

Three Things We Can Count On

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To the short list of things that are immutable—death and taxes—it appears that we now can add the rise of medical costs in workers’ compensation cases. Despite legislative changes in most jurisdictions and the inception of the Affordable Care Act, workers’ compensation medical costs continue to escalate. Two reasons for the cost creep are the frequency with which costly, and arguably unnecessary, medical tests are prescribed and performed on injured workers, and the rising cost of generic medications. These two areas must be addressed if costs are to be controlled.

Most workers’ compensation cases involve orthopedic injuries, and most of those are soft tissue injuries. Despite the fact that soft tissue injuries tend to be self-resolving, injured workers with these conditions are frequently given diagnostic tests that are often medically unnecessary, sometimes duplicative, and almost always expensive. Studies have shown that these tests are performed at higher rates than those given to the general public.

For instance, a look at current orthopedic treatment trends in general shows that many medical providers have become more judicious when recommending diagnostic studies. Individuals who are not in a litigious setting are no longer immediately sent for X-rays as soon as they complain of neck or back pain. However, in workers’ compensation cases, injured workers frequently receive costly diagnostic studies as soon as an injury is diagnosed. Those who go to an emergency room often receive X-rays of the cervical and lumbar spine (even if only the neck or low back is injured), as well as an MRI on the same visit. Even those workers who go to occupational medicine facilities

frequently receive X-rays on the first visit. Unless the circumstances are extraordinary, these tests are not needed as a first line of medical treatment for a soft tissue injury.

The purpose of an X-ray is to determine if there is a fracture, broken bone, or misalignment. It cannot detect injuries to the soft tissue structures, such as ligaments or tendons. If an individual has injured her back at work while lifting or pulling, it is highly unlikely that there is any true diagnostic purpose in having X-rays done immediately. Nonetheless, these tests are invariably ordered, and they also almost invariably show that there are no fractures or dislocations.

Perhaps even more disturbing than the frequent use of X-rays is the fact that injured workers are often prescribed MRIs of the cervical and lumbar spine, or sometimes both, just as often. Conventional medical wisdom is that an MRI is necessary to determine if immediate surgery is needed. In non-emergency situations, an MRI should not be used unless there is a “red flag” from the patient’s history or the physical examination that suggests that it is necessary. Absent these conditions, MRIs are generally not recommended during the early stages of neck or back pain.

MRIs determine if an individual has disc pathology. They should not be read in a vacuum, and an astute medical provider can determine if the pathology is acute or degenerative. The problem arises when an MRI is done to the lumbar or cervical spine within weeks of an injury. What the scan usually reveals is the normal degenerative process, which is often not symptom producing. However, the mere existence of this pathology often provides a basis of disability

or is the precursor to other medical treatments, such as injections or repeat studies. These treatments then address the pathology seen on the study, which is not necessarily attributable to the work injury.

Another area of cost concern for workers' compensation insurers and third party administrators is the exploding cost of generic drugs. Historically, generic drugs were used by carriers to help contain medical costs. Medication that was under patent was more expensive than generic medication, and many state legislatures passed regulations mandating that injured workers use generic medicine instead of the more costly brands. However, the cost of generic drugs has risen drastically in recent years. Since 2013, the price of half of all generics has risen in commonly prescribed medications, and some of those increases have been as much as 500 percent. These medications include those commonly used by injured workers, such as pain medication, muscle relaxants, hypertension drugs, and anti-inflammatories.

One factor impacting these rising costs may be the pricing of key ingredients used in individual drugs. These prices are not regulated, and market forces may create significant increases or decreases in the cost of medication. However, with generic medication, the trend has been that key ingredient costs have been steadily rising, not declining. From a macro perspective, the reason for the increase may be that, in recent years, many pharmaceutical

companies have merged, and there are far fewer drug manufacturers than there used to be. This consolidation has resulted in fewer companies selling drugs and fewer companies selling the key ingredients needed to make the drugs. Basic Keynesian economics has always indicated that when competition decreases, prices increase, and that principle is seemingly at work here.

The cost increases in generic medication have been so great that they have attracted the attention of the federal government. In November 2014, the U.S. Senate convened a panel to determine the reason for the price increase. While the Senate hearings included mention of the economic factors noted, no specific mandates were given at that time. It is clear, however, that the rise in these costs is having a profound effect on the costs of workers' compensation cases.

In order to address these two tremendous drivers of cost, the workers' compensation defense industry will have to give serious thought as to how to manage the costs of diagnostic testing and generic medication.



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