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Paper Offers Way to Trim Prescription Drug Costs in Set-Asides: Top [2014-01-30]

One of the hardest parts of settling some claims is winning the government's blessing for a proposed Medicare set-aside. And future drug costs are typically one of the most costly things that the Centers for Medicare and Medicare Services insist on before approving a settlement.

A white paper to be presented next month in Atlanta urges claims adjusters to think long-term and start weaning claimants off of drugs long before approaching CMS with a proposed set-aside to settle a workers' compensation claim.

The paper, written by executives for ISO Crowe Paradis and Prium, reports that there's a huge cost problem in the workers' compensation arena that centers on prescription drugs. It cites a 2012 survey by CompPharma that found employers and insurers spent an estimated $4 billion on prescription drugs that year.

Other study data from NCCI's May 2012 research brief found that prescription drugs account for 19% of workers' compensation medical costs and that the cost of narcotics per claim is increasing.

While companies attempt settlements and move to create a Medicare set-aside, the paper says, the problem gets thornier.

"Simply put, it's often impossible to settle claims with Medicare beneficiaries whose claims involve large-scale prescription drug costs," said the authors. The paper was written by Mark Pew, product development executive at Prium, and Dorothy Kelly, chief executive officer of ISO Crowe Paradis.

Pew and Kelly, along with Dashae Needham of Sedgwick CMS, will present their ideas about

cost containment during the Atlanta Claims Association's Workers' Compensation Boot Camp [1] on Feb. 4.

According to the paper, 30-year drug costs for each of the most widely used prescription drugs start at roughly $150,000. Those drugs and estimates are:

- Abilify, 10 mg, $251,521.50.
- Duragesic, 100 mcg, $173,052.00.
- Butrans, 20 mcg, $165,984.00
- Imitrex, 20 mg, $164,628.00.
- OxyContin, 80 mg, $147,606.00.

"Treatment with those drugs, left unattended, can derail a settlement, even as the long-term prognosis of the claimant continues to decline," write Pew and Kelly.

Complicating the problem, they say, is Medicare's tendency to overstate future care assumptions with regular approvals of all of treating physicians' recommended remedies, even in "either/or" scenarios.

Pew and Kelly recommend a strategy of assembling a multi-tiered documented "package of evidence" for Medicare's review that:

- Provides a written assessment by both the treating physician and a reviewing peer physician of the most appropriate current and future treatment.
- A signed written agreement between the treating physician and the reviewing peer physician of changes to the treatment regimen.
- A transactional record from the pharmacy benefit manager showing discontinued drugs and/or reduced dosages tied to the timeline of treatment.
- A clinical record of engagement that documents the progress of the treatment over time.

The paper cites this example of how the strategy has worked:

A workers' compensation claimant's doctor prescribed Flector patches, which required about $110,000 of the total set-aside of $140,000. But the patches were found to be ineffective, even though medical records showed a prescription for the patches. The payer had set a maximum claim settlement amount at $80,000, including medical, indemnity and attorney's fees.

As it stood, the case could not settle. The payer contacted the physician who agreed the patches were no longer needed and the doctor wrote a letter of discontinuance for the patches.

That information allowed the payer to reduce the allocation to $30,000. Medicare approved and the parties settled the case.

Pew said in an interview that taking on that kind of detailed documentation takes time – too much time for some payers. Especially when the claimant and payer may be anxious to settle. But Pew said the strategy gets results by building documentation around a treating physician's recommendations, which he said carry the most weight in Medicare's set-aside reviews. He estimates about 40% of the total workers' compensation payer cases seek set-aside approvals from Medicare. Pew predicts that eventually, the treatment documentation route will become "standard operating procedure in the industry."

Not all Medicare set-aside professionals are convinced the approach will work.

Jennifer Jordan, general counsel for Medval, a Maryland-based Medicare set-aside consulting firm, said she is skeptical about spending time and money trying to persuade Medicare that any particular set-aside provides adequate funds.

She said the approach can cost too much because of the many months it takes to execute, and there are no guarantees it will pass a Medicare review. They say the issue involves accurately calculating risk with set-aside funds, and that settlements without involving Medicare can take less time and cost less.

What's more, the physicians involved may not be receptive to suggested prescription changes to their patients.

Jordan offered a reminder to employers and insurers who might invest too much to get a set-aside approved that the program is voluntary.

"You don't need Medicare's approval" she said.

As Teddy Snyder, of WC Mediator.com, put it in a recent blog: Medicare's approval of set-asides "is not and never has been required. The law merely requires that Medicare's interest be taken into account, which is what you are doing when you incorporate the MSA into the compromise and release."

The lengthy treatment documentation as described in the paper can work, said Jordan, "if you want it."

But she said the strategy's close monitoring of treating physicians can also backfire.

"If you go to a doctor and call into question their treatment, they can get defensive." They can react by prescribing more treatments, she added. "They may think you're going to sue them."

Meanwhile, she said, Medicare has been increasingly demanding more outside information on claimants that are separate from the case in question. She said the finicky requirements of Medicare reviews do not guarantee that six months of carefully documented weaning of a claimant from drug prescriptions will automatically win approval. That, she said, has convinced some payers not to take that path.

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1. http://www.atlantaclaims.com/events/view/Workers-Compensation-Boot-Camp
2. https://ww3.workcompcentral.com/news/comment/id/9ad87d3b6dc05995d6575ec286787a1em
3. javascript: history.go(-1)