THE IMPERATIVE ISSUES IN WORKERS' COMPENSATION

I. Incentive is different in WC and group health. Are we incentivizing absence from work? Comp and group health are very different. Secondary gain, drugs and absence. Tertiary gain for the doctor is monthly return visit, and perhaps
   a. Every single service provider makes more money if the case goes south.
   b. Cases are churned by the service providers
      i. A lot of money made off the churn - Lobby effort to maintain the churn
II. Regulatory complexity brings cost and does not contribute to the delivery of benefits
   a. Examples regulations on color of paper, weight of paper, different informational posters in each state
   b. Filing forms is incentivized and companies penalized if paperwork is not filed.
   c. Perfection is impossible with the human element, penalty for 1%
   d. Do we consider how rules and regulations make sense for the industry versus the need for the state? Does the regulated entity even have a method of getting the data?
   e. Lack of balance between the needs of the regulator and needs of the industry. Some data requirements are in the statute and require legislative change to fix.
   f. How do we balance the needs and the effects?
   g. State agreements/consistency on data or subsets of data could simplify the process
   h. 300 forms are updated in the country every quarter.
   i. EDI burden is onerous and the adjuster is trying to check certain boxes and document
   j. This data hunger seems to some to be growing, and states are wanting more and more information
   k. Carrier community perceives no system gain from submitting the data.
III. Misclassification is an Imperative issue
   a. It is an IRS issue
   b. It is a disparate definition issue
   c. What happens to workers?
   d. Where is fairness for payers?
IV. Data illustrates people who are acting inappropriately, but then nothing happens.
   a. Some portion of medical practice has no insurance coverage. The figure is 15%. Shifting to health as a default
   b. There is a lack of enforcement on the obligation to procure coverage and provide the documentation
   c. People who are illegally misclassifying, illegally fail to provide coverage
   d. There are bad actors in every segment of the marketplace – where is accountability
   e. No one feels responsible for job loss (is this "own" or "any" occupation)
V. Delays in treatment even if compensable
VI. Competition between states
   a. Legislators and regulators "Pass it first," regulators have to contort to deal with cluelessness
   b. Some states build consensus through a pre-legislative committee process.

VII. Systems are persistently adversarial disputes drive the adversarial system
    a. Employers do not see quid pro quo – don't see the purpose being served.
VIII. Medical ignorance. Some people will not make a personal investment in themselves and their recovery
    a. Injuries escalating – is the poor outcome preventable
    b. System does not create an environment of recovery. We do not enable recovery. Communication
    c. Malingering
    d. Why is the worker not at the very center of the whole process? The employee/patient centrist focus.
    e. Those who manage and mitigate in house get totally different results
IX. Methodology of claims handling
    a. Perceptions of carriers providing service in house versus vendors
X. Lawyers in the system,
    a. Some perceive the lawyers are a problem
    b. Some perceive the system does not work without lawyers.
    c. Complexity, legalese drafting
    d. Medical direction issue and the resulting perception of distrust in "their doctor."
    e. Poor medical care.
    f. Factual issues drive the need for adversarial
XI. Roles and delineation
    a. Attorneys restricted in roles
    b. Adjusters guiding care – and being lawyer and doctor
    c. Getting it down to the penny
    d. Lack of common sense. Resolve the issues
    e. Damage mitigation versus litigation
    f. Is there room in the system for safe harbors (getting the AWW within a range)?
XII. System failures
    a. System cannot be all to all people.
    b. Gaps in compensation –
    c. Getting the bad actors.
    d. Changing a culture in place would require effort
    e. Workers comp has a bad reputation – mistrust
    f. Systemic under filing of legitimate claims
XIII. Perceptions and education
XIV. Injured workers believe or are not informed or uninformed assumptions
    a. Everyone needs a lawyer
    b. What does case manager do - case manager in waiting area and excluded
    c. Negativity – not encouragement,
    d. Medication encouraged as only solution
        i. Distinction between chronic and acute (medicate)
    e. Participatory engagement of the worker – are they engaged and considered?
    f. Status quo – sit in a recliner
    g. Fear of retaliation on the job results in under filing and other problematic results
    h. Participatory engagement depends on trust between employer and employee
        i. System education and knowledge challenges

XV. Unrealistic expectation of full recovery and youth
    a. Aging hurts, injuries hurt
    b. Getting a settlement is an end goal
    c. Patient complaint of too little expectation of recovery
XVI. Are treatment protocols a benefit or a burden
    a. Is there merit to the scientific basis for them
    b. Is the use as a "cookbook" or a guide
XVII. Vocational rehabilitation has been a failure
    a. The outcomes of voc rehab were not to expectations
    b. Without success, states seem to have abandoned it
    c. Is rehab just the body or the mind also – getting back to life
    d. Employability should be focus
    e. Misaligned incentives, offering Voc for the sake of offering, not to rehabilitate
    f. Everyone can do something
    g. Vocational Rehab is misused and misappropriated
    h. Timeliness of the vocational efforts
    i. Does the employer owe job protection?
    j. No perception of encouragement to think about future
    k. "Normal" will be different after injury, but you can do something
    l. Employers opposed to return to light duty
    m. Voc rehab frustration
        i. Majority of the persons that decline Voc rehab are based on attorney recommendation
        ii. Few failures of participation in Voc are due to employer refusing to provide
XVIII. Opt out movement.
    a. An outcome, reaction to system problems, not an "imperative issue."
    b. Alternatives to workers' compensation policies is a reality
    c. More alternatives are seen as likely
    d. There is general agreement that the current opt-out model offers inadequate benefits and process
XIX. Colorado proposal for single payer.
    a. Could change the marked and require new products
    b. Funding could be split on a work/non-work basis, but still single pay
XX. Federalization.
    a. Can there be a national standard, short of federal regulation
    b. Is there a constitutional method of creating standards
    c. Once that path is started, how could it be controlled/growth
    d. There are those who feel regulation possible under new federalism
XXI. Ability versus disability
    a. ADA focuses on what people can do, instead of disability
XXII. Is it time for a new national commission?
    a. Can change/adaptation come without such a body?
    b. Is the perspective being skewed by present perspective without appreciation for the future value shift that the millennial generation (or beyond) might bring?
XXIII. Occupational disease –

a. Should there be change in how it is perceived
b. Should employers be responsible when there is no/insufficient proof or science, to avoid societal impact?
c. England has adopted a process through a board in which a board defines what is compensable in gross terms. There could be deviation from the standard in a case.

XXIV. Staffing and training of the workers' compensation professions
a. Aging workforce – turnover is coming
b. Training mentees

XXV. Permanent partial compensation
a. Adequacy
b. Logic of calculation
c. Comparisons among states

XXVI. Employee not represented in the conversation (not injured)
a. There are no employee organizations
b. Unions, there are more that would attend

XXVII. Benefit adequacy
a. Ill or not defined – "adequacy."
b. There is a contention that the volume of benefits is inadequate
c. There is variation jurisdiction to jurisdiction in benefits
d. There is a perception that there is 80% of the system working appropriately, but 20 needs addressing.
e. Adequacy analysis may be both macro and micro
    i. Macro – is the volume of potential benefit to the employee with potential of injury sufficient to balance the potential benefit to the employer in that potential injury
    ii. Micro – is the volume of benefits in this case, sufficient to justify the exclusive remedy in this case.
f. Is it possible to have a system that is ultimately and absolutely fair to all of the participants?
g. With the negligence counter-process, and the absence
h. Where is the analysis of failures, and how the process can improve without failure analysis?

XXVIII. What is the critical point that causes a case to go over-the-edge?
a. Attorney involvement is driven
    i. Attorney brings to the process a new view
    ii. Process is seen by the employee as "trustworthy"
b. Delay in delivery
c. Lack of communication
d. Lack of clarity on the RTW process and the path back

XXIX. There is a question about whether there are outliers
a. Too bad so much of what we depend upon is anecdotal examples
b. The perception is that there is too little empirical data
c. Are workers RTW after settling a case?
d. Is this RTW being studied or quantified once settlement removes immediate interest?