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WHY IS PAIN MANAGEMENT SUCH AN "EPIC FAIL" IN WORKERS' COMPENSATION CLAIMS?

The very term "pain management" implies that conditions are incurable, chronic, and need to be "managed." Moreover, pain management practices are varied, hard to classify, and inconsistently applied across the country. As a result, there are various "epic fails" prevalent in pain management particularly in the context of workers' compensation claims.

The key in addressing these issues is first by understanding the current failings in the pain management system. Once those issues are understood, then a proper protocol can be implemented to handle complicated pain management concerns in workers' compensation claims thus reducing overall claim costs and moving cases to a resolution.

EPIC FAILS IN PAIN MANAGEMENT

Considering the subjective nature of chronic pain, it is no wonder that there are so many differing opinions on how to treat and diagnose these complaints. In addition, Claimants treated for chronic pain through workers' compensation generally have poorer outcomes both medically and vocationally than individuals outside of the system, which leads to systemic problems. As discussed below, there are various reasons why problems persist in the pain management system including attitudes toward pain, limitations of pain management training, problems with healthcare systems and referrals including supervision of pain care, financial pressures driving treatment, overuse of opioids, and treatment bias.

Attitudes toward pain.

First, a customer service mentality is prevalent in pain management and contributes to the problems. Specifically, it is easier for doctors to provide what patients want then to tell them "no." There is also top down pressure from hospital and administrators to keep patients satisfied not to mention internet ratings sites for physicians by patients when to be free from pain is nearly impossible considering the subjective nature of those complaints.

Poorly trained pain providers.

Many practicing pain physicians are not fellowship trained in pain management or Board certified. Rather, many have alternative pain Board certifications allowing them to prescribe medications. Moreover, there is a failure of academic institutions to comprehensively train pain physicians. Specifically, the marketplace does not support functional rehabilitation programs, and it is difficult

for academic institutions to financially support such program, which are crucial in the context of workers' compensation. In addition, pain fellowship programs focus heavily on performing pain procedures. In fact, few pain fellowship programs actually focus on opioids and other medications.

Due to this lack of consistency on how medical providers are treating this condition, the number of pain medicine associations continues to grow throughout the world in an attempt to develop a cognitive plan for future research and treatment procedures for individuals suffering with chronic pain. In spite of these multiple pain medicine associations, it is unfortunate that the inconsistencies in administering treatment for chronic pain continues, therefore extending time periods for continued treatment with little relief to the injured worker, and increasing the costs to Employers and Insurers to fund this continued care.

Issues with healthcare systems and referral patterns.

Unfortunately, pain management referrals may be directed by financial pressure rather than quality or necessity. In addition, there are pressures from hospital and healthcare administrators leading to tracking of in-network and out-of-network referrals. There is financial incentive for individual providers to refer within a healthcare system, which may not lead to the best course of treatment for an injured worker.

Problems with coordination of treatment between treating doctors.

Problems also exist in determining whether everyone has total knowledge of the Claimant's pain management regimen including what medications and procedures are actually helping the patient. This leads to situations in which a Claimant may not be actively seeing his primary treating doctor and contributes to misinformation throughout the process. Moreover, it results in the potential where a workers' compensation doctor may not be willing to handle the difficult aspects of the case including determining maximum medical improvement ("MMI"), permanent partial impairment ("PPI"), and work status, which complicates efforts to return a Claimant to work.

Talk is cheap.

There is a strong financial incentive to inject, implant, or operate rather than saying that interventional procedures are not needed. Moreover, pain management physicians are pressured to move forward with these procedures rather than saying "enough is enough" Generally, if two of the same type injection do not provide significant/long lasting relief and improve function, then there is no continued efficacy for that procedure. However, this is generally ignored by many physicians.

Opioids.

Opioids are typically prescribed in workers' compensation claim to treat catastrophic injuries with chronic pain; short term pain relief following surgical treatment, which necessitates immediate pain control; and general pain control. Some opioids were originally intended to treat acute pain or end of life conditions, but doctors have increasingly prescribed them for a variety of other uses.

However, now the usual treatment supplied to a person suffering from chronic pain includes the use of narcotic pain medications.

Opioid drugs are extremely addictive and may not necessarily be beneficial for long term treatment. The efficacy of opioids is only in acute/malignant pain. There is no efficacy in chronic non-malignant pain greater than 12 months. In fact, high doses of opioids and long term use may cause increased pain. Moreover, there are multiple side effects that impair function. In that regard, abuse and diversion of prescription opiates is causing a national healthcare crisis.

The constant use of opioids in workers' compensation cases can actually prevent injured workers from improving even leading to subsequent surgery and long term opioid use. The growing use of powerful narcotics for the treatment of work-related lower back pain actually results in longer recovery times and higher treatment costs for injured workers. There is a clear correlation between early narcotic prescribing in workers' compensation claims and negative medical outcomes in those claims suggesting more intensive use of narcotics may delay overall recovery. Narcotic use prevents the body from making its own pain relievers causing a worker to become dependent on the narcotic for pain relief. Litigation, lost work days, all increase dramatically as well when opioids are prescribed.

Overall, the use of opioids for treating work-related injuries is as too often the first answer in treating pain and is often prescribed longer than necessary. However, when used for rehabilitative purposes such as improve function to ultimately return a Claimant to work opioid medications should be very restricted. Therefore, it is critical to focus on physical activity and getting the Claimant back to work, even in a light duty capacity, as soon as possible.

Consumer treatment bias.

Treatment bias rests in the myth that doing something is better than doing nothing, however, this may run counter to a doctor's Hippocratic Oath to "do no harm." Studies have shown that consumers made more favorable inferences about physicians who render more treatment even though two physicians agreed that less treatment was better for the patient. Therefore, these outside pressures are leading to longer treatment without actual benefit to an injured worker.

RECOMMENDATIONS FOR EFFECTIVE PAIN MANAGEMENT PRACTICES FROM A CLAIMS PERSPECTIVE

From a claims perspective, how many times have you cringed upon a receipt of another recommendation for pain management care? Following this reaction, how many of you have asked one of the following questions: Is this treatment necessary? What type of treatment will the Claimant receive? Is this the appropriate physician to supply this treatment? How long will this treatment proceed and how much will it cost? Clearly, you should not be alarmed by your reaction or subsequent questions as these thoughts are currently crossing the minds of multiple parties involved in the process of supplying medical treatment to injured workers. This leads to pain "mis-management" resulting in patient outcomes that are often poor and costly.

Overall, pain management referrals do very little to advance the patient to maximum medical improvement ("MMI"), steer patients towards costly treatment, very rarely clear up the clinical picture, and can lead to problematic diagnoses (i.e., Reflex Sympathetic Dystrophy/Complex Regional Pain Syndrome) including problematic recommendations (i.e. spinal cord stimulators) in the context of workers' compensation claim. Therefore, claims professionals should be aware of affirmative steps that can be taken from both a medical perspective and claims standpoint to effectively cope with these difficult situations.

Rehabilitative approach to pain management is advisable for medical professionals.

Overall, there are two general approaches in pain management. A palliative approach focuses on pain and is patient controlled. In such case, opiate drugs are most often used. In contrast, a rehabilitative approach to pain management focuses on function and is physician rather than patient driven. In a rehabilitative approach, opiates have limited to no indication in treatment. Moreover, physical and behavioral rehabilitation is encouraged.

Early detection and intervention is critical. Many become problematic over time, as Claimants become physically deconditioned/sedentary, at risk for depression, and overly dependent on medication. The challenge is to identify which claims are likely to move in that direction and to intervene as soon as possible to help support a better outcome. Therefore, the goal of pain management is to prevent cases from becoming chronic. To prevent this, the focus should be on diagnosing a patient's problems early and to treat those problems quickly and aggressively with an emphasis on return to work.

The key to improving the current concerns would require the expertise of clinical and claim professionals working together to perform data analysis, oversight, and management of the injured worker's progress. Therefore, the goal should be safe, rational and effective management of chronic pain to maximize functionality and return to work.

In that regard, pain management cannot be the only source of treatment for an injured worker. Both physical therapy and occupational therapy should be implemented as part of a multidisciplinary approach to improve function. Effective pain management involves advocating an evidence based approach to pain with an endpoint of restoring function rather on a moving target of subjective complaints.

Tools available to the defense.

From claims management perspective, there are various tools available to claims professionals to combat unjustified pain management referrals.

As a rehabilitative approach is desirable, Functional Capacity Evaluations ("FCEs"), are extremely important to determine a Claimant's return to work abilities/restrictions and credibility of complaints through validity testing. These will assist in identifying light duty work parameters to assist a return to work. Surveillance can also be critical in showing a Claimant is much more active than a doctor may be aware leading to questions on the credibility of the Claimant's subjective pain complaints and need for a different medication regimen.

Also, a return to work may be complicated by certain narcotic medications, which may prevent a Claimant from operating heavy machinery/driving. Therefore, other medications that may not have those limiting effects on a Claimant, and alternatives should be explored with medical providers.

Defense counsel should also demand evidence based treatments from doctors to limit use or potential overuse of prescription drugs or unnecessary narcotics prescriptions. In addition, it is critical that defense counsel request that all physicians in the chain of care, including pain management physicians prescribe medications to patients that have the lowest addictive potential as certain medications have similar pain reduction results as addictive, narcotic medications. Such changes can have dramatic reduction in claim costs especially when settlement may involve a Medicare Set Aside ("MSA"), and if the MSA will be reviewed by The Centers for Medicare & Medicaid Services ("CMS"). Therefore, any cost reducing measure that can be made on the front end will lead to reduced costs when it comes time for settlement.

Independent medical examinations ("IMEs") are also critical tools that can be very useful in determining the viability of a treatment recommendations and whether authorization should be provided particularly when issues involving spinal cord stimulators ("SCS") and expensive medications are involved.

Another consideration that should not be overlooked are co-morbidities. A co-morbidity refers to a diagnosed health condition unrelated to the employee's work injury. There are many co-morbid conditions, but the ones we see most often in workers compensation claims are obesity, diabetes, hypertension, depression, and drug abuse (including alcohol and tobacco dependence). In fact, per in a 2012 National Council on Compensation Insurance (NCCI) study, the prevalence of drug abuse as a co-morbid diagnosis quadrupled in the same 2000 to 2009 time period when a claim involved a comorbid diagnosis of drug abuse, the average cost of medical increases to $13,717.

With that in mind, it is recommended that the Employer/Insurer and medical professionals identify comorbid conditions early in a case as they relate to pain management recommendations and delve into a Claimant's medical history in the discovery process to determine what conditions could have a negative impact on a future handling of a claim. The Employer/Insurer should ensure that they authorize only treatment associated with the compensable work injury. However, understanding an employee's overall medical picture, including the effect of any comorbid diagnoses, will help formulate a more effective plan to provide the Claimant with medical treatment reasonably required to effect a cure, provide relief, or restore the Claimant to suitable employment. Moreover, if a workers' history reveals prior drug abuse, alcoholism, depression, or another pre-existing condition, more reasons support the non-use of narcotic medications.

Understanding Failures and Increasing Effective Treatment.

Chronic pain is a frequent and growing aspect of workers compensation claims. Therefore, claims professionals need to understand the failures in the present system and implement concrete programs with measurable outcomes to respond to and reduce potential claim costs. Overall, the purpose in treating injured workers continues to be returning them to gainful employment. In treating chronic pain, all those involved in the workers' compensation arena should work in a concerted effort to decrease the inconsistencies and increase the effectiveness of treatment for chronic pain with a rehabilitative and functional focus.