



## Workers' Comp Gains Haven't Eased the Pain of Tough Cases

By Marc Lifsher, Times Staff Writer  
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SACRAMENTO — Two years after California overhauled its workers' compensation program, costs paid by employers have been sliced in half and profits for insurers have soared.

But employees injured on the job say they are paying a heavy price.

The sweeping changes — pushed by Gov. Arnold Schwarzenegger and passed by the Legislature in 2004 — were intended to rein in a program that was described as rife with fraud and had become the most expensive in the nation, discouraging some businesses from moving to or staying in the state.

Even as the number of claims has plummeted — by 28% in the last two years — appeals of claim denials are up. Requests for hearings rose 7.6% to 73,513 in the second quarter of this year, compared with the fourth quarter of 2003, according to state statistics.

Medical care and disability payments by insurers to injured workers fell an estimated 37% from 2003 to 2005.

Physicians, labor union officials, advocates for injured workers and even some workers' comp officials are wondering whether the changes went too far.

Under the new law, services and disability payments for many injured workers were cut, opportunities for rehabilitation were trimmed, and insurance companies received more power to scrutinize and reject doctor recommendations.

That review process is at the heart of many complaints.

"Every little request is a battle, and the patient is worse for the wear," said Dr. Paul Slosar, a spine surgeon and associate director of a Daly City medical group specializing in back injuries. "The delays are 10 times worse than anything I was dealing with three or four years ago because everything is being challenged."

Mary Stone of Yorba Linda agrees. The former assistant principal at Anaheim's Western High School was assaulted and seriously injured while working late in her

office in 2003.

Stone blames the new system for denying her the care her doctor recommended. As a result, she said, she was forced to give up her career.

She waited more than a year to get approval for surgery on her right shoulder. After the operation and the denial of a request for postoperative physical therapy, her shoulder locked in its socket. Unable to return to work, she lost her job.

"I'm more disabled than the day I left work," Stone said.

For the majority of people hurt on the job, the overhauled workers' comp system works. Most receive prompt medical care, draw temporary-disability checks if they miss work for a short spell and return to their jobs.

But that's not the story for thousands of others, many of whom have suffered more severe injuries on the job and required more extensive and expensive care.

They often cannot return to their current jobs — or any others — and they find themselves forced to dispute the handling of their claims in the crowded workers' comp courts.

According to the California Division of Workers' Compensation, of the estimated 660,000 people filing workers' comp claims this year in California, about 140,000 are expected to make appeals seeking more or better medical treatment or larger monetary awards for permanent injuries.

Cases can take four years or longer to resolve, and some workers who are awarded lifetime medical benefits can be in and out of the courts for decades.

Complaints to the state Division of Workers' Compensation about delays and denials of medical care also are piling up, accounting for 24% of 32,000 calls from injured workers in an informal survey conducted by the state between December 2005 and July.

"It's a minefield that injured workers have to go through. They get short shrift from the system," said Keith Markman, an ombudsman for workers at the state Workers' Compensation Appeals Board. "The little guy is the last to have some interest shown to him."

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### **The 2004 Law**

The \$21-billion-a-year workers' comp system was created by the California Legislature in 1913 so that injured workers at public and private companies could get needed treatment quickly without having to sue their bosses for unpaid doctors' bills.

Almost a century later, the program had become the most expensive in the nation, a major cost for business, an ongoing loser for insurers and a system said to be plagued with fraud.

Backers of the overhaul were upset with the Democratic-controlled Legislature for passing a 2002 law that boosted workers' comp benefits at a time of rising medical costs.

Employers wanted to curb what they viewed as unlimited and often unneeded care, including surgeries, chiropractic treatments, physical therapy, psychiatry and related services. They also tried to create "more objective" criteria for calculating payments to employees who could no longer perform the work they had done before their injuries.

The laws passed in late 2003 and early 2004 as well as regulations issued by the Schwarzenegger administration created sweeping changes.

- Most injured workers lost their right to choose a doctor and instead must go to clinics designated by employers.
- Visits to chiropractors and physical therapists were limited and vocational rehabilitation eliminated.
- Temporary-disability payments were stopped after two years and permanent-disability benefits cut by as much as 55%.
- For the first time, insurers could deny a portion of a permanent-disability benefit by claiming it was caused by a preexisting condition such as degenerative arthritis of the back, even if the worker experienced no previous symptoms.
- Fees paid to outpatient surgical centers and pharmacies were also capped.

The new laws empowered insurers to veto treatment plans any time a specialized medical review doctor — who doesn't examine patients — rules that a surgery, a therapy or a prescription drug is not specified by certain guidelines. Critics complain that the guidelines are incomplete and don't cover all types of workplace injuries.

Gov. Schwarzenegger signed the overhaul in April 2004, pledging that workers would be protected. "The most important thing for us was putting workers first," he said at a glitzy ceremony at a Long Beach aerospace plant.

"These reforms will create workers' compensation the way it used to be, meant to be — to heal injured workers and get them back on the job." Schwarzenegger touts the legislation as one of his greatest accomplishments in office.

But concerns about medical care under the overhaul have been raised in legislative hearings, appeals and complaints.

Carrie Nevans, the acting administrative director of the state Division of Workers' Compensation, is concerned that there is at least partial evidence that "many insurance companies have gone too far" in denying care.

Said division spokeswoman Susan Gard, "We are hearing it anecdotally over and over again."

Some lawmakers, including state Sen. Richard Alarcon (D-Sun Valley), say they feel misled about the new system. "We were told that we would not reduce benefits for truly injured workers, and the fact is we have," he said.

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### **A Lesson for Mary Stone**

Mary Stone loved being an educator.

The school administrator, then 44, had just earned a doctoral degree in education and helped lead a drive to boost her students' test scores.

While she was working alone the night of April 30, 2003, Stone's career crashed. An assailant crept into the school office and threw her to the floor. She severely injured her right shoulder and hand.

Over the last 3 1/2 years, Stone has been seen by more than half a dozen physicians and specialists; undergone surgery and other medical procedures; received numerous MRIs, X-rays and diagnostic tests; and been probed and questioned by medical-legal evaluators.

On the day after being attacked at work, she was examined by her personal physician, and X-rays showed no broken bones.

So Stone continued going to work, taking analgesics and receiving limited physical therapy, despite growing pain.

After waiting more than a year for authorization from the insurance company, she underwent surgery on her right shoulder. But her condition deteriorated, she said, after the school district's insurance administrator approved only two weeks of postoperative physical therapy.

Her doctor's request for "additional therapy and referral to a neurologist" also was denied by the insurance administrator.

Over the next 18 months, Stone was in constant pain, she said. "I was sitting at home atrophying," she said. In the meantime, she lost her job after the insurance company concluded that she was permanently disabled.

Steve Lansford, an attorney for Stone's self-insured employer, the Anaheim Union

High School District, said Stone wasn't denied needed care. "All medical treatment requested by her physicians has been authorized in a timely and appropriate manner," he said.

In an April 11 report, Dr. David L. Wood, a medical examiner approved by attorneys for Stone and the school district, said he would not oppose a recommendation by Stone's neurosurgeon for another operation.

"She does have marked loss of range of motion, and re-operating on the shoulder should be available to her," Wood wrote. The insurer has asked for a second evaluation from him.

Stone is hoping she still can be helped. And she is appealing to a workers' comp judge to review her case and order an operation.

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### **Results Cheer Business**

Though some employees may be frustrated by it, employers have been thrilled with the quick results from Schwarzenegger's workers' comp overhaul. Average premiums paid by businesses are nearly half what they were in 2003 and are expected to drop by at least 6% more in January.

"It's a tremendous success," said Ding Kalis, president of Magnus Industries Inc., a Santa Fe Springs toolmaker with 10 employees.

Kalis said his workers' comp annual premiums plunged to \$6.22 per \$100 in payroll from \$16 in 2004. "Now, we're actually seeing if we can get the business to grow," he said.

California's average workers' comp rates, the nation's highest in 2003, dropped to fifth-highest in early 2006, behind those of Florida, Montana, Alaska and Texas.

The new law's savings quickly added up, totaling at least \$8 billion on policies started or renewed in the first six months of 2006 compared with the first half of 2003.

The biggest chunk of that savings, 40%, came from changes in permanent-disability benefits. Switching to so-called evidence-based medicine yielded 27%, capping medical fees 13%, junking vocational rehabilitation 12% and limiting physical therapy and chiropractors' visits 8%, according to a study released by the Schwarzenegger administration in January.

Insurance companies shared in the bonanza. They're paying out about 31 cents in workers' claims for every \$1 in premiums received from policyholders — a long way from the 1990s, when they lost money eight years in a row. Their worst year was 1999, when they paid \$1.39 in claims for every \$1 in premiums received.

But in 2005 insurers posted profits conservatively estimated at \$4.3 billion. Profits in 2004 were \$3.6 billion. The trend continues to be positive this year, according to the Workers' Compensation Insurance Rating Bureau of California, an industry-backed statistical service.

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### **Fred Payne's Plight**

Unlike Stone, who was hurt by a sudden, traumatic incident, Fred Payne's injury was a result of years of repetitive movements. He regularly sat for as much as four hours straight, talking on the phone and typing at a keyboard as a technical support worker at United Parcel Service in Santa Maria.

But as time passed, Payne said, his "neck became stiffer and stiffer and my shoulders got more painful."

A company doctor treated him with physical therapy and muscle relaxants. But neither worked.

In February 2005, the doctor ordered Payne, 50, to stop working. "I couldn't sit for three or four minutes without extreme pain," he said.

Since then, Payne lost his \$13.75-an-hour job and fell \$20,000 into debt. He divorced, put his house on the market and began paying \$150 a month in child support. The \$207 a week he gets in temporary-disability benefits doesn't begin to cover his living expenses, he says.

Now, 22 months after filing his workers' compensation claim, Payne says he's being denied the medical treatment he needs to return to a relatively normal life and hold down a job.

Moreover, his employers' insurance company turned down his doctors' request for surgery and declined to authorize further medical appointments, pain medicine or physical therapy.

A spokesman for the insurance company, Liberty Mutual Group, declined to comment on Payne's case, noting that it remained in litigation.

Payne's neurosurgeon, Dr. Phillip Kissel, wrote Liberty Mutual that he was "in direct disagreement" with the insurer's denial of a recommendation for surgery. He criticized "the obstructive nature of your company's decision."

Payne is despondent. "They could give me a half a million bucks," he said, "and it would not be worth this pain."

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### **Outlook for Change**

As Stone, Payne and other injured workers wait, often in pain, for their cases to be heard by a judge, the Schwarzenegger administration has been slow to gauge how the new law is affecting injured workers.

Although studies have been completed calculating the savings for business, the state has conducted little research into the quality of medical care being delivered to injured employees.

"It doesn't seem like the people who can do the study or who can afford to have the study done are interested in doing it," said Frank Neuhauser, a UC Berkeley researcher specializing in workers' comp.

Insurers and many employers contend that they lack sufficient evidence to justify tinkering with the success of the 2004 workers' comp law. "We can't make major policy decisions based on anecdotes," said Nicole Mahrt, a spokeswoman for the Sacramento office of the American Insurance Assn., an industry lobbying group.

For his part, the governor has promised to revisit some parts of the workers' comp overhaul if an administration analysis due at the end of the year should find that "seriously injured workers are falling through the cracks."

Schwarzenegger has opposed virtually all proposed changes in the law. On Sept. 19, he vetoed a bill sponsored by Democrats in the Legislature that would have doubled the cost of permanent-disability benefits. "I will continue to defend the workers' compensation reforms," the governor said.

The workers' comp issue, though red-hot during the 2003 recall campaign, hasn't had much of an airing this election season. Schwarzenegger vows to hold the line against significant changes. His Democratic opponent, state Treasurer Phil Angelides, said that if elected he might adjust parts of the overhaul.

Officials in the Schwarzenegger administration are writing regulations that they hope will cut down on abuses. Among the ideas being discussed: slapping large fines on insurers that unfairly delay or deny care.

The Schwarzenegger administration needs to move quickly to fine-tune the system, said Thomas Rankin, former president of the California Labor Federation. "They are stalling while the workers are suffering," he said. "The ones for whom the system was designed are the ones getting the short end of the stick."

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(INFOBOX BELOW)

## How Workers' Comp Works

All California employers are required to have workers' compensation insurance.

The policies provide people hurt or made sick on the job with medical care and with temporary and permanent disability payments when necessary.

A claim can be triggered by a single traumatic event such as a cut, a fall or a motor vehicle accident or by a chronic condition attributable to muscular or nerve problems such as those linked to repetitive motions.

The sick or injured employee must report the condition immediately to a supervisor, seek treatment and file a workers' comp claim with the company. The employer must send the claim to the company's insurer within a day.

While reviewing the claim, the insurer is required to provide up to \$10,000 worth of immediate care. A doctor, who does not examine the patient, may review the primary physician's treatment plans and make a recommendation to the insurer.

If the worker or the insurer disagrees, the patient will be examined by a third doctor for an independent opinion.

Disagreements could also arise over the cause of the injury or illness and whether an employee should be allowed to return to work.

If still no agreement on treatment is reached, the case can be appealed to the state Workers' Compensation Appeals Board and, if necessary, state courts.

— Marc Lifsher

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Reined in

42%: Drop in workers' comp insurance rates paid by California employers from 2003 to 2006

\$8 billion: Total savings to employers in 2006 compared with 2003

37%: Drop in estimated disability and medical payments by workers' comp insurers from 2003 to 2005

Sources: Bickmore Risk Services, Workers' Compensation Insurance Rating Bureau of California