

# Edging up

Short takes on emerging industry issues – from use of clinical services to an update on the SMART Act

## Use of clinical on a claim

BY **JAMES M. HARVEY**

*SVP, Managed Care Products & Product Development, Sedgwick*

The opioid epidemic is a problem that touches many lives. We have heard numerous stories involving people who have become addicted because they started innocently taking pain pills. As this issue invades the very fiber of American life, we have to think differently about function versus pain and understand that there are other ways to treat discomfort. We don't always have to take the easy way out with pills.

A recent study published in the *Journal of Occupational and Environmental Medicine* by Robert Lavin and colleagues adequately painted the picture of the workers' compensation world many of us already knew to be true. Despite what some might think, the use of opioids (e.g. hydrocodone, oxycodone, morphine) is not the solution for getting injured workers back on their feet and working again. With over 11,000 workers' compensation claims reviewed over a period of seven years post-injury, the study shows us that those claims where opioids were never prescribed were closed in an average of 412 days and cost an average of just over \$10,000. Yet, when an opioid was prescribed, the claim could last as long as 1,985 days and could cost the client over \$180,000, including both medical and indemnity costs.<sup>1</sup>

Medications are and have always been a tool to help get injured employees back to work. Many times, it's medications, even the short-term use of opioids, that allow a patient to get through a needed

### SEDGWICK

#### CONNECTION BLOG

<http://blog.sedgwick.com/2015/04/13/dont-wait-for-regulatory-changes-manage-prescription-drug-use-today/>

<sup>1</sup> Robert A. Lavin, MD, MS; Xuguang Tao, MD, PhD; Larry Yuspeh, BA; and Edward J. Bernacki, MD, MPH. "Impact of the Combined Use of Benzodiazepines and Opioids on Workers' Compensation Claim Cost." *Journal of Occupational and Environmental Medicine* 56.9 (2014): 973-78. Print.

surgery or physical therapy so that they can return to normal daily living. Yet, the data is showing that opioids and other concerning psychotropic medications often seen in workers' compensation are increasing costs and risks – and leading to a much bigger problem. And it's not just an industry problem. Nationwide, inappropriate drug use is a leading cause of injury or death in the United States and the rate of deaths due to drug overdose has doubled since 1999.<sup>1</sup>

We realize the problem is far more complex than what medication is dispensed in a bottle. Yet, we believe the solution for combatting this trend is something

we are very familiar with here at Sedgwick. One of our core values is "one company, one team." This concept is the foundation for the collaborative, multidisciplinary effort we provide with our complex pharmacy management (CPM) solutions. Our CPM team, made up of Sedgwick's skilled nurses, pharmacists and physicians, is tasked daily with addressing the most challenging claims and the medications that could endanger the health and safety of injured employees. Last year, CPM intervention on claims with long-term opioid use resulted in a 25% decrease in the number of medications prescribed and a 41% decrease in morphine equivalent dosage across medications

prescribed. Reducing the number and strength of prescription drugs puts injured employees on the pathway to productivity and improved health and safety.

What distinguishes our program is not just a functioning group of multidisciplinary clinicians; it's the collaboration with treating physicians and our claims colleagues that sets us apart and drives the best results for injured employees. As the workers' compensation world continues to watch the opioid dilemma unfold, our CPM team will remain on the front lines working together for success.

---

## U.S. Department of Labor updates definition of spouse

BY **SHARON ANDRUS**

*Director, National Technical Compliance, Disability, Sedgwick*

The Family and Medical Leave Act of 1993 (FMLA) includes provisions for eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. In February 2015, the U.S. Department of Labor (DOL) issued new rules revising the regulatory definition of "spouse" in the context of the FMLA to include employees in legal, same-sex marriages in order to allow

them to take FMLA leave to care for a spouse or family member. The change, which took effect March 27, 2015, was intended to give employees in same-sex marriages the same rights under the FMLA as all other employees regardless of state of residence.

On March 26, 2015, a United States District Judge in Texas temporarily blocked the rule from going into effect after at-

torneys general in the states of Arkansas, Louisiana, Nebraska and Texas challenged it because they do not recognize same-sex marriage under state law. The plaintiffs, which are these specific states in this case, claim the FMLA rule violated Section 2 of the Defense of Marriage Act by requiring states to recognize same-sex marriages entered into in other states.

On April 10, 2015, the federal judge in Texas refused to lift the restriction against the DOL rule to force Texas to recognize same-sex spouses married in other states. Following the court order, the DOL has confirmed it will not enforce the rule in Arkansas, Louisiana, Nebraska and Texas, but confirmed it will enforce the rule in the remaining 46 states. Any same-sex spouses in these four states only will not be eligible for FMLA protections.

Sedgwick will continue to process any leave cases for same-sex spouses under employer-spe-

cific personal leave policies, if already established. If you are a Sedgwick client that does not currently have an existing personal leave policy, but would like to add one, please contact your client services director to request an update. Sedgwick will process any applicable cases to ensure FMLA will not be applied for same-sex spouses in the states of Arkansas, Louisiana, Nebraska and Texas.

For more information on the multi-state ruling or to read the FMLA announcement, please see the [DOL's website](#).

## U.S DEPARTMENT OF LABOR

<http://www.dol.gov/whd/fmla/spouse/index.htm>

## SEDGWICK CONNECTION BLOG

<http://blog.sedgwick.com/2015/03/24/u-s-department-of-labor-updates-definition-of-spouse/>

*Have a plan for dealing with all types of severe weather that may cause physical damage to your home or business. Here are some additional weather resources to help you plan and stay prepared.*

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**AMERICAN RED CROSS**

**THE WEATHER CHANNEL**

# Preparing for major weather events

BY **SCOTT RICHARDSON**

*SVP, National Property Manager, VeriClaim, a Sedgwick company*

This past winter offers a recent reminder of how unpredictable the weather can be and how important it is to be prepared. Tornadoes, thunderstorms, hail, hurricanes, lightning, floods, extreme temperatures and other weather-related events have cost millions of dollars in [property damage](#) over the years. In fact, tropical storms and hurricanes resulted in more than \$10 million in property damage in 2013, according to the latest statistics published by the [National Weather Service](#). To help you prepare for the upcoming hurricane season, the National Weather Service offers important information on their website including posters and other resources centered around [National Hurricane Preparedness Week](#), which runs from May 24–30, 2015.

# Is the SMART Act finally getting implemented? Yes!

BY **MICHAEL R. MERLINO II, ESQ.**

*SVP, Medicare Compliance and Structured Settlements, Sedgwick*

The Strengthening Medicare and Repaying Taxpayers (SMART) Act of 2012 was passed more than two years ago with the intended purpose of addressing shortcomings in two areas of Medicare compliance: mandatory Medicare reporting (MMSEA/SCHIP) and conditional payments ("Medicare liens").

Some areas of the law required no action by the federal government. For example, the SMART Act established a very clear three-year statute of limitations and softened the penalties for failure to report claims under the MMSEA. Specifically, the SMART Act removed the strict liability provision that required a \$1,000 per day, per claim penalty and replaced it with discretionary penalty of "up to" \$1,000 per day, per claim based on fault principles.

Other sections of the SMART Act required action by The Centers for Medicare & Medicaid Services (CMS), the federal entity that manages the Medicare program.

This year, CMS is implementing two important sections:

## **1. SOCIAL SECURITY NUMBERS**

CMS is eliminating the need to obtain a claimant's complete Social Security Number (SSN) in order to determine if the individual is a Medicare beneficiary. Rather, CMS now will accept the last five digits of a claimant's SSN on materials submitted for approval. Many claimants were unwilling to provide a complete SSN for privacy reasons, which impeded the claims handling process. This change should reduce the claimants' reluctance to provide this important piece of information.

## **2. TIMELY FINAL CONDITIONAL PAYMENTS DEMANDS**

The Act requires CMS to simplify the conditional payment process by providing parties access to a final demand (how much Medicare is owed) before a case settles. This is an important change to CMS' current process that provides the final demand after a case settles. Receiving the final demand after settlement causes many problems in the claims handling process.

In order to accomplish these changes, CMS is significantly enhancing its online portal to facilitate the transfer of information between the parties to a lawsuit or claim and CMS. Pilot programs beginning in April 2015 should be fully implemented later this year.

Sedgwick is on the steering committee for the [Medicare Advocacy Recovery Coalition \(MARC\)](#), and was actively involved in the passage of the SMART Act and its implementation. We are optimistic that these changes will have a positive impact on the claims handling process for the entire industry.