Dynamic Chiropractic

Excessive Medical Claims for Automobile Personal Injuries: the RAND Report

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On April 6, 1995 the article, "Fraudulent Auto Injury Claims Are the Rule Here, Study Says," ran in the San Jose Mercury News. It was a reprint of a story from the L.A. Times that appeared in hundreds of other papers around the country. The writer quoted the report as finding that California's rate of "excess" (excessive) claims costs motorists $3.5 billion a year.

The report (Carroll S, Abrahamse A, Vaiana M: The costs of excess medical claims for automobile personal injuries, Santa Monica, RAND, 1995) is available from RAND (tel: 310-451-7002). The research was supported by the Institute for Civil Justice, which is supported by corporations, trade and professional associations, and private foundations, among others.

The authors noted that between 1980 and 1991 insurers' costs for compensation for bodily injury grew 167 percent. Sixty percent of this growth to inflation and rising health care costs; 40 percent to increases in the number and size of claims. To investigate the problem further, the authors drew upon a large database of individual claims. Details of the database were not provided in the report, and the methods used to arrive at conclusions were based partly on presumptions. They note for example, that since "compensation for general damages is typically thought to be a multiple of the victim's economic loss" under the tort system, higher medical bills would result in higher compensation, and therefore would provide an incentive for excess claiming. Similar incentives were outlined for the dollar no-fault system where suits cannot be filed until a certain dollar figure has been reached, thus providing an incentive to reach that threshold.

Michigan and New York have verbal no-fault laws in which damages can only be sought for specific types of injury, including death, dismemberment, loss of a bodily part or sense, or fracture. The authors assumed that all hard claims (fracture, dismemberment, etc.) were generally real and that claims for non-existent (read fraudulent) soft tissue injuries in these states would be rare since victims can receive treatment but not compensation. They then developed an index which compared the number of hard claims to the number of soft claims. Michigan and New York had an index of 0.7 -- 7 soft claims for every 10 hard claims. Using this method, Hawaii (dollar no-fault) had an index of 0.9 and California an index of 2.5 -- 25 soft claims per 10 hard claims. Overall, 35-42 percent of medical costs submitted were reported to be excessive with a potential net result of increasing the costs to insurers $9-13 billion annually.

Clearly a disturbing trend exists in the area of personal injury. We hear periodically about accident fraud rings; doctors do occasionally become unknowingly drawn into this perfidy. Readers should understand that this RAND paper is, as the authors admit, a series of hypotheses. Many of the supporting arguments are based on supposition. And, as is often the case, alternate hypotheses might also explain some of the observations described by the authors. For example, based on National Accident Sampling System (NASS) data and data from the National Safety Council (both of which are valuable because they include data on many accidents where litigation is not an issue), most injury accidents occur at speeds between about 10-18 mph. Death, dismemberment, fracture, and other "hard injury" occurs only rarely at these speeds. Therefore, statistically, we

might expect to see exactly the index of 2.5 reported in California (i.e., a greater number of soft claims). If that was the case, we must then entertain a new hypothesis to explain the reversed index of 0.7 observed in New York and Michigan.

Patients are generally reluctant to obtain care when their coverage is in question. With an attorney on the case they are generally more comfortable seeking medical care (notwithstanding the argument that attorneys may play an active role in inflating the cost of care). Also, in minor injuries, claims are frequently not filed because victims fear that their rates will be increased. Conversely, it has always been my experience in California that non-represented victims are frequently harassed, often relentlessly, by insurance company claims personnel. And these efforts are frequently sufficient to discourage patients from completing necessary care. Recently Dynamic Chiropractic reported a large settlement handed to plaintiffs in a class action bad faith suit file against a large auto insurer here in California, attesting to the scale of this practice of denying medical care for treatment of soft tissue claims. There is no compelling reason to believe that this practice is not prevalent in New York and Michigan. Moreover, in these verbal threshold states, attorneys are likely to be interested only in hard claim cases and, more than likely, patients (and attorneys) would enjoy the same incentives to artificially drive up the costs of these claims, while the cost of soft claims is artificially lowered through the practices of difficult claims agents. Thus we might observe a skewing of both soft and hard statistics in directions opposite to those observed by the authors of the RAND paper in tort and dollar no-fault states.

Perhaps the definitive way of determining the real prevalence of claims inflation would be to compare a large series of claims, for both soft and hard injuries, that have equal representation in litigation and non-litigation. Although this would be more time consuming and costly research, it would seem logical that a more realistic and reliable "index" could be derived from this pool of data.

In my next column I will comment on the Canadian Task Force study on whiplash reported in the most recent supplement of Spine.

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