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sedgwick
caring counts

Sedgwick is proud to provide the fifth issue of the ***edge***, our quarterly publication dedicated to shining a light on our industry's leading-edge topics that shape our collective future.

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Going global

BY **MIKE ARBOUR**

*Division President of Sedgwick
International and CEO of Vericlim*

For U.S.-based global corporations with exposures around the world, a major challenge is determining a consistent global strategy for risk; is it better to work with service providers in every country in which they operate or to find a more centralized way to manage claims worldwide? There are numerous benefits to a centralized global approach: standardizing claims processes across geographies, maintaining the vendor relationship through a single point of contact, ensuring compliance with various regulatory requirements, continuity and currency of claims data, and so on.

It may seem like an obvious choice to use one service provider to manage claims and risk needs in a coordinated way around the globe, but the real challenge is finding one that can do so proficiently. So many aspects of this business vary greatly by country; claim outcomes and norms are inseparable from the cultures and geographies in which they occur. A valued partner will not only have deep roots in multiple geographies and honor varying local customs and regulations, but also have the multinational expertise to support customers in maintaining global standards.

The claims landscape in the U.S. differs greatly from those in other countries. Workers' compensation administration is a very American line of business, but managing the costs and services associated with workplace injuries worldwide remains a focus for many multinational firms. With economic realities changing in many countries regarding national systems for disability and leave, transnational companies are looking for solutions for managing these kinds of employee absences globally. Due to the litigious nature of American society, our domestic casualty claim counts are about 10 times those of most other developed nations, but a liability claim in Canada or

France could take three or more years to close—a thought that likely makes U.S. claims and risk managers cringe. Property is the most consistent line of business worldwide, though claim volumes may be higher abroad due largely to other countries' less stringent fire protection standards. In short, translating American risk and benefits expertise into a global practice is no easy task.


Disparities like these get to the heart of Sedgwick's own strategic approach to international expansion. In order to replicate the service experience across the 150 countries where our customers operate, we've chosen to use a combination of owned operations and licensed partnerships with strong, indigenous providers to build Sedgwick and Vericlim's global network. This addresses customers' needs for broad geographical coverage, deep local expertise and the regional customization needed to properly apply our **caring counts** philosophy the world over. Partners that "get it" work to develop long-term relationships with customers, take the opportunity to get to know their businesses inside and out, and find ways to meet their needs. This is what we strive for at Sedgwick, whether our customers operate only in the U.S. or span multiple geographies. Bringing together our intimate

understanding of customers' organizational processes, cultures and values in the U.S. with global coverage and local expertise allows Sedgwick and Vericlim to be everywhere customers need us when they need us most.

ADDITIONAL REFERENCES

Sedgwick acquires OSG Group
http://ci36.actonsoftware.com/acton/attachment/4952/f-05e3/1/-/-/-/SedgwickAcquiresOSGGroup_PR_US.pdf

Vericlim expands operations in Canada
https://www.sedgwick.com/news/Copy%20of%20press%20releases/ExpandCanadaOperations_PR.pdf



Communication and teamwork: Keys to a successful return to work

BY **ROBIN MOLESKI,**
RN, BSN, CCM

VP, Clinical Operations, Sedgwick

It was Tuesday afternoon and a long-time employee was delivering a heavy load as part of his daily routine working for a beverage distributor, but this time he injured his back going up a flight of stairs and suffered significant lower back pain. He was prescribed pain medication and physical therapy. He had worked more than 30 years with his employer and was proud of his ability to perform his duties. He had a work-related back injury in the past and was fearful that further aggravation would put him in a wheelchair. He was also concerned that if he returned to light duty, he would be expected to perform the same jobs that caused the injury. A nurse case manager was involved as a part of his employer's return to work program and she helped the employer search for options to expedite a safe return to work. By coordinating with the case manager, the employer was able to place the employee in a different light duty job that allowed him to return to work less than two months after his injury and remain in the same job once he was released to full duty.

SUPPORTING A STRONG RETURN TO WORK PROGRAM

Returning to work after an injury or illness can be difficult depending on the circumstances involved. The keys to ensuring success include having a return to work program that is focused on teamwork and consistent communication between all parties – the employer, claims examiner, nurse, return to work and behavioral health specialists – and most importantly, the injured employee. This ensures that everyone is on the same page when the return to work goals and plans are being developed. The involvement of individuals such as a nurse and return to work or behavioral health specialist should be determined by systematic triggers and human expertise. Frequent communication keeps the employer informed of what's going on and ensures the employee remains connected to their workplace – a vital part of the process.

In addition, communicating with everyone prevents duplication of effort and reduces the chances for confusion for the employer and injured employee. There really has to be collaboration among all parties to set expectations and to ensure everyone understands the return to work goals. If the nurse, examiner, and return to work and behavioral health specialists are all working on the same system, the team can coordinate with one another to ensure the right person with the right expertise is on the file at any given time – providing increased flexibility and shared accountability.

GETTING INVOLVED EARLY

We engage the injured employee by beginning the conversations immediately after the injury, so that the injured employee understands the company's return to work policy and each person's role in the process – including his or her own. This lets the employee know what will be expected and can reassure the employee that their employer is committed to helping facilitate a safe return to work. Also, the less time injured employees are off work, the higher the chances they will go back to work. It is very important to get all of the resources needed involved early in the claim so that a plan can be formulated. The overall process can be driven by a return to work specialist, a nurse or a behavioral health specialist, depending on the complexity of the situation. Early and frequent communication sets the tone for cooperation among all parties.

DRIVING RETURN TO WORK SUCCESS

Typically, a return to work specialist is a Certified Rehabilitation Counselor or a Certified Disability Management Specialist. Those two certifications focus primarily on vocational rehabilitation and return to work. For individuals who do not work any longer or do not have a job to go back to, the return to work specialist has the skills to assist with work site analysis and labor market surveys, and teach people how to compose a resume and prepare for a different job.

A return to work specialist engages in situations where a nurse is assisting with a claim and the restrictions are not progressing or the employee is not going to be able to go back to the same job, or if the doctor provides permanent restrictions. In addition, some larger employers with multiple locations may want the return to work specialist to assist if a particular location cannot accommodate the restrictions. A return to work specialist also helps with specialized projects for employers such as performing job analyses and writing functional job descriptions based on first hand observations. These descriptions have more meaning and more physical demands attached to them so they can be used to help facilitate a more timely return to work with the physicians.

HOW JOB DESCRIPTIONS HELP

When someone is injured at work, it is more meaningful for the clinical team to have consistent job descriptions. If an employer does not have a written job description for each employee's position, the return to work specialist would have a basic understanding the employee's duties and rely on a physical demand sheet that a supervisor or manager would complete. The sheet includes very detailed information such as the amount of weight pushed/pulled and the frequency, the amount of standing and climbing, etc. Sometimes customers that don't experience lost time claims very often would need a return to work specialist to help them create job descriptions going forward should they have other injuries. Employers that do not have light duty positions have the option to arrange temporary light duty work for their employees at pre-agreed upon not-for-profit organizations. The expectation is that the injured



employee would go to the not-for-profit in lieu of working a light duty job for the employer in order to qualify for their benefits. Being productive through positions like these can lead to a faster recovery and may help the injured employee avoid the depression that often accompanies being out of work.

ADDRESSING BEHAVIORAL HEALTH ISSUES

Engaging employees with a behavioral health specialist can help them work through issues that may prevent them from returning to work such as personality issues with co-workers or fear of being injured again. Behavioral health intervention is a valuable tool for those minor psychological concerns that impact whether somebody goes back to work or stays at work, as well as more complex mental health issues like post-traumatic stress disorder. For example, an employee may be worried that their co-workers and manager would be upset with them for being off work. A behavioral health specialist can help the person with anxiety. For a traumatic incident like a robbery, a behavioral health specialist will meet with the employees and help them work through their fears while they're still on the job and prevent them from having to be off work.

ADVANTAGES OF INTEGRATING

Looking across the spectrum of workers' compensation and disability programs, often the human resources department manages disability claims and the risk management department oversees workers' compensation losses. With separate teams handling these cases, there may be communication barriers because they are not interacting with each other. Being able to see the overall picture of these programs offers advantages for employers. Housing disability and workers' compensation claims management services on a single or highly interfaced system mitigates some of the communication barriers for employers.

With the Americans with Disabilities Act (ADA) and the ADA Amendments Act (ADAAA), the employer is required to make reasonable accommodations for employees who may otherwise be barred from productive employment as long as that accommodation is not placing an





undue hardship on the employer. The ADA/ADAAA encourages employers to provide temporary or permanent accommodations for work-related injuries the same as it does for non-work-related return to work scenarios. Attempting to put silos around how the ADA and its amendments pertain to return to work and disabilities can be detrimental not only for the employee's return to work success, but also for the employer from a legal perspective.

PUTTING THE EMPLOYEE FIRST

For some employers, having a multi-disciplinary team involved in the return to work process is part of their focus on advocacy. The primary objective for them is not just driving return to work or medical cost containment. It is also about connecting with the injured employee and making sure the employee, his or her family members, and the employee's manager understand what to expect. Efficient communication across the injury management team builds trust for the employee, as well as a sense of accountability for his or her own recovery.



Community spotlight:

Caring countsSM for Sedgwick colleagues in Greater Dubuque

BY **TIM AXTELL**

*Senior Operations Manager,
Sedgwick*

Caring counts at Sedgwick, and in the heartland, our Greater Dubuque offices (two in Dubuque, Iowa; one in Bellevue, Iowa; and one in Platteville, Wisconsin) have demonstrated their heart by teaming up with Resources Unite (RU), a non-profit organization that partners with other companies to provide time, talent, money and supplies to those in need both locally and nationally. RU's goal is to strengthen the Dubuque community by creating connections between people and volunteer opportunities and resources that lead to a happier and more engaged way of life. In recognition of their volunteer efforts and commitment to caring, in April, our Greater Dubuque offices received the Resources Unite Outstanding Volunteer Corporate Award.

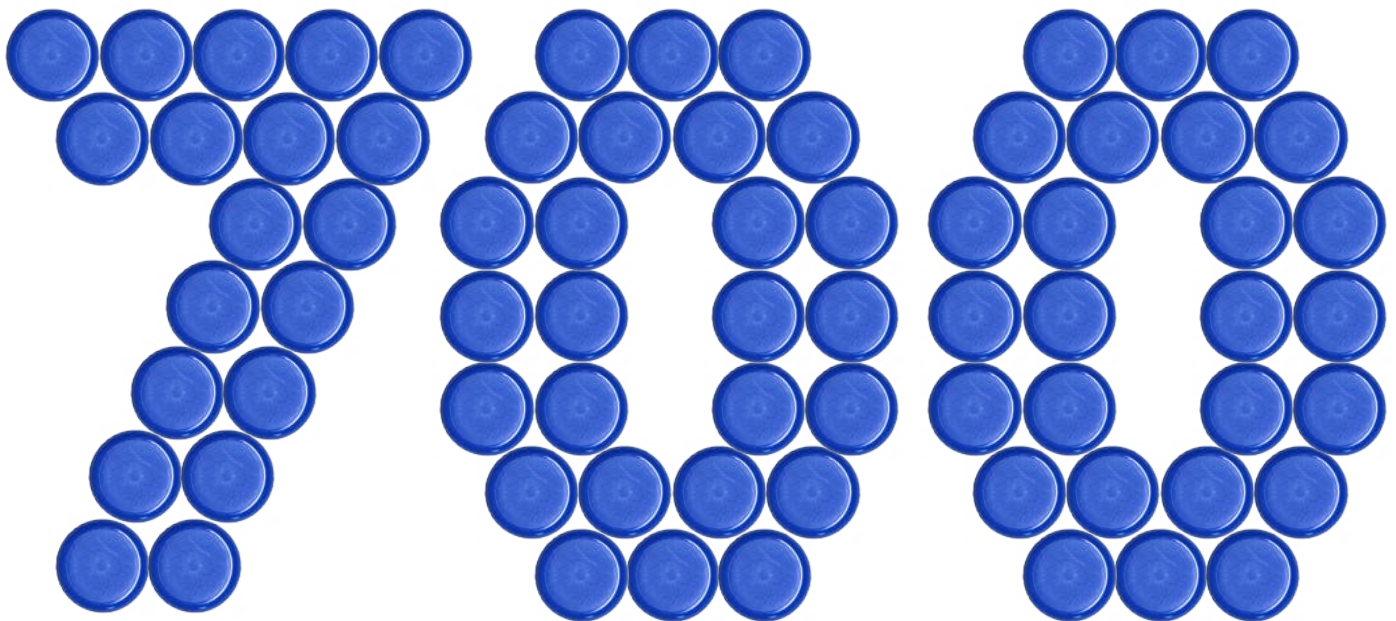
In the past year, working with RU, Dubuque-area colleagues have completed approximately 4,000 hours of volunteer work. Through periodic food drives, they have donated about 2,500 pounds of food to missions, food banks and non-profit organizations. Local Sedgwick colleagues volunteered their service at approximately 150 organizations, projects or events, and they devoted many hours to writing postcards to veterans.

A major collaboration between RU and Sedgwick in 2016 was the "Just Add Water" campaign. When Sedgwick colleagues engaged in a little friendly competition between account teams to collect water to send to Flint, Michigan, they far exceeded anyone's expectations.

Michelle Winter, leave of absence coordinator in Dubuque, set a goal for the area offices to collect 60 cases (one pallet) of bottled water to send along with RU's community collection effort.

The driving force behind this effort, Winter set up some challenges at Sedgwick that resulted in 339 cases of water being donated.

"The campaign was awesome," Winter says. "We started out with 23 cases of water brought in by one of our dedicated teams with help from the Dubuque claims assistants. After that, we decided it was time for a good old-fashioned challenge with the other Sedgwick teams at the Dubuque area offices.



**cases of water were collected for Flint after our
company matched the donation effort.**



The Platteville office and the Dubuque call center quickly accepted the challenge, and we collected 252 cases of water between the two teams! Then between the Dubuque and Platteville offices, we collected 339 cases of water. Of course, we were doubly honored when Sedgwick generously matched our donations!"

Sedgwick's two Dubuque offices and the Platteville office teamed up to contribute about 11.5 pallets of water. Our company matched the effort, to send a total of 700 cases of water to Flint. In all, the RU community effort sent nine semi-trucks of water to Flint in April.

"Partnering with RU has been the perfect way to take our core values out into the community and do the right thing," Robin Hammill, service center team lead in Dubuque, says.

"This is what we do every day, while working with our clients and their employees, but now we are able to do that side-by-side with our colleagues while providing support to the non-profits that desperately need assistance – some of which we didn't even know existed until RU brought them forward. We are proud that our Sedgwick colleagues stepped up to help the Flint community during their time of need."

Enhancing provider panel cards for employers

BY **TERRI RILEY**

*SVP, Managed Care Practice and
Client Services, Sedgwick*

It is no secret that a quality medical provider is the driving force behind achieving the best possible outcome after a workplace injury. There are many ways to evaluate and identify the highest quality providers, but the more critical point is ensuring the utilization of these providers at the time of injury. Certainly, state regulations guide the ability to direct care within each jurisdiction, but traditional provider panel postings offer significant value to help support the direction of care for injured employees.

Historically, industry workers' compensation medical cost containment organizations held strictly to state regulations, which include mandatory provider panel postings and directory distribution in California, Georgia, Pennsylvania, Tennessee and Texas. Most often, an online provider search tool supports the direction of the employer, examiner or nurse at the time of injury. However, agreements between the provider networks and the managed care companies required that all panel postings included network providers.

Among the many issues with this approach is the ongoing concern related to incorrect network provider data. This information is known to be fraught with errors and corrections are nearly impossible to apply, causing panel postings to be out of date soon after they are created. Also, network contracts often prohibit employers from posting panels with "out of network" in-house clinics or local providers associated with good treatment outcomes. In addition, several jurisdictions allow, but do not mandate, panel postings so managed care companies generally do not produce panels for these locations.

Below are the keys to ensuring Sedgwick continues to improve the process:



VALIDATE PROVIDER DEMOGRAPHICS

The network industry continues to have difficulty maintaining accurate provider data. Being able to validate the address, phone information, office hours and whether the provider accepts workers' compensation patients are critical factors when directing care.



MAXIMIZE THE PROVIDER SELECTION

Mandatory panel states determine the type and number of providers allowed to be listed; however, the laws often do not limit the number of providers.



NOTIFY EMPLOYERS OF PROVIDER CHANGES

By tracking providers used on a panel, employers can be sure that they will be notified when a provider moves, retires, stops taking new patients or makes other changes that will impact care.



COMPLETE ANNUAL UPDATES

Reviewing and updating panel providers annually helps ensure all mandatory panels are up to date and follow jurisdictional requirements; and it provides an opportunity to place the best quality providers on each panel.



SHARE PROVIDER PANELS WITH THE CLINICAL TEAM

Provider selection is based on the evaluation and development of panel postings. At Sedgwick, these providers are identified using our five-star quality provider benchmarking and search tool, and shared with our nurses so they can perform prompt referrals at the time of injury to support the best outcomes.



STREAMLINE COMPLIANCE EFFORTS

Maintaining current and historical documentation ensures prompt, global updates when jurisdictional regulatory changes occur.



OFFER PANEL CARD OPTIONS

Making electronic and printed copies available at employer locations helps support the direction of care right at the time of the injury.

By including each of these important elements, Sedgwick's provider panel card postings have helped customers ensure prompt treatment for injured employees while reducing claim costs. Our dedicated colleagues have the expertise to respond to various types of mandatory and customized requests. We have continued to focus our efforts on making the process more efficient, and in 2015, our national panel card team produced 102,000 panels and validated demographics for 194,000 providers. We continue to monitor related regulatory changes and look for ways to improve provider panels for our customers and our clinical team.

A close-up portrait of Ericka DeBruce, a woman with short dark hair, wearing glasses and a red top, smiling. The background features a blue and white geometric pattern.

Expert view

Q&A with Ericka DeBruce, VP of Engagement, Inclusion and Social Responsibility, Sedgwick

The “Expert view” column presents a wide range of topics offering valuable insights and information for customers.

edge:

What are you working on right now that will have an impact on our customers in the near future?

Ericka:

Sedgwick customers look to us for leading-edge ways to manage risk, administer benefits, leverage technology, and take care of their people. Cultivating our diversity, inclusion and engagement is key to our ability to deliver more innovative services and to go the extra mile for our customers.

A big part of my role is leading Sedgwick's efforts to foster a culture of belonging because it is that kind of environment that allows for dissenting opinions—what's commonly called "diversity of thought." There is a common misconception that having a diverse organization automatically results in diversity of thought. However, if employees feel there are negative ramifications for voicing differing opinions—such as not getting promoted or being viewed as disagreeable or an outsider—they will suppress their creativity and follow the status quo.

That's where inclusion comes into play. In cultures of belonging, organizations embrace differences and are well-positioned to capitalize on their employees' unique talents and ideas. Inclusion and belonging, combined with diversity, are what drive innovation.

A culture of belonging also drives employee engagement, which is the other important piece of the puzzle. Engaged employees who feel valued for their uniqueness go above and beyond what is minimally required of them. This is known as discretionary effort and at the heart of our **caring counts** philosophy.

edge:

Are there areas that Sedgwick is enhancing or changing to respond to trends we are seeing with our customers and in the industry?

Ericka:

One troubling trend on which we're very focused is the general lack of interest in entering the risk and benefits field. As our customers' needs in these areas grow more complex, our industry is facing a serious sustainability crisis.

At Sedgwick, we are committed to finding eager, new talent to join our ranks to ensure we can maintain our competitive edge and serve the needs of our customers long into the future. As many industry veterans move toward retirement and recent high school and college graduates gravitate toward the tech sector and other fields, we must find creative ways to attract and retain talent and diversify the kinds of people interested in fulfilling careers with us.

To that end, Sedgwick has teamed up with *Business Insurance* as a founding partner of its Diversity and Inclusion (D&I) Institute, which works to identify perceived and actual barriers to D&I in our industry and develop strategies for sustainability. Together with

our customers and industry partners, we're working to spark interest among all kinds of people in doing the work that we do. An industry organization like this certainly yields indirect benefits for us, but our hope is also that communicating Sedgwick's employer brand and employee value proposition through the institute will help us attract untapped talent.

Another trend that is significant for our business is the increasing diversification of our customer and consumer population in line with the changing demographics of our nation as a whole. The American workforce includes more and more women, people of color and individuals for whom English is not a primary language. Additionally, varying family structures impact how we administer benefits on behalf of our customers.

Our response to this trend includes a renewed focus on diversity recruiting and a greater emphasis on delivering culturally congruent care. These tactics enable us to more closely mirror the populations we serve, and provide appropriate care in accordance with the values, beliefs and lifestyles of our consumers. An obvious example of culturally congruent care is the ability to speak to people in their native

language. We've achieved great success with our bilingual claims teams advocating for Spanish-speaking consumers and we're working to incorporate other languages into our repertoire. As Managing Director Jay Ayala wrote in a blog article on the [Sedgwick Connection](#):

"Our ability to communicate in a native language is a critical tool for gaining the trust of injured employees for whom English is a second language. Additionally, it is just as important that we understand how differences in culture and values affect perceptions and play a vital role in claim resolution. Removing language-related and cultural barriers reduces friction in the system."

In order to provide culturally congruent care and practice empathy, you have to understand the people you're caring for and where they come from. For example, in the U.S.,

when someone passes away, our standard response is "I'm sorry for your loss." In other cultures, that can be perceived as apologizing for something inevitable or meant to be, or even a denial of the afterlife. It's important for our colleagues to realize that the cultural lens through which they view the world may not be the same as that of the people they're caring for. Our goal is to position our colleagues to deliver culturally congruent care and to approach the service experience from others' points of view.

edge:

What is your vision for D&I at Sedgwick?

Ericka:

Our long-term vision is for Sedgwick to not just reflect but lead our industry and the communities we serve in demographic diversity and how we engage colleagues, consumers and customers.

Demonstrating **caring counts** means going beyond the superficial and treating the whole person. To do that, we have to treat our colleagues in a holistic way as well, and that means understanding their uniqueness and what they bring to the Sedgwick organization.

My challenge is bringing the D&I concept down from a lofty goal into tangible actions. That can be achieved by focusing on attitudes and behaviors; it's less about what we do and more about how we do it. My job is to lead the change we want to see in our industry and ensure that our colleagues know exactly how to drive the results we're aiming for.

RESOURCE

Sedgwick's diversity and inclusion video, **Differences Matter**
<https://www.youtube.com/watch?v=NpuT3J3WPts>

ERICKA DEBRUCE

As Sedgwick's vice president of engagement, inclusion and social responsibility, Ericka DeBruce focuses on organizational initiatives that support the company's commitment to diversity and inclusion (D&I) and corporate social responsibility (CSR) and strengthen its culture of workplace and community engagement. She brings to her position a wealth of experience and genuine passion for inclusive and engaged organizational cultures. Previously DeBruce served as global diversity and inclusion manager for International Paper and held diversity leadership roles at Talbots, American Cancer Society, American Red Cross and BAE Systems. She earned a bachelor's degree from Bradley University and the Strategic Diversity and Inclusion Management certification from Georgetown University. DeBruce is an advisory board member for the Business Insurance D&I Institute's [inaugural conference](#), which will be held in Chicago Sept. 28-29, 2016.



Edging up

Short takes on emerging industry issues – prescription drug legislation, OSHA's new reporting requirement and state disability changes

State legislative changes impact prescription drugs

BY **ROXANNE BROWN**

Director, Regulatory Compliance, Sedgwick

Arizona, Tennessee and New York recently passed legislation related to prescription drugs that will provide added safety for patients who are prescribed narcotics. The following pages include brief summaries on each of the state updates.

ARIZONA

Gov. Doug Ducey signed [Senate Bill 1283](#) on May 12, 2016 requiring medical providers to access a patient utilization report before prescribing opioids or benzodiazepines. This will be required for all medical providers in Arizona beginning October 2017. Hospital in-patients or cancer/hospice patients are exempt from the database checks. Sedgwick's pharmacy management team will begin to educate healthcare providers and injured employees about this important tool prior to the October 2017 implementation date so that prescribers have the opportunity to develop treatment plans for continuation or weaning well in advance of the requirement.




October
2017

TENNESSEE


A new formulary will go into effect on August 28, 2016 for new prescriptions written after January 1, 2016. In May, the Sedgwick team began working with pharmacy benefit managers to notify providers and injured employees about the state's new formulary and requirements. This will allow time for patients, pharmacists and doctors to review and understand the formulary, and for the clinical team to assist in developing plans for weaning or continuation of the medications after August 28.

NEW YORK


On June 22, 2016, New York Gov. Andrew M. Cuomo signed significant legislation limiting opioid drug prescriptions among other provisions. The new law becomes effective 30 days after receiving the governor's approval. The legislation includes the following changes:




Limits initial prescription of opioid medication to a seven day supply and requires subsequent medical follow up for a renewal, refill or new prescription for an opioid or any other drug




Requires coverage for medication for detoxification or maintenance treatment of a substance use disorder



Allows inpatient coverage for unlimited medically necessary treatment for substance use disorder in a residential setting



Establishes a Prescription Pain Medication Awareness program to educate healthcare practitioners and the public about the risks associated with prescribing and taking controlled substance pain medications



Requires course work and training in pain management, palliative care and addiction for every person registered with the Drug Enforcement Administration (DEA) and every medical resident prescribing under a DEA registration number

This outlines the basic provisions and the requirements have varying implementation dates. Sedgwick will monitor and implement processes to comply with the changes as they take effect. Our pharmacy management team will be essential in developing workflows and processes to ensure compliance and provide safe, quality care for injured employees.

OSHA's new electronic reporting requirement

BY **MALCOLM DODGE**

VP, Risk Services, Sedgwick

On May 12, 2016, the Occupational Safety and Health Administration (OSHA) published its [final rule](#) on a new requirement for employers to submit OSHA records electronically. For U.S. employers that are subject to recordkeeping obligations, the rule requires that records be submitted electronically starting with 300A reports for calendar year 2016. The submission deadline for the first transmittal is July 1, 2017.

The rule breaks out electronic submission deadlines. There is a set of rules for employers with establishments that have at least 250 employees and another set of rules for employers with establishments with 20–249 employees. Note that the rule is specific that the submissions will be required based on headcount at each establishment, not by the firm as a whole.

For employers that have establishments with a headcount of at least 250 employees, the reports that must be filed and their submission deadlines are:

For the 2016 reporting year, employers must submit their OSHA 300A reports by July 1, 2017

For the 2017 reporting year, employers must submit their OSHA 300A along with certain elements of their OSHA 300 and 301 by July 1, 2018

For the 2018 reporting year, employers must submit their OSHA 300A along with certain elements of their OSHA 300 and 301 by March 2, 2019

For employers that have establishments with a headcount of 20–249 employees, the reports that must be filed and their submission deadlines are:

For the 2016 reporting year, employers must submit their OSHA 300A reports by July 1, 2017

For the 2017 reporting year, employers must submit their OSHA 300A by July 1, 2018

For the 2018 reporting year, employers must submit their OSHA 300A by March 2, 2019

Sedgwick has confirmed with the Department of Labor that we will be able to submit reports on behalf of customers that utilize our OSHA services to meet this electronic reporting requirement. However, employers will ultimately be responsible for the completeness and accuracy of the data. The specific format of the files to be prepared for submission has not yet been developed by OSHA. As information on the format is made available to us, we will share it with our customers.

For questions about OSHA's electronic reporting requirement, please contact your Sedgwick client services representative or Malcolm Dodge, VP of risk services, at malcolm.dodge@sedgwick.com.

State law changes impact disability benefits

BY **DESIREE TOLBERT-RENDER**

AVP, National Technical Compliance, Sedgwick

FLORIDA SUPREME COURT INCREASES LENGTH OF TEMPORARY TOTAL DISABILITY BENEFITS

On June 9, 2016, the Supreme Court of Florida revived the limitation in the workers' compensation law preceding the 1994 amendments, which provided temporary total disability (TTD) benefits not to exceed 260 weeks, or five years.

In *Westphal v. City of St. Petersburg*, the court deemed unconstitutional the portion of the workers' compensation statute that cuts off disability benefits after 104 weeks to an employee who is totally disabled and incapable of working, but who has not reached maximum medical improvement (MMI).

The case involved Bradley Westphal, a former firefighter and paramedic for the City of St. Petersburg, Florida, who sustained compensable injuries to his back and knee. He was provided TTD benefits and medical treatment that included multiple surgeries. Westphal was recovering from his final surgery, a five-level lumbar fusion, when his entitlement to 104 weeks of TTD was exhausted. Although completely unable to work, because MMI had not been attained, Westphal was not entitled to impairment benefits or permanent total disability (PTD) benefits under the Florida workers' compensation act.

The state high court found that Westphal and similarly situated injured employees are deprived of common law and statutory remedies during the "statutory gap" when TTD is no longer due, yet there is no entitlement to any other indemnity benefits despite the inability to work while recovering from injuries. The court concluded that this result does not keep with the notion of legal justice because it violates the injured employee's state constitutional rights of access to courts and the administration of justice "without . . . denial or delay" under Article I, Section 21, of the Florida constitution.

The court reasoned that whereas "almost seven years or even five years post-accident should be a reasonable period for an injured worker to achieve maximum medical improvement, clearly two years is not for the most severely injured of workers, like Westphal, who might be in need of multiple surgical interventions."

Impact of this decision

This decision will impact any Florida workers' compensation claim with a date of accident on and after Jan. 1, 1994, that has not been settled or not reached the statute of limitation if the injured employee falls into the described "statutory gap."

Most injured employees attain MMI within 104 weeks, so the decision is not expected to affect a large number of claims. However, it may provide an incentive for some injured employees and their attorneys to pursue more medical treatment and extend the attainment of MMI, resulting in the payment of additional weeks of TTD. Alternatively, some believe that the extension of TTD to 260 weeks may actually delay the filing of some claims for PTD and limit or mitigate exposure on those claims.


Because the *Westphal* decision involved only the claimant's entitlement to TTD benefits, the decision is silent as to the statutory cap on temporary partial disability (TPD) benefits. The current statute maintains a statutory cap of 104 weeks for TPD benefits. It is anticipated that claimant attorneys will seek to have the *Westphal* decision applied to TPD benefits as well, but the rationale explained by the court in *Westphal* may not be relevant to claims involving an employee released to work with restrictions. Based upon the decision, any workers' compensation claims that have exhausted 104 weeks of TTD and for which PTD benefits are not being paid must be evaluated for reinstatement of TTD.




Rate changes

The National Council on Compensation Insurance (NCCI) submitted an amended rate filing to address the impact of the *Westphal* decision on the Florida's workers' compensation system. This [amended filing](#) increases NCCI's initial proposed combined average rate increase from 17.1% to 19.6%.


Individual projected rate impacts for three recent legal changes in Florida include the following:



A 2.2% projected rate increase for the June 9, 2016 Florida Supreme Court decision in the case of *Westphal v. City of St. Petersburg* described above. NCCI indicates the anticipated impact to be a combined 260-week limitation on temporary disability benefits (temporary total and/or temporary partial disability).



A 15% projected rate increase for the April 28, 2016 Florida Supreme Court decision in the case of [Castellanos v. Next Door Company](#) that held the mandatory attorney fee schedule in Florida Statute unconstitutional as a violation of due process under both the Florida and United States Constitutions. The anticipated impact, according to NCCI, is the return to hourly attorney fees.



A 1.8% projected rate increase related to updates within the Florida Workers' Compensation Health Care Provider Reimbursement Manual per [Senate Bill 1402](#). The manual became effective on July 1, 2016.

The Florida Office of Insurance Regulation has scheduled a public rate hearing for August 16, 2016.

What's next?

The Florida legislature adjourned March 11, 2016. Given that this is a major election year, it remains uncertain whether a special session will occur. If it does not, it will be 2017 before legislation to address the benefit issue is a possibility. In the meantime, there is growing debate about changes needed in the Florida workers' compensation system.

Sedgwick is actively involved in efforts by the [Workers' Compensation Coalition](#), led by the Associated Industries of Florida, to develop a broad strategy addressing this and other challenges to workers' compensation in the state, including recommendations regarding legislative changes.

RECURRENT PERIODS CHANGE IN CALIFORNIA DISABILITY PLANS

California [Senate Bill 667](#) became effective July 1, 2016 and includes changes in the state and voluntary disability insurance plans. Below are the amendments in SB 667:

- Under the previous law, a disabled individual [in California] was eligible to receive disability benefits equal to one-seventh of his/her weekly benefit amount for each full day during which he/she is unemployed due to a disability if the director of employment development makes specified findings, including that the individual was unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period. The law provided that during this seven-day waiting period, no disability benefits were payable.

As of July 1, 2016, this bill waives the seven-day waiting period for an individual who has already served the seven-day waiting period for the initial claim when that person files a subsequent claim for disability benefits for the same or a related condition within 60 days after the initial disability benefit period. The bill also requires the director to submit a report regarding the effect of the modified waiting period to the legislature on or before Jan. 1, 2020, as specified.

- Before this change, the law provided that if an individual received two consecutive periods of disability benefits due to the same or a related cause or condition and separated by not more than 14 days, they were considered as one disability benefit period.

SB 667 bill extends to 60 days the time between claims for the same or related cause or condition to be considered one disability benefit period. Therefore, for all claims incurred on or after July 1, 2016, the recurrent period of disability changes from the 14-day period to a 60-day period for the same or related cause or condition. (The 14-day recurrent period applies to claims initially incurred prior to July 1, 2016.) This change applies to all CA state disability insurance claims administered by California's Employment Development Department as well as to California voluntary disability insurance claims administered by Sedgwick.

As a result of this new law, Sedgwick has updated its systems and processes, and we are fully ready to ensure compliance for our customers.

Sedgwick customers that have questions regarding the recent state changes should contact their client services representative.

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