



Workers' Compensation Trends, Impacts and Updates

David Lodwick, CIC, CRM
Director of Trust Services



Factors To Consider Today

Recent rate trends in Florida

Key cost drivers in the rating structure

What does the immediate future look like?



History of WC in Florida

- 1908 Federal Employers' Liability Act – First WC law in U.S – signed by President Theodore Roosevelt
- 1935 Florida Passes “Workplace Compensation law”
- 1948 All states now have WC law
- 1955 Special Disability Trust Fund established
- 1979 1st Florida Reform Bill
 - Workman’s Compensation becomes Workers’ Compensation
 - Wage loss concept added – Indemnity
 - Division of WC established
- 1990 WC Division of Fraud established
Drug Free Workplace established



History of WC in Florida

- 1993 Major Bill Reform
 - Wage Loss modified with impairment income and supplemental benefit
 - Managed Care introduced
 - Chiropractic care limits
- 1999 Special Disability Trust Fund abolished
- 2003 Major Reform Bill
 - Permanent Total Disability amended
 - Permanent Partial Benefits amended
 - Practice Parameters and Protocols mandatory
 - Ind. medical examinations changed
 - Attorney fee award structure amended

Since 2003 rates in Florida down 60%



2016 Rates

- NCCI Initial Request -2.2%
 - OIR Final Approval -4.7%
- OIR did not allow additional requested costs for:
- Profit and Contingency (lower investment income)
 - Experience and Trend
 - General Costs



Factors Cited By NCCI and OIR

- Reduction in claims frequency
- Fraud remains a concern
- Drug costs
- Hospital inpatient, outpatient and ambulatory centers costs higher than national averages

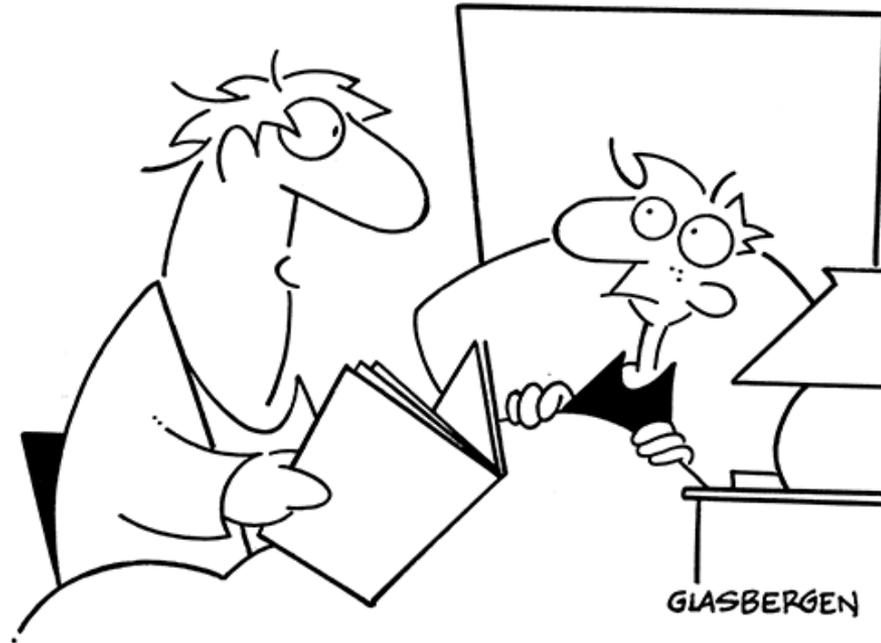


Factors Cited By NCCI and OIR

- Continued claims costs for heart presumption claims
- Proposed legislation for Firefighters Cancer Presumption
- Constitutional legal challenge to the WC statute



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“Humpty Dumpty had a great fall, but he paid attention to his supervisor’s workplace safety lectures, wore all the proper gear and nothing bad happened.”



Lower Frequency of Claims

- 3 year downward trend on reported claims
- More evidence beginning to show similar increases to health insurance claim filings

Are we safer or are employees not reporting?

- Subrogation from health carriers becoming commonplace

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“Humpty Dumpty had a great fall. But many of his coworkers suspect he did it intentionally just to get time off and collect disability benefits.”



WC Fraud

- January 1, 2014 report by Florida DFS
 - 475 cases presented for prosecution (+35%)
 - 418 WC fraud arrests (+53%)
 - 259 WC fraud convictions (+25%)
- Includes fraud by:
 - Claimants
 - Companies – certificates are fraudulent



WC Fraud

SIU Video



WC Drug Costs

- Drugs are a significant cost driver for both WC and Health Insurance
- 2013 – Cap placed on physician dispensed drugs
 - 112.5% of average wholesale price plus \$8
 - Pharmacies at 100% of average wholesale plus \$4.18**
- Florida average prescription cost is \$536, which is 2nd highest among the 17 states surveyed (Insurance Journal 5/13)
- Use of compounded drugs continues to increase in frequency and will remain a cost driver



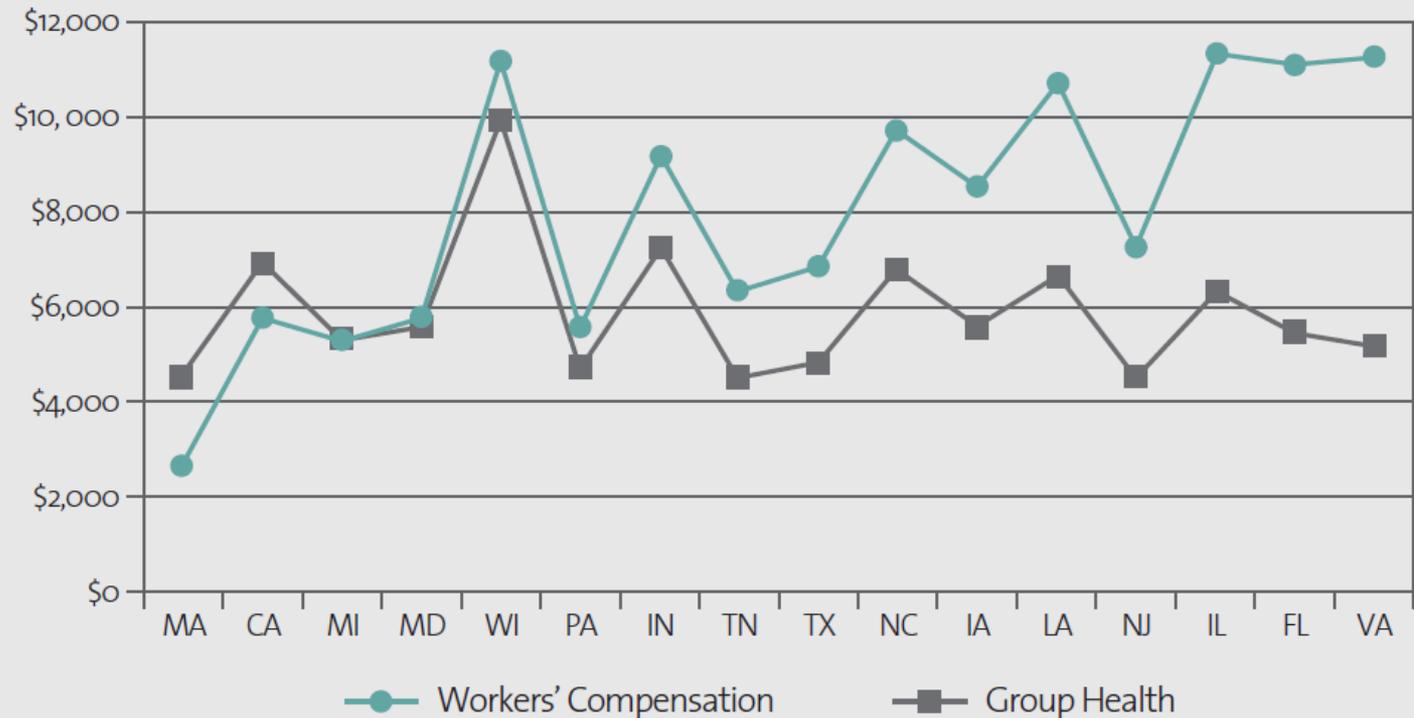
Hospital Inpatient, Outpatient and Surgical Costs

- Florida Fee schedules tied to professional services rather than “Facilities”
- Hospitals and centers use different CPT codes
- Costs vary greatly by region
- Senate Bill 1580 (2014) attempted to limit to 120-140% of Medicare costs. Bill died in Committee
 - ❖ **If self-insured, work with your TPA and local facilities to manage these costs**



Hospital Inpatient, Outpatient and Surgical Costs

Workers' Compensation and Group Health
Hospital Outpatient Payments for Shoulder Surgical Episodes, 2008



(WCRI 2015 Annual Report)



Heart Presumption Claims

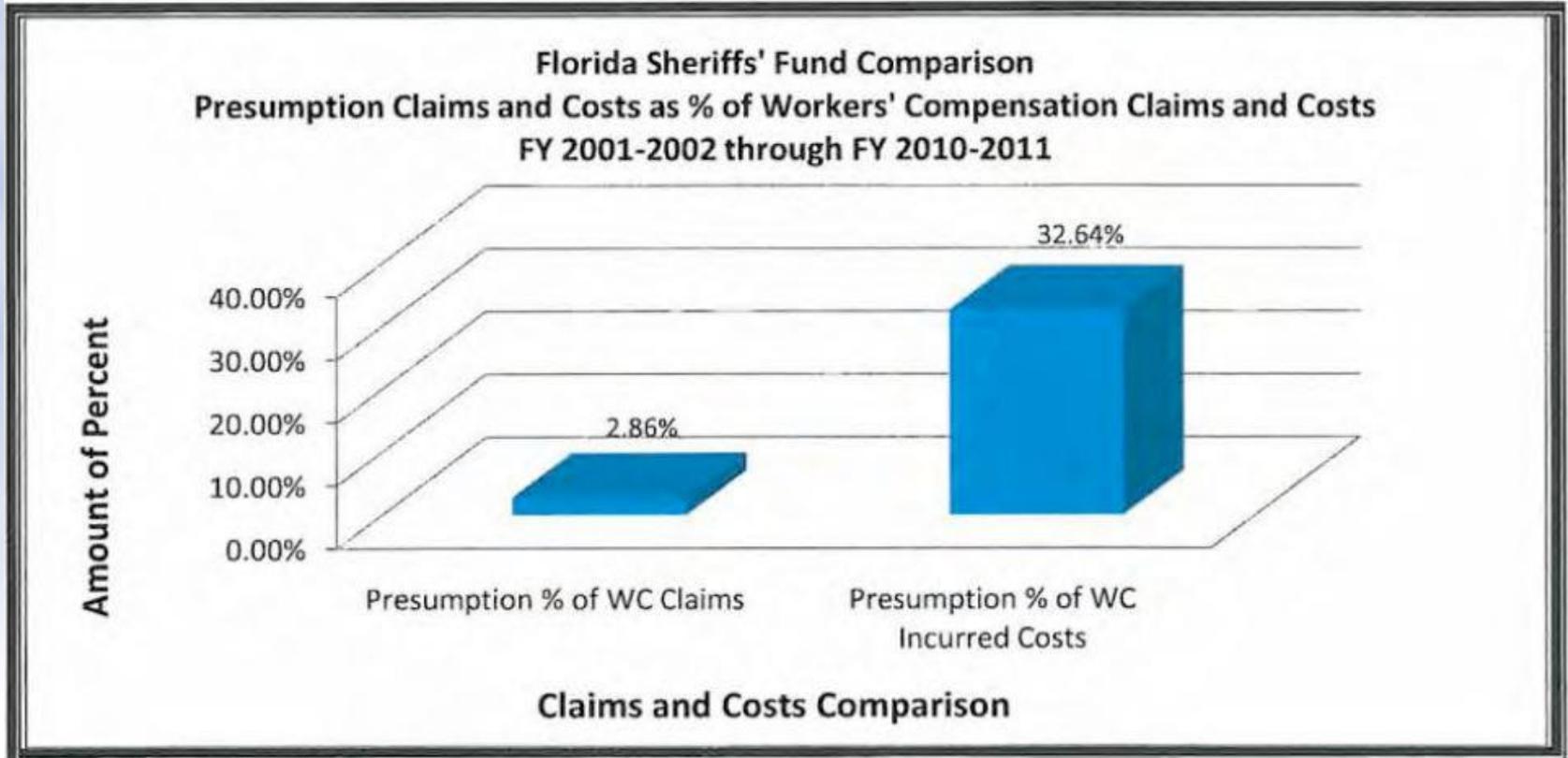
Full time
firefighters
and police
officers

Low
frequency,
very high
severity

High
frequency
of
litigation



Why Are We Having This Discussion?



Graph Credit: Task Force on Public Employee Disability Presumptions – Final Report January 1, 2012



Firefighters Cancer Presumption

- Potential future cost drivers for this class
- CS/SB 456 and HB 345 (2016) would have established a cancer disability presumption for firefighters
- Original bill was written to cover ALL types of cancer and did not require any time of service or a physical examination



Firefighters Cancer Presumption

- SB 456 was amended to limit to:
 - 5 types of cancer
 - Requires pre-employment physical
 - No tobacco use for 5 years
 - No other employment in past 5 years with higher risk for these cancer types
- Bills died in session



Constitutional Challenges to the WC Laws

- WC laws sometimes call “The Grand Bargain”
 - Employers:
 - Pay premium for statutory benefits
 - Receive tort immunity for suits from their employees for these injuries
 - Employees:
 - Receive statutory benefits for medical costs, lost wages and permanent impairments
- Theoretically, a “No Fault” system to provide benefits and services without conflict or litigation between employers and employees



Challenges

- **Castellanos v. Next Door Company** (FL 1st DCA 2013)
 - Plaintiff attorney worked 107 hours on the case
 - JCC reviewed the case and awarded \$164.54 in attorney fees
 - Claimant Appealed
 - Unconstitutional violation of separation of powers in Statute 440
 - Violation of Equal Protection
 - Ability to contract
 - Ability to access the courts



Challenges

- **Castellanos v. Next Door Company** (FL 1st DCA 2013)
 - DCA held that the Statute is constitutional but submitted to the Supreme Court of Florida whether the award of attorney fees in this case is adequate and consistent with access to courts due process, Equal Protection and other requirements of the Florida and Federal Constitutions
 - Pending at Florida Supreme Court



Update

- April 28, 2016 – Florida Supreme Court ruled for the plaintiff
- Fee schedule is invalid as it eliminates the right of claimant to get a reasonable attorney's fee
- May 27, 2016 – NCCI filed an interim year rate request of 17.1%
- OIR final rate decision pending



Challenges

- Westphal v. City of St. Petersburg

(FL Ct App Feb 28, 2013)

- Part of the 1993 Reform Bill amend temporary indemnity benefits to 104 weeks from prior limit of 260 weeks
- Westphal did not have the option to sue his employer and was required to pursue his WC benefits only
- After 104 weeks his indemnity benefits ceased under the law
- He had not reached MMI and, therefore, could not be classified as PTD



Challenges

- Westphal v. City of St. Petersburg

(FL Ct App Feb 28, 2013)

- A Florida appellate court ruled the 2 year limit on benefits for temporary total disability violates the State's Constitution
- The court also implies that process-based constitutional rights may be translated into required benefit levels for employees
- Article 1, Section 21 of the Florida Constitution:
"The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."
- Pending at Florida Supreme Court



Challenges

- **Stahl v. Hialeah Hospital** (Case ID ID14-3077)
 - Stahl was a nurse injured on the job
 - After 2 years, MMI was reached with a 7% disability rating
 - Stahl would receive a 1 time payment for the rating but no long term compensation
 - Prior to 2003, Stahl would have received permanent partial benefits



Challenges

- **Stahl v. Hialeah Hospital** (Case ID ID14-3077)
 - This suit is specifically challenging:
 - The hospital was negligent for his injuries due to inadequate staffing
 - Questions the constitutionality of the benefits versus access to the courts due to the lack of permanent impairment benefits
 - Stated goal by the plaintiff attorneys is to revert to the 1935 law that allowed an injured worker to opt for a WC claim or personal injury lawsuit
 - Pending at Florida Supreme Court



Update

- April 28, 2016 – The Florida Supreme Court decided not to review the case, which leaves intact the “Sole Remedy” provision.



Challenges

- Drug-Free Workplace: Voss v. City of Key West
 - Applicant for Recycling Coordinator job refused a drug test
 - As a drug-free workplace the City tested all new hires
 - Suit filed alleging a violation of 4th Amendment rights
 - Court ruled the position is not “Safety Sensitive” and held the drug test was a violation of 4th Amendment rights

Review your job descriptions with your attorney to determine which positions are “Safety Sensitive” in accordance with this ruling.



Questions?

David Lodwick

407-367-1811

dlodwick@flcities.com