NC Workers' Comp NEWS

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Renewed focus on opioid use

New guidelines developed by the American College of Occupational and Environmental Medicine (ACOEM) recommend reducing the average daily opioid prescription to a 50-milligram morphine equivalent dose, instead of the traditional 100-120 milligrams per day.

ACOEM developed the guidelines for Reed Group Ltd., a disability case management services firm and a unit of Guardian Life Insurance Company of America. The report includes some startling observations:

- 80-94% of opioid trials have industry conflicts (funding and/or conflicts of interest in the trials).
- People in safety sensitive jobs should not take opioids. A systemic review found all 12 studies of motor vehicle crashes supported an elevated risk of crashes among drivers taking opioids. Other guidelines currently on the market don't include this warning, and/or do not back it up with scientific review.
- The guidelines suggest a 50mg morphine equivalent dose is the appropriate limit. Prior guidance used elsewhere and based mostly on expert opinion has been 100-120mg, possibly allowing fatalities to occur.
- No comparative trials show that an opioid is superior to another medication (out of 28 trials).
- Most patients in opioid trials do not tolerate opioids and drop out in various phases of the trials.
- No evidence shows the long-term efficacy of opioids - the longest placebo-controlled trial lasted only 4 months

There is widespread agreement opioids are mismanaged in workers' compensation, even as they are being prescribed more often. A study by NCCI found the percentage of medical claims receiving narcotics within one year after injury increased from 8% in 2001 to 13% in 2008. The Workers' Compensation Research Institute recently reported workers who receive narcotics prescriptions are not actively monitored, contrary to generally accepted treatment guidelines.

"Few longer-term users of narcotics received the recommended services for monitoring," WCRI concluded, based on its study of 17 states. Joseph Paduda, a well-known industry analyst, saysopioid use and misuse is "the most significant problem facing workers' compensation."

"The continued growth in the use of opioids to treat WC claimants and the industry's struggle to understand and address the impact of opioid usage on individual claimants and the industry as a whole has led to a near crisis," he writes in his 2013 Workers' Compensation Opioids and Opioid Management Survey.

"Claimants taking opioids are out of work longer, incur much higher costs, and their suffering from the drugs' adverse effects includes a decline in functionality, high risk of addiction and dependency, and in some cases, premature death due to overdose," he adds.

A spokesman for Coventry Workers' Comp Services, a division of Aetna Inc, told ***Business Insurance*** opioid use appears to be moderating but "we, as an industry, have many patients who are still in the danger zone of taking these types of medications." A spokesman for Progressive Medical Inc., echoed the sentiment saying "we're still in the midst of this opioid crisis."

Probably most states are acting to get a better grip on opioid use in workers' compensation. Most recently, the South Carolina Workers' Compensation Commission announced it has appointed a multidisciplinary group to study the issue and suggest what steps the commission should take to manage the problem.

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CASE LAW UPDATE

By Joe Austin

Employers can glean some guidance for handling claims from a recent Court of Appeals decision which deals with the calculation of average weekly wages (AWW) and statutes of limitations that can be affected by that calculation.

In Miller v. Carolinas Medical Center-Northeast, the employee injured her back in 2006, but initially did not lose any time from work. In 2007, the Industrial Commission (IC) approved a Form 21 for payment of the rating, based on an AWW of $689.21. The Form 21 specifically provided that the AWW was "subject to verification." The employer paid the rating in 2007, and issued the last payment for medical treatment on November 11, 2008.

With regard to medical expenses, the Workers' Compensation Act provides that an employee's right to additional medical compensation (AMC) ends two years after the last payment of medical or indemnity compensation, unless within that period of time, the employee files an application for AMC which is approved by the IC. With regard to indemnity compensation, the Act provides that the IC may award additional compensation provided that a request for additional benefits is made within two years of the final payment of indemnity benefits. Since the employee filed a claim for AMC on November 16, 2010 and a request for additional indemnity benefits on August 29, 2011, the employer argued that neither of the employee's claims was timely.

In resolving these issues, the IC ruled that the adjuster had incorrectly calculated the AWW by dividing the employee's earnings by 365, and multiplying the result by 7. Observing that the Act requires that the AWW be calculated by dividing the employee's earnings by 52, the IC ruled that the correct AWW was $691.11, which meant that the employee was due an additional $18.90 for the rating. Further, the IC reasoned that the statute of limitations for pursuing additional indemnity benefits had not started to run, because the employer had yet to issue the last payment of compensation for the rating.

With regard to the claim for AMC, the IC found that after the last payment of "medical expenses," the employer had paid a bill to a "rehabilitation company" on January 20, 2009. Noting that rehabilitative services are included within the Act's definition of "medical compensation," the IC ruled that the statute of limitations for the employee to pursue AMC had not expired when the employee filed his request for AMC in 2010.

The Court of Appeals noted that the adjuster's error in calculating the AWW was a mistake of law in terms of how the AWW should be calculated, which does not provide a basis for modifying an award of compensation. In addition, the Court stated that, even though the AWW was expressly "subject to verification," any request for verification would have to be made within a reasonable time. Since the employee did not challenge the AWW for nearly four years after the IC approved the Form 21, the Court ruled that the employee's request for modification of the AWW had not been made within a reasonable time, and vacated the award of additional compensation.

Nevertheless, the Court agreed with the IC's determination that the employer's payment for rehabilitative services in 2009 amounted to the last payment of medical compensation, so that the employee's 2010 request for AMC had been filed in a timely fashion.

Takeaways: In calculating the AWW of an employee has worked for at least 52 weeks prior to an injury, there are two points that should be recognized: (a) the employee's earnings should be divided by 52, instead of dividing by 365 and multiplying by 7, and (b) as a corollary, only those earnings during the 52 weeks before the injury (not 365 days or the year prior to the injury) should be considered.

Second, any challenges to an AWW from an award of the IC must be made within a reasonable time. In this regard, it is of note that the form that is currently used for payment of the ratings in most cases, the Form 26A, does not contain the "subject to verification" language, and arguably, cannot be challenged at all once it has been approved.

Finally, and perhaps most importantly, in those cases in which the IC does approve payment for a rating, it is important to collect and promptly pay bills from all vendors in order to ensure that the statute of limitations for the employee to file a claim for AMC starts to run at the earliest possible time.

Joe Austin is a senior attorney at Young Moore and Henderson in Raleigh. A graduate of Davidson College, he received his law degree from Wake Forest University.

President's Note

Topics, speakers for 2015

Earlier this year we concluded one of our most popular annual conferences ever and we will soon begin planning the 2015 event. I am inviting you to send us ideas for topics and speakers next year. Several of the presentations at this year's conference were suggested by our members/readers and I am sure you will again make useful suggestions.

We experimented with a new location this year for breakfast and refreshment breaks and everyone liked having food and drinks served right outside the classroom. Our exhibitors were pleased, and it added a more festive atmosphere to the conference.

On the last day of the conference this year we handed out evaluation sheets to all the attendees and asked for ideas for 2015. These are the suggestions we received:

- More focus on return to work
- Explanation of fee schedules
- How to integrate PPO networks, fee schedules, and bill review services
- Work conditioning
- PTSD
- Managing pain medication/addiction
- Impairment ratings

We will look into developing these topics. Please send additional suggestions to Moby Salahuddin at msalahuddin@sc.rr.com.

With very best wishes,
Jay Norris

New opioid called dangerous

Attorneys general from 28 states, along with several advocacy groups and some U.S. senators, have asked the FDA to rescind its recent approval of Zohydro ER, a pure form of the painkiller hydrocodone.

The drug is approved for managing pain severe enough to require daily, around-the-clock, long-term treatment and for which alternative treatment options are inadequate. Critics say the drug will exacerbate the nation's prescription drug abuse epidemic.

Massachusetts Governor Deval Patrick banned Zohydro earlier this year after declaring a state of emergency to tackle the state's growing epidemic of opiate addiction. A federal judge recently struck down the ban, saying Massachusetts has no authority to overrule the FDA's decision to approve the drug.

The FDA acknowledges the potential for abuse and addiction and is requiring the drug manufacturer to study and monitor reports of addiction, overdose, and deaths associated with long-term use beyond 12 weeks. The agency notes the efficacy of Zohydro is based on a clinical study that enrolled over 500 patients with chronic low back pain and found the drug significantly reduced chronic pain compared to placebo.

The FDA approved the drug against the recommendations of its advisory board, which cited the potential for addiction. Continue reading below...Even though it is meant to release hydrocodone slowly over 12 hours, the pill could be tampered with to release a large dose all at once.

In its letter to FDA Commissioner Dr. Margaret Hamburg, the coalition called FED UP! noted the highest available dosage of Zohydro will contain 5-10 times more hydrocodone than Vicodin or Lortab. "Someone unaccustomed to taking opioids could suffer a fatal overdose from just two capsules. A single capsule could be fatal if swallowed by a child," the letter said.

According to ***WebMD Health News***, Zohydro's selling point is it contains only hydrocodone, as opposed to hydrocodone plus acetaminophen (marketed as Lortab and Vicodin) or hydrocodone plus ibuprofen (Vicoprofen). The drug manufacturer says acetaminophen overdose is a leading cause of sudden liver failure in the U.S. Nearly two-thirds of those overdoses are attributed to medications that include hydrocodone and acetaminophen.

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coming up

October 8 – 10, 2014

19th Annual NC Workers' Compensation Educational Conference — **Raleigh Convention Center**

March 25-27, 2015

Annual Conference, NC Association of Self-Insurers — **Holiday Inn Resort, Wrightsville Beach**

April 15-17, 2015

Members-Only Forum, SC Self-Insurers Association — **Litchfield Beach & Golf Resort**

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At the Commission

By Bruce Hamilton, Teague Campbell

New commissioner nominated

Governor Pat McCrory has nominated Charlton Allen of Iredell County to the North Carolina Industrial Commission. The appointment is subject to confirmation by the General Assembly.

Allen is a graduate of the University of North Carolina at Chapel Hill and received his juris doctor degree from the University of North CarolinaSchool of Law. He was admitted by the North Carolina State Bar in 1997.

He practices with the Law Offices of Charlton Allen, PLLC in Mooresville and has previously practiced law in Statesville, Concord and Wilmington. Allen has prior experience in the field of workers' compensation law, among other areas of law.

Revised maximum compensation rate

On March 12, 2014, the Industrial Commission revised the maximum compensation rate for all injuries and claims arising on or after January 1, 2014. The new maximum compensation rate for 2014 is $904.00, reduced from $912.00.

Employers or carriers who have paid disability compensation at the higher rate shall be entitled to credit for related overpayments pursuant to N.C.G.S. § 97-42. Disputes concerning this credit can be addressed by Motion with Executive Secretary Meredith R. Henderson of the Industrial Commission

New opioid called dangerous *(continued from page 3)*

The CDC reports overdose deaths involving opioid pain relievers now exceed deaths involving heroin and cocaine combined. The number of deaths has increased in tandem with the increase in prescriptions for opioids. "These increases occurred despite numerous warnings and recommendations over the past decade for voluntary education of providers about more cautious use," the agency notes.

It adds nearly three out of four prescription drug overdoses are caused by opioid pain relievers. The unprecedented rise in overdose deaths in the US parallels a 300% increase since 1999 in the sale of these strong painkillers.

The misuse and abuse of prescription painkillers were responsible for more than 475,000 emergency department visits in 2009, a number that nearly doubled in just five years. The substance abuse treatment admission rate in 2009 was almost six times the rate in 1999, according to the CDC.