

AMERICAN BAR ASSOCIATION
TORT TRIAL AND INSURANCE PRACTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 **RESOLVED**, that the American Bar Association opposes the adoption of “ Universal 24-Hour
- 2 Health Coverage” by Congress, such as proposed by Senator John D. Rockefeller in a proposed
- 3 Amendment to America’s Healthy Future Act.

REPORT

I. Purpose

This Report is submitted in support of the Recommendation urging Congress to oppose the adoption of “Universal 24-Hour Health Coverage”, such as proposed by Senator John D. Rockefeller in a proposed amendment to America’s Healthy Future Act.

II. Universal 24-Hour Health Coverage

The concept of Universal 24-Hour Health Coverage involves providing, in a single policy, medical benefits for all of an employee’s injuries and diseases, whether work-related or not. Consolidating the medical payments components of workers’ compensation systems and Group Health Insurance would result allegedly in a reduction in controllable administrative costs for claims and general administration, reserves, and marketing costs. The concept of “24-hour coverage” was looked at in the 1970’s and again in the early 1990’s and not pursued. Among other factors, implementation would be extremely difficult and disruptive in every state and territory. In addition, several states experimented with pilot projects (including California, Kentucky, and Oregon) and those projects were not successful.

III. Concerns with the Present System and Reasons for Rejection

Workers’ compensation medical benefits and traditional health insurance are very different. Workers’ compensation health coverage is part of a package of benefits for injured workers that almost all states and territories require employers to purchase. Group Health insurance is not (yet) mandatory and represents a far greater expense to employers than workers’ compensation even though employees typically share the expense of Group Health insurance. Due to the high expense, not all employers offer Health Care to their employees, at this time.

Workers’ compensation health benefits are administered with wage replacement and other benefits in a coordinated manner and comprise more than 50% of the estimated \$90 Billion in annual workers’ compensation benefits. As a result, the health portion cannot simply be taken out of the workers’ compensation systems as the Rockefeller Amendment proposes without examining its broader implications and the extraordinary disruptions it would cause for all of the parties to workers’ compensation systems. Furthermore, Universal 24-Hour Health Coverage will not reduce occupational and non-occupational health care costs. Every serious study of the issue for the past 20 years, including the National Association of Insurance Commissioners (NAIC) study has concluded that the objectives of “24-hour coverage” are not practical and/or can be accomplished through existing systems.

Workers’ compensation is not a medical program, but rather it is a no fault

disability program with a medical component. In workers' compensation, medical treatment is broader than under the health care system. The objective is to expedite return to work, requiring coordination between the nature and intensity of medical treatment with the employer's obligation to pay benefits for lost wages. Removing workers' compensation medical treatment from its indemnity component would disconnect the responsibility for managing medical issues from disability claim costs. The result will be a loss in "coordinated care" that currently exists under workers' compensation in coordinating medical treatment with payment of wage loss benefits. Therefore, integration or merger of traditional health care with workers' compensation would have a serious impact on all parties that has not been discussed, much less debated.

Universal 24-Hour Health Coverage would not eliminate the need for determining workplace injury causation and it would not lower administrative expenses. Causation would still need to be determined for payment of indemnity benefits. Moreover, the medical benefits paid under workers' compensation differ from that under traditional health insurance. Workers' compensation medical treatment is first-dollar coverage, paid without co-payments, deductibles, and dollar or duration limitations. (If a 24-hour product distinguished between work-related and non work-related injury/illness for deductible purposes, one of the presumed benefits of 24-hour coverage would be lost.) Grossing up all traditional health care benefits to the level of workers' compensation benefits would make integrated coverage even more expensive than the trillion dollar price tag already estimated. The alternative of cutting medical coverage for work-related injuries to save money effectively rations medical treatment for injured workers, diluting the promise employers have made to their workers under the workers' compensation systems and creating hardship for workers who need more intensive and expensive medical treatment to expedite their return to work.

Another important distinction that a fully developed debate over time would examine is the duration of the medical benefits. First dollar benefits are provided under workers' compensation for all services related to an injury that occurred until the injury is fully treated or settlement reached. It is "long-tail" not limited to "policy years". Group health coverage however is only provided for health care services provided during the coverage period. If the policy is not renewed, coverage does not extend beyond the coverage period even if the injury/illness occurred during the coverage period. It is essentially a "claims made" policy that provides payments only for care given in the policy year.

Reducing medical benefits payable under a 24-hour plan will lead to increased litigation against employers, as injured workers seek to recover medical expenses previously paid on a first-dollar basis. Additionally, many states have fee schedules giving a cost saving to employers. A 24-hour coverage approach would remove any ability to lower those costs for employers from the community of workers' compensation medical providers.

Universal 24-Hour Health Coverage will jeopardize workers' compensation's exclusive remedy, a compact nearly 100 years old in which the employer promises to pay statutory *no fault* benefits, including medical treatment and lost wages, in exchange for the employee relinquishing his right to sue the employer in tort. Diluting the promise to pay first-dollar medical treatment for the duration of the injury will weaken the exclusive remedy and destabilize the workers' compensation system. There is *relatively* little dispute and consequent litigation over causation in workers' compensation related claims; and much of the dispute and litigation would be exacerbated under Universal 24-Hour Health Coverage as disputes arise over coordinating treatment between an integrated health system and return-to-work programs. The litigation questions alone are reason enough not to pursue any 24-Hour Health Coverage amendment to the pending federal health care bills.

Finally, Universal 24-Hour Health Coverage will jeopardize worker safety, a serious issue, by eroding the predictive value of workers' compensation experience rating for insured employers and thereby shift costs to safer employers away from less safe employers. Safer employers would subsidize less safe employers; and the result would be workplaces that are less safe for all workers. Workers' compensation premiums are determined by the particular track record of each insured employer. Workers' compensation insurers have special expertise in workplace safety and work closely with employers. If the existing experience rating of premiums for workers' compensation benefits provided does not include more than half of the benefits provided because of the merger of the workers' compensation health care systems with 24-Hour Health Coverage, employers would lose existing incentives to promote safety. This would also harm companies that have engaged in best safety practices while potentially rewarding those that do not. It arguably could cause a "race to the bottom" in workplace safety as employers seek to control their safety costs to remain competitive, resulting in a greater number of workplace injuries.

IV. Conclusion

There are no compelling reasons to expand the number of issues being addressed in the pending federal health insurance legislation by invoking the failed policy of Universal 24-Hour Health Coverage and completely disrupting and overturning the provision of medical benefits through existing federal, state and territorial workers' compensation systems. This is particularly so when the full ramifications of such a major step have not been explored, much less fully explored with the participation of all of the parties to the federal, state and territorial workers' compensation systems.

"Workers' compensation is a very important field of the law, if not the most important. It touches more lives than any other field of the law. It involves the payments of huge sums of money. The welfare of human beings, the success of business, and the pocketbooks of consumers are affected daily by it.

Judge E. R. Mills, Singletary v. Mangham Construction, 418 So.2d 1138 (Fla. 1st DCA, 1982)

Therefore we urge you to vote for this recommendation and oppose any federal pre-emption of workers' compensation medical benefits, by the creation of federal "Universal 24-Hour Health Coverage", such as proposed by Senator John D. Rockefeller's proposed amendment to America's Healthy Future Act.

Respectfully submitted,

John Tarpley, Chair
Tort Trial and Insurance Practice Section
February 2009

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: John R. Tarpley, Chair
Tort Trial and Insurance Practice Section

1. Summary of Recommendation(s).

The Congress is urged not to adopt “ Universal 24-Hour Health Coverage”, such as proposed by Senator John D. Rockefeller in a draft Amendment to America’s Healthy Future Act.

2. Approval by Submitting Entity.

Approved by the Council of the Tort Trial and Insurance Practice Section on November 13, 2009.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

Consistent with policy on **Workers’ Compensation** adopted 2/74 and 2/80 which opposes legislation mandating minimum federal standards for state plans of workers' compensation; urges that workers' compensation systems remain responsibility of states and opposes federal legislation infringing upon the states' systems.

Consistent with policy on **Asbestos-Related Disease Claims** adopted 03M302 which states in part: Does not support the preemption of legal definitions for claiming or impairment as they may be found in... Workers Compensation statutes and their regulations; and federal, state and territorial laws regulating employee benefit plans and employer health care coverage plans.

5. What urgency exists which requires action at this meeting of the House?

The President has urged Congress to undertake a historic restructuring of the nation’s health insurance system, which has passed the House and is pending in the Senate. There are no compelling reasons to expand the number of issues being

addressed in the pending federal health insurance legislation by invoking the failed policy of Universal 24-Hour Health Coverage and completely disrupting and overturning the provision of medical benefits through existing federal, state and territorial workers' compensation systems. This is particularly so when the full ramifications of such a major step have not been explored, much less fully explored with the participation of all of the parties to the federal, state and territorial workers' compensation systems.

6. Status of Legislation. (If applicable.)

Legislation has passed the House (without Universal 24-Hour Health Coverage) and is pending in the Senate.

7. Cost to the Association. (Both direct and indirect costs.)

None

8. Disclosure of Interest. (If applicable.)

Members of TIPS represent all of the various parties that would be affected in various ways by any adoption of Universal 24-Hour Health Coverage.

9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)

This Report is being referred to all ABA Sections, Divisions, and Forum Committees as well as state and local bar associations for co-sponsorship.

10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)

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Dallas, Texas 75252
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11. Contact Person. (Who will present the report to the House. Please include email address and cell phone number.)

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EXECUTIVE SUMMARY

1. Summary of the Recommendation

The Congress is urged not to adopt “ Universal 24-Hour Health Coverage”, such as proposed by Senator John D. Rockefeller in a draft Amendment to America’s Healthy Future Act.

2. Summary of the Issue that the Resolution Addresses

Workers’ compensation health benefits are administered with wage replacement and other benefits in a coordinated manner and comprise more than 50% of the estimated \$90 Billion in annual workers’ compensation benefits. As a result, the health portion cannot simply be taken out of the workers’ compensation systems as Senator Rockefeller’s amendment proposes without examining its broader implications and the extraordinary disruptions it would cause for all of the parties to workers’ compensation systems.

The concept of Universal 24-Hour Health Coverage involves providing, in a single policy, medical benefits for all of an employee’s injuries and diseases, whether work-related or not. There are no compelling reasons to expand the number of issues being addressed in the pending federal health insurance legislation by invoking the failed policy of Universal 24-Hour Health Coverage and completely disrupting and overturning the provision of medical benefits through existing federal, state and territorial workers’ compensation systems. This is particularly so when the full ramifications of such a major step have not been explored, much less fully explored with the participation of all of the parties to the federal, state and territorial workers’ compensation systems.

3. Please Explain How the Proposed Policy Position will Address the Issue

It will enable the Association to educate Congress about the failed attempts to adopt Universal 24-Hour Health Coverage since the 1970’s and provide the affected parties the time and an opportunity to participate in an organized debate of an issue that affects every person and business in the United States.

“Workers’ compensation is a very important field of the law, if not the most important. It touches more lives than any other field of the law. It involves the payments of huge sums of money. The welfare of human beings, the success of business, and the pocketbooks of consumers are affected daily by it.

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4. Summary of Minority Views

None identified.

