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Controlling Medical Costs Following Employee Injuries

I. Utilization Review

Utilization review (UR) is the process used by employers or claims administrators to review treatment to determine if it is medically necessary. Utilization review can be done prior to the service being performed, during the course of treatment, or after the service has been provided.

The ability to manage a claim via Utilization Review (UR) can vary by jurisdiction. In many states, a properly obtained UR via Utilization Review Accreditation Commission (URAC) standards can help limit medical treatment by requiring a third party to determine the reasonableness of treatment. This can prevent unnecessary treatment that drags out a claim and can ultimately reduce medical costs by considerable margins. In this section, we will discuss:

- The efficiency of the UR process
- Examples where judicial bodies have supported UR and eliminated the employer's obligation to pay for unnecessary treatment
- How the effective use of UR can impact the life of a claim
- How permanent partial disability owed to an injured employee can be reduced by UR
- Insights on how claimant attorneys often view UR
- Situations where an employer may elect to override a UR
- Strategies on how to face a UR challenge from a treating physician

II. Medicare Set-Asides

There is often confusion from a compliance perspective regarding MSA's. While there are no statutory or regulatory provisions requiring that a Workers' Compensation Medicare Set Aside proposal be submitted to the CMS for review, submission is a recommended process, and CMS has clearly outlined the review criteria. CMS will only review proposals if:

- 1) The claimant is a Medicare beneficiary and the total settlement amount is greater than \$25,000.00; or
- 2) The claimant has a reasonable expectation of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000.00

The requirement of CMS approval can lead to applicants not wanting to settle claims or can result in MSAs much higher than an employer knows they are liable. Additionally, during the approval process, in many states, benefits would continue, even if both parties are ready to settle. This results in additional TTD benefits, which impacts the overall exposure of the case. Employers are also confronted more than before with the concept of settling claims with open medical rights.

Employers are also often confronted with MSA allocation reports with near insurmountable dollar figures. Employers, the TPAs, claim consultants, and their attorneys often need to undertake strategies that will allow them to reduce the exposure MSAs. In addition, employers need to consider other avenues that would allow them to potentially not have an MSA at all. In this section, we will discuss strategies related to funding an MSA and foregoing an MSA, including discussion on:

- Conducting a diligent analysis of what is truly related to a work injury
- Determining whether prescriptions are related to work conditions, comorbid conditions, or both
- Utilizing generics where prescriptions are work related
- Considering whether alternate treatment plans can be put into place
- Options for settling with medicals open
- Settling with an MSA and an annuity
- Strategies on how to protect Medicare's interests on a totally disputed claim
- Situations where leaving medical rights open may be the better option than funding an MSA

III. Prescription Costs

A growing pharmaceutical market has resulted in numerous resources to treat and improve injured workers to great advantage. The flipside to these improvements is that they cost money. More and more employers are faced with prescriptions for compound medications and opioids.

Compounding refers to the process of creating a custom medication to treat a patient's medical condition. Pain management physicians are among the most likely to prescribe compound medications, and the number of ingredients in compounds has increased over the past few years with no documented medical efficacy.

Opioids are strong controlled substances prescribed by physicians to alleviate pain by reducing the intensity of pain signals by attaching to specific proteins called opioid receptors. Opioids do not

eliminate the source of the pain or the underlying medical condition. When these drugs attach to the opioid receptors, they reduce the perception of pain and create a sense of well-being.

Medical guidelines recommend opioids should be used only in the short term. The most common prescription opioids are hydrocodone, oxycodone, morphine and codeine. According to the American College of Occupational and Environmental Medicine, also known as the Official Disability Guidelines, opioid effectiveness plateaus after 60 days of use, by which time other pain management therapies should be introduced. However, many injured workers continue to take the narcotic drugs for a longer duration. Over time, the use of these drugs can result in dependence, addiction and sometimes death if not properly prescribed.

Our panel will provide an overview of:

- what prescriptions fall into these categories
- existing and anticipated costs
- strategies on how to manage them
- narcotic utilization
- strategies to control long-term drug use.
- challenging the practicality of long-term drug use

Our panel will also discuss some suggested reporting tools that can be implemented in order to closely track and manage trends in a particular program.

IV. Utilization of Nurse Case Management Resources

In many instances, providing medical treatment for injured employees is far more complicated than having them see a single provider start to finish. It is not at all uncommon for an injured employee to see an initial treating physician, a specialist, a physical therapist, an occupational therapist, a pain management specialist and so forth. Challenges can arise in making sure that all providers not only work together but are aware of what others in the treatment chain are providing. Failure to properly manage the medical treatment of an injured worker can result in duplicative treatment, duplicate diagnostic studies, over treatment, more physical medicine than is necessary, the over prescription of medications, and so forth. Finally, reaching several different providers to let them know about policies the employer may have regarding return to work can be difficult to manage without additional resources.

Employers have several different options in terms of implementation and engagement. Nurse case management typically includes telephonic and/or field case management. An employer can typically choose to implement resources on a claim by claim basis or establish specific criteria that trigger the assignment of either a Field Case or Nurse Case manager. Many employers choose to have a TCM assigned to the file to gather information regarding the employee's work status and treatment status in order to determine if a case assignment is warranted.

An effective nurse case management program can bring considerable benefit to the injured employee while saving the employer significant costs. Our panel will discuss:

- Utilization and benefits of telephonic nurse case management
- When to utilize field nurse case management
- Prescription nurse case management
- Impact on return to work programs
- Employee advocacy
- Helping the injured employee reach maximum medical improvement
- Working effectively with a claimant's counsel

V. Independent Medical Examination Process

One of the most common tools that employers utilize in managing a claim is the Independent Medical Examination. An IME can prevent unnecessary future treatment, eliminate exposure where an injury is not work related, and help an employee return to work as quickly as possible. Many question why one would request an IME if an arbitrator or hearing officer is going to defer to a treating doctor's opinion. As such, because of the connotation of an IME, it can create controversy and must be done properly in order to obtain its full effect.

There are several issues an employer must consider and questions to ask before getting an IME. For example, in many instances a records review might be more advantageous. One of the advantages of a records review is that it can most often be done more quickly and for less money. A records review can also give an employer the opportunity to gauge where an evaluating physician may go before obtaining an opinion that might ultimately be discoverable. A favorable records review may be a sufficient means to either deny treatment or terminate treatment. In other instances, it might provide an employer with the confidence to obtain a full IME. On the other hand, an unfavorable records review might result in a change in strategy.

IME's are a very common tool used by claims handlers to address treatment status, return to work status, etc. However, employers are often faced with unfavorable IME's which can hinder settlement and closure of a claim. Often times, IME doctors are not provided with the appropriate documentation or background to objective and accurately provide opinions regarding causation. Implementation of standardized "best practice" protocol is recommended to ensure:

- IME's are obtained timely and only when reasonable and necessary
- Potential alternatives are exhausted prior to resorting to an IME
- IME Doctors are provided with all relevant material regarding the claim necessary to complete an objective assessment

Once the decision to obtain an IME has been reached, it is important to identify the proper expert. In addition to finding a qualified expert with relevant Board Certification, issues such as credibility and reputation must also be considered.

In addition to identifying the right expert, the employer needs to take several steps in order to make sure that the physician has everything they need to perform the best exam possible. Our panel will give advice and discuss:

- Proper documents to obtain before scheduling an IME
- Relevant document to provide to for the IME (medical records, diagnostic studies)
- Investigations that can be utilizing before obtaining an IME (surveillance)
- Other considerations of the employer that will provide accurate information to the IME physician (job videos, ergonomic studies, and job descriptions).