

REGULATORY POINTS

- I. There is a perception of miscommunication or lack of communication between the regulator and the market.
 - a. Regulations have unintended consequence
 - b. Some regulations are not needed
 - i. What is needed is for the “offender” to be dealt with instead of more regulation
 - ii. When regulatory issues arise, regulations are put in place that are often long-lasting and impractical to get rid of them.
 - c. Where is the process to sunset regulations?
 - d. One state is task-forcing regulation
 - i. Less is more
 - ii. You cannot write enough regulation
 - e. Excess amount of regulation is recognized as a problem. States are eliminating forms and regulations
- II. Every regulation comes with a cost
 - a. If a state asks for a data element, then the cost is in the millions because the carrier and every vendor has to reprogram.
 - b. Regulations not designed to help the injured worker, they are designed why?
- III. Government explanation for regulations
 - a. Lack of regulation can cause a problem with the state government audit process
 - b. Lack of regulation could be a problem in terms of due process and equal protection
- IV. Regulation is forcing doctors and carriers, etc. to do more work not to benefit their business, but to benefit the government or some other system participant.
- V. Government reaction to failure to obey regulation is enacting more regulations
 - a. Government regulators are seen as failing to consider the unintended consequences of regulation and the costs associated with them.
 - b. What is the motivation of the revision of the Guides and other similar regulation.
 - c. Regulators are not seen as involving the industry in the process
- VI. Failure analysis
 - a. EDI and the effort to reduce paper and decrease cost?
 - b. Industry still forced to generate and use paper
 - c. Mutual benefit?
- VII. Once the tool is in place then others want to add to the process and each change costs money
 - a. The issue may primarily be a lack of communication
 - b. If the regulator is communicating, to involve the regulated in the regulation
- VIII. Vagueness is a problem.
 - a. Use the word “reasonable.”
 - b. The “wobble room” is a product to allow regulators to deal with the outliers
 - c. Should regulations address all?

- d. Can there be success through majority application/effectiveness (accepting outliers)?
- IX. Applicability of rules (effective dates) leads to litigation and lack of clarity
- X. States have taken great pains to define independent contractor
 - a. Significant disconnect between the definition of IC, and then the interpretation when someone will be left in the cold but for finding a way to make it compensable.
 - b. Everyone did all they are supposed to do, properly and suffer loss
 - c. Then event and judge reclassifies to “employee” and not a penny of premium was collected
 - d. Bad actor employers tricking the worker is one issue
 - e. Bad actor contractors may be another
- XI. Equity in benefit calculation
 - a. Carrier on risk for one job pays benefits based on payroll of two
 - b. Benefit to society and detriment to employer
 - c. Risk depends on what state
 - d. Carrier on the injury is left holding the bag
 - e. Inequity falls on the employer because it is better situated to absorb loss
 - f. Some states have a concurrent employer benefit fund
 - g. Benefit variations and inequities between various jurisdictions
 - h. Benefit inequities within some state/jurisdiction systems
- XII. How to determine the best process. Who defines “best.” Best for whom?
- XIII. Different states treat violation of safety rules differently
- XIV. Is the jurisdiction willing to discuss, is there openness to discussion and dialogue on Regulations?
- XV. If one state of some states would lead with efforts at state consistency, would that drive more states into such a discussion.
- XVI. Benefit discussion. This has to be a holistic discussion of all the system features of the jurisdictions’ rather than just a comparison of amputation benefits in various cases.
- XVII. If death and no dependents, then a state fund death benefits for purpose
 - a. Help children of other workers or otherwise assist the affected
- XVIII. There is a huge variation in adequacy of benefits state to state
 - a. Is the variation state to state a benefit and an attribute that should be valued?
- XIX. Can uniformity be encouraged
 - a. Canadian provinces gather annually to discuss best practices
 - b. Variations in benefits are not problematic if they all meet some minimum. A model could be built to describe the value and the comparison
 - c. Adding cost to the workers’ compensation system has not been high on the agenda of state government and the impetus has to move the legislature and the government.
- XX. Is Opt out an employer revolt against comp, is uber (disruptive) a revolt against establishment business?