



Federal Legislation and Developments In Workers' Compensation

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on Unemployment & Workers' Compensation

November 16, 2023



Federal Impacts on WC Ongoing Issues

- Nationalize Workers' Compensation
 - National Standards – 1972 Commission List
- Shift costs from SSA, SSDI to workers' compensation - Reverse offset – 15 states including Ohio; Amend SSDI and WC offset
- Shift costs from Medicare and Medicaid to workers' compensation – conditional payment reimbursement
- Medicare for All – Sanders and Jayapal - federal preemption of medical items and services coverage.
- Expand federal WC programs and leverage for state WC expansion advocacy
- Push back on Medicare Secondary Payer and Conditional Payment Reimbursement – S 653 and HR 3124 Reintroduction



Federal Impacts on WC

- Proposals to Federally “Monitor” State Workers’ Compensation
 - American Rescue Plan Act amendment for the Office of Workers’ Compensation to “monitor” State workers’ compensation Laws. UWC coordinated opposition sign on letter.
 - Proposed amendment in House Education and Labor Committee mark up
 - Possible US DOL “study” of inadequacies of state workers’ compensation without legislation
 - UWC successfully Opposed language in FY 2023 House Appropriations Report to authorize NIOSH to report to Congress on state workers’ compensation cost shifting to federal programs.



Proposal to Authorize NIOSH to Review State WC Laws

Occupational Injury and Illness.—The Committee requests a report within 180 days of the date of enactment of this Act on the estimate of the total incidence and economic burden of fatal and nonfatal occupational injury and illness in the U.S. The report shall adjust for known underreporting of occupational injury and illness, estimate the incidence or prevalence of occupational illnesses from public health data through attributable risk proportions or other standard methodologies, and estimate both medical and indirect costs, such as lost earnings, benefits, and home production. **This report shall also estimate the proportion of the total economic burden not absorbed by worker's compensation insurance and shifted onto federal programs such as Medicare, Medicaid, and Social Security Disability Insurance.** pages 89-90 of the report [CRPT-117hrpt403.pdf \(congress.gov\)](https://www.congress.gov/117/hrpt/403/pdf/CRPT-117hrpt403.pdf)



COVID-19 Presumptions

- UWC successfully opposed proposals to Establish Conclusive COVID-19 Presumptions for workers covered under the Longshore Act
 - HEROES Act proposal and American Rescue Plan Act amendment proposed to establish COVID 19 presumption.
 - UWC coordinated opposition sign on letters to keep the proposal out of budget reconciliation bills – opposition was successful
 - Rep. Frank Mrvan (D-IN) proposed HR 3114 to establish COVID 19 presumption for “maritime employment” under the Longshore Act.
 - HR 3114 included in reported mark up in House Ed and Labor Committee on party line vote prior to change in House Majority.



Medicare for All Proposals

- Bernie Sanders (S 1655) and Representative Jayapal (HR 3421) propose Medicare for All
 - Unlikely to move independently
 - Could be part of advocacy leading up to the 2024 election.



Medicare for All Proposal HR 3421 Jayapal (D-HI)

- **SEC. 522. PROHIBITION OF EMPLOYEE BENEFITS DUPLICATIVE OF UNIVERSAL MEDICARE PROGRAM BENEFITS; COORDINATION IN CASE OF WORKERS' COMPENSATION.**
- “(a) **IN GENERAL.**—Subject to subsection (b), no employee benefit plan may provide benefits that duplicate payment for any items or services for which payment may be made under the Medicare for All Act.
- “(b) **REIMBURSEMENT.**—Each workers compensation carrier that is liable for payment for workers compensation services furnished in a State shall reimburse the Medicare for All Program for the cost of such services.
- “(c) **DEFINITIONS.**—In this subsection—
- “(1) the term ‘workers compensation carrier’ means an insurance company that underwrite workers compensation medical benefits with respect to one or more employers and includes an employer or fund that is financially at risk for the provision of workers compensation medical benefits;



Medicare for All Proposal HR 3421 Jayapal (D-HI)

- “(2) the term ‘workers compensation medical benefits’ means, with respect to an enrollee who is an employee subject to the workers compensation laws of a State, the comprehensive medical benefits for work-related injuries and illnesses provided for under such laws with respect to such an employee; and
- “(3) the term ‘workers compensation services’ means items and services included in workers compensation medical benefits and includes items and services (including rehabilitation services and long-term care services) commonly used for treatment of work-related injuries and illnesses.”
- 112 Co-sponsors



Medicare for All Proposal Sanders S1655

- ‘SEC. 523. PROHIBITION OF EMPLOYEE BENEFITS DUPLICATIVE OF MEDICARE FOR ALL PROGRAM BENEFITS; COORDINATION IN CASE OF WORKERS’ COMPENSATION.
- “(a) IN GENERAL.—Subject to subsection (b), no employee benefit plan may provide benefits that duplicate payment for any items or services for which payment may be made under the Medicare for All Program established under section 101 of the Medicare for All Act (referred to in this section as the ‘Medicare for All Program’).
- “(b) REIMBURSEMENT.—Each workers compensation carrier that is liable for payment for workers compensation services furnished in a State shall reimburse the Medicare for All Program for the cost of such services.
- “(c) DEFINITIONS.—In this subsection— “(1) the term ‘workers compensation carrier’ means an insurance company that underwrites workers compensation medical benefits with respect to one or more employers and includes an employer or fund that is financially at risk for the provision of workers compensation medical benefits;



Medicare for All Proposal S 1655 Sanders

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- “(3) the term ‘workers compensation services’ means items and services included in workers compensation medical benefits and includes items and services (including rehabilitation items and services and long-term care items and services) commonly used for treatment of work-related injuries and illnesses.”.
- 14 Co-sponsors



WCMSA Reform Proposal

The COMP Act Reintroduction (formerly S 653 and HR 3124)

Clarifies that workers' compensation law controls amounts to be set-aside to meet MSP requirements.

Provides right to appeal disputed determinations by CMS.

Permits direct payment to satisfy MSP without CMS review.

New sponsors expected with reintroduction in 2023.

NCOIL has supported earlier versions.



Federal Workers' Comp Act Regulatory and Legislative Activity

Longshore Act – Amend Hearing Loss claims provisions to apply a reasonable time limit to claim.

Rules to provide Civil Monetary Penalties for failure to report -
Comments were due November 13th

Black Lung Benefits Act – Rule to define required financing for self insured coal mine operators.

Social Security – policy discussion about how to improve reporting of workers' compensation payments to apply the SSDI/WC offset.