

Is the ACA Impacting Workers' Compensation Claims?

Has the ACA led to employers' treating workers' comp claims like crime scenes?

By David Leng, Vice President, Duncan Financial Group



A free “vacation” has long been a motivation of workers’ compensation fraud, as is monetary rewards. But the Affordable Care Act (ACA) has added millions of additional people into the healthcare system, putting a significant strain on budgets.

The U.S. Department of Health and Human Services (DHHS) reports that the physician supply will increase by only 7 percent by 2020, and starting in 2015, the estimated doctor shortage will be about 63,000. By 2025, the shortage could be as high as 131,000, primarily due to additional users coming into the healthcare system.

The DHHS reports that this collision of care needs and the shortage of both primary care and specialist physicians could greatly impact the delivery of healthcare in the workers’ compensation marketplace. The end game is as healthcare costs, and especially deductibles, rise for individuals, and doctors find themselves conflicted over where they can be better compensated, we may very well see a rise in fraudulent claims.

“We have seen a dramatic increase in questionable or ‘red flag’ claims as the ACA has been phasing into place, and identifying the true cause of an injury is becoming a larger and larger area of focus in our workers’ compensation claims handling process,” said Stacey Cheese, Claims Manager of East Coast Risk Management, a licensed third party administrator and claims manager for more than 1,500 employers. While employers choose higher deductibles to reduce their health insurance premiums, workers’ compensation has a \$0 deductible for an injured employee, which may be

the biggest driver of these questionable claims.

Identifying Fraudulent Claims

An employee tells his supervisor Monday morning that he hurt his back climbing down a ladder. He’s instructed to go to the emergency room to seek treatment. Since it is difficult to accurately diagnose the cause of a back injury, the physician takes the employee’s word for it, particularly knowing he will make a higher fee treating a WC injury than dealing with health insurance.

Typically, the treating physician makes decisions about the work-relatedness of a condition. Reimbursement rates set under the ACA tend to be lower than reimbursement rates under workers’ compensation systems. These plans pay providers for services received; therefore, there is an incentive for providers to prefer these payments.

In this instance, maybe the employee hurt his back sliding into second base during a Sunday afternoon softball game but says it happened on a Monday morning simply because his employee benefits don’t have a disability program, or maybe his employer went to a deductible program to offset higher premiums. The bottom line is that the employer is going to be unfairly paying

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the freight, while watching his premiums rise.

According to Richard Victor, Executive Director of the Workers' Compensation Research Institute, the ACA has made high-deductible general health insurance plans common, while increasing the possibility of classifying uncertain claims, including accidents involving soft-tissue injuries, as WC incidents. The logic was that selecting the WC classification allowed for the claimant to avoid what would likely be a high deductible under his or her health insurance plan and for the healthcare provider to be paid

under the fee schedule or other fee-for-service system of the WC system for that state.

With so much at stake, it is becoming increasingly important not to take every workplace injury at face value. Every job incident should be treated like a crime scene – think of it as WorkComp CSI.

First, you need to be aware of certain red flags, particularly in the case of a remote injury, where an employee gets a soft-tissue injury (back, neck, etc.) away from work but says he or she was hurt on the job. And if you suspect this is the case – an employee has come to you saying he strained his back lifting a box in an area where he was working alone and unsupervised – now is the time to utilize “workplace forensics” with the following steps:

- Have the injured employee immediately put in writing the facts of the injury.
- The job supervisor needs to do a thorough investigation of the accident scene, walking through and noting each and every aspect, in order to verify the story of how the accident happened. Keep detailed records and make sure to take pictures of the scene.

- Talk to fellow employees. Did they see the injured party report to work and was he or she limping, walking gingerly, or complaining of pain while holding his back, for example?
- Was the injured employee acting disgruntled in the time leading up to the injury, upset at the company, or making threats? Has the injured employee been a discipline problem? It's best to review the history of any employee who reports an injury, even if there's no evidence of wrongdoing.
- Document the use of safety equipment such as hard hats, gloves, goggles, safety harnesses, etc.
- Is there any video surveillance available in the area where the accident occurred? Is there evidence on social media that the injured worker may have been hurt off the job? Often, these tips come from coworkers who grow weary of carrying an extra workload.
- Finally, repeat the first step. There's a reason why police investigators ask suspects numerous times to repeat a story – because it's hard to fabricate something exactly the same each time you repeat it. Do the employee and witness statements, and the account conveyed at the doctor's office, all align?



CRIME SCENE DO NOT CROSS

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- As a last case scenario, particularly if the potential damage to the company appears to be significant, you could hire a private investigator well-versed in WC matters to do the so-called heavy lifting.

So what are the potential consequences this law might produce for the WC marketplace? If the ACA results in higher cost plans, larger deductibles, and limited doctor and healthcare providers, workers could stray out of this system and into the WC realm.

The higher deductibles may help to reduce an employer's premium, but many do not realize that when the employee cannot afford to pay the deductible itself, there will be repercussions. Many employees are defaulting on payment to doctors and medical facilities, causing them additional financial problems when creditors call and credit scores plummet. Employers should help ease the situation by educating employees on how and why they should adequately fund their Flexible Spending Accounts or Health Savings Accounts.

The best advice is to be diligent in your investigation of every incident. It's a sad state of affairs that employers can no longer give employees the benefit of the doubt when an incident occurs, especially with so much at stake. Employers must do due diligence in order to determine if those cards turn out to be a winning hand or one that forces them to fold.

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