



2019 Workers Comp Conference
May 21-23, 2019
Chicago, IL

Disaster Recovery In Workers Compensation

I. Case Studies in Disasters: Impacts, Regulatory Responses and Operational Implications

A. The Last Decade in the United States: A “Tidal Wave” of Disasters

The federal National Oceanographic and Atmospheric Administration (NOAA) tracks aggregate loss figures for natural disasters across the country. According to NOAA’s 2017 Billion Dollar Disaster report, *the seven years with the most billion-dollar disasters have all come in the last decade* and of the total costs incurred since 1980, *over 25% have come since 2015*¹.

In the recently-released 2018 version of the same report, NOAA noted that “during 2018, the U.S. [also] experienced an active year of billion-dollar disaster events including the 4th highest total number of events, only behind the years 2017 (which was the most catastrophic, at \$312.7 billion in losses), 2011 and 2016. 2018 also represented the year with the 4th highest total costs (at \$91 billion), only behind the years 2017, 2005 and 2012. The report continued to state that “...the U.S. has sustained 241 weather and climate disasters since 1980 where overall damages/costs reached or exceeded \$1 billion (including CPI adjustment to 2018). **The total cost of these 241 events exceeds \$1.6 trillion**”².

B. Florida – A Case Study in Regulatory Response to Declarations of Emergency

Faced with disasters of the magnitude outlined above, states have formulated differing regulatory responses to disasters that occur within their borders. For example, Florida has devised an “automatic” regulatory response that “kicks in” upon a declaration of emergency and authorized the Office of Insurance Regulation to issue specific administrative orders immediately. Florida’s “auto-response” is comprised of 2 main prongs:

- a. Property/Casualty Provisions (addressing such topics as non-renewals, rate hikes, and cancellations within the first 90 days following a catastrophic natural disaster, and is mostly focused on the Property/Casualty market), and
- b. Pharmacy-Related Provisions (including suspension of “refills-too-soon” edits that prevent patients from refilling medications when the system indicates they should still

¹ *Billion-Dollar Weather and Climate Disasters: Overview*, NOAA Nat’l Centers for Environmental Information, at <https://www.ncdc.noaa.gov/billions/> accessed 1/26/18. NOTE: These figures were released PRIOR to the very recent 2018 update by NOAA, so these figures now are actually WORSE now, and the top EIGHT most expensive billion dollar disaster years have all come within the last decade.

² *Billion-Dollar Weather and Climate Disasters: Overview*, NOAA Nat’l Centers for Environmental Information, at <https://www.ncdc.noaa.gov/billions/> accessed 3/6/19.

be making use of their prior refill). This latter provision affects all lines of insurance business that provide pharmacy-related services (including Workers' Compensation).

C. Hurricane Harvey in Texas – A Different Regulatory Approach

Statewide Impacts and Statistics

In contrast, Hurricane Harvey prompted the state of Texas to face a crisis brought on by natural disaster, and took a different regulatory approach. From an overall damage perspective, Hurricane Harvey was one of the worst natural disasters ever to hit the state. In only 6 days, 27 trillion gallons of rain were dumped on Texas, with 51 inches of rain falling on Houston alone. During the storm, 122,300 people had to be rescued, and more than 210, 700 homes were destroyed. Harvey ended up being branded a Category 4 Hurricane, topping out with 130 MPH winds, and resulting in 72 fatalities³, the largest number of direct deaths from a tropical cyclone in that state since 1919⁴. Harvey is the second most costly hurricane in US history, behind only Katrina in 2005, after adjusting for inflation⁵.

Governor Abbot Declares a State of Emergency

Faced with the impending hurricane, on August 23, 2017, Governor Abbot declared a state of emergency for Texas' impacted counties, 2 days in advance of the hurricane making landfall on the northern end of San Jose Island, near Rockport, TX, on the 25th. Making the declaration in advance of the hurricane hitting landfall enabled the state to immediately mobilize its emergency response teams, and put the federal government on notice that the state would be seeking federal disaster assistance as well⁶.

Direct Impacts to Workers' Comp and Commissioner Brannan's Regulatory Response

Among the casualties of the hurricane's wrath were a number of state governmental agencies, including the Texas Dept. of Insurance (or "TDI"), responsible for administration of the state's workers' compensation program. The TDI and workers' compensation stakeholders experienced a number of direct impacts from the storm, including:

1. A mail system that was shut down,
2. Field offices that had flood damage, forcing the closure of several locations,
3. Many doctors' offices that were destroyed, along with corresponding medical records,
4. Courts that were shuttered and dockets that were pushed back,
5. Hundreds of first responder claims filed,
6. Hundreds of thousands of people displaced, and
7. Stifled communication.

Stakeholders throughout the workers' compensation system, including injured workers, medical providers, attorneys, claims administration organizations, and many more, turned to the TDI for guidance on how to proceed in the wake of the storm. In response, then-Commissioner Ryan Brannan issued a benchmark regulatory response in Commissioner's Bulletin No. B-0020-17, on August 29, 2017, which contained the following key provisions:

1. Required carriers to continue benefit delivery in affected counties,

³ Data source: Texas Dept. of Insurance, 2018.

⁴ *Hurricane Harvey*. National Hurricane Center Tropical Cyclone Report, May 9, 2018, NOAA at https://www.nhc.noaa.gov/data/tcr/AL092017_Harvey.pdf accessed March 6, 2019

⁵ *Ibid.*

⁶ The Declaration remained in effect until Aug 7, 2018, at which time the Declaration was then renewed by the Governor in a new Proclamation, following successive monthly extensions following the original Declaration.

2. Waived penalties/restrictions for claimants seeking emergency and non-emergency care in non-networked facilities (and with non-networked providers) and coverage of payment for those services,
3. Extended deadlines for medical examinations,
4. Authorized payments to pharmacies for up to a 90-day supply of prescriptions, subject to the remaining number of days authorized by the prescriber, regardless of the most recent refill date,
5. Provided for expedited change of address processing, and
6. Tolloed a number of regulatory deadlines, including claim notification and filing deadlines, medical billing deadlines, medical and income benefit payment deadlines, electronic data reporting deadlines, and medical and income benefit dispute deadlines.

The bulletin's provisions remained in effect until January of 2018, at which time Commissioner Brannan issued a follow-up bulletin notifying stakeholders that the "acute" impacts of the storm had passed, and that normal operations (and administrative rule provisions) were once again in effect⁷.

The Industry Responds to Commissioner Brannan's Bulletin

Coventry

As each stakeholder had been impacted by the storm differently, operational responses to Commissioner Brannan's bulletin also varied. For example, within Coventry, four of our operational units (the pharmacy benefit division, First Script®, our Texas based network (HCN), the State Reporting team (responsible for EDI and medical bill reporting), as well as our bill review team, were most directly impacted, and a cross-functional, interdepartmental team was formed to strategize a response.

A number of lessons were learned in our attempts to operationalize the bulletin. First and foremost, was that existing system limitations made county-by-county distinctions very difficult. For example, to strictly comply with the bulletin, bills generated by providers in counties that were subject to the disaster declaration would theoretically have tolled deadlines in which to submit their billing statements, *whereas all other counties were still technically operating under the standard billing rules*. Since there was no simple way for us to change the system quickly in order to draw this distinction, we had to disengage the timely filing edit for ALL counties within Texas during the time period covered by the Bulletin.

Secondly, it became clear just how crucial speedy communication with the TDI would be. After initial receipt of the bulletin, Coventry reached out to TDI immediately with our first round of questions and were impressed with the response time and guidance provided, especially in light of the operational challenges that the state was facing at the time. The state continued to keep the lines of communication open thereafter.

⁷ Note that Commissioner Brannan's "retraction" memo took effect in January of 2018, despite the fact that the state's Declaration of Emergency was still very much in affect at the time. Contrast this approach to that taken within Florida, where the dates were "synched".

Lastly was a bit of surprise, in that the anticipated spike in call volume to our PBM injured worker line (set up to handle early refill requests) never materialized. We did receive a handful of calls from injured workers in impacted areas, but not at all the numbers that we had expected to receive.

Gallagher-Bassett

As a TPA, GB's operational impacts associated with Commissioner Brannan's bulletin were understandably different. First was the influx of first responder claims. Commissioner Brannan's bulletin stated that since first responders were "on the front lines of this disaster, helping their fellow Texans", and he reminded system participants that Section 504.055 of the Texas Labor Code gives "first priority to an injured first responder's claim for worker' compensation medical benefits if that first responder sustains a serious bodily injury in the course and scope of employment". With its comparatively large size, GB was able to handle the volume of these claims, with the claim number suffix identifying the claim properly, and catastrophic (CAT) loss coding utilized to specifically tie the losses to the single discrete catastrophic event. Any non-first responder injury claims tied to the hurricane could similarly be identified using the same coding system.

In addition to its increased claims handling load, GB also expanded its partnership with vendors to continue case management services, actively worked to provide catastrophic case management and medical coordination for impacted injured workers, and provided on-site catastrophic even early intervention professionals.

D. The California 2018 Camp Fire Disaster

Devastating Statewide Impacts and Statistics

With 81 deaths, California's Camp Fire disaster claimed more victims than the previous 3 worst wildfires that the state had ever seen before *combined*. 18,421 structures were destroyed as a result of the fires, making the Camp Fire more destructive than the state's 7 next worst fires combined, during an accelerated, two-week timeframe. By comparison, the structure losses associated with the Camp Fires were more than three times the toll from the state's widely publicized Tubbs fires in Napa and Sonoma the previous year⁸.

Governor Declares State of Emergency

On November 8, 2018, Acting Governor Gavin Newsom declared a state of emergency for Butte County, followed by an Executive Order issued by Governor Brown on 11-8-2018 to streamline wildfire recovery efforts, and a Request for Major Disaster Declaration on 11-11-18, also issued by Brown. On 11-12-18, Governor Brown indicated that the state had secured a Presidential Major Disaster Declaration.

Direct Impacts to Healthcare

Among the far-reaching impacts of the Camp Fires were devastating impacts to *providers of healthcare*, representing a "double whammy" impact, as those who would normally be turned to as a source of assistance found *themselves* suddenly forced to evacuate: both patients and staff. An example was the Adventist Health Feather River Medical Center,

⁸ *CampFire – 3 Startling Facts*, USA Today, 11/20/18, at <https://www.usatoday.com/story/news/2018/11/20/camp-fire-3-startling-facts/2064758002/> accessed 11/15/18

located in Paradise, CA, in the heart of the fire. Fleeing healthcare workers set up a makeshift clinic in a nearby parking lot in an attempt to help fire victims. The hospital has struggled to recover since that time, and, tragically, in February of 2019, Adventist issued its last pay and benefit checks to health workers whose positions were eliminated indefinitely⁹.

Similarly, the Far Northern Regional Center suffered damage during the fires, adversely impacting disabled and autistic adults – a population arguably least able to respond quickly and most at risk. The facility suffered medical and pharmacy records destruction, and had surprising temporary adverse impacts to tele-psychiatric services that had been provided by a specialty behavioral health provider based in far-away Fresno.

These direct adverse impacts to healthcare provide a “cautionary tale” when contemplating disaster recovery in Workers’ Compensation. As discussed below in more detail, many states, including California, do not currently have a specific operational regulatory plan for disaster recovery as it relates to Workers’ Compensation. What lessons can be learned from Texas’ approach?

II. The Texas Model as a Regulatory Benchmark

A. TDI Outreach

As part of its coordinated effort to respond to Hurricane Harvey, the TDI undertook a number of internal steps, including:

1. Sending staff to Disaster Recovery Centers and other sites to provide information on how to contact insurers, reschedule appointments, and answer questions,
2. Providing extended customer service hotline hours,
3. Allowing staff time off to volunteer in cleanup efforts, and
4. Coordinating with federal agencies, such as FEMA and OSHA.

Other jurisdictions could emulate these same steps, moving forward *proactively* to provide outreach to stakeholders in the system in the wake of a disaster, and serving a central role between injured workers, medical providers, and claims handlers. Interagency coordination is also key (both within each state as well as to the federal government), and the state workers’ compensation divisions are well-poised to assist in this role as it relates to injured workers.

B. Operational Considerations for Carriers

Payors and claims administrators have a role to play in disaster recovery as well. First and foremost is to ensure the continuity of benefit checks and medical care delivery for injured workers. Larger payors or TPA’s routinely have the ability to handle claims “virtually”, from multiple offices and/or out of state, away from disaster zones, and have redundant systems and business continuity plans in place to ensure swift recovery following a disaster. Benefit payment delivery is often systematic and not impacted by regional disasters. Similarly, payors can often update claim information (such as new address information) in “real time”, eliminating “lag times” that can lead to delays in benefit delivery.

⁹ Paradise Hospital Workers Get Last Paychecks After Camp Fire Wiped Out Over 1,200 Jobs, the Sacramento Bee, February 15, 2019 at <https://www.sacbee.com/news/state/california/fires/article226335560.html> accessed 3-6-19.

Claims handlers also have the ability to facilitate waiver of penalties/restrictions for out-of-network care, to ensure that injured workers continue to receive medical care in the event that their regular treating provider (or facility) is suddenly unavailable due to a disaster.

C. Suspended Timeframe Provisions

As seen in Texas, a governor's disaster proclamation may toll time-sensitive deadlines and requirements stemming from state regulations, and may also trigger additional/special/*ad-hoc* claim data reporting requirements. Payers and claims handlers must be poised to respond. Among the areas that can be anticipated to be impacted are:

1. Workers' compensation claim notification and filing deadlines
2. Extended deadlines for medical evaluations
3. Provider medical billing deadlines
4. Medical and indemnity payment deadlines
5. Electronic data reporting deadlines, and
6. Dispute filing deadlines, including both medical provider disputes and legal/claim-related disputes.

Payers must address each of these time sensitive issues operationally, and in tandem with their strategic vendor partners, to ensure that injured workers and providers are not adversely impacted.

III. State of the States

As mentioned previously, each jurisdiction within the country has adopted a differing regulatory approach to disaster recovery within Workers' Compensation, ranging from no specific pre-determined plans, to a very structured regulatory response. Some states have disaster preparedness manuals, and others may have business continuity plans (or both). States can look to best practices and benchmarks to develop a regulatory framework, but "plans" only go so far. Plans must be revisited and players must know the parts they are designated to play. Multistate and international organizations, such as the International Association of Industrial Accident Boards and Commissions (IAIABC) may be uniquely poised to facilitate development of model regulations/legislation that could be implemented across the states, perhaps in association with other multi-state legislative bodies, such as the National Council of Insurance Legislators (or "NCOIL") and/or the National Insurance Commission (NIC). Having a unified approach could help stakeholders coping with disasters to know what to expect and how to respond.

IV. Claims Handling Considerations

A number of special dispensations can be contemplated for handling claims in the wake of a disaster as well, such as waiving standard statutory deadlines, allowing out-of-network medical treatment as needed, allowing prescription refills sooner than would generally be allowable, and/or use of EFT or other electronic benefit delivery methods for indemnity and reimbursement checks. Focus should remain on ensuring that impacts to injured workers are mitigated to the extent possible.

A number of other claims handling considerations following a disaster can also be relevant. For example, adjusters from other states may temporarily be called upon to handle the uptick in claim volume associated with a major disaster. In such cases, payers/TPA's must address state licensing issues, and ensure that out-of-state adjusters are properly trained and vetted. Emergency licenses may be required and issued as appropriate as well.

Similarly, emergency circumstances may necessitate assistance from out-of-state medical personnel in order to temporarily staff up to handle a major disaster recovery effort. Comparable to claims handling personnel, licensing issues can arise that must be dealt with by the payer/TPA. Services rendered by an out-of-state provider may also be tied to a temporary waiver to seek out-of-network care for a designated period of time for impacted counties following a disaster, as mentioned previously.

V. Legal and Underwriting Issues

A number of legal and underwriting considerations may come into play in the wake of a disaster as well, such as:

1. Court-related impacts from docket delays and/or venue changes,
2. Issues stemming from first responder claims,
3. Jurisdiction-related issues (such as out-of-state conflicts of law and/or extraterritorial provisions)
4. Worker's Compensation coverage for workers located out-of-state temporarily after a disaster (such as a Georgia-based roofing contractor who goes to Florida to help put roofs on houses that have been destroyed after a hurricane), and
5. Temporary changes in roles for workers following a disaster (such as when a receptionist grabs a broom and becomes a janitor for a period of time following a fire to help in the clean-up effort).

Depending upon the size and nature of the disaster, it may be necessary to consult legal counsel experienced in handling these types of issues.

VI. Real-World Perspectives

The past can often serve as a lesson for the future, and unfortunate circumstances have provided us with "real-world" examples of disaster recovery efforts in Workers' Compensation. The Wisconsin Workers' Compensation Board recently suffered a terrible fire, resulting in structural damage, operational interruption and loss of data and files with resulting impacts to stakeholders throughout the system. Although the Board has continued to grapple with these impacts to the current day, a "disaster" does not necessarily have to be large overall in terms of dollar damage or geographic area covered to be considered "catastrophic" to those specifically impacted. A relatively small fire in an office building can result in a "catastrophic loss" to a small business.

By way of example, recently, a small Chicago-based Workers' Compensation law firm experienced a fire. The fire resulted in impacts to the business ranging from facility loss, to IT (computer system) and records loss, to missed hearings and resultant impacts to clients. The firm lost all means of communication for several days and staff had to scramble to recover. The firm learned a valuable

lesson about the importance of business continuity planning and has since resumed operations with a fully-functional recovery plan in place. Workers' Compensation-related businesses not only have to be equipped to help when *their clients* (and/or injured workers) are impacted by a disaster, but also have to be equipped *themselves* to respond in the event of disaster.

VII. A Call to Action: "Every Business Should Have a Plan"

The most important singular take-away from this information should be this: a disaster can happen to any organization, big or small, and having a solid disaster recovery/business continuity plan in place can make the difference between "business [more or less] as usual" vs. "business closed". In recognition of the importance of this topic, the federal government has issued a 12-page booklet through the Federal Emergency Management Agency (or "FEMA") for small businesses looking to address disaster recovery planning. In the booklet, 10 key steps are outlined to prepare *in advance* for an emergency:

1. Focus on prevention.
2. Establish an evacuation plan.
3. Keep an updated list of emergency contact numbers.
4. Create an emergency kit.
5. Protect vital business records.
6. Create backup copies of critical data and programs.
7. Know your risks and prepare.
8. Understand your insurance coverage.
9. Keep insurance information and contact names and numbers in a safe place.

To download and read the 12-page FEMA booklet, please visit <https://www.fema.gov/media-library/assets/documents/89506>