Lex and Verum

The National Association of Workers' Compensation Judiciary

Number XII, 0810

NAWCJ Judiciary College 2010!

On August 16, 2010 the Judiciary College convened in Orlando, Florida. Judges from more than ten states gathered for a diverse and focused educational conference, a year in the making. The Program Curriculum Committee (see page 2) did an outstanding job of both selecting intriguing topics and recruiting nationally recognized speakers to attend. This year the program focused attendees on how our processes and laws are different, with a comparative law panel luncheon kick-off. Judges from multiple jurisdictions brainstormed various topics that demonstrate diversity among states, including methodology for rendering findings of fact, settlement of claims, and the applicability of specific evidentiary rules.

Two keynote highlights of the program were Professor Charles Ehrhardt of Florida State University who provided an "enthused," and "animated" (according to attendees) presentation that engaged the crowd in subjects such as expert opinion admissibility and hearsay. Although these frequently encountered trial topics are seemingly familiar, Professor Ehrhardt identified and explained some complexities and reasoning that are certain to aid the trial judge in most appropriately applying various rules to these trial objections. John Salatti was another highlight of the program. It is difficult to engage an audience for an hour on many topics, and writing may seem a little "dry." Defying that perception utterly though, John was engaging, interesting, insightful, and spirited through three hours of drafting, writing and editing advice for the trial Judge. He answered many curiosities regarding the organization, brevity and internal logic of trial orders. John's pointed analysis provided attendees with practical "take-aways" which can be applied immediately.

Other highlights of the program included Judge Poindexter (D.C.) providing new insight into the frustrations encountered when pro-se litigants engage in our various processes and procedures. This program provided insight; as important though, this presentation provided a reference point or "touchstone" for several commiserative conversations between attendees later in the day. So much of what many of us do as Judges is done in significant isolation, and the interaction with others from around the country, with the realization that they face similar challenges, was both encouraging and empowering according to attendees.

The atmosphere at the 2010 program was upbeat, collegial, and interesting. The speakers brought real-world experience, academic intensity, and enthusiasm to subjects that workers' compensation adjudicators face on a regular basis. The practical knowledge from this program will provide tools for more effective adjudications, while the collegiality and camaraderie fostered in this informal setting will support and motivate adjudicators faced with exceptional dockets and time demands. With attendees from California, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, Pennsylvania, and Texas, the Judiciary College 2010 perspectives were diverse, the conversations were informative, and the exchange of ideas and concerns was invaluable. Planning is underway now for the NAWCJ Judiciary College 2011. Plan now to attend August 21-24, 2011. We will see you then!

We Thank the 2010 Judiciary College Program Curriculum Subcommittee:

Hon. Jennifer Hopens
Texas

Hon. David Imahara
Georgia

Hon. Ellen Lorenzen
Florida

Hon. Donna Remsnyder
Florida

Hon. David Torrey,
Pennsylvania

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NAWCJ Elects New Officers

The NAWCJ Annual Business meeting was held on August 16, 2010 at the World Center Marriott, Orlando. Judge Lazzara called the meeting to order and several topics were addressed. The outstanding efforts of the Nominating Committee (featured in the July 2010 *Lex*) culminated in the election of the following new officers:

Hon. Ellen Lorenzen (FL), President
Hon. David Torrey (PA), Vice President
Hon. Melodie Belcher (GA), Secretary
Hon. Robert Cohen (FL), Treasurer

The NAWCJ has experienced exceptional growth and has developed significantly in the last two years under the careful watch of President Lazzara. The outstanding dedication he has shown to both the organization and to the need for ongoing, focused judicial education has brought the NAWCJ to this cross-road. With the transition of leadership to these new officers, the future success and growth of the Association is assured.

Judge Lorenzen was featured as a NAWCJ Board Member in the February 2010 Lex and Verum. She has a broad experience in workers' compensation as an adjuster, a lawyer and a Judge. She is the former public co-chair of the ABA Section of Labor and Employment, and has been involved in the NAWCJ as Treasurer, and on the 2010 Judiciary College Curriculum Committee.

Judge Torrey was featured as a NAWCJ Board member in the March 2010 Lex and Verum. He is a prolific author, frequent lecturer around the country, and has served the NAWCJ as a Board member, Chair of the 2010 Nomination Committee, and as a member of the 2010 Judiciary College Curriculum Committee.

Judge Belcher is the Director and Chief Administrative Law Judge of the Georgia State Board Of Workers' Compensation. She has been involved in the Southern Association of Workers' Compensation Administrators (SAWCA). Judge Belcher will be featured in an upcoming Lex and Verum.

Judge Cohen is the Director and Chief Judge of the Florida Division of Administrative Hearings. He is President of the National Association of Administrative Law Judiciary, and extensively involved in both the Bar and community. He is a founding Member and founding Board Member of the NAWCJ. He was featured as a NAWCJ Board Member in the December 2009 Lex and Verum.

Disability Determination: Validity with Occupational Low Back Pain

Raymond C. Tait,[A] John T. Chibnall,[A]
Elena M. Andresen,[C] and Nortin M. Hadler[D]

Disability determination for occupational back pain is a medicolegal dilemma of considerable complexity in the United States and in other developed countries. For a century, solutions have been based on determining the magnitude of coincident pathoanatomy (impairment). It has become clear, however, that pain, functional compromise, and measurable pathoanatomic abnormality are often poorly associated. [24] Nonetheless, "impairment-based disability determination" is mandated in the Code of Federal Regulations for the Social Security Administration and remains a mainstay of disability determination for workers' compensation (WC) jurisdictions. Because "impairment based disability determination" is administratively fixed, the determination process has been forced to accommodate a variety of cognitive and/or coping-related modifiers,[13] as well as a complex array of factors related to job demands.[10]

The long-standing recognition that low back pain challenges disability determination processes[20, 22] has led investigators to address the problem through such measures as improving the reliability of rating practices.[9 ,25] Despite these efforts, disability determination for claimants with pain remains problematic.[16] Significant variability exists among health care providers in their approaches to the assessment and management of low back pain and dysfunction.[5 ,10,27] Furthermore, there is evidence that variability in disability management and assessment is not only a function of error (eg, a lack of standardization),[9] but it is systematically associated with a range of social factors including race[5,7,18,19, 38,40] and socioeconomic status (SES).[38] These complications notwithstanding, the indemnification process culminates in a decision regarding a claimant's level of permanent partial (or total) disability by an Administrative Law Judge, after which the case is "closed."

To determine whether permanent partial disability ratings are consonant with long-term outcomes, a large cohort of claimants with occupational back pain was interviewed approximately 21 months after claim settlement to assess their clinical and occupational status.[38] Aside from measures of functional status, variables were selected for analysis that reflected medical impairment (diagnosis and surgery), medical management (treatment costs), and sociodemographic factors previously linked to differences in the determination of disability.[38, 40] Two sets of predictors were examined: 1) those associated with the determination of levels of residual disability at the time of claim settlement; and 2) those associated with functional status at the time of the telephone survey. Both medical and sociodemographic factors were expected to predict residual disability at the time of claim settlement and clinical status approximately 21 months thereafter.

Materials and Methods

Because the present analysis is based on data from an existing study of WC claimants in Missouri (Disparities in Occupational Lumbar Injuries Outcomes Research [DOLOR]),[38] the methodology will only be summarized here. The full methodology is presented in detail elsewhere. [6 ,38]

Study Population

Participants represented the population of African American and non-Hispanic white WC claimants who filed low back injury claims in St. Louis City, St. Louis County, or Jackson County (Kansas City metropolitan area), Missouri, and whose claims were settled between January 1, 2001 and June 1, 2002. Because the WC database does not contain racial/ethnic identifiers, these geographic areas were chosen for study because they contained the majority (82.7%) of the 424,275 adult African Americans residing in the state. In addition, African Americans represented 24.4% of the population in the 3 geographic areas (compared with about 11 % statewide), thereby increasing the likelihood that they would be well-represented in the study sample. (Other racial/ethnic groups were excluded because of low representation in the state.)

Continued Page 4

Disability Determination, Continued from Page 3.

Procedures

The institutional review boards of Saint Louis University and Battelle Centers for Public Health Research and Evaluation (BCPHRE) approved the study and informed consent procedures. Inclusion criteria for the study included a single incident WC claim for a low back injury (claimants with multiple claims were excluded), subsequent case settlement, fluency in English (as determined by the BCPHRE interviewer), ability to provide informed consent (administered over the telephone because of the low-risk nature of the research), and self-described African-American or non-Hispanic white race.

Attempts were made to contact all 3,181 persons who had settled claims during the designated time period by using information obtained from the Missouri Division of Workers' Compensation (MDWC). Because the MDWC database is in the public domain and BCPHRE is not a covered entity, restrictions associated with the Health Information Protection and Accountability Act did not limit access to claimant identifiers. Two levels of tracing procedures were used to locate those who had moved or whose contact information was inaccurate. Basic tracing involved accessing information available through the Internet and other public data sources (eg, Telematch, Phone Disc). In-depth tracing involved more individualized searches, including credit bureau inquiries, telephone calls to former neighbors, etc. Once a potential participant was located, a letter was sent that explained study purposes and procedures before scheduling a telephone interview. Surveyors from BCPHRE conducted telephone interviews by using computer-assisted telephone interviewing. Interviews required 15 to 20 minutes; claimants were compensated with $25 for their time. One of 10 respondents was randomly selected to be reinterviewed for reliability purposes, yielding a subset of 153 claimants who received an additional $10 for the second interview.

Measurements

Final permanent partial disability ratings were obtained for each claimant from the database of the MDWC. Medical costs (also obtained from the state of Missouri) were used as a proxy for the intensity of medical care that was provided. Impairment-related factors were reflected in the diagnosis of the injury (regional backache versus herniated disc, obtained from the claimant interview) and presence/absence of surgery (obtained from the claimant interview). A composite score ranging from 0 to 2 was calculated from the diagnosis and surgery variables; claimants diagnosed with regional backache and without surgery were assigned 0 points, claimants diagnosed with a herniated disc who did not undergo surgery were assigned 1 point, and claimants diagnosed with a herniated disc who underwent surgery were assigned 2 points.

Social factors included race (participants self-identified as African American or non-Hispanic white) and SES. An SES factor score (mean, 0; standard deviation [SD], 1) was generated from a principal components analysis of 3 variables: years of education, annual household income at the time of the interview, and compensation rate at the time of injury (a function of preinjury salary). Annual household income was collected relative to the date of the interview rather than the date of injury because of concerns that retrospective estimates, especially those dating back a variable number of years, would be less accurate than more current estimates.[21] Although estimated household income and compensation rate were disparate in time, factor analysis showed that the 3 SES indicators reduced to one factor that explained 52.7% of the variance: annual household income (0.81), compensation rate (0.73), and education (0.63). Therefore, the factor score was used as a composite indicator of SES. Post settlement status was assessed on a variety of dimensions: pain intensity (0 to 10 scale; composite of worst, least, and usual pain levels in previous week)[28] general mental and physical health (SF-12),[42] pain catastrophizing (Pain Catastrophizing Scale),[36] pain-related disability (Pain Disability Index),[39] and employment status. All variables demonstrated adequate to excellent reliability.[6]

Statistical Analysis

All data analyses were performed by using SPSS 11.5 for Windows (SPSS Inc, Chicago, IL). Associations among variables were tested by using basic path analysis (iterative, forced-entry, sequential multiple regression). The models hypothesized indirect paths from race and SES to disability ratings, mediated through direct paths from diagnosis/surgery and medical costs to disability ratings. Strength of association was estimated from standardized regression coefficients (beta weights). The standardized coefficients represented unique associations between variables, such that variables with significant direct or indirect paths to a variable later in the model were adjusted for all other

Continued Page 5

variables in the model at that stage. Pearson product moment correlation coefficients and multiple regression were then used to examine associations between disability ratings and post settlement outcomes.

Discussion

The very weak associations between disability ratings and postsettlement clinical and occupational status raise serious questions regarding the validity of current disability determination processes. At a minimum, the weak associations are clear evidence that ratings of residual disability at the time of claim settlement do not reflect the disability construct, "an alteration of an individual's capacity to meet personal, social, or occupational demands because of an impairment." [10] Moreover, the pattern of results is paradoxical; approximately 21 months after claim settlement, claimants with higher disability ratings were faring better than claimants with lower ratings. Thus, beyond the administrative function of bringing closure to a protracted medicolegal process, the results raise conceptual questions about the utility of such ratings among claimants with occupational low back pain. Indeed, the pattern of results suggests that in many cases case closure is neither fair nor sufficient to provide chronic pain claimants with resources necessary for a "fresh start, *II* the general purpose of case settlement in work-related injuries.[4]

The path analyses indicate that diagnosis, surgical intervention, and the intensity of medical treatment (as reflected in medical costs) carry great weight in the determination of residual disability for occupational low back pain in the United States. This is consistent with the impairment model that has informed disability determination for the past century. If the association between indices of impairment and disability ratings is expected, the direct and indirect associations between race and disability ratings are not. Indeed, systematic variability in diagnosis and treatment as a function of race, leading to lower residual disability awards for African Americans, is incompatible with any accepted model of disability determination.[14] The contribution of race (and, to a lesser extent, SES) to ratings of residual disability raises questions regarding both the equity and validity of the disability determination process.

Aside from their implications for disability determination, the results should be considered in the context of other research relevant to race, ethnicity, and medical decision making. Previous studies of the DOLOR cohort have shown that race and SES are significantly associated with a range of treatment and outcome variables, even after correcting for potentially confounding demographic, injury, medical, and legal factors.[6, 38] Although not directly examined in the DOLOR studies to date, the pattern of results suggests that race/ethnicity and other sociodemographic factors influence medical decision making and, *pari passu*, the outcomes of medical care. Other studies of patients in pain[18,19,41] and a wide range of other medical conditions[11 ,34] have reached similar conclusions. The present results serve to document that the effects of sociodemographic factors on medical decision making extend beyond the clinic to medicolegal settings.

Some speculation is warranted regarding the representation of African Americans in this sample (39.4%) relative to their representation in the study regions (24.4%). It is unlikely that differences in work-related physical demands account for the apparent over-representation of African Americans with low back injuries.[17, 32] Instead, African Americans might have carried a greater preinjury health burden, in part a function of lower SES, that contributed to a lower threshold for help seeking and an increased risk for disability after painful low back injury.[1,23,29,33] Alternatively, jobs characterized by low control, low status, low pay, high stress, high dissatisfaction (characteristics often associated with the jobs of nurse aide, domestic/commercial cleaner, janitor, nursing home attendant, etc) produce increased rates of low back injury claims. Lower SES minorities are disproportionately represented in such jobs.[23,27] Clearly, if the disproportionate rate of low back injury claims among African Americans is mirrored in other studies, it merits research that goes beyond the speculation offered here.

Limitations of this study should be considered when interpreting the results. First and foremost, it is important to note that the results derive from data collected in the state of Missouri for low back injury claimants. Like 24 other states, Missouri requires that injured workers first consult with an employer-retained physician. Missouri is also 1 of 10 states in which statutes do not explicitly link medical impairment and judicial disability ratings (although research has shown them to be highly correlated)[7] Second, although the claimants that we surveyed appeared representative of low back injury claims that were settled during the designated time period (at least in regard to their representation on the WC database), the nonresponders might have differed in ways that we did not identify or measure.

The validity of respondents' recollections regarding diagnosis and surgery is also subject to question. Although respondents were reliable in their recollections, we could not verify information on diagnosis and surgery from review of medical records because of privacy issues. Indeed, there is the potential for factors such as social desirability to

Continued Page 6

Disability Determination, Continued from Page 5.

systematically influence the information reported by respondents.[12,15] Moreover, as has been reported previously,[8] respondents were extremely dissatisfied with treatment that was rendered. This might have kindled distrust of medical care providers and/or deepened pre-existing levels of distrust,[30,31] influencing respondents' willingness to disclose information. Nonetheless, unless the validity of the information obtained from respondents differed as a function of race, the relative relationships among the constructs studied (as opposed to their absolute levels) should not have been differentially affected by the latter factors.

Finally, we note that we used several proxies to represent important study constructs: 1) diagnosis and surgery were proxies for medical impairment; 2) treatment costs were a proxy for intensity of medical care; and 3) the SES factor score was a proxy for a construct that has been described with much more complexity.3 In regard to the proxies for medical impairment and medical costs, previous research suggests that even if lacking in detail, these proxies captured the constructs reasonably well. [7] Nonetheless, they are limited relative to the rich clinical data contained in medicolegal records that would have contributed to estimates of medical impairment and informed the disability determination process. In regard to SES, the present study, as with most current research, failed to incorporate more complex models that have been proposed, including those that describe SES in a family-of-origin/ developmental context or those that focus on the SES implications of the neighborhood/geographic area in which a person lives[35] Furthermore, among the SES indicators that we used, estimated household income might be susceptible to under-reporting.[2] Those caveats notwithstanding, the components of the SES indicator used here (household income, salary, level of education) are consistent with those used in other studies. Moreover, the factor score, by virtue of its composite nature, is superior to the single-construct indicators that are frequently used.[3] These limitations notwithstanding, the results raise a number of unsettling questions regarding disability determination for claimants with chronic low back pain. When pathoanatomic findings correspond poorly to pain, functional limitations, and levels of disability (as is common in low back pain), determination of disability on the basis of such findings is an intrinsically flawed process. Furthermore, the inequitable allocation of disability ratings reflects disparities in the management of these work-related injuries. Hence, the flaws are not distributed evenly, but they are visited disproportionately on minorities and persons of lower SES. Considered in the context of studies that also show relatively poor treatment outcomes for these occupational injuries,[6,24,26] these flaws point to the need for further empirical evaluation of

Continued, Page 7

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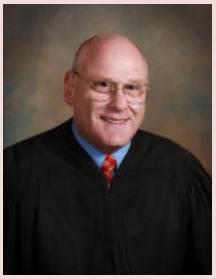

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Disability Determination, Continued from Page 6.

disability determination practices for occupational back pain. If the results of future studies are consistent with those reported here, new paradigms might be needed to guide disability management and determination for such refractory conditions as chronic low back pain.

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Continued, Page 8

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Perspectives:

Jodi Ginsberg, Esq., an Atlanta, Georgia Workers' Compensation practitioner posed the following in the "Question of the Month" portion of her Blog (http://www.georgiaworkerscompblog.com/).

If you are injured on the job, do your trust your employer to play by the rules with your workers' comp claim?

429 people responded, the Results:

Yes: **14%** (61)
No: **82%** (353)
No opinion: **3%** (15)

Disability Determination, Continued from Page 7.

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NAWCJ Members Judge the 2010 Zehmer Moot Court Competition at the FWCI in Orlando

On Sunday, August 15, fourteen teams of law school students from nine law schools in Florida and Mississippi argued in the 2010 National E. Earle Zehmer Moot Court Competition. This annual event focuses on important and interesting issues in the field of workers' compensation. The competition was divided into several rounds with teams presenting oral arguments in two (double-elimination) preliminary rounds at the Annual FWCI Educational Conference.

These preliminary rounds were judged by panels of three Judges of Compensation Claims and experienced workers' compensation practitioners from all around the State of Florida. The majority of the Judges at this year's competition were members of the NAWCJ, in Orlando for the NAWCJ Judiciary College 2010.

Prior to arriving in Orlando, all fourteen teams submitted written appellate briefs on the issues. The briefs were graded by a panel of attorneys whose scores were averaged for a final written brief score. The written brief score was then combined with the scores of each of the two preliminary rounds to determine the four teams with the highest overall scores. Those four teams advanced to a semifinal round, held later Sunday afternoon. One semi-final round, unbeknownst of course to the judges because the teams are known to us by team number only, pitted two teams from Stetson University against each other!

The semifinal round is a single-elimination round which the panel of three Judges of Compensation Claims decided based solely on oral advocacy skills, and from which emerged two teams to advance to the final round.

On Monday, August 16th, the final round of the competition was held before Judges of the Florida First District Court of Appeal. Stetson University prevailed in the end, but all of the participants expressed their enjoyment of the competition and thanked the FWCI for their sponsorship. The NAWCJ thanks its members for their dedication to and participation in this worthwhile educational program.

New Study Identifies and Quantifies Factors That May Lead Injured Workers to Seek Attorney Representation

One goal of a workers' compensation program is to deliver necessary medical care and income benefits to workers injured on the job without the uncertainty, delay, and expense of litigation. In many states, however, disputes and attorney involvement in the benefit delivery process are common.

Policy debates about attorney involvement have common themes from state to state. Workers' attorneys argue that they help workers receive benefits that these workers would not be able to obtain themselves, help workers navigate a sometimes complex system, and protect workers from retaliation by the employer or insurer. Advocates for employers and insurers contend that attorneys are involved more often than necessary, that workers can often receive the benefits they are entitled to without representation, and that attorneys may even reduce the total amount of benefits that workers take home.

Some of the existing attorney involvement is inevitably unnecessary—for example, cases where the worker would have received the statutory entitlement without resorting to hiring an attorney. If unnecessary attorney involvement can be avoided, this would be a "win-win-win" scenario. Workers would receive benefits without the expense of paying an attorney and the delays of dispute resolution; employers and insurers would save the costs of defending the case; and increasingly resource-short state workers' compensation agencies would have smaller caseloads to manage and would have to provide fewer dispute resolution services.

This study *Avoiding Litigation: What Can Employers, Insurers, and State Workers' Compensation Agencies Do?* identifies and quantifies some of the more important factors that lead injured workers to seek representation by an attorney, providing some key take-aways for employers, claims organizations and state agencies.

Major Findings

The study found that workers were more likely to seek attorneys when they felt threatened. Several sources of those perceptions of threats were found in:

- *The employment relationship*. Workers believed they would be fired as a result of the injury, and/or workers perceived that the supervisor did not think the injury was legitimate.
- *The claims process*. The worker perceived that his or her claim had been denied, although it was later paid. This perception may have stemmed from a formal denial, delays in payment, or communications that the worker deemed to be a denial.

Potential Implications for Employers, Claims Organization, and State Agencies

It is possible that attorney involvement can be decreased if employers, claims organizations, and state agencies reduce or eliminate *unnecessary actions* that workers interpret as threats. The suggested actions below, while logical implications of this study, are not themselves the findings of the empirical research. These include:

- *Train supervisors:* Help supervisors create timely communications that focus on trust, job security, and entitlement to medical care and income benefits.
- *Create state agency education materials and help lines*: Provide written materials and an accessible help line that answers workers' questions to help ease feelings of vulnerability and uncertainty.
- *Communicate in a clear and timely fashion about the status of the claim*: Prevent misunderstandings through unambiguous, timely communication from the claims manager so the worker does not mistakenly conclude that the claim has been denied.
- *Eliminate system features that encourage denials or payment delays*: Eliminating system features that discourage timely payments may help prevent a worker's misconstruing a delay as a denial.

WCRI Report: *Avoiding Litigation: What Can Employers, Insurers, and State Workers' Compensation Agencies Do?* WC-10-18. July 2010. This summary is published with the permission of WCRI, and is protected by their Copyright. The report and others from WCRI are available on their website, http://www.wcrinet.org/

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States Huddle to Develop Program to Share Prescription Drug Data

By Bill Kidd, Central Bureau Chief

Members of an advisory committee to the Council of State Governments hope to complete work before the end of the year on an interstate compact to allow sharing of prescription drug monitoring information, in an effort to control costs in state programs, deter "doctor shopping" and prevent the illegal diversion of drugs. The council's goal is to have a proposal that can go to individual states for their 2011 legislative sessions.

In recent years, concern has increased over diversion of prescription drugs in workers' compensation and Medicaid programs, and "pill mills" which dispense controlled substances – particularly painkillers – with only cursory or no examination of individuals seeking prescriptions. James Giglio, a committee member representing the Alliance of States with Prescription Monitoring Programs, told WorkCompCentral Monday that 43 states have passed legislation to create prescription drug monitoring programs, with 34 of those programs currently active.

The states now are looking at how they can share data. The Council on State Governments established the advisory committee in December to work on issues needing to be resolved in an interstate compact, such as who would be authorized to access data, the technology involved, and security and privacy issues, Giglio said. Committee members contacted by WorkCompCentral say misuse of prescription drugs costs lives as well as costing states through abuse of state programs much as Medicaid and to provide treatment and court services – at a time of fiscal crises for many state governments -- as well as increasing costs to businesses in added health care and workers' compensation premiums.

Kansas State Sen. Vicki Schmidt, R-Topeka, a pharmacist who chairs the committee, said the misuse of prescription drugs has become "a lethal epidemic." Creating a mechanism to allow states to share information from their monitoring programs with authorized users, such as doctors and pharmacists, in other states could allow those users to identify situations in which there may be misuse, Schmidt said.

The need for such sharing may be particularly acute in border areas, Schmidt reported, citing Kansas City as an example. "There's a little bit in Kansas and a lot in Missouri," Schmidt said – and residents may seek to fill prescriptions on either side of the state line." In such instances, a pharmacist may need information to determine if abuse may be occurring. The planned interstate compact would provide a way to access such information. Schmidt said that as a pharmacist she has seen instances where she believed there were problems – such as customers with prescriptions for Oxycontin who wanted to pay cash and not have the prescriptions billed to their insurance company.

Dave Hopkins, manager of the Kentucky All Schedule Prescription Electronic Reporting program, said that under KASPER and other prescription drug monitoring programs, medication dispensers report to the program when a drug is dispensed and the information is stored in a database. Only authorized users can access the database, he said. Among the authorized users are prescribers of medical treatment for a current patient, a pharmacist providing pharmaceutical treatment of a current patient, and law enforcement officers with an open investigation that specifies an individual. "They (law enforcement officers) are not allowed to go on fishing expeditions," Hopkins said. The Kentucky Medicaid program can access the program for recipient review and drug courts can gather information on individuals appearing before them.

NAWCJ Judiciary College 2010

Narcotic usage - too much, or too little?

By Joe Paduda*

Just in case you thought the problems with abuse of powerful prescription drugs have been overstated, here's a wake-up call. The CDC's Director is taking this very seriously, saying: "Overdose with prescription drugs is one of the most serious and fastest-growing problems in this country."

The problem is showing up in a doubling of Emergency Room admissions due to prescription drug abuse, driven primarily by oxycodone, methadone, and hydrocodone.

Narcotic use is rampant in workers compensation as well. Studies by NCCI and CWCI point to the frequent use of narcotic opioids for workers comp claimants, with the explosive growth in California particularly troubling.

One of the issues in comp is that unlike group, most Medicare Part D plans, and to a lesser extent Medicaid, claimant copays are nonexistent. There's no financial skin in the game, as medications are free.

Another potential contributor is the potential street value of these drugs; while there isn't conclusive documentation of the percentage of scripts that are diverted, the 'sense of the industry' is that diversion is not uncommon. Add to that the desire on the part of some states to reduce the work comp drug fee schedule to match Medicaid, and there's no surprise use is exploding (if PBMs can't afford to manage utilization, utilization isn't managed).

Here's what some of these drugs are reportedly worth on the street. The estimated street value of one 40-milligram OxyContin pill is about $40; another report indicates an 80mg dose is going for $30 in the northeast. Actiq runs about $25 a dose. Duragesic patches range from $20-$75 depending on brand, location, and dosage.

So, narcotics are ripe for abuse, there's a big - and very profitable - secondary market for them, and use is growing. That's one side of the story. The other is the inability of many legitimate pain sufferers to get adequate treatment. Research published by Oregon State University indicates "at least 30 percent of patients with moderate chronic pain and over 50 percent of those with severe chronic pain fail to achieve adequate pain relief." Some think the inability of those with chronic pain to get treatment thru standard channels is a big component of the overall narcotic diversion issue.

What does this mean for you? Like so much else in health care, there are no clear problems or easy solutions. This is more evidence of the complexity of one small part of the challenge.

Visit Joe Paduda's blog at : http://www.joepaduda.com/

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