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A study by the RAND Institute for Civil Justice

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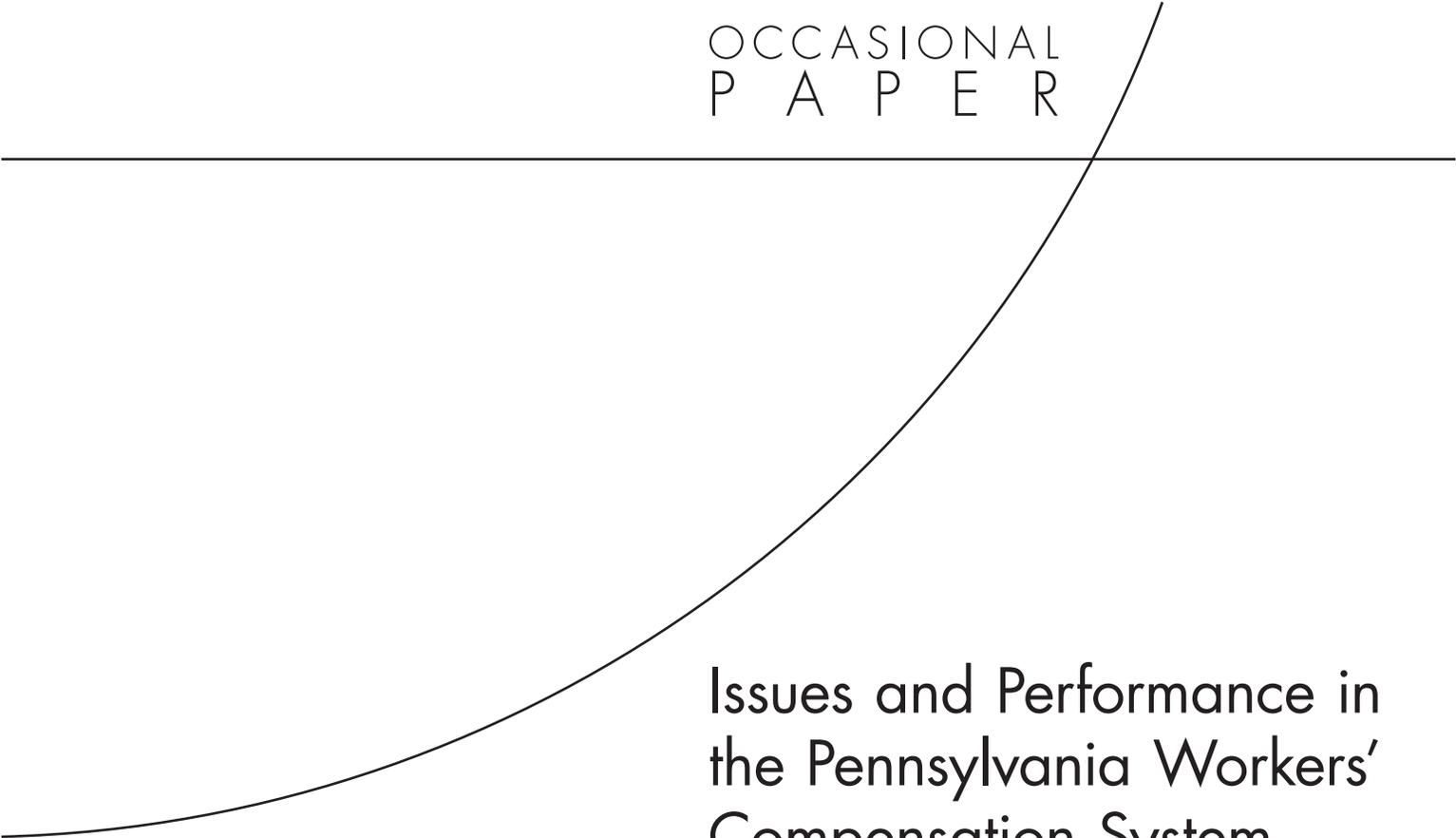
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P A P E R



Issues and Performance in the Pennsylvania Workers' Compensation System

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Summary

The workers' compensation system in Pennsylvania reflects a longstanding compromise between workers and employers, in which the former receive a guaranteed set of benefits in connection with workplace injuries and illnesses without regard to putative employer fault or negligence. In return, employers receive protection from tort liability regarding the same set of injuries. In principle, workers' compensation helps to provide certainty, both for workers and employers, in defining the parameters of liability for harms sustained in the workplace. Nearly 100 years after the adoption of the first workers' compensation laws by the states, however, modern workers' compensation systems involve complicated administrative mechanisms and standards for providing medical care to injured workers; for making difficult medical and legal determinations about the nature and treatment of occupational illnesses; for compensating workers' loss of income due to work-related disabilities; and for resolving disputes over claims through a channel removed from the ordinary judicial process. Notably, workers' compensation costs in many states have risen significantly over the last 30 years,¹ resulting in increasing financial pressure on employers and calls for systemic reforms. Consonant with the broader national pressures for reform, the workers' compensation system in Pennsylvania was the subject of major legislation in 1993 and 1996, and most recently again in 2006.

This paper was motivated by a legislative resolution in 2004 and the latest set of statutory reforms in 2006, which together suggest a continuing interest in costs and efficiency as drivers of workers' compensation policy in Pennsylvania. This paper examines some of the key policy issues that the Pennsylvania workers' compensation system faces and reviews available performance data from a number of sources. Our work focused particularly on surveying several aspects of the system: benefits and compensation, safety, medical care, and dispute resolution. In studying these aspects of workers' compensation policy, we undertook a broad review of available scholarly literature, performance data, and legal and regulatory materials concerning the Pennsylvania workers' compensation system (and to a much more limited extent, those of other states as well). To clarify and build on the results of our review, we also undertook a series of qualitative interviews with a range of stakeholder groups in the Pennsylvania system, including employers, officials, lawyers, physicians, and insurers. Based on the findings from our research, we identify a series of workers' compensation policies that may be prominent as targets for reform in the future, and we offer recommendations for addressing these issues through reform and additional performance assessment.

¹ Interestingly, costs to employers have declined on a national basis in the most recent available year of data, after several years of rising national costs during the early 2000s (Sengupta, Reno, and Burton, 2007, p. 84).

Overview of Performance and Policy in Pennsylvania

Several general observations emerge from a review of published data on benefits, cost, and compensation within the Pennsylvania workers' compensation system. First is simply the sense that Pennsylvania does not appear to be a system in crisis, or one in which employer costs are spiraling rapidly out of control. Although aggregate benefit payments in Pennsylvania are above the median when compared with those of other states, adjusted measures of total costs per claim (i.e., controlling for differences across states in injury and industry mix) suggest that the commonwealth is doing reasonably well compared with other states, and particularly so in regard to the rate of growth in costs over recent years. As mentioned above, Pennsylvania instituted a series of statutory changes to try to stem growth in workers' compensation costs during the 1990s. More recent data on benefits and costs (from 2000 to 2004) suggest that the earlier changes may have been successful in that aim. In contrast to the relatively abundant performance data that are available concerning payment levels, however, there are comparatively little data to address the questions of adequacy of indemnity benefits and how well the system actually does in replacing lost wages for workers who are seriously injured while on the job. Comparative interstate data for some other important measures of outcomes, notably speed of return-to-work, are also limited.

Promoting safety within the workers' compensation system has become a major priority for Pennsylvania policymakers, as reflected both by statutory reforms adopted in 1993 and by the more recent initiatives of the Bureau of Workers' Compensation and the WorkSAFE PA coalition. Occupational injury statistics published by the commonwealth suggest that rates of workplace injuries have fallen substantially during the last 15 years or so, from about 29 injuries per 1,000 workers in 1990 to between 15 and 18 injuries per 1,000 workers in 2005.² Data to support rigorous interstate comparisons of injury rates are limited, however, and several exploratory analyses undertaken by RAND on OSHA data suggest that Pennsylvania may not outperform several peer states on some measures of safety outcomes. Meanwhile, specific Pennsylvania policies intended to address workplace safety, particularly insurance incentives given to employers to adopt certified safety committees, have generated only limited performance data concerning their effectiveness. Consequently, the future prospects for improving workplace safety in the commonwealth may be tied less to specific policy reforms than to improved data collection and assessment of those reforms on a prospective, pilot basis.

Medical care is likely to be a crucial aspect of workers' compensation policy in the future, because related costs continue to climb both in Pennsylvania and across the nation. Notably, Pennsylvania's workers' compensation medical costs are relatively low, on a series of measures, compared with those of a number of other states. Comparative interstate data on access to care, health care quality, and worker outcomes are sparser, although the commonwealth has for many years conducted its own survey study looking at medical access and self-reported outcomes within the workers' compensation system. Prominent aspects of previous medical policy reforms already enacted in Pennsylvania include provider panel requirements, utilization review oversight, and a medical fee schedule based on Medicare circa 1994 (with subsequent annual adjustments based on state wage rates). Future reforms to further strengthen cost

² Although not directly comparable to Pennsylvania's numbers, national statistics from the Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses suggest that the U.S. rate of nonfatal workplace injuries has also been on the decline since the early 1990s (Bureau of Labor Statistics, 2002, p. 16).

controls could build on any of these mechanisms, but, in any case, policymakers will need to balance considerations of cost containment against competing interests in maintaining access to care, quality of care, and good outcomes for injured workers. Given the skew in available performance data toward medical costs (and away from quality indicators), it would be easy for policymakers to focus inadvertently on the former set of concerns to the detriment of the latter.

Finally, dispute resolution within the workers' compensation system has also been the target of several major reforms in the last decade, including the institution of "compromise and release" (C&R) agreements in 1996 and the enactment of mandatory mediation requirements in 2006. Recent years of performance data suggest that the Pennsylvania Department of Labor and Industry's Office of Adjudication is now resolving workers' compensation cases more quickly and has reduced the backlog of cases within the system. On a complementary note, Pennsylvania does not appear to be an outlier when compared with a number of other states on several measures of litigation costs and litigiousness. This being said, the performance data that are currently available mostly focus on measures of litigation speed and cost, rather than on quality of outcomes or on the experience of litigants as participants in the justice system. As with workers' compensation medical care, future reforms on dispute resolution will need to balance considerations of cost against considerations of quality, both in outcomes and processes. Expanded efforts within the system to collect detailed outcome data on dispute resolution, particularly regarding initiatives such as mandatory mediation and compromise and release agreements, could provide new and useful insights to policymakers.

Key Observations and Recommendations

Based on the findings of our investigation into the workers' compensation system in Pennsylvania, we offer the following set of conclusions and recommendations for policymakers:

- Currently available data suggest that benefit payments in the Pennsylvania system, adjusted for payroll growth, have been relatively flat during 2000–2004, and that Pennsylvania compares favorably with a number of other states on several measures of average costs per workers' compensation claim. Far less clear is the adequacy of wage replacement associated with Pennsylvania's indemnity benefits and how well Pennsylvania compares to other states on this criterion. *Pennsylvania policymakers should consider the adequacy of wage replacement, as well as systemic payment levels, in assessing the overall performance of the system.* Either BWC or independent researchers should be encouraged to perform analyses on the adequacy of wage replacement in the commonwealth, so that policymakers can track and understand related trends over time.
- One of the most important reforms to the Pennsylvania system over the past 15 years was the institution of compromise and release agreements, which allow claimants and insurers to negotiate final, lump-sum settlements in discharge of workers' compensation liability. Nearly a third of the total benefits paid by the system in 2005 were disbursed through C&R agreements. Here again, though, the impact of C&R settlements on adequacy of wage-replacement benefits, long-term vocational outcomes, and medical care for injured workers is not well understood. *Ideally, the commonwealth should collect and aggregate more information about C&R agreements, who is entering into them, and what the major features*

of those agreements are. Future studies of wage-replacement adequacy in Pennsylvania should also look specifically at the impact of C&R, as compared with the traditional payment of claims. Finally, any future proposals for additional C&R reforms, such as eliminating hearing requirements or mandating the existence of a genuine dispute between litigating parties, should be formally evaluated on a pilot or prospective basis.

- New requirements for dispute mediation, instituted in 2006, are among the most recent reforms to the Pennsylvania system. Under the revised law, all workers' compensation claims that enter litigation must be mediated, except where a judge makes a finding on good cause that mediation would be futile. Given the newness of the requirements for mediation, however, there is currently no information on the effects of the mandate, on the nature and volume of cases resolved in the commonwealth through mediation, or on whether mediation produces materially different outcomes than adjudication across otherwise similar cases. *Pennsylvania stands in good position to track these kinds of measures going forward, and could thereby help policymakers in reviewing any future proposals to refine or expand on the current mediation requirements.*
- Rates of workplace injuries in Pennsylvania fell substantially between 1996 and 2005, according to aggregated workers' compensation data published by the commonwealth. Interstate comparisons of occupational injury rates are hampered, however, by differences in underlying definitions and methods for compiling data across the states. Notably, the Bureau of Labor Statistics (BLS) fields an annual Survey of Occupational Injuries and Illnesses, which estimates industry-specific injury rates both nationally and for 42 states, not including Pennsylvania. *The commonwealth should consider requesting that BLS increase its survey sample in Pennsylvania, so that comparable state-level injury rates will become available.*
- One of Pennsylvania's major initiatives to promote workplace safety involves encouraging employers to adopt certified safety committees, by providing a 5-percent discount on workers' compensation insurance premiums for participating employers. Uptake of certified safety committees within the employer community has been modest, however, and the limited safety performance data on the committees that are currently available through PCRB are only suggestive, but not conclusive, that the state certification program has had a beneficial effect. *Pennsylvania should seek better performance data to gauge the impact of certified safety committees on workplace injuries, as a precursor to any effort to expand the reach and influence of safety committees in the employer community.* More broadly, the commonwealth should consider new ways to make the financial benefits to employers of improved safety performance more transparent and more salient, throughout the employer community.
- Medical payments represent the part of aggregate workers' compensation payments that are growing most rapidly in Pennsylvania (and across the nation). And although Pennsylvania, when compared with a number of other states, has lower average medical costs on a per-claim basis, general trends toward growth in medical costs remain a subject of concern. Meanwhile, only limited performance data are currently being collected by the commonwealth describing quality of care and access within the Pennsylvania system, and interstate comparisons and benchmarking on those sorts of parameters are very limited. *Policymakers should continue to track measures of medical cost, and should improve the tracking of quality of care and access within the workers' compensation system, given that the pressures for medical cost containment are unlikely to diminish.*

- One aspect of the workers' compensation medical framework that has occasionally been criticized is the medical fee schedule, which in turn is based on the Medicare schedule from the early 1990s. Medicare fees have since been revised in ways not reflected by the Pennsylvania fee schedule, thereby giving rise to concerns about administrative burdens, as well as the potential for perverse incentives to providers that might undercut the aim of containing costs. We note that any proposed reform to the Pennsylvania fee schedule, particularly if intended to emulate current fee rates under Medicare, would likely involve highly technical details in the transition, as well as significant groups of winners and losers within the provider community. *As a precursor to any such proposal, we recommend that the commonwealth undertake a detailed study of the price implications of, and implementation options for, revising the medical fee schedule, along the lines of a similar assessment that was performed in California in 2003 (Wynn, 2003).*
- Pennsylvania has implemented several other important policies for containing workers' compensation medical costs since 1993, including provider panel requirements and utilization review oversight. Both of these mechanisms could be refined or expanded on in the future, and as of fall 2007, the commonwealth was reviewing a set of proposed regulations to update and clarify the current framework for utilization review. *We suggest that any future reforms to these policies incorporate a formal, prospective assessment of their ultimate effect on costs, as well as on health care quality and access.* This kind of performance information could help policymakers in evaluating the successfulness of the policies, as well as in refining them going forward.