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Transcending the challenges of 2017

BY **SCOTT ROGERS**
Division President, National Accounts, Sedgwick

The close of each year brings time for reflection. As we look back at the major events of 2017, to my mind, what stands out most is the progress our industry has made in developing innovative solutions to meet the needs of our clients, as well as their employees and customers.

GOOD HEALTH EMPOWERMENTS

Of the many challenges to general health and well-being of our citizens, the most urgent is the soaring opioid epidemic, which causes 91 deaths each day and costs our nation an estimated $53.4 billion each year.[1] The Trump administration has declared this epidemic a national public health emergency, directing federal agencies to provide more grant money to combat its rapid spread. The growing crisis has increased the urgency of exploration into more effective treatment options. While more than half of the country has adopted legislative measures allowing some use of medicinal marijuana, the debate over its benefits, risks, insurance coverage and efficacy as an alternative to highly addictive opioids continues.

In addition to addressing the opioid crisis, Sedgwick has helped rally our industry in recognizing that mental health links with physical recovery and workplace productivity. According to *The American Journal of Psychiatry*, $193 billion in income is lost each year due to mental illness,[2] but because the stigma surrounding mental health frequently keeps employees from seeking the treatment they need, examiners, case managers and providers must partner in developing plans for and guiding employees through comprehensive care. Several states have now introduced legislation to increase first responders' coverage for mental health and PTSD treatment. However, much more work is needed, and the industry continues to look for new ways to address depression and other mental health conditions.

REGULATION TRANSFORMATIONS

More than ever, vigilance is needed for employers to maintain compliance with the ongoing changes in ADA, FMLA and other federal and state laws. The current administration's divergent priorities could also result in regulatory shifts for OSHA and the EEOC, such as the congressional resolution to limit the timeframe in which OSHA can penalize employers for violating the record maintenance requirements.[3]

Several states are introducing new family-friendly paid leave bills and others are clarifying or expanding regulations for leave benefits. This trend has continued to grow over the past four years, particularly in states with a large workforce in technology firms.

CONSUMER-CENTRIC PROGRESSIONS

Similarly, the industry has an increased focus on the care and needs of consumers, including better communication and improved access to on-demand support and resources aimed at improving the claims experience. We're seeing that increased consumer satisfaction is leading to accelerated outcomes and better overall health.

RISK CIRCUMVENTIONS

An unusually high number of natural disasters in 2017 have made a tremendous impact in some way on companies in virtually every line of business. Over the past year, catastrophic damage from hurricanes, floods, wildfires and other weather events has cost our industry billions of dollars and emphasized the critical nature of business continuity plans. The increased use of drones in damage assessment and recovery efforts is just one way the industry is adapting to meet these challenges.

Ransomware attacks and high-profile corporate security breaches continue to keep the business world on edge. Consequently, cyber security has become an increasing concern as the number of cyber threats soared in 2017, making the need for a pre-catastrophe plan crucial.[4]

As seasoned professionals begin to retire, bridging the talent gap becomes increasingly important. Attracting bright new colleagues is complicated by a lack of interest in insurance careers – only 4 percent of recent college graduates are considering pursuing professional opportunities in our industry.[5] Furthermore, clients expect our workforces to be as diverse as their own. Human resources experts are exploring ways of widening the potential pool of candidates by looking beyond specific educational backgrounds and catering to employees' changing needs with benefits designed to attract millennials.


WE'RE SEEING
THAT INCREASED CONSUMER
SATISFACTION IS LEADING
TO ACCELERATED OUTCOMES
AND BETTER OVERALL HEALTH


SEDGWICK'S NEW REPORTING
DASHBOARD FULLY INTEGRATES
MANAGED CARE DATA INTO THE CLAIMS
REPORTING SYSTEM, ALLOWING CLIENTS
TO MORE CLEARLY IDENTIFY
PROGRAM PERFORMANCE
TRENDS AND OUTCOMES

TECH MODERNISMS

With the impending launch of autonomous vehicles on public roads across the country, our industry faces new challenges. Federal legislation has been introduced to ease some of the hurdles for self-driving cars. The House measure restricts the number of vehicles automakers can sell and sets performance standards, but leaves the rules on registration, licensing, liability, insurance and safety inspections to individual states.[6]

Along with more refined predictive analytics comes a wealth of big data in useable form. Sedgwick's new reporting dashboard fully integrates managed care data into the claims reporting system, allowing clients to more clearly identify program performance trends and outcomes. Actionable data on trends requiring immediate intervention gives risk managers the power to make a definitive impact on the lives of their injured employees.

The increasing use of telemedicine is connecting patients with the right medical provider for initial and follow-up treatment for minor injuries and illnesses. Among the most notable advantages is fast, convenient care, regardless of distance, traffic and other geographic impediments. In addition to reducing costs and lost work time, a key goal is to improve consumer satisfaction. A well-structured program can offer patients a sense of empowerment and more active engagement in their own healthcare.

Technological advances are leading to other game-changing solutions as well. Video cameras in company vehicles are not only improving road safety by deterring texting and other distracted driving, but also providing clear and accurate details to complete accident investigations and settle liability claims.

As new challenges emerge, our industry will continue to step up and develop more innovative, effective solutions. At Sedgwick, we are committed to meeting the needs of our clients and their employees, because taking care of people is at the heart of everything we do. **Caring counts.**[SM]

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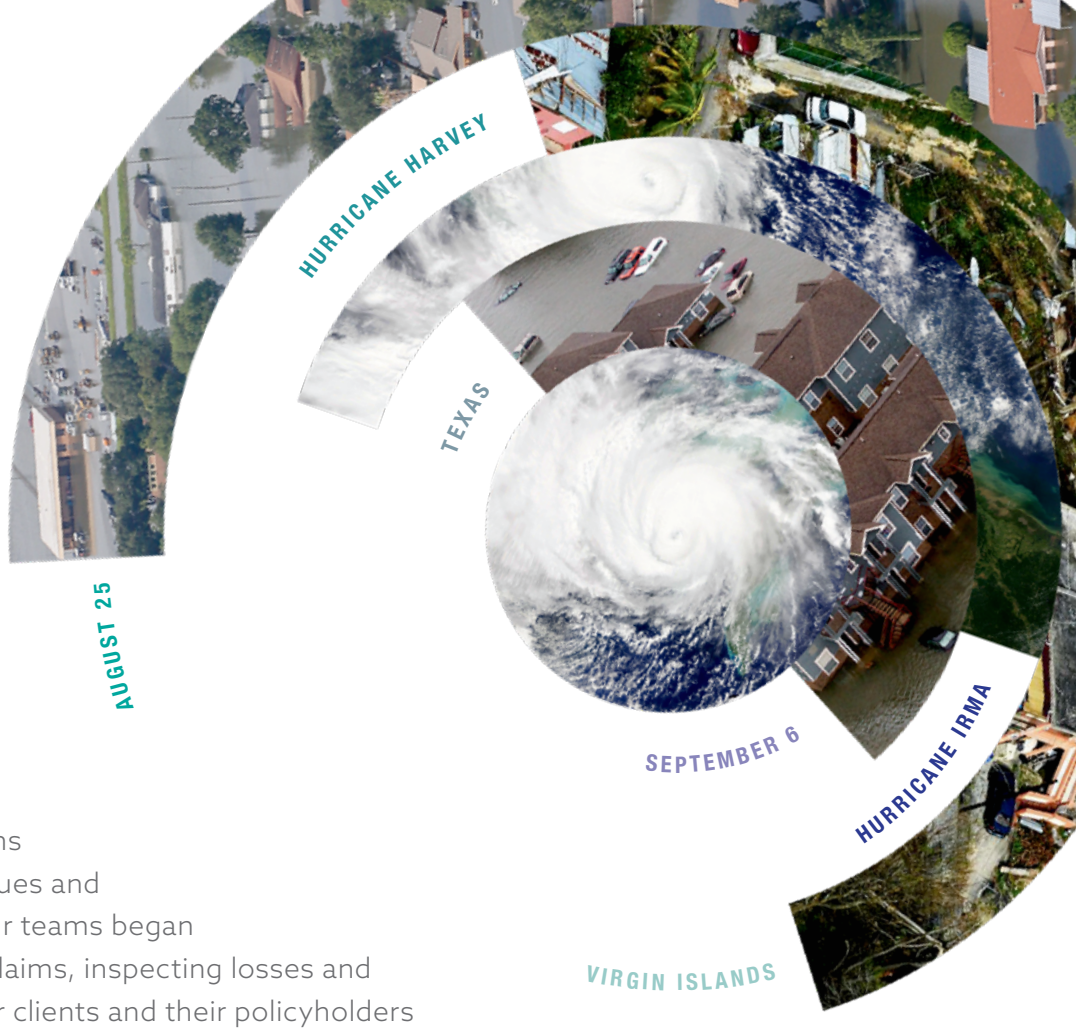
Three powerful hurricanes – one extraordinary team

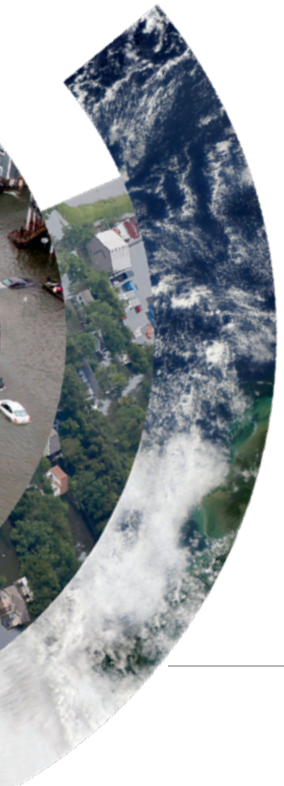
BY **TOM SIMONCIC**
President and COO, Vericlaim, a Sedgwick company

Having three Category 4 hurricanes in a four-week period is unprecedented. But it happened. On August 25, Hurricane Harvey hit Texas, followed by Hurricane Irma in the Virgin Islands on September 6 and Florida on September 10, and then Hurricane Maria struck in the Caribbean on September 19. The number of lives disrupted was enormous and the damage to homes and businesses was massive.



For Sedgwick, Vericlaim and CJW, these destructive storms impacted our clients, colleagues and offices in various regions. Our teams began responding to the property claims, inspecting losses and managing the process for our clients and their policyholders as each of the hurricanes devastated everything in their path.

What started with one adjuster to manage claims from Hurricane Harvey ballooned into an operation involving a group of more than 2,500 colleagues, associates and partners. We had to mobilize in a way that had never been done before. We leveraged all of our team's time, talent and capabilities to serve our clients and their customers in their time of need. We were able to put ourselves in a position to successfully provide the services and care that they needed.



The total number of claims for Sedgwick, Vericlaim and CJW from all three hurricanes combined is expected to exceed 25,000, with more than 200,000 locations to be addressed. Whether the risks involved Fortune 500 brands, chain restaurants, retail stores, habitational units, hospitals, manufacturers, small businesses, high-value homes, school districts, county and city buildings, or personal residences, each location required an inspection.

With the largest group of adjusters in the U.S., we have been able to draw colleagues from coast to coast to travel to the areas impacted, not only in the continental U.S., but in the Caribbean as well. Cause and origin experts from Unified Investigations & Sciences, and colleagues from Canada and Ireland also assisted with the process. We were able to call upon our international colleagues to supplement our adjusting staff and call center capabilities in the U.S. and Canada.

FOUR WEEKS – HUNDREDS OF CLAIMS

Immediately after Hurricane Harvey occurred, Randy Neal, senior vice president at Vericlaim, accompanied by his seasoned staff, set up our national catastrophe operations center for field loss adjusting services in Dallas. People were stranded in their homes in Houston and the area around the office was flooded. This team began to manage the claims with our adjusters, supplemented by our outside catastrophe claims partners. Once the flood waters subsided about a week later, the national catastrophe operations center was moved to Houston and remains there today.

When we saw that Irma was a potential threat, we put together a team of executives and senior-level colleagues led by Scott Richardson, senior vice president at Vericlaim, and built a catastrophe TPA claims center within 10 days with 130 people in Orlando to support CJW. This included setting up furniture and equipment, telephones and laptops, establishing work flows and sharing knowledge. The teamwork between our regular CJW staff and the CJW claims center has been exemplary. CJW, a subsidiary of Sedgwick, manages U.S. claims for carriers in the London market.

To oversee the quality control aspect of the claims process, our quality control center, led by national manager Barry Lorenz, was expanded and has been working around the clock since the beginning of Harvey.

When Hurricane Irma occurred and claims were starting to be reported, many of our colleagues in Florida did not have power. Adjusters in Orlando and Jacksonville had to drive somewhere that had power in order to assist our clients with claims while their own homes and lives were disrupted. Vericlaim Repair Solutions, our managed repair network, rose to the occasion and supported our efforts with facilities management.

AN IMMENSE LEVEL OF LOYALTY AND DEDICATION

To help respond to the large number of property claims, many colleagues changed part of their day-to-day responsibilities while others worked evenings and weekends. From assisting with claim intake and adjusting, to taking calls, managing resources, preparing reports, and purchasing computers, telephones and furniture, to teaching, supervising and mentoring, the list of what needed to be done was done. Only a company like Sedgwick, with resources unparalleled in the industry and a commitment to caring for others as its foundation, could create this formula for success.

Of course it's the adjusters, surveyors, cause and origin experts, administrators, technicians, accountants, programmers, engineers, forensic accountants, content specialists and other field representatives who are the real heroes during catastrophes of this magnitude. They are taking care of our clients and their customers who are dealing with unexpected losses. For these dedicated colleagues, the long days, horrendous working and living conditions, physically, mentally and emotionally draining activities are coupled with the sacrifice of being away from their homes and families. Our colleagues consistently worked 90+ hours a week, sun up to sun down and beyond to help our clients service their customers.

Through their innovation and hard work, our colleagues took unprecedented steps to provide extraordinary levels of service to our clients so that they could help their customers restore their lives, homes, businesses and communities. Today, our team continues to help manage the claims process for our clients and their policyholders with hurricane-related property losses.

LOOKING TO THE FUTURE

A weather pattern with multiple Category 4 hurricanes in August and September is not something you would expect to see. Comprehensive disaster plans can help businesses prepare, respond and reduce the potential ripple effect of weather-related disasters like these. Having the right pre- and post-catastrophe plans in place can help businesses build resilience. Advances on the horizon in pre-catastrophe predictive models and new technologies for post-disaster recoveries could provide critical advantages for insurers, adjusters, risk managers, corporations and brokers.

A USA Today report[1] provided some numbers showing the devastation these storms left behind.

- Hurricane Harvey (August 25-31) resulted in record flood levels for many residents – 6.9 million were inundated under 30 inches of rain, another 1.25 million received 45 inches, and another 11,000 had as much as 50 inches. The AccuWeather damages estimate is $190 billion.
- Hurricane Irma (September 6-12) destroyed one quarter of the buildings on the Florida Keys. Irma maintained a maximum sustained wind of 187 mph for 37 hours and the estimated damages are $64 billion-$92 billion according to Moody's Analytics.
- Hurricane Maria (September 19-27) caused unprecedented devastation to Puerto Rico. Rainfall levels up to 7 inches caused flooding and mudslides. The estimate of insured losses is $40-$80 billion according to AIR Worldwide.

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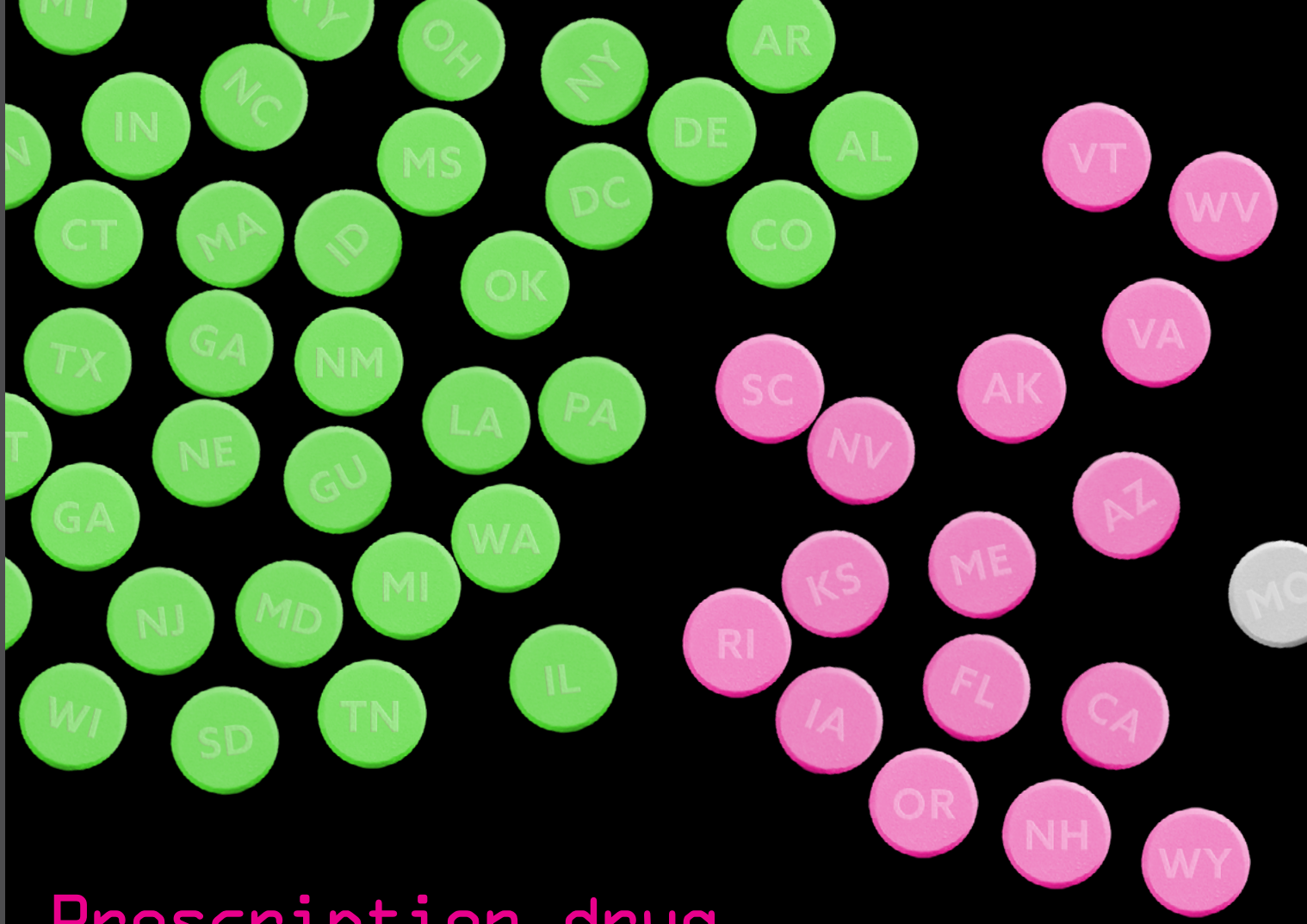

Prescription_drug (monitoring programs) + (the opioid epidemic)

BY REEMA HAMMOUD
PharmD, BCPS, Director, Clinical Pharmacy, Sedgwick

Prescription drug monitoring programs (PDMPs) are electronic data systems used by healthcare professionals at the state level to report prescribing and dispensing data of controlled substances for individual patients. PDMPs are used to deter abuse and misuse. Physicians and pharmacists can utilize this tool before prescribing or dispensing a medication to a patient. With the growing opioid epidemic and increasing number of deaths related to opioid overdose, PDMPs offer an intriguing solution to the overprescribing of opioids. When utilized correctly, PDMPs have shown to be effective in combatting the opioid epidemic.

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As of 08.04.17 42 states are linked through a program called PMP ((prescription monitoring program)) Interconnect.[3]

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The Centers for Disease Control and Prevention ((CDC)) has committed $20 million in an effort to aid 16 selected states over the course of four years.[2]

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For example, in Kentucky, Tennessee and New York, prescribers are legally required to check PDMP data when initially prescribing opioids. This has resulted in a decrease in the number of opioid prescriptions in each state of 8.5%, 7% and 9.5%, respectively, with a decrease only one year after the legislative mandate.[1] Data supports that PDMPs can be effective in combatting the opioid epidemic when used correctly. However, the current process is not easily accessible and has numerous potential flaws. Due to the severity and complexity of the opioid crisis, PDMPs cannot be relied upon solely to address this ongoing epidemic.

</CURRENT STATE OF PDMPS>

Currently, every state except Missouri has an established PDMP; 16 states submit prescription data on Schedule II IV drugs, and 35 states and territories submit data regarding Schedule II V drugs. At this time, 40 states and the District of Columbia are mandated to report their prescription data within one business day, and the latest mandated reporting time is eight days in Montana. Significant progress is being made to link the states and allow interstate sharing of prescription data. As of Aug. 4, 2017, 42 states are linked through a program called PMP (prescription monitoring program) Interconnect.[3] PMP Interconnect links the states' prescription data together and the program is being fully integrated into the existing PDMPs of the states. Theoretically, this program should provide full access to prescription data in every state easily and with no added steps needed. However, data between many interconnected states is not easily accessible. Each state has its own set of user restrictions and types of providers who can gain access. There is also a lack of federal funding for these types of programs that makes it harder for states to operate within a limited allocated budget.

While PDMPs are beneficial, the funding required to support them limits the potential benefits they may offer. Funding of a state's PDMP varies across the nation. Some states elect to receive funds granted to them solely through federal programs, while other states may also gather a portion of licensing fees from medical practitioners and dispensers to help fund their state's PDMP. There are numerous federal programs that grant funds to aid in the maintenance of state-run PDMP databases. The Centers for Disease Control and Prevention (CDC) has committed $20 million in an effort to aid 16 selected states over the course of four years.[2] The CDC will grant anywhere between $750,000 and $1 million each year,

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Even though laws might not mandate that ((PDMPs)) be referenced, and there might be no legal penalties, healthcare professionals should still utilize ((PDMPs)) whenever prescribing dangerous and life-threatening medications.
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which will be used to enhance the PDMPs in the selected states. The Harold Rogers Prescription Drug Monitoring Program (HRPDMP) and the Substance Abuse and Mental Health Services Administration (SAMHSA) are among other federal programs that grant money to states to help enhance PDMPs. SAMHSA is a part of the Department of Health and Human Services, which is reported to have obtained close to $4 billion in the budget for the 2018 fiscal year. Of the reported $4 billion, $500 million is invested to combat the nation's opioid crisis.

Michigan utilizes a PDMP known as MAPS that was recently updated in April 2017 to integrate with the PMP Interconnect system. This allows Michigan providers to access prescription data for patients receiving a controlled prescription from one of the other 41 linked states. Limitations to this integration have been found because Texas and Tennessee, like some other states, are not fully integrated. Both of these states should be easily accessible since they are interconnected with Michigan via PMP Interconnect. When reached for comment, Michigan representatives of MAPS made it clear that all the states should be interconnected; however, each state still has the capability to restrict user access. This leaves out managed care organizations and law enforcement agencies, which still do not have total transparency into this data. This is a major flaw in regard to the overall connectedness of the system and illustrates the lack of access for all parties involved.

</HEALTHCARE PROFESSIONALS>

In clinics, hospitals and pharmacies throughout the country, healthcare professionals are not fully utilizing the data available to them through PDMP databases. In many of these situations, clinicians might not have the time or resources to inquire about the opioids or other controlled substance use. This could result in the continued prescribing and dispensing of opioids. PMP Interconnect is promising, but the lack of accessibility proves to be an issue. In a busy clinic setting, physicians are already limited for time to interact with the patients, and accessing PDMP data can take up to several minutes. For example, in a 15-minute appointment time with a patient, a physician might not be able to sacrifice limited time pulling up PDMP data. The current process is time consuming, and interrupts the physician's workflow. One way to address this issue is to allow prescribing physicians to assign delegates who can access the PDMP data. This would allow the delegates to access a patient's

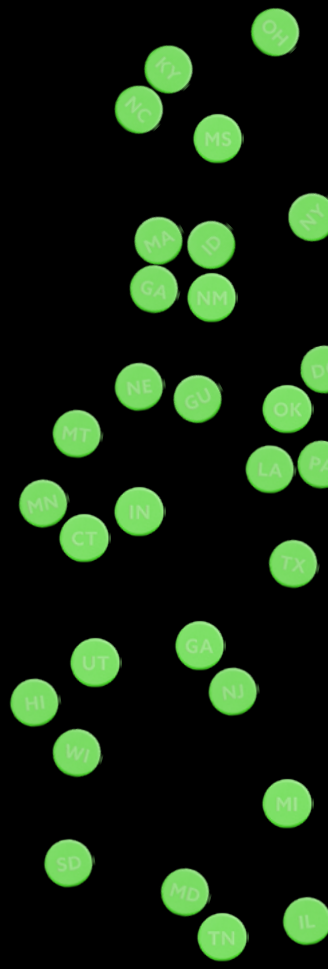
fill history and have it readily available for the physician at the beginning of the office visit. This process would integrate easily into the workflow, help decrease overprescribing of opioids, and allow physicians to provide opioid counselling. Currently, many states do allow delegates, but the process is not streamlined. There is not a clear rule on who can be deemed a delegate, and it varies between states. Clear and consistent labeling of authorized personnel would be beneficial.

As previously mentioned, among the very few states that require mandatory referencing of PDMPs, the process is not streamlined. Many states do not mandate that physicians address PDMPs before prescribing an opioid. Even though laws might not mandate that PDMPs be referenced, and there might be no legal penalties, healthcare professionals should still utilize PDMPs whenever prescribing dangerous and life threatening medications. In fact, chain pharmacies, such as CVS, have made accessing PDMPs a mandatory part of their best practice guidelines for dispensing pharmacists. [4] While workflow integration, legal penalties and other incentives are commendable ways to ensure utilization of PDMPs, saving a person's life should be the biggest incentive. With the current opioid epidemic, the risk of prescribing or dispensing unnecessary opioid prescriptions could extenuate the problem.

</THIRD PARTY ADMINISTRATORS>

Clinicians working on behalf of third party administrators (TPAs) regarding workers' compensation cases are on the front lines in combatting the opioid epidemic. Due to the nature of the injuries presented in these cases, opioids are among the most prominent medications seen in workers' compensation cases. Workers' compensation clinicians and case managers handle cases across the nation, thus making the national PDMP system crucial. Healthcare professionals in workers' compensation work directly to lower excessive prescribing of opioids and follow state specific guidelines to facilitate care. Studies have shown that workers' compensation agencies are leaders in reducing over-prescription of opioids.[5] It is critical that we understand the importance of transparency across state lines in PDMP access for all involved parties including payers. Increasing PDMP access and providing training to these professionals will assist stakeholders in combatting the opioid epidemic.

Clinicians working in a TPA setting do not have the same privileges to prescription drug monitoring programs as prescribing physicians or dispensing pharmacists. Only five states (Michigan, North Dakota, Ohio, Utah and Washington) allow accessibility to workers' compensation clinicians. Even with these five states providing access, there still is a lack of consistency among these states regarding access criteria. Utah provides accessibility to PDMP data to managed care clinicians such as physicians, pharmacists, pharmacy interns and pharmacy technicians, as well as to law enforcement agencies. Despite increased access, the healthcare professionals would need to be licensed in the state of Utah in order to have access. Therefore, a third-party clinician licensed in any other state would not be able to view controlled-substance fill history for a Utah claimant through PDMP. Ohio allows an out of state clinician to be granted access if they request it through an application process that is not clearly outlined on their website. This process is not consistent among states, and in general, the limited accessibility to the database for payers is another flaw of the current PDMP system. While there are a few states that are trying to allow for greater accessibility, a lack of total transparency remains for payers, creating yet another hurdle in combatting the opioid epidemic.



</LOOKING AHEAD>

In an effort to create a more comprehensive and less cumbersome system for healthcare providers, some electronic medical record (EMR) systems have merged with state PDMPs. Michigan has announced that it is attempting to integrate their PDMP with EMRs. On June 19, 2017, Lt. Gov. Brian Calley announced that MAPS will be integrated with Henry Ford Hospital's delegated electronic medical record system (EPIC).[6] This new change, along with PMP Interconnect, will help combat opioid abuse in Michigan. The integration hopes to increase physician use as it provides a streamlined program. Prescribers will need to access only one system and use one login, which will help save time and give the prescriber an opportunity to discuss opioids concerns with the patient. Once a physician logs into their EMR, the PDMP will be integrated with the help of Appriss's NarxCare. Not only does NarxCare automatically link with PDMP, allowing prescribers' access, but it also provides a risk assessment of the patient. NarxCare evaluates the patient's health history along with their medications to generate patient reports. These patient reports include visualizations showing usage patterns and risk scores of

controlled substances, such as opioids.[7] NarxCare reports are thought to be a useful tool in preventing overprescribing of opioids.

Although Michigan's integration of Henry Ford Health System's EMR will be beneficial, it alone is not enough in combatting the opioid epidemic. Henry Ford's EMR is one of many EMRs that health systems in Michigan can utilize. The same issue of varying EMRs arises in other states as well. The integration of EMRs with PDMPs will be very valuable in gauging substance abuse once every EMR is integrated. It appears that cost is the main barrier preventing complete integration of systems. With the integration of EPIC and MAPS costing millions, the cost to integrate EMRs nationwide could be prohibitive. Cost and time are the two biggest challenges state and federal governments might not be willing to take. The benefits of such an undertaking substantially point to the necessity of funding a system to combat the growing opioid epidemic.

</C0NCLUSI0N>

The opioid epidemic is a major public health issue that is sweeping the United States. PDMPs can serve as a useful state level intervention in monitoring the prescribing and dispensing of abused drugs. PDMPs have proven to be a helpful resource in attacking the opioid epidemic, yet these tools are not without flaws and lack full participation. Funding for each state's PDMP will benefit dramatically if more money is allocated to support the opioid crisis, which will contribute to expansion and maintenance of PDMPs. Furthermore, if more states were to obtain a portion of the monies collected from licensing and other fees from the state's medical boards (board of medicine, pharmacy, dentistry, etc.), there will be more cash allotted to PDMP support. Additionally, the lack of accessibility granted to TPAs is alarming and warrants immediate attention. Giving access to payers is crucial, considering their role in addressing the opioid overutilization. Allowing healthcare professionals to designate delegates might assist in cutting time and make the use of PDMPs more attractive in the clinical setting. A comprehensive PDMP system that integrates EMRs will offer the best outcome for the prescriber and patient. Implementing all of these changes to current PDMP programs offers a comprehensive mechanism to combatting the opioid epidemic.

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Is a leave of absence still considered a reasonable accommodation?

BY **KIMBERLY T. WEBB**
Director of National Technical Compliance – ADA, Sedgwick

Providing a leave of absence to help support injured or ill employees in returning to work is often difficult for many employers, especially when facing production deadlines, staff shortages and holiday vacations. While some employers are able to accommodate employees in these situations, others face challenges in using leave as an accommodation, which can cause frustration and confusion for all involved. In light of this dilemma, a new case from the 7th Circuit arises, with a decision that makes some employers excited about a future without leave of absence as a reasonable accommodation.

In the case Severson v. Heartland Woodcraft, No. 15-3754 (7th Cir. Sept. 20, 2017), Raymond Severson began his career with Heartland Woodcraft around 2006 and over time had been promoted to an operations manager for the fabricator of retail display fixtures. In 2010, he was diagnosed with back myelopathy caused by impaired functioning and degenerative changes in his back, neck and spinal cord. This back condition typically did not prevent him from performing his essential functions, however he did have flare-ups that were particularly debilitating and at times, hindered his ability to walk, bend, lift, sit, stand, move and work.

In 2013, Severson was demoted to a second-shift lead position due to performance issues. This new position involved manual labor, specifically lifting more than 50 pounds, operating production machinery, etc. During this same timeframe, Severson aggravated his back at home and, as a result, requested a leave of absence under the Family and Medical Leave Act (FMLA). Heartland gave him the 12-week FMLA leave and, on the last day of that leave, Severson had surgery and requested an additional two more months of continued medical leave to recover from surgery. Heartland denied Severson's request and terminated him. Heartland advised that he could reapply when he was medically cleared to work. Of course, Severson sued under the Americans with Disabilities Act (ADA) alleging his employer should have accommodated him by providing two to three months of additional leave beyond his FMLA entitlement, as well as other options.

The U.S. Court of Appeals for the 7th Circuit, which has jurisdiction over Illinois, Indiana and Wisconsin, held that a request for a two-to-three-month leave of absence is not a reasonable accommodation pursuant to the ADA. The court characterized the ADA as an "anti-discrimination" statute, not a "leave entitlement" statute. As a result of this decision, many employers were overjoyed at the shift and grateful for the tide finally turning. But on a cautionary note, this is one decision where additional leave time was not considered to be a reasonable accommodation. Other court circuits and the Equal Employment Opportunity Commission (EEOC) have greatly differed in their opinion of this issue and, additionally, employers with the 7th Circuit's thought process have been greatly penalized for this mindset.

As a result of this case, the EEOC filed an amicus brief arguing that the extended leave was reasonable because it was for a definite period of time, was requested in advance, and would have enabled the employee to return to work. The EEOC argued that the inquiry as to whether an accommodation is reasonable should not focus on the employee's ability to perform the essential functions of the job at the point of termination, but rather, at the end of the requested leave.

Interesting enough, the 7th Circuit court did not go as far as to state that the ADA never requires leave as an accommodation. The court gave a couple of examples contrasting how a multi-month leave of absence is viewed differently from a leave of absence that is "intermittent," "a couple of days," or "even a couple of weeks."

RECOMMENDATIONS FOR EMPLOYERS:

Many employers have asked for Sedgwick's point of view in light of this new case. Sedgwick maintains that a leave of absence is considered a reasonable accommodation as long as it is not an undue hardship on the employer. Again, we reiterate the 7th Circuit's decision is one example and does not fall in line with other jurisdictions or with the EEOC's view of a reasonable accommodation.

The *Severson v. Heartland* case highlights the need for a critical eye toward a leave of absence (multi-month or intermittent) as a reasonable accommodation. In light of the ruling in this case, employers should ensure their accommodation review programs consider each request for a leave of absence, as well as other requested accommodations, on a case-by-case basis and not automatically deny them because they are requests for multi-month absences or requested due to the exhaustion of FMLA.

It's also a good idea for employers to conduct regular reviews of their policies and include language that employees may be eligible for additional leave as an accommodation under the ADA, if reasonable. Human resources professionals should always listen closely and give serious consideration to employees' requests for leave accommodations.

For further information, please review the EEOC's 2016 resource document Employer-Provided Leave and the Americans with Disabilities Act. This publication offers insight into situations where employers would be expected to provide a leave of absence, unless the employer can show the leave of absence created an undue hardship.

Should you have any questions about this ruling, please contact your Sedgwick client services representative.

RESOURCES

Employer-Provided Leave and the Americans with Disabilities Act. EEOC. 2016.
http://www.eeoc.gov

Severson v. Heartland Woodcraft, No. 15-3754 (7th Cir. Sept. 20, 2017)
http://caselaw.findlaw.com/us-7th-circuit/1874573.html

Expert view

Q&A with Bryon Bass, SVP, Disability and Absence Practice & Compliance, Sedgwick

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

edge:
The Americans with Disabilities Act (ADA) and return to work (RTW) continue to be hot topics among our clients and the industry in general. What questions are employers asking?

Bryon:
One of the most common things we hear is, "Do we have to engage in the interactive process, and when do we engage?" If given a medically reasonable accommodation request, whether related to an occupational or non-occupational injury or illness, an employer is required to pursue the interactive process. There are different pathways that can lead to the interactive process. As soon as an accommodation request is made, or even if the employer knows – or should know – of an employee's need in the workplace that may

be related to a disability, the obligation to engage in the interactive process is triggered. It is also important to start the interactive process anytime an employee has exhausted leave.

edge:
How can employers maintain compliance under ADA requirements?

Bryon:
Three keys to compliance are communication, documentation and consistency. The interactive process typically consists of a dialogue between the employee, supervisor and a human resource representative or ADA coordinator, and it is often beneficial to include the employee's healthcare provider for guidance. Regular communication throughout the process is essential. Engage with the employee to clearly understand the need, look for potential accommodation options and consider parameters, and monitor that the accommodation is being carried out appropriately and consistently.

Because an employee's need for a job accommodation can be prompted by a disability or leave of absence request, a workers' compensation claim, or can arise outside of those circumstances, a claims management system that brings together information on all types of employee absences, tracks each step in the interactive process, and enables comprehensive documentation helps ensure compliance on multiple fronts. A centralized information platform can greatly reduce documentation risk and give employers a strong defense in the case of legal challenges.

Most important is consistency. Regardless of the nature of an injury or illness, your practices should be consistent across the board when considering the interactive process and RTW options, including light duty or transitional work opportunities. Risk management and human resources teams should follow a common process and communicate to ensure employees have equal access to accommodation choices. Also, avoid a "100% healed" mentality; organizations that maintain an employee must be completely healed before returning to work in any capacity are setting themselves up for challenges. This type of standard violates the ADA because it removes the opportunity for all employees to pursue reasonable accommodation.

edge:
What are the most common hurdles employers must overcome in implementing the interactive process and RTW strategies?

Bryon:
Many common challenges we see among employers can be addressed with careful planning. First, do not get tripped up by job descriptions (or a lack thereof). It is important to ensure you have an up-to-date functional job description outlined for each position. If not documented, updated and readily available, this lack of information can delay the interactive process and make it tough to implement a reasonable accommodation or RTW plan. Some employers may have job descriptions on file, but they have not been reviewed in months or years. Validate essential functions as part of the interactive process to ensure the tasks identified reflect the current reality of each position.

Additionally, without a clear, written policy that is communicated and shared across the organization, employers may be setting themselves up for problems. A formal, written policy helps set expectations, and supports consistency when following ADA requirements and engaging in the interactive process – whether via occupational or non-occupational paths.

Finally, as part of planning and policy, clearly outline the roles and responsibilities of all players – risk managers, human resources, supervisors, business leaders, your third party administrator and the employee – to eliminate uncertainty and avoid missteps. Invest time and resources to train staff, especially front-line supervisors, on the basics of ADA, the requirements of the organization's policy and how to consistently follow and document the steps of the interactive process.

edge:
How should we consider leave in the accommodation equation, particularly after the recent 7th Circuit court decision?

Bryon:
We frequently answer questions from employers about using leave or intermittent leave as an accommodation. While leave, particularly intermittent leave, as an accommodation can be difficult for employers to track and manage, it is also an area that can prompt ADA-related lawsuits. In general, we have suggested that leave as an accommodation should be considered if it is appropriate, reasonable and practicable. Employees may request leave in order to facilitate the healing process and return to work or, in the case of intermittent leave, remain at work while also allowing time for treatment and recovery. The U.S. Department of Labor's (DOL) Job Accommodation Network (JAN) offers some excellent guidance on conditions that might warrant leave under the ADA, as well as how to determine the appropriateness of a request.

Since the recent 7th Circuit decision *(see the article "Is a leave of absence still considered a reasonable accommodation?" in this issue)*, some employers have shifted their thinking and no longer believe that leave is acceptable as an accommodation. Proceed with caution; based on court rulings in other jurisdictions, as well as repeated Equal Employment Opportunity Commission (EEOC) guidance and decisions, leave as an accommodation may still be considered reasonable when intended to help your employee get back to work. The focus should be on whether the employee would be able to perform the essential functions of their job at the end of the requested leave, as well as whether the accommodation would place an undue hardship on the employer. We recommend reviewing each request for leave as an accommodation on a case by case basis rather than setting absolute limits.

The EEOC offers a resource document titled "Employer-Provided Leave and the Americans with Disabilities Act," which offers insight into situations where employers would be expected to provide a leave of absence as a reasonable accommodation. We also advise consulting with your corporate legal counsel for specific direction.

edge:
What additional resources can employers turn to for guidance on ADA compliance and RTW?

Bryon:
In addition to the Job Accommodation Network (askjan.org) the DOL's Office of Disability Employment Policy offers more resources on its website (www.dol.gov/odep). The EEOC offers many resources and guidelines (**www.eeoc.gov**). Employers can also turn to the Disability Management Employer Coalition (dmec.org) and similar industry associations. The FMLA Insights Blog (FMLAInsights.com) and Sedgwick's own blog, *Connection*, (blog.sedgwick.com) can also be timely sources of information.

It is easy to get into the weeds when it comes to individual cases and circumstances. Contact your Sedgwick representative and your corporate legal counsel if you have questions or need specific advice.

BRYON BASS
Bryon Bass is responsible for overseeing disability and absence management product standards and compliance, quality and disability payroll. He has a wide range of experience in health and productivity management, both from an employer benefits role and third party administration. His responsibilities have included client relationships, service operations and oversight of disability and absence management products. Bryon has also been active as an author and seminar leader dealing with FMLA implementation, corporate health and wellness strategies, workers' compensation metrics and disability program design. Previously, he was the director of integrated disability management for a large utility company, where he oversaw companywide integrated delivery of disability and absence management services, comprised of self-insured/self-administered workers' compensation, fitness for duty, leave of absence, accommodation and time-off programs.

Community spotlight

First responders demonstrate that courage counts

BY **DAVE NORTH**
President and CEO

At Sedgwick, taking care of people is at the heart of everything we do. Our job is to provide assistance and support when the unexpected occurs. But more often than not, our colleagues are not the first ones at the scene when there's an injury at work, a natural disaster, an outbreak of violence, an auto accident, a fire or a health crisis. It's the community first responders—police, firefighters, paramedics and emergency medical providers, search and rescue teams, military members and other brave professionals—who are on the front lines, ensuring everyone's health and safety during uncertain times and demonstrating how **courage counts**.

Each year, leading up to the holidays, Sedgwick conducts an awareness and fundraising campaign to support and promote a cause that is meaningful to our customers, community and colleagues globally. Reflecting on some of the painful events of the past year—hurricanes, wildfires, earthquakes, terror attacks and more—we were drawn to the bravery of the men and women who ran toward danger, rather than away from it, to save the lives and property of others. In recognition of their sacrifice and heroism, we have dedicated our 2017 holiday campaign to honoring all the first responders who epitomize how **courage counts** in times of crisis.

This year, Sedgwick is donating $50,000 to charities supporting the physical and emotional needs of first responders around the world. This cause holds significant meaning for me because of my own experience as a veteran and a firefighter; I am especially pleased to dedicate Sedgwick's gift in honor of our valued clients and business partners.

Additionally, we have mobilized Sedgwick colleagues around the world to help us demonstrate our collective gratitude to first responders. In support of the communities where we operate, our colleagues are participating in holiday activities at local police stations and fire houses, bringing meals to emergency personnel who are at work—rather than with family and friends—on the holidays, and delivering thank-you cards to the heroes who make a difference in their local areas.

We're also recognizing first responders within the Sedgwick family—colleagues and their relatives in the armed forces and who volunteer as firefighters, auxiliary police, ambulance corps team members and more. Please visit our website and watch our social media channels to see how our colleagues and offices around the world are participating.

Do you know a first responder hero whose generosity of spirit you want to recognize this holiday season? Help us honor them on social media by using the hashtag #SedgwickCourageCounts and tagging @Sedgwick in your messages.

I would be remiss not to acknowledge another group especially deserving of our thanks: the tireless team of adjusters that has gone above and beyond the call of duty in the latter part of this year to aid in managing an influx of property claims from one of the most destructive hurricane seasons on record. While we tend to think of first responders as professionals like EMTs, firefighters and police officers, this year we can add to that list the many colleagues from across the Sedgwick and Vericlaim family who have been on the ground from day one to assist in the areas of greatest need *(read more about our hurricane response efforts in this issue, "Three powerful hurricanes – one extraordinary team")*. We are grateful to everyone who has pitched in to help those working to rebuild their homes and their lives in the aftermath of these catastrophic storms. Their personal sacrifices, attention to detail, and commitment to demonstrating that **caring counts** have not gone unnoticed.

This past year, first responders were called upon like never before. We look back on 2017 with renewed appreciation for everyone who aided those in times of need, and ahead to 2018 with a sense of hope that their vital services will be in far less demand next year.

Edging up

Short takes on emerging industry issues – physical therapy costs, state legislative changes and fraud control

Rising physical therapy costs – Balancing the budget as price tags surge

BY **ROBIN BUSH**
Vice President, Medical Networks, Sedgwick

Employers and risk managers watching physical therapy spend rising may assume that the rising cost is because of increasing utilization. After all, the workforce is aging and co-morbidities are on the rise. These factors can lead to more frequent and longer durations of physical therapy. However, the primary reason for rising physical therapy cost is a trend of increasing state fee schedules, especially in states with a higher number of occupational injuries.

Risk managers often closely scrutinize high-cost treatment items, such as high-end diagnostic studies and surgery. Historically, physical therapy costs sometimes crept beneath the radar because the unit and per visit costs are relatively low compared with other healthcare services. State fee schedule increases in recent years have drawn attention to the overall cost of physical therapy.

Below are the physical therapy fee schedule increases from 2011 through 2016 in states with some of the highest volumes of treatment in the nation (as reported by WCRI).

- California – 57%
- Florida – 4%
- Georgia – 13%
- North Carolina – 71%
- Texas – 12%

Physical therapy is frequently the first line of defense for doctors trying to help patients recover from occupational injuries. With the increasing scrutiny on limiting prescription pain medications, and the standard treatment required to strengthen and rehabilitate older employees who need to return to the job, the demand for physical therapy will likely continue to rise.

KEY STRATEGIES TO HELP CONTROL COSTS

There are many components that drive price increases in any given state, including politics, care access needs and the application of conversion factors to increase provider reimbursement above Medicare fee schedule rates. State regulators walk a fine line to balance cost containment needs and provider access. They have to control cost, yet keep compensation feasible for providers. Specialists generally have higher conversion factors intended to incentivize them to work in a state. That means they are allowed a higher pay rate above the Medicare fee schedule than, say, a general practitioner. For example, surgeons are likely given the highest conversion factors among the medical providers in a given state.

The variable application of Medicare rules at the state level can also impact prices. Trying to stem the tide of fee schedule increases and influencing variables would be futile for an employer-based risk manager. However, there are key strategies that can help lower the cost of risk in any medical category including:

- Knowing and addressing geographic and nationwide utilization trends
- Maintaining consistent treatment plan review and case management practices to keep treatments within guidelines
- Making sure that a physical therapy specialty network is deployed that supports care coordination by nurses and claims examiners for early and appropriate intervention, and provides discounts below fee schedule
- Ensuring that co-morbidities and psychosocial and behavioral health issues are consistently identified and documented early, and that cost containment strategies are tailored to mitigate these factors
- Addressing all care provided for the injury; falling costs in one area often create increasing costs in another
- Understanding the state-level political climate and provider lobbies, and joining organized lines of communications to lawmakers

CLINICAL SERVICES PLAY A KEY ROLE

The consistent coordination with specialty network partners and application of utilization review and case management services can help control costs. When physical therapy is needed, we have seen that early and accurate guidance to appropriate care frequently drives earlier improvement in functional capabilities and return to work.

When utilization review is needed, nurses reference guidelines, such as the Official Disability Guidelines and American College of Occupational and Environmental Medicine guidelines, and evaluate treatment for the employee's injury to ensure it is appropriately synchronized with the guidelines.

Telephonic case managers evaluate the need for physical therapy during case management. This ensures the timing of testing, therapy and prescription drugs makes sense and continually follows applicable guidelines to support the employee's recovery and help the claim progress. A telephonic case manager can also build a rapport with the primary treating physician, and provide them with details on the employee's situation, medical needs, return to work opportunities and motivation for recovery.

Co-morbidities and psychosocial issues, including opiate sensitivity or addiction, must be addressed early. If physical therapy is being considered as an alternative to opioids, it may need to run alongside cognitive therapy or behavioral health services to eliminate recovery delays.

RESOURCE

Workers Compensation Research Institute (WCRI).
https://www.wcrinet.org/

CA SB 1160 brings UR changes and increased fraud control

BY **EDWARD E. CANAVAN, AIC, ARM**
VP, Workers' Compensation Practice and Compliance, Sedgwick

California Senate Bill 1160 aims to provide quality care for employees as soon as possible following a workplace injury. For injuries occurring on or after January 1, 2018, California physicians can provide certain types of medical care without the need for prospective utilization review (UR) for the first 30 days after the injury occurs.

Under SB 1160, prospective UR will be required in situations that involve:

- Pharmaceuticals
- Non-emergency surgical procedures (including all pre-surgical and post-surgical services)
- Psychiatric care
- Diagnostic tests (excluding x-rays)
- Home healthcare
- Durable medical equipment (exceeding $250)
- Electro diagnostic medicine

Beginning July 1, 2018, each UR process must be accredited by an independent, nonprofit organization certifying that it meets certain criteria such as timeliness in issuing a decision and the scope of medical material used, and requiring a policy preventing financial incentives to doctors and other providers based on the UR decision. Sedgwick is URAC accredited and our UR program ensures injured employees receive the best level of care at the appropriate cost throughout their recovery.

In addition to the changes in the UR process, California SB 1160 also prohibits providers who are indicted on suspicion of insurance fraud from adjudicating and collecting on liens.

To help shape this bill, the California Department of Industrial Relations worked with Sedgwick to better understand UR best practices and how our team handles requests for medical treatment.

RESOURCE

California Senate Bill 1160. California Legislative Information website.

33

Arizona changes claim settlement options

BY **EDWARD E. CANAVAN, AIC, ARM**
VP, Workers' Compensation Practice and Compliance, Sedgwick

As of October 31, 2017, injured employees in Arizona could, for the first time, waive the right to future medical care when settling a workers' compensation claim. This change was a key part of Senate Bill 1332, which was signed by Arizona Governor Doug Ducey on May 8, 2017.

The bill includes several safeguards intended to ensure that employees who agree to full and final settlements understand what rights they relinquish as part of the agreement. All settlements waiving the right to future medical treatment must be approved by the Industrial Commission of Arizona (ICA), and consider the permanency of the employee's injury and whether it has stabilized, and the fairness of the agreement to the employee.

To avoid the need for evidentiary hearings on the issue of fairness, the ICA requires that parties provide with their petition for approval information about the employee, including work history and education background, as well as an itemization of the employee's monthly expenses and current debt.

The ICA also recommends that the parties submit a detailed financial analysis of the proposed settlements that identifies the portion to the settlement intended to cover medical costs and wage replacement, as well as any present value calculations for benefits owed to the employee.

If an injured employee is receiving or anticipates receiving Social Security disability benefits, the petition should also include an explanation of the potential that a settlement would have on the payments.

For additional information from the ICA and suggested best practices for seeking approval for full and final settlements, please see the Arizona Revised Statutes § 23-941.01 document.

RESOURCES

Senate Bill 1332. State of Arizona Senate. Fifty-third Legislature. First Regular Session 2017.

Arizona Revised Statutes § 23-941.01: Full and final settlements – Information and best practices. October 19, 2017.

Premium decrease announced in Florida

BY **EDWARD E. CANAVAN, AIC, ARM**
VP, Workers' Compensation Practice and Compliance, Sedgwick

On November 9, 2017, the Florida Insurance Commissioner issued a Final Order granting approval to the National Council on Compensation Insurance (NCCI) for a statewide overall rate level decrease of 9.5%. The recommendation was primarily driven by a decrease in claim frequency of more than 8% from 2014 and 2015. This new rate applies to both new and renewal workers' compensation insurance policies effective in Florida as of January 1, 2018.

This rate level decrease comes just a year after NCCI recommended a 19.6% increase driven by two separate Florida Supreme Court decisions – Castellanos vs. Next Door Company, et al. (April 28, 2016) and Westphal vs. City of St. Petersburg, et al. (June 9, 2016) – which brought about retroactive changes to claimant attorney fee and potential indemnity benefit duration. A suit was filed against NCCI contending their process for calculating recommended rates violated Florida's "sunshine law." An appeals court ultimately affirmed the NCCI process and Florida regulators approved a 14.5% rate increase effective December 1, 2016.

Despite the state's recent rate decrease, future increases remain a possibility as experience data relating to the impact of the Castellanos and Westphal court decisions continues to mature.

RESOURCES

Office approves a 9.5% decrease to Florida's workers' compensation insurance rates. Florida Office of Insurance Regulation website. November 9, 2017.

Castellanos vs. Next Door Company, et al. April 28, 2016.

Westphal vs. City of St. Petersburg, et al. June 9, 2016.

Enhanced Nurse Licensure Compact introduced

BY **ROXANNE BROWN**
Director, Regulatory Compliance, Sedgwick

Beginning January 19, 2018, 26 states will implement the enhanced version of the nurse licensure compact (NLC). For state-specific information, see the National Council of State Boards of Nursing website.

Since 2005, the NLC has allowed nurses with a multi-state license to practice in their home state and other original NLC states. This has allowed Sedgwick's nurses handling claims across multiple jurisdictions to practice nursing without obtaining individual licenses in each state. In 2015, there were 25 states that had implemented the NLC. In May 2015, the original NLC was updated to an enhanced version called the eNLC. It became effective July 20, 2017 and 26 states enacted legislation to adopt the new model. Under the eNLC, nurses are able to provide care to patients in other eNLC states without having to obtain licenses. Nurses with an original NLC multistate license are grandfathered into the eNLC.

As of now, Wisconsin, Colorado, New Mexico and Rhode Island are members of the original NLC and have not yet joined the eNLC. These states plan to introduce legislation in 2018. This means that a nurse in Wisconsin, Colorado, New Mexico and Rhode Island will hold a multistate license valid in these four states, rather than in 26, and will need to obtain additional licensure in order to practice in any of the eNLC states.

The eNLC adopts 11 uniform licensure requirements in order for an applicant to obtain a multistate license; among them is the submission of federal and state fingerprint-based criminal background checks. These revisions will remove barriers that kept other states from joining the licensure compact and allow nurses to practice in a variety of states without the burden of obtaining individual licenses.

DaVone Hughes-Craig, regional licensing coordinator, and Sedgwick's centralized licensing team have been following the transition to the eNLC and, they are monitoring the individual state boards of nursing websites to ensure our nurses are compliant with all regulations, and internal policies and procedures. We applaud the National Council of State Boards of Nursing and the individual state boards on adopting uniform requirements across multiple jurisdictions to benefit current practices in case management and nurse call centers, as well as emerging technologies such as telehealth nursing.

RESOURCE

Enhanced Nurse Licensure Compact (eNLC) Implementation. National Council of State Boards of Nursing website.

36

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