

[ Healthcare Innovation/The Business Side ]

By Amy Keller

# Workers' Comp— Why It's Working



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A decade ago, Florida's workers' compensation system was in crisis. Skyrocketing claims costs were driving steep increases in premiums and making coverage unaffordable for many employers. Underwriting losses were so significant, in fact, that some insurance carriers stopped writing policies in the state and some businesses were denied policy renewals.

In 2003, lawmakers responded by overhauling the state's workers' comp system with a set of reforms designed to rein in cost drivers. Key elements of those reforms included limits on plaintiff attorneys fees, revisions to the medical fee schedule, redefined eligibility standards for permanent total disability, revised benefits for permanent partial disability and other changes.

Eight years later, workers' comp coverage is widely available, rates are affordable and the market is competitive. Rates, which dropped 61.9% since the 2003 reforms, will climb slightly this year. While Florida Insurance Commissioner Kevin McCarty approved an average 7.8% rate increase for 2011, Florida is still among the most affordable in the nation for workers' comp insurance.

"It's a good place for a carrier like



**WORKPLACE SAFETY:** Business owners looking for ways to reduce workplace injuries can sign up for a free safety and health audit with USF SafetyFlorida, the state's official small-business OSHA consultation program. Operated from the University of South Florida in Tampa, USF SafetyFlorida's consultation program works primarily with businesses in high-hazard industries. Above, USF SafetyFlorida consultant Jim Ulseth (left) discusses electrical safety at a commercial construction site in Tampa. Architectural Specialties Trading Co. in Pensacola implemented a safety program that has saved the company about \$50,000 a year in workers' comp costs, according to *USF Magazine*. More information: [usfsafetyflorida.com](http://usfsafetyflorida.com).

ours — and a good place for employers as well," says Steven Mariano, chairman and CEO of Patriot National Insurance Group in Fort Lauderdale. "Right now, Florida is in a period where it's a win-win." That said, industry players told *FLORIDA TREND* that they are keeping an eye on several potential cost drivers:

## MEDICAL COST INFLATION

Rising healthcare costs are a continuing worry for insurers. The Boca Raton-based National Council on Compensation Insurance says the volume of drugs

dispensed by doctors to injured employees is on the rise and is a significant driver of those increased medical costs.

While medical costs "have moderated over the last few years," the national council notes that they still continue to increase faster than wages. Thomas Koval, senior vice president and general counsel for FCCI Insurance Group, says a decline in the frequency of workers' comp claims has helped to offset medical cost inflation over the past several years, but, "When you see a flattening of the frequency trend, medical cost inflation becomes a more serious problem."

## MEDICARE SET-ASIDES

The Centers for Medicare & Medicaid Services has become increasingly aggressive about making sure that workers' comp settlements comply with federal Medicare "set aside" rules. In 1980, to help ensure the solvency of Medicare, a statute designated Medicare as the secondary payer of medical expenses when an injury arises out of and in the course of employment. As such, Medicare's interest must be taken into account — and funds must be set aside — when settling future medical expenses of a workers' comp claim involving Medicare beneficiaries or those who are likely to become Medicare beneficiaries within 30 months of the settlement date.

Attorneys specializing in workers' comp cases say that medical set-asides, which must be approved by the Centers for Medicare & Medicaid Services, can potentially add hundreds of thousands of dollars to the costs of a claim.

The rules have done two things, says Heath Eskalyo, a partner with Kelley Kronenberg in Fort Lauderdale who specializes in workers' comp. "It has increased catastrophic settlements and prevented some settlements from going through because it's just not a good business decision for the employer/carrier to fund that amount of money that CMS wants."

## ATTORNEY FEES

Some fear that continued legal wrangling over limits on attorney fees could upend the savings brought about by the 2003 workers' comp reforms. Proponents of those reforms argued that tort reform was needed to reduce litigation costs without harming workers — but attorneys who represent injured workers say the law is hurting injured workers by making it harder for them to get good legal representation and argue that the fee schedule is unconstitutional.

How the courts will ultimately decide the matter is anyone's guess. In 2008, the Florida Supreme Court threw out the limits on attorney fees but did not address the constitutionality issues. In 2009, state lawmakers counteracted the high court decision with a legislative tweak that reinstated limited attorney fees. Then, just two months ago, the 1st District Court of Appeals again upheld those limits in *Kauffman vs. Community Inclusions and Guaranty Insurance Co.* The case will likely be appealed to the Supreme Court. ■