployment of Narcan on jobsites for trained first responders.


Opioids and Suicide in Construction

Awareness and Action

- Suicide Prevention Resources are extensive!
- Employers need to lead with compassion and foster a supportive environment:
 - Speak out about workplace stress and mental health challenges
 - Identify resources that can help (EAP, Union, 988 Hotline)
 - Ask for feedback and implement feasible changes
 - Encourage employees to support each other and provide opportunities to interact
- Educate and support frontline supervisors

Opioids and Suicide in Construction

Awareness and Action




Suicide Prevention

5 Things You Should Know

Suicide is a leading cause of death among working-age adults in the United States. It deeply impacts workers, families, and communities. Fortunately, like other workplace fatalities, suicides can be prevented. Below are 5 things to know about preventing suicide.

1 BE AWARE

Everyone can help prevent suicide. Mental health and suicide can be difficult to talk about—especially with work colleagues—but your actions can make a difference. When you work closely with others, you may sense when something is wrong.



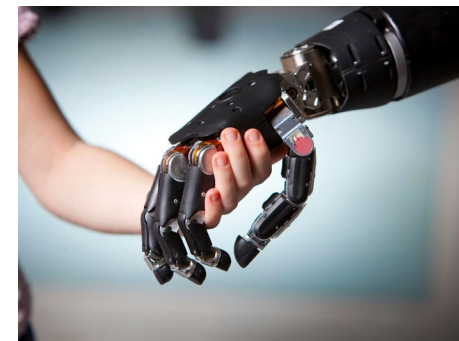
Vendor Overload!



Vendor Overload!

Navigating the jungle of vendors and services in the WC world!

- The options and services available continue to evolve!
- Critical to evaluate your needs first and identify the right combination of resources.
- Press your broker, insurance carrier, claims administrator for everything they have to offer.
- Based on footprint, identify regional and national resources.



Vendor Overload!

Navigating the jungle of vendors and services in the WC world!

- **Medical Resources:**
 - On-site care and PT services
 - Athletic Trainers – “Industrial Athlete” model
 - Tele-health
 - “Concierge” Medical Services
- **Return to work programs**
 - ReEmployAbility
 - Workfinders USA (Permanent Restrictions)
 - Work Bridge Group

Vendor Overload!

Navigating the jungle of vendors and services in the WC world!

- Fraud Tools
 - AI Tools – Social Media Sweeps
 - Social Discovery
 - FAMA – May be a resource
 - Continued advances in unmanned surveillance

Vendor Overload!

Navigating the jungle of vendors and services in the WC world!

- Strongly recommend structured pilot programs!
 - Needs Assessment
 - Vendor Selection
 - Program Design
 - Implementation
 - Training and Education
 - Data Collection
 - Feedback and Adjustments
 - Expansion and Scaling
 - Continuous Improvement

Questions?

