



2021 CLM Workers Compensation and Retail, Restaurant & Hospitality Conference  
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## **The Evolving Story of COVID and Workers' Compensation**

### **I. Understanding State policies related to workers compensation in response to COVID**

In the wake of the COVID-19 pandemic, regulators and policymakers around the country were given the difficult task of examining regulated markets to ensure policyholders and insurers had all the tools they needed. States across the country chose different courses in addressing these issues. In some instances, states reminded carriers of their claims handling obligations under the law, while other states created retroactive presumptions for certain classes of insured. Some states lifted limitations on telemedicine, allowed advanced prescription refills, and other changes to regulatory schemes. We also saw decisions made by government risk management funds to ensure coverage was extended to front line government employees that may not have been covered otherwise. While some States implemented these measures by emergency order, other states have gone as far as passing legislation.

### **II. Potential Long-term Impacts of Implementing Presumptions**

Insurers depend on sound, predictable regulatory environments to implement operations, including financial structure. The rates charged by companies, the reserves set by companies, and the reinsurance purchased by companies are all anchored upon predictable regulatory environments. As such, when regulators and policy makers mandate presumptions, the operational decisions anchored in regulatory predictability are cast into doubt. An insurer that is forced to pay claims based upon presumptions not considered when the rate was developed, and reinsurance was purchased cause great peril to insurers. In addition to potential catastrophic financial consequences, insurers that lose confidence in a state's regulatory mechanism may choose to reduce or eliminate their exposures in those states. Companies reducing or eliminating capacity in a state may lead to a lack of competition and an increase in premiums. In addition to the loss of capacity creating rate pressure, insurers that choose to continue to operate in an unpredictable regulatory environment will likely incur excess costs, like increased reinsurance costs and claim costs, that will ultimately be passed on to consumers.

### **III. How should insurers move forward to address state reactions to COVID in the workers compensation markets**

Like every other commercial enterprise in the world, the COVID-19 pandemic created a lot of challenges for insurers. Insurers were confronted with a shifting landscape that requires an abnormal level of diligence. Insurers must constantly monitor the jurisdiction in which they operate to know the most current regulatory requirements. Insurers need to work with counsel and regulators to ensure they are viewing claims through the correct regulatory lenses.