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BULLETIN

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Despite a growing body of evidence indicating that long-term use of opioids does more harm than good, a new CWCI analysis shows that nearly 70% of federally mandated and approved California Workers' Compensation Medicare Set-Aside (WCMSA) settlements for injured workers require funding for decades of opioid use, often at dangerously high levels and in conjunction with other high-risk drugs. Such a requirement exceeds federal and state clinical guidelines and places patients at high levels of risk.

WCMSAs are insurer-paid plans in which claims administrators allocate funds from workers' compensation settlements to cover future medical expenses arising from a work injury that might otherwise be paid by Medicare. Most claims with settlements that include future medical provisions involve injuries that have become chronic and require ongoing care, with the amount allocated in a WCMSA based on a review of the worker's medical records and a projection of their future medical needs. Medicare does not require that WCMSAs be submitted for approval, and will only review proposed WCMSA amounts if the injured worker is a current Medicare beneficiary and the total settlement amount is more than $25,000; or if there is a reasonable expectation that they will enroll in Medicare within 30 months of the settlement date and the expected settlement amount for future medical and disability/lost wages exceeds $25,000. Submitting a WCMSA for approval does, however, provide claims administrators some reassurance in regard to their future liability, because once approved, the funds are sent to a trust account or directly to the injured worker, and after they are exhausted and accounted for, Medicare becomes the primary payer for any subsequent Medicare-covered expenses related to the injury.

In their analysis, co-authors, Alex Swedlow and Dr. David Deitz examined a sample of 7,926 California WCMSAs that were completed, submitted and approved by Medicare in 2015 and 2016. From that sample they derived a number of key data elements, including the specific drugs included in the plans (and their drug categories); the dollar amounts allocated for drugs and for other medical services; the diagnostic codes for the underlying claim; the estimated number of years of medical coverage; and other prescription details, such as the strength of the opioid prescriptions based on the number of morphine milligram equivalents (MMEs) and the dosage based on the average daily morphine equivalents (MEDs). After grouping the WCMSAs by primary diagnostic code, the authors compared the medical and pharmaceutical data from the approved plans against data from a case-matched control group of 71,771closed California workers' compensation permanent disability claims involving the same types of injuries to determine:

- differences in the prevalence of opioids and other drugs between the two sample populations;
- pharmaceutical dollars as a percent of total medical dollars in the control claims vs. the WCMSAs;
- the prevalence of opioids in both samples;
- the distributions of opioids by DEA risk classifications (Schedule II, III and IV drugs);
- the cumulative potency of the opioids dispensed during the life of the workers' comp claim vs. the projected years of use within the WCMSA.

A review of the dollars allocated within the 7,926 approved WCMSAs found that the average amount set aside for prescription drugs was $48,986, while the average allocation for other medical expenses was $54,407, for a combined total of $103,393 for the 2015 and 2016 WCMSAs. A closer look revealed that 69.4 percent of the WCMSAs in the study sample included allocations for opioids, while in comparison, only 59.1 percent of the PD claims with a similar mix of injuries had involved opioids during the life of the claim.

Furthermore, the distribution of the various categories of drugs included in the approved WCMSAs shows opioids accounted for 27.7 percent of the medications included in these plans, which was more than twice the proportion noted for any other category of prescription drug. In terms of costs, the average amount allocated within WCMSAs to pay for opioids was $33,113, or 32.7 percent of the total prescription drug allocations, making them not only the most common, but also the most costly category of drugs within WCMSAs.

The distribution of opioids within the WCMSAs shows that the opioid combination drug Hydrocodone-Acetaminophen (i.e., Vicodin® or Norco®) was the most common opioid found in the approved WCMSAs (44 percent of the opioid prescriptions in the plans, 20.7 percent of the dollars allocated for opioids), followed by Tramadol HCI and Oxycodone HCI, though even more powerful Fentanyl, linked to more than 20,000 deaths in 2016, and originally approved by the FDA for end-stage cancer treatment, accounted for 2.2 percent of the opioid prescriptions and 6.6 percent of the total amount allocated for opioids in the approved plans.

Approved WCMSAs with opioids contained an average daily dose of 54.7 morphine equivalents for a period of 20.9 years. The official California Workers' Compensation Medical Treatment Utilization Guidelines (MTUS), the standard of care for California's injured workers, cautions the use of opioids at greater than 50 MEDs without concerted efforts to wean the patient to lower levels. Such long-term allocations for continued opioid use not only lack support from high-grade scientific medical literature, they also exceed levels that have been used to treat injured workers that have been independently shown to be inappropriate and dangerous. Comparing the opioids found in approved WCMSAs to those used in the control group of workers' compensation PD claims for similar injuries also revealed that the WCMSA plans called for much stronger opioids, as across all injury types, the average cumulative MMEs allocated to WCMSAs with opioids was 45 times the average used in the control group during the life of the claim. Comparing average cumulative MME levels for the top 5 injury categories showed that the opioid levels within the WCMSAs ranged from 33 to 78 times that of the control group of PD claims. Back injuries had the highest level of MMEs for both groups, though among the back cases, the average cumulative MME level in the WCMSAs was 36 times the level noted for the control group of workers' comp PD claims, while WCMSA lower extremity injuries had the lowest average cumulative MME value, though it was 40 times the level noted for lower extremity injuries in the control group.

The average of 20.9 years of opioid allotments for approved WCMSAs and the associated cumulative 337,196 morphine equivalents included in these plans are only two of the risks highlighted by the study. In addition, the authors found that in 10.3 percent of the approved plans the projected daily dose was more than 90 MEDs, a marker for high risk to the patient; and that many WCMSAs with opioids also including allocations for simultaneous, long-term use of other potentially risky medications: 14.5 percent of the WCMSAs with opioids included reserves for sedative-hypnotics as well, while 4.8 percent had allocations for sedative-hypnotics, muscle relaxants, and opioids.

Despite a growing recognition of the risks associated with long-term use of opioids in the treatment of injured workers, as evidenced in the MTUS and the Prescription Drug Formulary scheduled to take effect January 1, both of which support limited use of opioids and the adoption of weaning standards, the results of the CWCI study indicate that a more coordinated effort and better balance is needed between workers' compensation programs and WCMSAs in order to assure the long-term health and safety of injured workers as they progress through both systems. Because of the very real threat of harm to individuals affected by these policies, the authors believe such public policy modifications should be considered an urgent matter.

Additional details from the Institute study are included in a CWCI Report to the Industry, "Opioids in Workers' Compensation Medicare Set-Asides." CWCI members and subscribers can access the report at www.cwci.org and others can purchase from the CWCI Store.