Changes in workers’ compensation legislation

By the Risk Consulting National Practice

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DEA rule changes hydrocodone classification and prescription requirement

Hydrocodone is one of the most frequently prescribed drugs in workers’ compensation claim treatment, sometimes causing physical dependence and addiction. Previously a patient could refill a Hydrocodone combination product (HCP) with their pharmacy five times over a six-month period without calling or seeing the doctor for a new prescription. This prescription pattern often led to high quantities of pills being dispensed within short periods of time rather than monthly intervals. The U.S. Drug Enforcement Agency (DEA) recently published its final rule for hydrocodone products, changing its drug classification from a Schedule III to a Schedule II medication. The rule went into effect on October 6, 2014.

The Schedule II classification means patients can no longer refill prescriptions such as: Norco, Vicodin, Hydrocodone/APA generics, Tylenol 3, etc. without a new prescription. A physician may issue multiple prescriptions to cover a 90-day supply (in states where allowed) but each prescription must have its own fill date and cannot be filled prior to the fill date. The goal is to reduce the quantity of pills accessible to patients, thereby reducing the risk of addiction and abuse.

Considerations for employers

- Letters to medical providers from claim administrators requesting greater oversight and consideration over narcotic dispensing
- Establish a pharmacy benefit network with tighter formulary controls on narcotics

For more information visit:


Sources: AAFP News 9/17/14, Health of the Public; NCCI Medical Data Call for Service Year 2011

Missouri Supreme Court changes standard of proof for workers’ compensation retaliation cases

Prior to April 15, 2014, Missouri required an employee claiming retaliatory discharge to prove that the filing of his/her workers’ compensation claim was the exclusive factor for the employer’s decision to discharge him/her.

Together we’ll go far
The recent law change, issued in the decision of Templemire vs. W & M Welding, Inc., now states that an employee must only demonstrate that the filing of his workers’ compensation claim was a “contributing factor” in the employer’s decision to discharge.

Considerations for employers

The new standard eases the burden on employees discharged for filing workers’ compensation claims and increases their chances of prevailing. Employers may see an increase of retaliatory discharge claim filings.

For a complete overview of case facts visit:

Source: Case Law Quarterly Update (April 2014-June 2014), Simon Law Group, P.C.

Georgia Supreme Court reverses statute of limitation decision

On September 22, 2014, the Supreme Court reversed a prior Court of Appeals decision that allowed an employee to collect late payment penalties 10 years after he/she was last paid indemnity benefits.

In Reid vs. MARTA, the employee sought late payment penalties for 12 late temporary total disability payments made to him prior to his return to work in 2002. He did not assert this claim until 2010, and The Court of Appeals granted him benefits noting that his claim was not barred by the statute of limitations. The Supreme Court reversed The Court of Appeals decision stating that the claim must be brought within the two-year statute of limitations or it will be barred.

Considerations for employers

Ensure all associated penalties, fees, and underpayments are made timely or prior to the conclusion of the claim to avoid unnecessary litigation expense or file re-openings.

For more information visit:
http://scogblog.com/2014/09/22/released-opinions-63/

Source: Swift Currie Client Alert 9/23/14

Florida decision voids exclusive remedy defense

Employers are generally protected from employees filing negligence suits for workers’ compensation injuries since workers’ compensation is a no fault system of recovery. There is exception in cases of gross negligence by an employer, which is responded to under Coverage B of the workers’ compensation policy.

A Miami-Dade Circuit judge recently took issue with the state’s exclusive remedy rule, declaring it unconstitutional in August 2014, and citing that the current workers’ compensation law did not provide adequate benefits compared to the tort system. The judge declared that an employee should have alternative means of recovery from an employer since workers’ compensation reforms severely limited benefits.

The decision is currently on appeal. If the decision stands, it could present bigger issues for the state and possibly the nation, opening the door for other challenges against exclusive remedy. As state reforms modify or cap employee benefits, expect to see other challenges to the exclusive remedy provision.

Considerations for employers

- It is too early to draw implications as an appeal is pending, and it is anticipated this will be challenged up to the Florida Supreme Court.
- Keep an eye out for similar challenges in other states where reforms and caps that restrict benefits have been imposed.

For more information on case facts visit:
http://media.miamiherald.com/smedia/2014/08/14/12/01/1wvUAW.So.56.pdf
California SB 863 showing slow impact

California’s workers’ compensation reform in 2012 was, in part, intended to provide greater permanent disability benefits to employees (after they had been reduced significantly from the 2004 reforms), improve access to timely and competent medical care, as well as provide controls on escalating medical costs and remove litigation expense and burdens caused by the lien process.

While it’s too early to know the impact on many areas of the reform, there are a few signs of positive change from SB 863:

- Although still significant at 11.3% in 2013, insurance rate increases would have been three points higher at 14.3% without SB 863. Rates are expected to trend down as more of the legislative changes are enacted.
- Lien filings have been reduced by more than 50% due to filing fees that have now been imposed.
- The Independent Medical Review process (IMR) has steadily begun decreasing the number of costly Qualified Medical Exams (QME), which was historically associated with long waits, staggering costs, and administrative bureaucracy. IMR costs are expected to decrease even further in 2015.
- IMR determinations are also having a positive impact on utilization review findings, confirming the majority of treatments and prescriptions are not medically necessary or related to the workers’ compensation condition.

Considerations for employers

- California continues to see an increase in claim frequency, particularly in Los Angeles. Even with positive reforms, don’t lose sight of safety initiatives and good hiring practices.
- The increase in permanent impairment benefits should be more than offset by medical and legal savings elsewhere. Mitigate injury recovery and return employees to work as often as possible to reduce impairment factors.

For more information visit: www.dir.ca.gov/dwc/sb863

Source: SB 863: Assessment of Workers’ Compensation Reforms, July 17, 2014; Business Insurance August 7, 2014

Industry watch

Workers’ compensation trends are impacted by both economic and social issues that are worth keeping an eye on in today’s marketplace.

Top challenges on the horizon for workers’ compensation:

1. Wage and salary stagnation
   Wages drive insurance premiums for workers’ compensation policies. With salary increases averaging only 3% yearly, there is concern that premiums will fall behind what’s needed to cover the continued increases in medical costs on claims.

2. Technology and innovation
   Workers’ compensation, as a whole, has lagged behind in the development and use of technology to aide in the claim process. With more of the workforce having access to cellphones and associated applications, the ability to communicate quickly and efficiently to injured workers could open a brand new level of claims management.

3. Opioid abuse
   The workers’ compensation industry has become the “addiction creation industry” according to a health strategist. Steps to move the industry ahead in this area have been slow to occur but more studies showing outcomes on claims, when employees are prescribed opioids and when they are not, may help move the needle.

4. Marijuana in the workplace
   As more and more states legalize marijuana for medical use, it is likely that injured employees will also be given such prescriptions for their workers’ compensation injury care. The uncertainty of how employers handle these situations will likely bring rise to litigation, depending upon the employer voluntarily agreeing to accept the proposed medical treatment in a workers’ compensation claim where marijuana has been prescribed.
5. Manufacturing
The manufacturing sector in the United States has dwindled over the past 30+ years but is now positioned for renewed growth and opportunity. With new positions and untrained workers, the possibility of injury increases, especially in a manufacturing setting. Training and safety efforts will be critical to this growth sector in order to control claims.

6. Affordable Care Act
The impact of the Affordable Care Act on workers’ compensation claims is expected to be modest. One area that could be beneficial is in the identification of best practice treatment which could help workers’ compensation, where there are great variations in treatment for the same injuries.

7. Workplace safety
With the workplace being safer than ever, there is still room for improvement in certain business segments. OSHA is committed to prosecuting employers who permit unsafe environments.

8. Terrorism risks
The Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) essentially provides a back stop to workers’ compensation coverage in the event of a terrorist act in the workplace. It is set to expire on December 31, 2014, unless renewed by Congress. To end this security for employers would be problematic.

9. Workforce demographics
The workplace has seen a significant decrease in young men participating in the workforce. For those that are working, injuries that were generally reserved for the aging workforce (rotator cuffs, knee replacements) are being experienced by the younger workers. The demographic imbalance may lead to productivity and staffing gaps as baby boomers exit the workforce.

10. Mobile workforce
More and more of the workforce are telecommuting and connected virtually. As such, employer controls are not as present and may impact decisions when it comes to phone usage in the car or work environment at home. It is unclear if this trend will continue or if there will be a trend to move back into an office environment.

For more information visit:
http://www.insurancejournal.com/magazines/features/2014/05/05/327694.htm#.VBmaz4QMaxQ

Source: Insurance Journal May 5, 2014

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