

# Careful planning can blunt nature's impact on workers' compensation

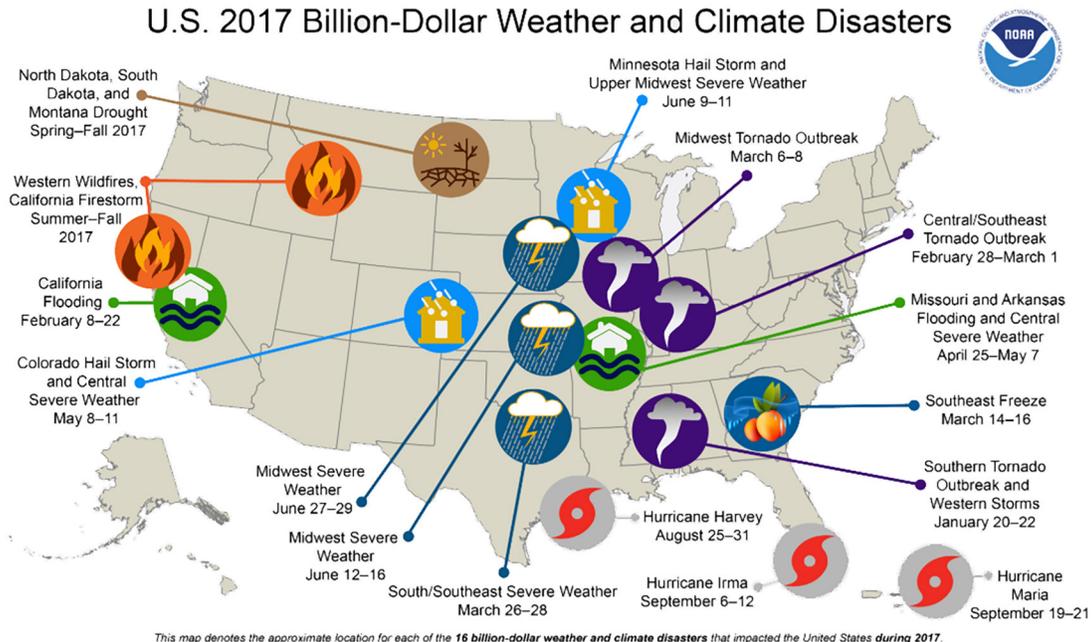
By Lisa Anne Bickford, Director of Government Relations



In just the past few years, natural disasters have generated startling headlines and produced enormous challenges for many, including for workers' compensation systems. In 2017, colossal hurricanes lashed the coasts of Florida, Puerto Rico, and Texas before scraping across enormous inland areas. The following year, in fall 2018, the deadliest U.S. wildfire in a century<sup>1</sup> swept across Northern California, leveling an area the size of Chicago. And in 2019, a patchwork of Midwestern levies has strained and sometimes failed to hold back rivers swollen by snowmelt and copious rain. If the assaults seem more intense these days, that's because they often are. More than ever, proper disaster planning is necessary to ensure the workers' comp system is able to rebound from catastrophe.

In dollars — an admittedly inadequate yardstick relative to the human toll involved — many of the most recent disasters have been among the worst recorded. The eight years with the most billion-dollar disasters in the U.S. all occurred in the past decade, according to the National Oceanographic and Atmospheric Administration (NOAA). Of the total costs incurred since 1980, more than a quarter have come since 2015.<sup>2</sup> Recent events lay out the story: Hurricanes Harvey and Maria were the second- and third-most expensive<sup>3</sup> hurricanes to strike the U.S. (Irma, which also hit in 2017, was fifth), and California's Camp Fire was the most expensive natural disaster in the world last year.<sup>4</sup>

## U.S. 2017 Billion-Dollar Weather and Climate Disasters



Scientists and government forecasters warn we can expect more of these extreme events. This could add to the challenges workers' comp regulators have long faced from more run-of-the-mill disasters that are smaller in scope. To better prepare for all types of disasters, the workers' comp industry, regulators, and clinicians will need to construct more robust backup plans, more resilient systems, and more flexible rules for emergencies. They'll also need to further prepare for the surges in claims that major disasters can generate. There are pockets of welcome news on this front. Some states, pressed into action by experience, are responding by fortifying their regulatory safeguards. Other states could benefit from making similar preparations.

It is no surprise that some of the states digging into this problem are ones most familiar with outsized disasters. In Florida, regulators are taking steps to prepare for events that could compromise workers. The Sunshine State's 8,400 miles of coastline, flat topography, and porous limestone foundation leave it susceptible to rising sea levels, storm surges, and massive sinkholes. In response, Florida has devised a regulatory mechanism that kicks in automatically when the governor's office declares an emergency. Florida's Office of Insurance Regulation is then empowered to issue specific administrative orders without delay. This ready-made response consists of two parts:

- Property/casualty provisions: These address topics such as non-renewals, rate hikes, and cancellations within the first 90 days following a catastrophic natural disaster. These rules are focused on the property/casualty market.
- Pharmacy-related provisions: These include measures that suspend "refill-too-soon" flags that can arise when a patient seeks to replace a medication that might have been left behind, lost, or ruined in a natural disaster. This affects all lines of insurance that provide pharmacy-related services, including workers' compensation.

## Texas reacts as storms begin to change

Texas, for its part, put in place temporary rules following the havoc that Hurricane Harvey delivered in the final days of August 2017. The way in which Harvey unfolded — by stalling over land and dumping rain — illustrates the way in which many scientists believe storms themselves are starting to evolve. A warmer planet can supercharge hurricanes because heat is fuel for storms.<sup>5</sup> And because warmer air holds more moisture, hurricanes can now vacuum up more water over the ocean and deposit more of it over land.<sup>6</sup> On top of that, more people are living along coasts and in areas susceptible to flooding.<sup>7</sup> It all adds up to heightened risk, according to federal forecasters. The U.S. Government Accountability Office, the investigative arm of Congress, projects rising seas and more frequent and intense storms could add \$13 billion to \$23 billion in annual flooding costs for U.S. coastal communities by the middle of the century.<sup>8</sup>



Harvey illustrated the damage large floods can inflict. The U.S. Geological Survey ranked Harvey the nation's largest rain event in scope and rainfall totals since such recordkeeping began in the 1880s.<sup>9</sup> The storm's destruction fanned out from the Gulf of Mexico deep into the second most populated state. More than 122,000 people needed rescuing; more than 210,000 homes were lost. Amid the devastation were injured workers. Even the Texas Department of Insurance (TDI), which oversees the state's workers' comp program, was not impervious to Harvey's toll. Field offices suffered flood damage, forcing some to close. Doctors and other providers saw their offices destroyed and medical records lost. Closed courts meant that dockets piled up. Hundreds of first responders filed claims. And communication disruptions, from downed phone lines to interrupted mail service, added to the challenges.

Regulators took far-reaching steps so that injured workers could continue to obtain care following Harvey. Despite facing its own challenges, TDI had to provide answers to the injured workers, medical providers, attorneys, claims administration organizations, and others who turned to the agency. TDI issued a benchmark regulatory response highlighting a number of emergency measures, which remained in effect until January 2018. This included:

- Requiring carriers to continue benefit delivery in affected counties
- Waiving penalties/restrictions for emergency and non-emergency care with non-networked providers and payment for those services
- Extending deadlines for medical examinations
- Authorizing payments to pharmacies for up to a 90-day supply of prescriptions regardless of the most recent refill date
- Providing for expedited change-of-address processing
- Temporarily suspending a number of regulatory cutoff points, including claim notification and filing deadlines, medical billing deadlines, medical and income benefit payment deadlines.

## Fires erupt in the west

The hurricanes that ravaged the U.S. in 2017 gave way to disasters of a different sort the following year. In the summer and fall of 2018, wildfires ripped across broad swaths from New Mexico to Oregon. The strongest wildfires in California history became emblematic. The notorious Camp Fire killed more than 80 people in November 2018; the fatalities surpassed the combined toll from the state's previous worst three fires. The two-week inferno also destroyed more than 18,000 structures — more than were lost during the seven next most destructive fires.<sup>10</sup>



As with the 2017 hurricanes and hurricanes Florence and Michael in 2018, elected officials deployed emergency-response mechanisms. On November 8, 2018, Gavin Newsom, then the state's acting governor and now governor, declared a state of emergency for Butte County, in California's Central Valley. The state's then-outgoing governor, Jerry Brown, issued an executive order to streamline recovery efforts. Within days, President Trump declared three of the hardest-hit counties federal disaster areas.

Health care leaders, clinicians, and administrators also jumped into response mode, even as many were forced to flee their own homes and workplaces. The Adventist Health Feather River Medical Center was located in the heart of the fire in Paradise, California. Health care workers in the area set up a makeshift clinic in a nearby parking lot in an attempt to help evacuated fire victims while portions of the hospital burned. Sadly, heroic as those efforts were, the hospital could not stave off the blow to its operations. In February 2019, Adventist issued the final paychecks to health workers whose positions were eliminated indefinitely<sup>11</sup> while the hospital works to rebuild the portions the fire razed. Adventist helped hundreds of health workers relocate to other locations and spent \$30 million<sup>12</sup> to extend pay and benefits into early this year.

## What can we learn from these experiences?

The disruptions wrought by flood and flame, as well as other calamities, offer warnings for how far-reaching the consequences of disasters can be for injured workers and those who care for them. These events underscore the need for proper disaster recovery planning in workers' compensation, which can be overlooked given its small size compared with group health.

Too few states have adopted specific operational and regulatory plans relating to how workers' compensation systems would respond following a disaster. Texas offers instructive insights into how to minimize disruptions to injured workers.



As part of its efforts to respond to Hurricane Harvey, TDI took a number of important steps. These included sending staff to disaster-recovery centers and other sites to answer questions and provide information about how to contact insurers and reschedule appointments. The agency also extended the hours of its customer-service hotline while simultaneously giving staff time off to volunteer in the cleanup efforts. TDI also coordinated efforts with other branches of government including the Federal Emergency Management Agency (FEMA) and the Occupational Safety and Health Administration (OSHA).



## Maintaining communication after a disaster is critical

Jurisdictions beyond Texas could devise similar frameworks for how they would respond in an emergency. Perhaps the most basic function would be to act as a conduit for communication among all the stakeholders in the workers' comp system, notably injured workers, medical providers and claims handlers. Likewise, communication with local, state, and federal agencies also is critical. State workers' compensation regulators, in particular, are well positioned to assist in this role as it relates to injured workers.

Payers and claims administrators have a role to play in disaster recovery as well. Most pressing is to ensure that injured workers continue to receive medical care and benefit checks. Larger payers or third-party administrators (TPAs) can often reroute claims-handling to offices outside of disaster zones. Redundant systems and business-continuity plans can hasten recovery following a catastrophic event. Thanks to improved technology, payers often can make speedy changes to claim information (such as updating a mailing address) without incurring the lag time and delays that can impede delivery of benefits.

Similarly, waivers can be facilitated to lift restrictions when prescriptions need to be replaced or out-of-network treatment is needed when disasters disrupt access to network treating providers or facilities.

As in Texas, a governor's disaster proclamation can be used to automatically suspend certain deadlines and requirements stemming from state regulations. Payers can work to clear away some of these time-bound obstacles by adjusting their own operations and by working with vendor partners to do the same. Taking such steps can ensure that injured workers and providers, who are likely already traumatized by a disaster, don't face unnecessary bureaucratic blows as well. It is imperative to remember that most individuals exposed to a traumatic event likely will require some level of crisis intervention. The goal of any crisis intervention is to mitigate the harmful effect of traumatic stress, to provide support, and to offer encouragement in order to accelerate recovery.<sup>13</sup>



## Collaboration helps states prepare for disasters

A number of other claims-handling considerations following a disaster can be relevant. For example, adjusters from other states might be called upon to work through a surge in claim volume associated with a major disaster. In such cases, payers and TPAs must ensure that out-of-state adjusters are sufficiently trained and vetted. Those adjusters also must be properly licensed for the jurisdiction. Failing to use licensed adjusters can give rise to a host of legal and other complications. Savvy planning can reduce some of these challenges. Similar issues could emerge when out-of-state medical personnel step in to take on a recovery effort. Emergency licenses might be required and could be issued as needed.



Workers' comp systems vary in their regulatory readiness to respond to disasters. Some states have assembled detailed regulatory steps for what to do in an emergency while other states have not put forth formal plans. In some cases, states have drafted disaster preparedness manuals or business-continuity plans. Other states have done both. While regulators can look to best practices and benchmarks to develop a regulatory framework, detailed plans alone are not sufficient. Even the most robust protocols will require regular updating. And key players must be kept aware of the tasks and roles they are designated to undertake.

Organizations that operate nationwide (and even abroad) such as the International Association of Industrial Accident Boards and Commissions (IAIABC) could facilitate development of model regulations and legislation that states could adopt. Efforts to craft model frameworks might benefit from coordination among various groups like the National Council of Insurance Legislators (NCOIL) or the National Insurance Commission (NIC). By working together, these organizations could offer states a unified approach that would help regulators and other key players know what to expect and how to respond when coping with a disaster.



## Legal and underwriting challenges carry risk

A number of legal and underwriting considerations could come into play in the wake of a disaster as well. Court dockets may be delayed and venues could change. First responders could be filing claims en masse. Numerous issues also might arise relating to jurisdiction. These might involve conflicting laws among states or extraterritorial provisions. There also can be hurdles involving workers' comp coverage for those who arrive in a disaster zone from out of state. For example, a roofing contractor from Georgia might become injured after traveling to Florida to help repair homes following a hurricane. Or a worker might fall or inhale toxic fumes when attempting to clean up from

a fire. This could mean a worker is taking on job responsibilities that are outside her traditional role. Doing so could trigger a temporary reclassification from, for example, "clerical" to "janitorial" if a worker's job responsibilities change substantially to take on more risk. Depending on the size and nature of the disaster, it might be necessary to obtain advice from legal counsel experienced in handling these types of issues.



## A call to action: Having a plan is key

The takeaway is clear: Disasters happen. They're nothing new. What is perhaps new is an increase in the frequency and severity of natural disasters. If these occur more often and with greater consequence, the workers' comp system will face more challenges in bouncing back. Thoughtful planning will become ever more critical to ensuring the system set up to safeguard and help workers can continue to do so following a major disruption. Regulators, clinicians, and other players in workers' comp will need to craft strong backup plans, resilient systems, and flexible rules that can be deployed in an emergency. The risks to injured workers following a disaster can be great. Failing to prepare for calamity only makes those risks greater.



### About the author

Lisa Anne Bickford is the director of government relations and has over 20 years of broad-based experience in government affairs, information technology (including project management, process engineering and analysis), law, and management consulting. In her current role, Ms. Bickford provides workers' comp and auto regulatory expertise across the United States, with special focus on California, Florida, Texas, Illinois, New York, and any state considering major regulatory reforms or bills with potential broad-reaching impacts.

### About Coventry

Coventry offers workers' compensation care- and cost management solutions for employers, insurance carriers, and third-party administrators. With roots in both clinical and network services, Coventry leverages more than 35 years of industry experience, knowledge, and data analytics.

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