**Update: California Workers Compensation Reforms SB 899**

On April 19, 2004 Governor Schwarzenegger along with support from both the Assembly and Senators’ Houses passed further workers compensation reforms designed to build upon last year’s legislation. It is anticipated this new reform will help reduce the costs of workers compensation which has threatened the state’s economy and propelled the controversial State Fund to be the largest carrier in the state.

The new reforms contain major provisions aimed to control costs, while fairly compensating injured employees. It should be noted that cost-controlling measures will not interfere with providing immediate medical care to injured employees. Streamlining the administrative process will work to expedite the delivery of benefits; while cutting costs associated with cumbersome administrative procedures. The yet to be published regulations or rules will provide guidance on implementing the new law. These regulations and eventual case law will be key factors in determining the ultimate cost benefits of this new legislation. In addition, the effective date of implementation for some of the provisions must still be determined.

A summary of the provisions are noted below:

**Medical Treatment**

Employers are to provide medical care for a claimed injury upon receipt of a claim form regarding notice of injury. While a claim is being delayed to determine compensability, a statutory cap of $10,000 of medical benefits applies. Therefore all medical care is paid within the cap until the claim is either accepted or denied. Paid medical benefits however do not constitute an admission of compensability.

New legislation strengthens prior reforms (AB749) by utilizing the American College of Occupational and Environmental Medicine (ACOEM) guidelines for defining appropriate medical treatment. This reform also utilizes the American Medical Association (AMA) guidelines for defining Permanent Partial Disability benefits. We anticipate the use of these guidelines will bring an objective approach to treatment patterns, disability and permanency ratings, which were absent in the past.

“Medical provider networks” created by the employer, carrier or claims administrator, will provide for complete medical management of the injured employee. In the event of disputes the employee can seek a second and third opinion within the network. If continued disputes remain the employee can request an independent medical evaluation outside the network approved by the Administrative Director. The criteria for approved networks are uncertain; however these networks are key to providing appropriate medical care in the most cost effective fashion.

We believe such networks are key to overall cost benefits under this new legislation. Currently it is unclear if health care organizations (HCO) in use today will be recognized under this new legislation.

This reform strengthens AB 749 by placing an additional cap on occupational therapy at 24 visits per claim. This adds to the 24-visit limit on chiropractic and physical therapy treatment.

**Medical – Legal Practice (Disputes)**

The below noted items are effective immediately, but will change on 1/1/05 when the medical provider networks will take effect.

For disputed cases, an unrepresented employee now has first choice to select a physician from a Qualified Medical Examiner (QME) panel of 3, supplied by the Administrative Director. The injured employee has until 10 days to make the selection and appointment. Failure to act within the 10 days gives the employer the opportunity to request a panel and make the selection for the injured employee. The key change is the 10-day time frame that speeds the process along where it dragged on under the prior law. What remains unclear is the action which an employer can take in the event of an employee being a “no-show” for the appointment.

For disputes with represented employees regarding an Agreed Medical Evaluator (AME) the parties will secure from the Administrator Director a panel of 3, of which each party will remove a physician thus leaving the remaining physician to conduct the medical evaluation.

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The presumption of correctness for the treating physician is repealed for all claims.

**Disability and Permanent Partial Benefits (Indemnity)**

Temporary disability benefits are capped at 104 weeks from the date of the first disability. Exceptions are for designated injuries or diseases to include hepatitis, serious burns, severe eye injuries, amputations, HIV, pulmonary fibrosis, chronic lung disease. Such injuries will have extended benefits up to a maximum of 240 weeks.

Post 104 weeks of benefits, the employer is to evaluate the extent of permanent disability and issue payment within 14 days.

A key percentage of disability remains at 70%. Injuries accessed at 70% to 99.75% will realize an increase in the number of weeks to be paid for the disability; however, the rate of the benefit will remain the same.

Permanent Partial Disability Benefits will now be evaluated using the AMA guidelines which will bring a much more consistent approach to the ratings and compensate like injuries virtually the same.

Apportionment will now be based on causation as opposed to disability. Medical reports will discuss all prior injuries as a percentage of disability unrelated to the industrial injury. The employer will now only be responsible for the percentage of disability directly caused by the specific work related injury.

**Effect on Return to Work Programs**

There is an incentive in the law for return to work programs for employers with 50 or more employees. Now more than ever creating return to work programs is paramount in deceasing costs for more that just reducing temporary total benefits and returning the employee to a productive lifestyle. Permanent disability will either be increased or decreased by 15% depending on whether the employer offers to return the employee to normal, modified or alternative work within 60 days of the termination of temporary disability. If an offer is not made, the percentage of permanent disability increases by 15%.

**Vocational Rehabilitation**

The provisions for vocational rehabilitation, which existed before 1/1/04, is reinstated for injuries occurring prior to 1/1/04 and will be in effect until 1/1/09.

The Supplemental Job Displacement Benefit (Voucher System) created under SB 228 remains in effect for injuries on or after 1/1/04. While this program may be subject to further review it currently stands as a viable job displacement benefit.

Employers who modify the workplace to accommodate employees returning to work could receive an incentive of $1,500 to $2,500 (this applies to injuries of 7/1/04 and after). Modification of the job is the catalyst to secure such an incentive. It is to be funded by the state, perhaps through a SIR charge to carriers.

**Moving into Transition**

The above information provides a synopsis of the significant changes of the recently enacted reform.

The new law certainly provides optimism that in time costs will be reduced with the implementation of much more equitable system for all parties. While certainly more questions will surface about the reforms, on paper the legislation appears to be a major step to gain control of a costly run away system.

The creation of effective regulations and the fair interpretation through case decisions will be most important to ensure appropriate implementation as the new legislation takes hold. Only time will tell how such factors will play out.

During the implementation and as the law unfolds to help our clients understand the implications of this new law inquiries can be made through your account executives or by sending an e-mail via the ESIS website at www.esis.com.

**Florida**

On April 14, 2004, a proposed rule making hearing was held in Tallahassee, FL regarding Florida Administrative Code 69-7.602 FLORIDA WORKERS’ COMPENSATION MEDICAL SERVICES FILING AND REPORTING RULE. The Rule as proposed, promulgates recent changes to the Florida workers’ compensation statute under §440.13(15) and (16) regarding Medical Services and Supplies; Practice Parameters and Standards of Care, which took effect on October 1, 2003.

FAC 69-7.602 mandates the use of a proposed form DFS-F5-DWC-25 Florida Workers’ Compensation Uniform Medical Treatment/Status Reporting Form which has generated controversy.

The DWC-25 form is a vehicle for reporting clinical assessment, treatment plans, determination of functional limitations and restrictions as well as certification of maximum medical improvement and permanent impairment. This form is to be submitted physicians, physician assistants and ARNP’s (Advanced Registered Nurse Practitioner) to the insurer no later than the close of the next business day following initial medical services, by the close of the next business day following subsequent visits or maximum of 30 days from the prior evaluation.

Although the DWC-25 may improve benefit administration, the filing requirements and complexity of the form present significant administrative burdens to medical service providers and may drive qualified providers out of the system altogether.

Likewise, the DWC-25 will also be burdensome to the insurer where a large number of forms must now be separated from medical billing and reports, date stamped and indexed. There is also an issue as to whether medical billing may be rejected or suspended if not accompanied by the DWC-25 causing work
ESIS Announces Top Ten Ways to Reduce Workers Compensation Fraud: What Every Risk Manager Should Know

When workers compensation insurance fraud occurs, everyone pays the price, including legitimately injured employees. According to the National Insurance Crime Bureau (NICB), workers compensation claimant fraud and medical fraud combine to contribute significantly to an annual estimated $30 billion insurance fraud problem. In addition, questionable workers compensation claims continue to be reported at a rapid pace. The Special Investigation Unit (SIU) of ESIS, Inc., the risk management services company of ACE USA, recently released a top ten list detailing tips and methods for reducing the risk of workers compensation fraud.

According to Jim Henwood, SIU Manager, ESIS, Inc. preventing fraudulent workers compensation claims is a win/win for employers and employees.

“Our job is to conduct an impartial investigation into every suspect claim, so those filing fraudulent claims are identified and referred to law enforcement agencies for prosecution. The workers compensation system is only designed for employees who have suffered legitimate workplace injuries,” said Mr. Henwood.

ESIS’s top ten tips for fighting workers compensation fraud.

Build Safety and Fraud Awareness in the Workplace and Beyond

1. Employee awareness campaigns challenge misconceptions. Workers compensation fraud is not a victimless crime, and perpetrators are prosecuted to the fullest extent of the law. Make employee awareness a part of your corporate culture. Use posters, employee newsletters, and other notices to ensure that employees know that workers compensation fraud is a serious crime and they can anonymously report suspected workers compensation fraud. Provide workers with your updated workers compensation fraud reporting notice at least once a year.

2. Conduct thorough background checks. Reduce the risk of workers compensation fraud by thoroughly screening prospective employees. Has this person previously filed a fraudulent workers compensation claim, or been convicted of other types of fraud? Devoting the resources to thorough background checks on the front end lessens the risk of fraudulent claims.

3. Install video equipment in the workplace.

A visual record can help support legitimate workers compensation claims while weeding out bogus injuries. Additionally, the installation of cameras and video surveillance equipment has been proven to deter fraud and other crimes in the workplace across the board.

4. Implement a rapid and timely workplace injury response plan. Who is in charge when an injury occurs? Your response plan should include the following: immediately recommending a medical facility for treatment; securing the description of accident and injury; reporting the occurrence immediately to your administrator; preserving any workplace evidence; securing the names of any witnesses; and, if possible, taking statements from the injured worker and witnesses and securing a photograph of the area.

It is important to create and clearly communicate to all employees the accident reporting procedures prior to accidents actually happening. This will ensure that timely and proper procedures are followed when an accident occurs.

5. Implement a comprehensive workplace safety program. Make workplace safety a priority by conducting regular safety awareness seminars. Use posters, flyers and newsletters to stress safety procedures, and reward workers for achieving safety milestones. A truly safe workplace makes it that much harder to persuade someone that a fraudulent workers compensation claim is a legitimate one.

6. Know how your organization’s claims are handled. Are claim representatives and adjusters properly trained to detect fraud indicators “red flags,” which suggest a claim may not be legitimate? Do they receive ongoing fraud awareness training? Your organization benefits when they do, since such training can reduce the incidence of fraud.

7. Know the role of your insurer’s Special Investigation Unit (SIU). Suspect claims are referred to your insurer’s SIU representatives for potential fraud investigation. These specialists are trained to investigate signs that a claim may be fraudulent, and after thoroughly doing so, will share their investigation with the proper law enforcement agencies. What resources does your insurer and its SIU call upon to flag and investigate suspect claims? Have fraudulent cases been successfully prosecuted? The professional resources of a well-trained claims professional staff and the SIU that supports it are key to reducing the risk of workers’ compensation fraud.

8. Pay attention to worker scuttlebutt. Following a workplace injury, and throughout the claims process, rumors often circulate among employees. Sometimes rumors are grounded in fact. Paying attention to worker scuttlebutt can help in investigating a claim’s validity.

9. Know the contents of your insurer’s fraud fighting toolbox. Does your Third Party Administrator maintain professional memberships in organizations that provide ongoing education and training as well as access to indexes and databases that can help pinpoint fraud? A well-equipped fraud-fighting toolbox can decrease your odds of becoming the victim of fraudulent claims.

10. Utilize the resources of your insurer. If your insurer is committed to fighting workers compensation fraud, they’ll be able to demonstrate that commitment. Talk to their SIU about developing your own in-house program aimed at decreasing fraudulent claims. Customer awareness education is just one of the resources your insurer can bring to the table.
The ESIS OSHA Recordkeeping Solution is a comprehensive system that can help businesses fulfill government standards for recordkeeping and reporting of OSHA-recordable injuries and illnesses. This product offers businesses many benefits by helping users bridge the gap between claims management and the rigorous OSHA recordkeeping requirements.

The ESIS OSHA Recordkeeping Solution assists businesses in complying with the OSHA regulatory posting laws. With the click of a mouse, businesses can now electronically populate the required OSHA 300, 300A and 301 forms. Automating OSHA recordkeeping can reduce the time businesses spend developing and maintaining those records by more than 75 percent.

The ESIS OSHA Recordkeeping Solution offers users many benefits including:

- **Centralized Recordkeeping Management** – giving multi-site organizations the ability to identify and document injuries and unsafe conditions immediately via the Internet.
- **Instant Incident Retrieval** – enables authorized personnel to review and analyze incidents in order to correct hazards that led to injuries or illnesses.
- **OSHA Requirements** – incorporates the latest OSHA rules and regulations on a real-time basis using regulation 300, 300A and 301 OSHA reports.

## North Carolina Subrogation

North Carolina permits either party to a settlement agreement between an injured employee and an alleged liable 3rd party to ask the trial court to determine the amount the employer is entitled to recover from the settlement amount from workers’ compensation benefits. The North Carolina Court of Appeals recently ruled in Ales v. T.A. Loving Co., et al., that the trial court cannot determine the amount of a workers’ compensation lien when a condition of the settlement is that the lien be waived or reduced.

In the underlying case the employee settled the 3rd party case for $145,000 contingent on the waiver of the workers’ compensation lien. The employee filed a motion to waive the lien and the court ordered the lien waived in total. On appeal the employer argued the court did not have subject matter jurisdiction to waive the lien and the Court of Appeals agreed. The court ruled that the settlement was contingent upon the waiver, and that based on N.C. Gen. Stat. 97-10.2(j), a lien adjustment can only occur if the settlement agreement has been finalized.

Based on this decision an employee and a 3rd party can not enter into a settlement in North Carolina contingent upon the court agreeing to a lien waiver or reduction. They can enter into a settlement and then petition the court to waive an outstanding lien as long as that settlement is not contingent on the lien waiver. The employer must be given notice and an opportunity to be heard however the employer’s consent is not required for lien waiver or reduction. The employer should make every attempt to protect the lien through written commitment from the injured worker’s attorney prior to a settlement.

## ESIS Launches Property Engineering Unit

ESIS has expanded its product and service offerings with the launch of ESIS Risk Control Property Engineering. Through its network of experienced engineers, the ESIS Property Engineering unit provides full-service property and machinery consultative services to help clients prevent and control the impact of major losses.

Formerly a unit of the ACE US International division of ACE USA, the Property Engineering unit provides customized services through a global network of engineers, helping clients manage their property and machinery risks. The unit delivers services that focus on fire protection, boiler and machinery hazards, risk improvement, unusual exposure identification, expected loss calculations and more. Clients include Fortune 2000 multi-national organizations in a wide range of industries, including heavy manufacturing, utilities, chemical, food processing, real estate, warehousing and retail.

“Our engineers are among the most experienced in the industry and help our clients deal with critical business exposures through a consultative approach,” said Michael Schmidt, Vice President, ESIS Risk Control Property Engineering. “As part of ESIS, we will have additional opportunities to build and expand our risk control services network. We’ll be better positioned to help our clients more effectively manage their risks and protect their bottom line.”