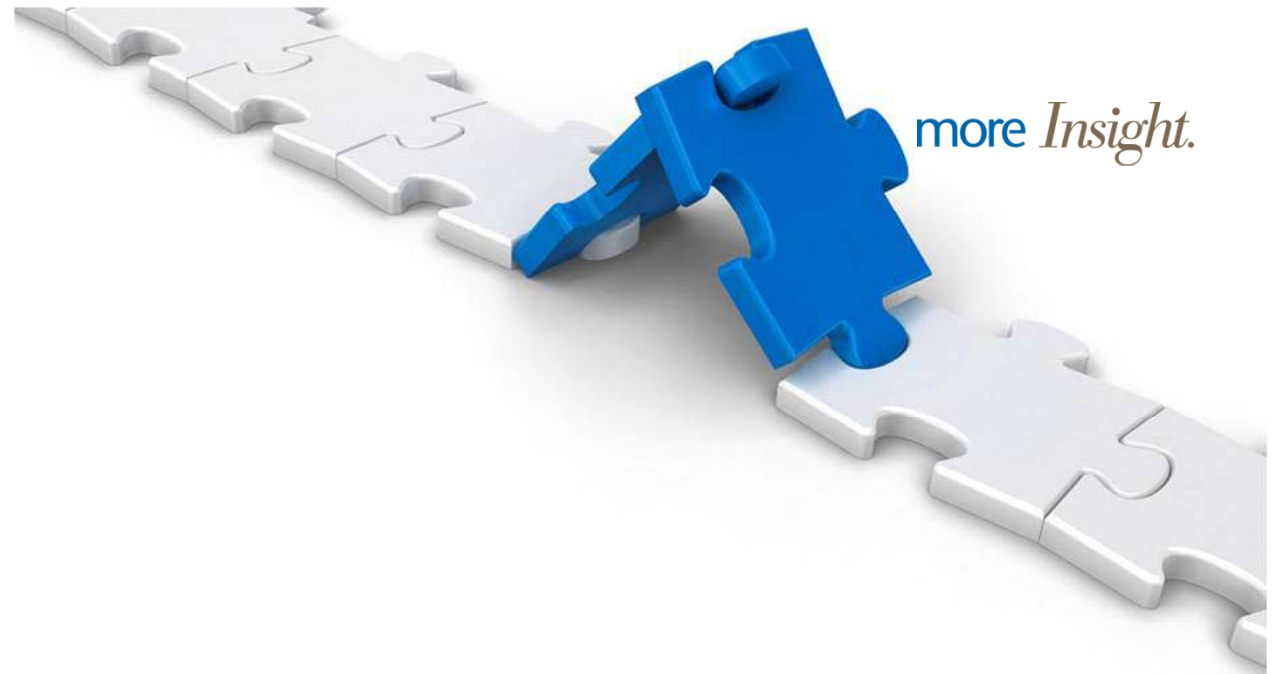




more *Insight.*

Navigating Employee Injuries and Health Care Issues



Presenters

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MEDICARE SECONDARY PAYOR [MSP]

WHY SHOULD WE CARE?

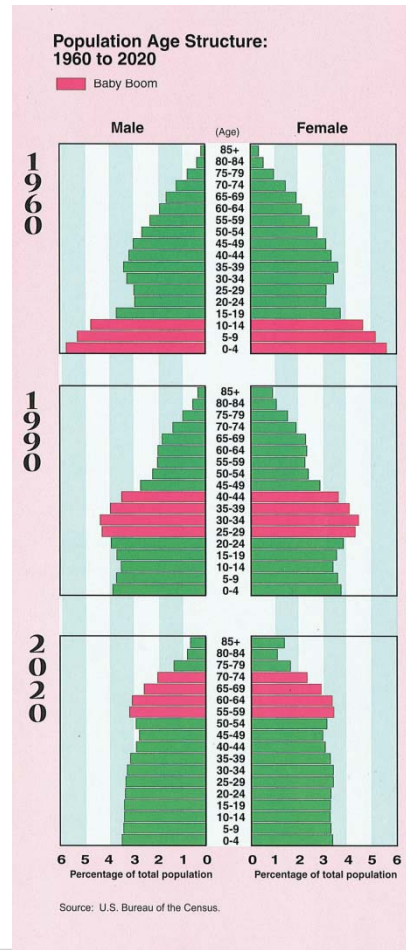
ACRONYMS

- ▶ MSP--Medicare Secondary Payor
- ▶ RRE--Responsible Reporting Entity
- ▶ GPP--Group Health Plan
- ▶ NGHP--Non-Group Health Plan
- ▶ ORM--Ongoing responsibility for medicals
- ▶ TPOC--Total Payment Obligation to Claimant
- ▶ DOI--Date of Incident
- ▶ CMS—Centers for Medicare & Medicaid Services

POLICY BEHIND MSP REQUIREMENTS

- ▶ Medicare needs money to make up for past
- ▶ Benefits should be coordinated
- ▶ Fairness
- ▶ Current technology now makes the reporting by numerous groups reviewable
- ▶ 2012--\$4.2 billion recovered by govt in health care fraud recoveries.
- ▶ Aging population will burden Medicare

Medicare's Future



Section 111 of MMSEA of 2007

- ▶ Adds *mandatory* reporting requirements by RRE
- ▶ Applies to Medicare beneficiaries with GHP who receive settlements or *other payment* from liability insurance (including self-insurance)
- ▶ Any injury and/or treatment (including future) arising from incident must be considered
- ▶ \$1,000 per day fine + other penalties

WHAT DO WE DO?

- ▶ Usually nothing
- ▶ If your business has a lawsuit with bodily injuries involved, discuss MSP with counsel prior to settlement; you may have reporting requirement
- ▶ If your business reduces or writes off a charge for “good will”, this could be a reportable event
- ▶ You cannot contract away your RRE duties
- ▶ Your TPA processes your claims, but your insurer, or you, are the RRE

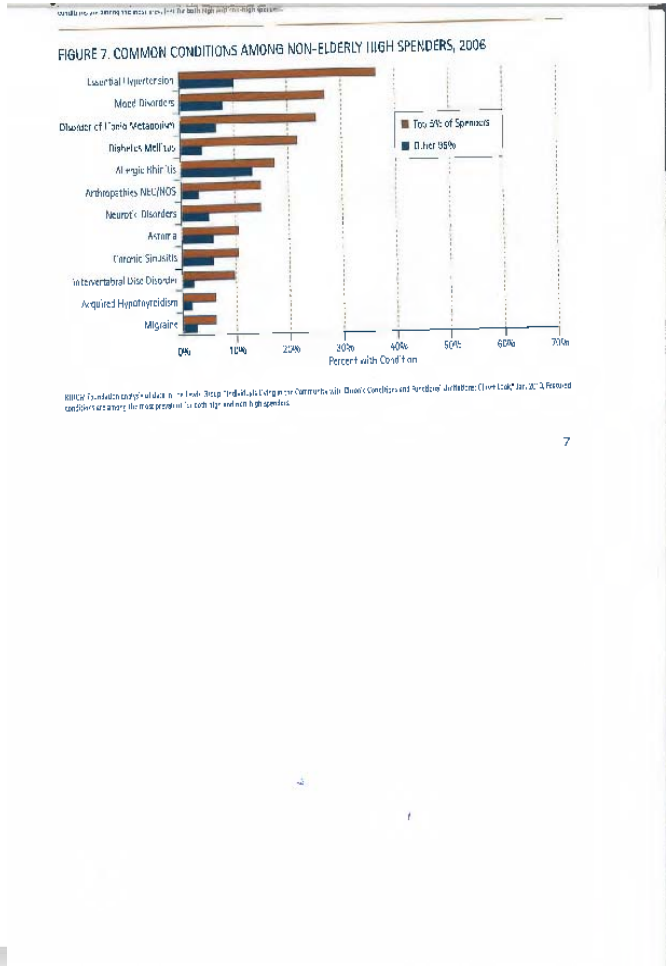
EMPLOYER WELLNESS PROGRAMS

“A Happy Office is an Unproductive Office”, Arch W. Riley

CAN I OFFER A WELLNESS PROGRAM?



Common Non-Elderly Medical Conditions



What Does My Program Target?

- ▶ Health-Related Behaviors
 - ▶ Prevention or health promotion
- ▶ Disease Management
 - ▶ Lessen onset or severity, increase quality of life
- ▶ Goal: happier, healthier employees = more productive and satisfying (profitable) workplace

Who Is Offering Programs and Why?

- ▶ Labor Dept—92% of employers with >200 e'ees
 - ▶ 63% target exercise
 - ▶ 60% target smoking
 - ▶ 53% target weight loss
- ▶ BUT....fewer than 20% of eligible e'ees do it
- ▶ Annual value of incentives: \$100--\$500
- ▶ Small employers provide it as part of their group health insurance plan
- ▶ Reduction of medical costs and < absenteeism
 - ▶ \$3.27 lower med costs per \$1 spent on program
 - ▶ \$2.73 lower absentee costs per \$1 spent on program

TWO KINDS OF WELLNESS PROGRAMS

- ▶ HEALTH-CONTINGENT wellness programs
 - ▶ Chance to qualify
 - ▶ Reward/Penalty is capped (tobacco is exception)
 - ▶ Can't discriminate
 - ▶ Open to all (or provide alternative or waiver)
- ▶ PARTICIPATORY wellness programs
 - ▶ No reward, or any reward related to 'participation'
 - ▶ No cap on the financial incentive
 - ▶ Can't discriminate
 - ▶ Open to all (or provide alternative)

Health-Contingent Wellness Program

- ▶ EMPLOYEE MUST DEMONSTRATE SUCCESS in order to get the reward/avoid the penalty
- ▶ At least once per year chance to qualify
- ▶ Max reward/penalty is 20% of cost of e'ee health coverage (ACA proposes new cap up to 30%)
 - ▶ Tobacco cessation exception-add'l 20%
- ▶ Example: premium surcharge for tobacco use
- ▶ Screening/risk assessment for medical conditions (high bp, bmi, high glucose) reward those within normal parameters

Participatory Wellness Program

- ▶ OUTCOME DOES NOT MATTER!
- ▶ gift cards for completing health assessment;
- ▶ free gym membership;
- ▶ free counseling and lifestyle management sessions;
- ▶ Reimburse cost of smoking cessation program;



REWARD V. PENALTY

- ▶ The 2012 Dept of Labor/EEOC says:
- ▶ a REWARD is obtaining a premium discount or rebate, a waiver of cost-sharing, an add'l benefit or financial or other incentive.
- ▶ a PENALTY is premium surcharge, a financial or non-financial disincentive;
- ▶ *Query*: when is a reward so wonderful that it is essentially a requirement to participate and thus program is now involuntary

PERILS AND PROHIBITIONS

- ▶ ADA—must truly promote health/prevent disease;
- ▶ provide alternatives for disabled or provide for waiver;
- ▶ Can't require a medical exam or inquiry as to disabilities/health status
- ▶ GINA—Genetic Information Nondiscriminatory Act
 - ▶ information about a disease or disorder in the person's family may not be used against that person

Wellness Program outside group health plan

- ▶ Employer may offer and operate its wellness program as an “employment policy” and not as part of its group health plan. If so, there are still regulations that apply (HIPAA, ADA, ERISA, etc...), but employer has more freedom to choose behaviors to reward and penalize.

WHAT IS A COMPENSABLE INJURY?



A personal injury received in the course of and resulting from employment

- ▶ Coming to and going from employment generally not compensable
(exceptions: multiple work sites, zone of employment)
- ▶ Injury before or after working hours usually not compensable
- ▶ Mental injury without related physical injury not compensable
- ▶ Injury not compensable if caused by employee being under the influence of drugs or alcohol

Compensable Injuries

- ▶ Aggravation of pre-existing condition is compensable
- ▶ Repetitive motion injury is compensable

INVESTIGATING WORKPLACE ACCIDENTS



Accident Reporting Form

- ▶ Date/time injury occurred
- ▶ Description of what happened
- ▶ What was employee doing at time of injury?
- ▶ Any witnesses?
- ▶ Body parts involved
- ▶ Is employee seeking medical treatment?
Where?

Additional Accident Investigation

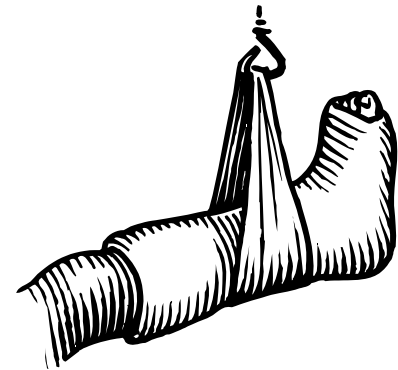
- ▶ Statement from injured worker
- ▶ Statement from witnesses
- ▶ Photos of accident scene

Why do we want this information?

- ▶ Document what happened and how it happened when the incident is fresh in everyone's mind, in case someone's story changes later
- ▶ Provide this information to your claims adjuster - it will help them make an appropriate decision on the claim

Treatment Issues

- ▶ Employee off work getting treatment
- ▶ Keep in touch with employee
- ▶ Keep in touch with claims adjuster



Return to Work

- ▶ Injured worker's physician releases him/her to return to work with restrictions
- ▶ Returning employee to work benefits employer:
(1) temporary total disability benefits cease = positive effect on your premium; (2) studies show the longer an employee is away from work, the less likely he/she is to return = increased cost of claim, negative effect on your premium

Return to Work

- ▶ What if the injured worker can no longer perform his/her job duties or you had to fill the position while he/she was off?
- ▶ If the injured worker's position is available and he/she is physically able to perform the duties, you have to reinstate the injured worker to that position.
 - ▶ If the position is not available, but a comparable position is available and the employee is able to perform the duties, you have to offer that position to the employee.
 - ▶ If neither the original position nor a comparable position is available, you have to give the employee preferential recall to any position that comes up that he/she is capable of doing. This preferential recall is effective for one year.

Return to Work

- ▶ If the employee is released to return to work with permanent restrictions and can no longer perform his/her old job duties, the employer is not required to “make up” a job that he/she can do.
- ▶ But if the employer has a position available that meets the employee’s restrictions and he/she is qualified for the position, it should be offered to the employee. If such a position comes open within a year, it should be offered to the employee.

WORKER'S COMPENSATION DISCRIMINATION



Discriminatory Failure to Reinstatement Employee

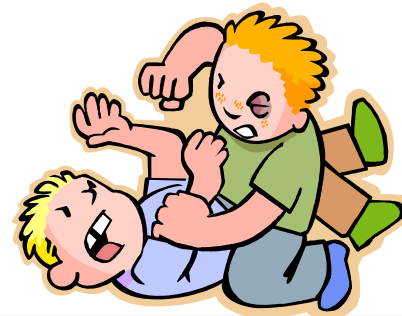
- ▶ Failure to re-instate under conditions discussed earlier is discriminatory action, employer may be subject to civil lawsuit.

Discriminatory Firing

- ▶ Termination of an employee while he/she is off work due to compensable injury and is receiving or is eligible to receive TTD is a discriminatory practice unless he/she committed a separate dischargeable offense.
- ▶ “Eligible” – if TTD is in litigation, not a good idea to fire employee
- ▶ “Separate dischargeable offense” – cannot be committed in course of action resulting in injury:

Discriminatory Firing

- ▶ If injury was result of violation of safety rule = not a “separate dischargeable offense.”
- ▶ Good example of separate dischargeable offense: employee is injured, on way out the door to seek medical treatment, punches supervisor.



Discrimination Regarding Healthcare Coverage

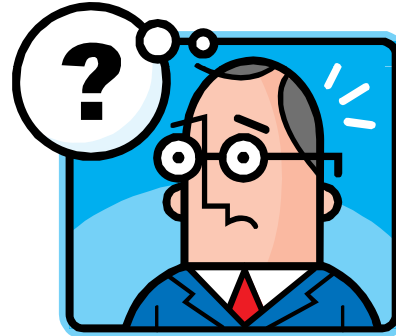


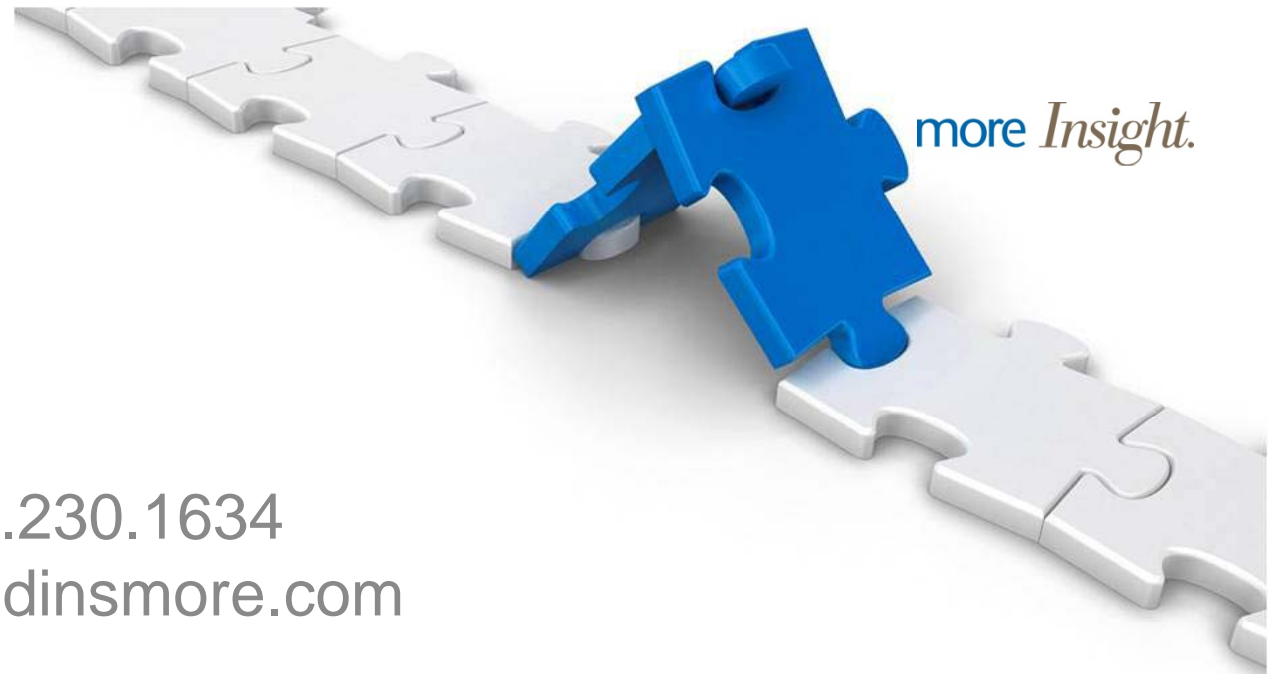
- ▶ An employer who has been providing healthcare insurance for employees by paying premiums may not cancel, decrease participation, or cause coverage to be decreased during the entire period for which an employee, during the employment relationship, is claiming or receiving benefits for a temporary disability.

Discrimination Regarding Healthcare Coverage

- ▶ If the policy requires contribution by the employee, he/she still must continue making the required contribution.
- ▶ The employer is not prevented from changing carriers, or cancelling/reducing coverage if the injured worker is treated in the same manner as other similarly classified employees.

QUESTIONS?





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