Dynamic Chiropractic

Recent Trends in Workers' Compensation Injuries

With the proliferation of managed care in health care delivery, we have noticed a new trend in many states in the way injuries are being defined in the workers' compensation system. We understand that there are many different workers compensation laws and rules that vary from state to state. Our article today must be correlated with your own specific state laws.

The two basic forms of workers' compensation access for patients/employees to see doctors of chiropractic are known as employer choice and employee choice. The former allows the employer to choose what panel of doctors the employee may select from for treatment of an occupational or workers' compensation injury. The states with employee choice allow employees to choose the specific doctor they would like to see. Again, there are many state law variations on the numbers of choices employees are entitled to and the types of practitioners they may see.

With the advent of managed care in group health insurance, workers' compensation and personal injury injuries still provide for fee-for-service reimbursement in most states. Unfortunately, hospitals, medical doctors and doctors of chiropractic have been squeezing these last two geese until the golden eggs are potentially no longer available. Industries claim that doctors and hospitals are coaching employees to create workers' compensation claims, where in fact the injury occurred outside of the industrial arena. Employees who do not like the group health managed care panel may create an injury in the workplace to be covered under workers' compensation and then choose the doctor they want to see. Workers' compensation generally pays 100% of the medical/chiropractic treatment, and if the employee is off work, generally has better compensation than nonwork-related injuries. All of these factors influence the workers' compensation system. In personal injury cases, legislatures such as New Jersey are creating laws to limit chiropractic providers. Tort reform, if passed, will also take its toll on medical and chiropractic providers. Employers seeing the discrepancies between group health costs and workers' compensation costs are seeking legislative support to find alternatives in workers' compensation reimbursement to health care providers.

In the workers' compensation system, we have found in the employer choice states that doctors with managed care programs are on the specific panels. In employee choice states, it is harder to get medical or chiropractic providers to sign up because the employee actually has the choice of where they want to go. More and more companies in employee choice states are now "suggesting" where and who their employees should see when they have a workers' compensation injury. This trend has resulted in doctors signing on managed care contracts with the workers' compensation company that provides the insurance to local industries in the hope of being the "suggested" doctor to see.

The latest trend that we have been monitoring appears to involve the denial of injury in the industrial workplace. Employees will report an occupational injury to their employer and seek treatment from a doctor of chiropractic. The industry and insurance company that represents them will conduct an investigation to determine liability. Lately we have seen that there are a high number of companies that will deny that the injury reported is related to the employee's job. Many

reports will have an "expert" who produces an opinion that the claimed injury was "pre-existing" or not related to the mechanics of the job duties. Occupational injuries or repetitive-type injuries such as carpal tunnel are often targeted, due to the difficulty in defining when the actual date or time of injury occurred.

We have also seen a high percentage of these denied workers' compensation claims with employees that also are covered under managed care contracts. Often workers are reluctant to file the necessary state forms for a hearing with the state administration judges on the determination of work injury, because their health insurance covers them for the condition. There is a fear of losing their job or retaliation by the employer, which directs them to use their group health insurance. While not all claims by employees are correct, and while investigations are necessary by the company and insurance company to conduct, the ratio of denied claims appears to be increasing.

There is a fine line that the practicing doctor of chiropractic needs to walk when handling situations where there appears to be a legitimate workers' compensation injury, yet the company has denied liability. You don't want to become antagonistic to the company and potentially burn valuable bridges, but you also want to make sure that correct record keeping of industrial injuries is followed and legitimate work-related injuries are recorded and handled in the proper way. You also need to understand that there are employees who use the system. Granted, they are a minority, but they do cause industries millions of dollars each year. There is no easy solution for this situation, but we have provided information below to assist you if this is happening in your local city or region.

Good record keeping is the base upon which you build your paper trail supporting your patient's claim of an industrial injury. Your industrial history can provide accurate information which can then be correlated to the information that the employee provided to the employer. Any discrepancies in the history will assist you and the industry to look more closely at the alleged injury suffered by the patient. Your history should at least contain the type of injury, the mechanism of injury, or how the patient felt they were hurt at the job site. You also need to include any pre-injury history or treatment to see if there is a correlation or factor involved in the current injury.

Next, you need to get a job description from the employer outlining the various duties that the patient/employee must do to fulfill the requirements of the job. If possible, request a video of the work being done for review. The best information comes from you going to the specific job site and watching first hand how the job is performed. If possible, we recommend personally doing the work to see if the injury the patient/employee has could correlate to the work being performed. After you receive the information on the job requirements, correlate it to the history provided by the patient and see if the type of injury and the mechanisms of injury actually relate to the work performed or an incident that would be incidental to the employee's work.

It would be of benefit for you to meet with a local workmen's compensation lawyer to discuss the laws, regulations and definitions of what your specific state determines to be a compensable work-related injury. You can also find this information in most libraries in their legal section, but talking to a practicing attorney may give you more insight on the variations or trends in the law.

Your examination needs to be industrially related. Routine orthopedic and neurological tests don't fulfill the need. The examination tests need to correlate to the mechanisms of injury to objectively support the industrial injury claim.

Call your industrial representative to discuss what you found and be a part of their investigation

rather than letting some other expert who may not know much about the case determine what the course of action should be.

Understand OSHA guidelines on what exactly they consider to be a recordable injury. Industries must follow OSHA guidelines on recordable injuries. They need to fill out an OSHA 200 log form for each recordable injury.

OSHA has defined an occupational illness as any abnormal condition or disorder (other than one resulting from an occupational injury) caused by exposure to environmental factors associated with employment. They have several categories or examples of occupational illness. Category 7(f) most correlates to the occupational illness seen in a chiropractic practice. Category 7(f) provides for disorders associated with repeated trauma. The examples given include: synovitis; tenosynovitis and bursitis; Raynaud's phenomena; and other conditions due to repeated motion, vibration or pressure.

OSHA has defined an occupational injury as any injury such as a cut, fracture, sprain, amputation, etc., which results from a work accident or from a single instantaneous exposure in the work environment.

OSHA has defined recordable cases as all work-related deaths and illnesses, and those work-related injuries which result in: loss of consciousness; restriction of work or motion; transfer to another job; or requiring medical treatment beyond first aid. Restriction of work or motion occurs when the employee (due to illness or injury) is physically or mentally unable to perform all or any part of his or her normal assignment during all or any part of the workday or shift.

Taking the above definitions, when deciding if a work-related injury is recordable, one of the keys will be determining if the injury just required first aid or actual medical treatment. Industries are required to fill out OSHA 200 logs for recordable injuries. Medical treatments under the regulations 1904.12(d) is defined as any treatment, other than first aid treatment administered to employees.

Essentially medical treatment involves the provision of medical or surgical care for injuries that are not minor through the application of procedures or systematic therapeutic measures. Part 1904.12(e) of the regulations defines first aid treatment as any one time treatment, and any follow-up visit for purpose of observation of minor scratches, cuts, burns, splinters and so forth, which do not ordinarily require medical care. Injuries are not minor if they must be treated only by a physician or licensed medical personnel; impair bodily functions; result in damage to the physical structure of nonsuperficial nature; or involve complications requiring follow up medical treatment.

A visit to the doctor for an examination or other diagnostic procedures to determine whether the employee has an injury does not constitute medical treatment. Examples of medical treatment would be: admission to a hospital or medical/chiropractic facility for treatment; positive x-ray findings; and application of therapy or treatment during second or subsequent visits. OSHA specifically lists in section F-14 of its question and answer section that a series of chiropractic treatments when required to treat a work-related injury is considered medical treatment since it involves considerably more extensive treatment than first aid.

Understand that the information above relates to OSHA record keeping and may be different than your specific state's workmen's compensation definition of work-related injuries. OSHA specifically states that nothing in this act shall be construed to supersede or in any manner affect any workers' compensation law or to enlarge, diminish or affect in any other manner the common law or statutory rights, duties or liabilities of employers and employees under any law with respect to

injuries, diseases or death of employees arising out of or in the course of employment. We provided the OSHA material in this article to assist you in the total picture of documenting any potential workplace injury. By taking a good industrial history, understanding the mechanisms of injury, performing an industrial examination, touring the workplace and other proactive factors, you will have a paper trail that will assist both you and your patient to document a legitimate workplace injury has occurred and receive proper reimbursement for your services.

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