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DATA-DRIVEN SOLUTIONS FOR AMERICA'S EXPANDING OBESITY PROBLEM

As the American populace – and its workforce – reportedly balloon to clinically obese weights, the nation's employers and workers' compensation systems must cope with the complications accompanying the widespread weight gain.

Legislatures created workers' compensation systems as a "grand bargain" between employers and employees. Employees receive an expedited administrative remedy for work injuries; in exchange, employers, except in rare cases, receive immunity from tortious lawsuits. This legislative calculus ignores questions of fault in favor of expeditious medical and indemnity benefits for the injured worker. Unfortunately, an injured worker's treatment may be hindered or complicated by his own prior conditions or co-morbidities which delay his return to the workforce. Many workers' compensation systems take the "fragile" claimant "as they are" – which translates into the employer becoming responsible for the claimant's prior conditions.

The Centers for Disease Control (CDC) estimates that as much as one-third of the U.S. population is obese. Obesity,

unrelated or not, significantly increases the costs of a workers' compensation claim. This article aims to address the impact of the reclassification of obesity as a disease on employers.

WHAT THE RECLASSIFICATION REALLY MEANS FOR WORKERS' COMPENSATION

In 2013, the American Medical Association (AMA) reclassified obesity as a disease, causing a fundamental shift in how people view obesity. This reclassification will directly impact funding for medical research, spur new intervention methods, and push doctors to actively manage obesity as a chronic disease.

In workers' compensation, this reclassification signals increase exposure in indemnity and medical costs for employers and carriers. Obesity doubles the costs of providing health insurance, short-term disability, and workers' compensation. A recent study by the *American Journal of Health Promotion* found a link between obesity and higher rates of absenteeism.

Overweight employees typically are less healthy in their diet and develop other serious co-morbidities like diabetes and heart disease. In particular, obesity certainly increases the probability and severity of an initial injury. Morbid obesity often limits the type, number, and effectiveness of treatment. Any delay in recovery affects the claimant's ability to return to work, reducing the employer's overall productivity and increasing indemnity exposure.

Previously, carriers were responsible for limited treatment to an established site of injury. Carriers were not responsible for treatment of unrelated co-morbidity even if it negatively impacted the workers' compensation claim, such as when obesity prevented the claimant

from undergoing a recommended surgery. In contrast, physicians now actively counsel claimants on weight management, and courts have started to mandate carriers bear the cost of reducing or controlling the weight of an injured worker. For example, in Indiana, courts required the carrier to pay for bariatric surgery in order to allow the injured worker to undergo a recommended surgery.

In the future, courts could require carriers to bear the cost of implementing a weight management program for obese workers to control their post-injury weight. Carriers may see a rise in claims that sedentary positions cause or contribute to their obesity. Additionally, a carrier could be held financially responsible for ongoing weight loss treatment so that, for example, a successful surgery would not be undermined by the claimant's increasing weight on his or her joints and tendons.

TAKE CHARGE: IMPLEMENT A WELLNESS PROGRAM

The CDC reported an epidemic of "lifestyle diseases" (e.g., inactivity, poor nutrition, tobacco use, alcohol consumption) as the primary contributors for chronic disease including obesity. Employers are increasingly aware that the "poor health habits" are the main obstacles for maintaining affordable health coverage. In order to counteract the increasing health care costs, employers are adopting ever-aggressive strategies to promote health and disease prevention.

Employers are investigating the benefits of implementing wellness programs. Programs that incentivize participation (or penalize lack of participation) have been implemented in an effort to improve employees' overall health. A 2008 report by the Department of Labor with RAND Health finds that wellness programs offer strong positive returns on investments by reducing overall health insurance premiums, medical costs, and employee absenteeism. Even legislatures have started to consider the prospect of offering tax breaks in an effort to incentivize employers to offer similar programs.

In the past, these wellness programs were underutilized because the employer could not effectively track participation and/or effectiveness of the offered programs. Recent technological advances, especially in wearable technology, offer the ability to monitor compliance and participation.

Wearable technology encompasses wrist bands, watches, and phones that monitor all aspects of the employee's daily life inside and outside of work. This includes, but is not limited to, heart rate, steps taken

in a day, location, time spent exercising, and even the employees' sleep cycles. This technology helps to monitor, but it does not encourage employees to participate.

Therefore, simply purchasing shiny new gadgets for your employees isn't enough. Employers should actively promote and educate employees on the existence and benefits of any wellness program. To encourage participation, employers should consider innovative programs such as voluntary and friendly competitions where the winner gets a minor award, gift certificate, day off, or small trophy.

Employers also should be aware that wellness programs, if mandatory, may result in widening the scope of compensable workers' compensation claims, depending on the individual state; the rewards, however, still certainly seem to outweigh the risks.

AND TAKE NOTE: MONITORING IS KEY

Implementing a health program that addresses obesity should be founded on three baseline goals – prevention, verification, and monitoring. Studies show that encouraging healthy lifestyles provides a tangible returnable investment by lowering insurance premiums and reducing overall risk of injuries.

Encouraging employees to utilize wearable technology presents an unprecedented opportunity to track data on an employee's health, daily movements, and fitness level. This real-time data brings significant benefits by providing verifiable evidence to insurance companies to lower premiums and monitoring the effectiveness of the employer's wellness program.

The data gleaned from wearable technology, however, benefits employers and carriers even further in terms of accepting, denying, and managing workers' compensation claims. This information could reduce the number of controverted cases because the employer would have the ability to verify whether the claimant suffered an injury on a particular date and at a specific time. Additionally, this technology, if utilized, allows employers the ability to mine information on its employees to determine an individual worker's medical status pre- and post-injury. It also provides data on the worker's baseline activities prior to the injury.

Wearable technology could improve the administration of workers' compensation claims as well. If an injured worker utilized this technology post-injury, the carrier could utilize the raw data to determine the claimant's activities of daily living, whereabouts, and lifestyle. For example, assume a doctor assigned his morbidly obese surgical candidate to undergo a rigorous home health

and exercise routine. Wearable technology would be able to confirm whether the treatment regime is effective and monitor compliance with the recommended program.

Many workers' compensation systems focus treatment and disability classification on the functionality of an injured worker. The ability to access real-time data and information on an injured workers' capacity can be invaluable in gauging the effectiveness of treatment modalities, treating physicians, and even workers' participation.

CONCLUSION

For the past five years, newspaper headlines have repeatedly foretold the doom that an increasingly obese workforce will have on insurance premiums and costs. In reality, through innovation and proper planning, employers have the opportunity to creatively promote solutions beneficial to both the employee and the employer. Focusing on a technology-based health plan also presents opportunities not only to improve a worker's overall health, but also to better manage a workers' compensation claim, should an accident occur.



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