

September 21, 2020

Summary of September 15, 2020, stakeholder meeting regarding “chilling effect” of having the Social Security number on forms 801 and 827.

Discussion on whether there is a “chilling effect”

Take away:

- Workers don't understand workers' compensation.
- Workers see the SSN on the form, and it makes them afraid.
- Workers are vulnerable, and may be fearful of termination or deportation.
- Employers may retaliate against workers who don't have a valid SSN when they file a claim.
- Worker's attorney suggested SSN be moved to the employer's side (who should have access to SSN anyway).

Details:

- Jovanna Patrick (claimant's attorney)
 - Sees this all the time.
 - Many claimant's come to her and decide not to file a claim because they think they are stuck between the injury and their job.
 - For the form, people do not understand how workers' compensation functions. Even if noted as optional, or not required, having the SSN on the form makes workers more afraid. There are also other ways employers dissuade claims these claimants are in a vulnerable position, and they are having to disclose something that can get them fired or they may be worried about getting deported.
 - Inquiries about the SSN directly to claimant will have chilling effect.
- Corinna Spencer-Scheurich (Northwest Workers' Justice Project)
 - Agrees with Jovanna Patrick.
 - They handle retaliation claims. These claims are often for undocumented workers. They have had a number of clients who refused to file workers' compensation claims because they were worried about immigration.
 - Bottom of form frequently filled out by supervisors or crew leaders and can create retaliation.
 - Has seen employers use immigration status as a reason to fire someone who filed a valid workers' comp claim, even though they knew of the status before.
- Kathy Nishimoto (Duckwall Fruit)
 - Question: How would having no number at all on the 801 form (either provided by the employee or the employer) – how will that solve the discrimination piece? The employer will still know of the claim.
- Jess Giannettino Villatoro (Oregon AFL/CIO)

Summary of Sept. 15, 2020, stakeholder meeting

- Pure existence of the box for an SSN has chilling effect on filing claim. Undocumented workers face discrimination or retaliation at a higher rate than white counterparts or citizens.
- Wants equal access to workers' comp system. Can we find another way to track these claims?
- Corinna Spencer-Scheurich (NW Workers' Justice Project)
 - Employers may do different things and may not get information or care to know.
 - Undocumented workers are more likely to be hurt on the job as they work in jobs more likely to result in injury. SSN on form provides an opening if the employer wants to retaliate.
- David Henretty (Oregon Law Center) – SSN's are required for I-9 purposes so someone could provide whatever documents they need to for I-9 and it may not be valid SSN, unless it is for e-verify.
- The State of Oregon does not care about legal status.
- Jovanna Patrick
 - Workers' she sees sometimes don't complete paperwork, may be paid in cash.
 - Some employers are complicit in hiring undocumented workers or know or don't try to learn about documentation status. These workers need to be protected.
- Paloma Sparks (OBI)
 - Repeated statements alleging bad intent on employers is not helpful. Need to discuss how we move forward and whether we take SSN off the form.

How do insurer's get the SSN?

- **City of Portland:** gets from employee at time of hire. But, for other employers using I-9, how will they get SSN to the insurer?
- **Liberty Mutual:** obtains the SSN regardless of any form requirements. Once they report to CMS they need social. They are already doing it, and if we change SSN requirements they would continue to do it. Won't make a difference to them, other than it won't be on the form any more.
- **SAIF:** If SSN not provided on that form, their best practice is to follow-up with the employer to ask for the SSN, primarily because they have to report it to CMS Medicare. SAIF estimates approximately 6,000 claims received in 2019 with no SSN on form 801 and of those, roughly 1,000 did not have an SSN. They have option to say not available to WCD, but don't have that option for CMS.
- **May Trucking:** asks worker or goes to HR.

How do insurers use the SSN?

- Dan Schmelling (SAIF) –
 - Two primary reasons they obtain is:
 - (1) Reporting. Required reporting to WCD. They also must report claims data to CMS Medicare and SSN is required on that.
 - (2) Also, SSN is good validating number. They looked through recent claims data and reviewed commonality of some names. In a 10 year period, they identified 40-60 workers with the exact same name, and some with same DOB as well. If they are providing or asking for records, the SSN ensures they are sharing the correct information and not some other worker's info.

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- Jason Falquist (Liberty Mutual)
 - Reporting claim to CMS. Two step process: 1. Cross reference against CMS database of current Medicare recipients 2. If a match is found, Liberty reports the claim to CMS.
 - Currently Liberty pursues SSN from employer.
- Diana Winther (MLAC)
 - It doesn't seem an SSN is required – why is getting that info from the employer directly preventing these things from happening? It seems those questions could still be asked of the employer, without it having an immediate chilling effect on the employee.
 - Sue with City of Portland agrees.

Input received via written testimony

- Danielle Erb, M.D.
 - Strongly encourages removing the SSN from the forms as most insurances have done.
- Larry Bishop (Sedgwick CMS)
 - Do not rely on the form 801. All claims are reported either electronically or telephonically, usually by employer who typically has the worker's SSN.
- Tressa Johnson (Greater Albany Public School District)
 - Would not have any issue obtaining the SSN another way, and doing so would protect identities if information were accidentally exposed.
- Julie Riddle (The Hartford)
 - Work in several states where the worker's SSN is not required and use different data fields for correct identification of workers.
- Jason Falquist (Liberty Mutual)
 - Support mitigating the use of sensitive, personal information on formwork as much as possible. No issue with removing the SSN from the 801 and 827, just request adequate time to implement the change.

Discussion-Possible Solutions

Take away:

- A request for the SSN on any form implies it is required.
- If removed, the SSN needs to come off both 801 and 827.
- If removed from the forms, the insurer will need to use a different avenue for obtaining the SSN from the employer.
- The SSN will need to be obtained by insurer to report to WCD on Form 1502.
- If the employer or insurer ask the worker for an SSN after the claim is filed, this may still have a chilling effect, but it would not deter the worker from filing a claim.
- Insurers will need an adequate amount of time to update forms and systems if the SSN is removed from the 801 and 827. (90-120 days)

Options discussed

1. Indicate that providing the SSN on the form is optional, and perhaps also have the worker acknowledge their voluntary disclosure of their SSN.

- Pro
 - None were discussed during the meeting.
- Con
 - Someone other than worker may be filling out form and may not convey that the SSN is optional.
 - Chilling effect remains as long as the SSN is on the form at all.
 - Employer may still demand the SSN from the worker when they report an injury.
 - Workers may not believe it is optional.
 - A worker with an SSN that chooses not to provide it since it is “optional” may feel misled if they learn it was later disclosed without their knowledge, because it is not optional for the employer to give the SSN to the insurer or for the insurer to give it to WCD.

2. Ask the worker to provide their SSN or their individual taxpayer identification number (ITIN).

- Pro
 - None were discussed during the meeting.
- Con
 - If a worker provides an ITIN, it is essentially an admission to not having an SSN
 - ITIN is a proxy of immigration status.

3. Ask the employer to provide the SSN/move box to employer portion

- Pro
 - Employee not being asked for the information. This may lessen the chilling effect for them.
- Con
 - Bottom of form frequently filled out by supervisors or crew leaders and can create retaliation (employer may not have cared to learn of immigration status before, but may terminate employment with workers’ compensation claim with no SSN)
 - Whoever is filling out employer portion may not know or have access to SSN, and would ask worker to provide. Same chilling effect.
 - Having SSN on the form is the chilling effect.

4. Eliminate the SSN field on the first report of injury forms (This would still require the insurer to timely report the SSN on Form 1502)

- Pro
 - Essentially eliminates any “chilling effect” on worker at the time they are filing a claim.

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- Eliminates liability for exposure of SSNs since the forms containing the SSN pass through multiple channels.
- Con
 - Insurers will have to obtain SSN from employers in a different way, which is an increased administrative burden, with related time constraints for adjusters, and time away from managing claims and administering benefits timely.
 - WCD may not be able to provide claim indexing and claim records as quickly as they do now.
 - WCD would need to print and distribute new 827's to all providers.

5. Other

- Remove the SSN from use completely
 - Pro
 - Eliminates one avenue that may trigger an employer retaliating against the worker (asking for the SSN may trigger a retaliation from the employer...they may not have asked for the SSN previously, or cared to know).
 - Con
 - Insurer needs the SSN when there is one to report to CMS/Medicare and to WCD.
- Remove from the 801 and leave on 827
 - Pro
 - May reduce chilling effect since the worker fills out the form at the medical provider.
 - Con
 - Not a required form, so it is not always filled out.
 - Large medical providers have moved away from collecting/using SSN.
 - Leaving on 827 is still anxiety provoking for workers.
- Expand 801 to two pages, one for worker and one for employer with the worker's SSN on the employer's page
 - Pro
 - May reduce chilling effect if worker is not asked to provide SSN.
 - Con
 - 801 used to be two pages, very unpopular with industry stakeholders.

Next Steps

- Stakeholders were given a deadline of September 25, 2020, to submit additional information or considerations.
- Follow-up with stakeholders regarding their questions about next steps in this process, whether or not there will be another meeting, and a timeframe for a decision.
- A decision on which possible solution will reduce or eliminate any chilling effect.
- If the SSN box is removed from the 801 and 827, rulemaking would need to take place for Division 60, specifically 436-060-0010(3)(a).