

COMP NEWS

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Heightened alarm over opioid use

New guidelines issued in March by the CDC emphasize once again the devastating impact of opioid use, which claimed nearly 29,000 lives in 2014 and more than 165,000 lives over the past 15 years.

Deaths related to drugs have surged across the country, but opioids continue to be used widely. The CDC reports that in 2013 alone, nearly 1.9 million people in the U.S. abused or were dependent on prescribed opioid medication.

More startling yet, opioids were prescribed, and continue to be prescribed widely, despite the lack of clear evidence they are superior to other therapies. "It has become increasingly clear that opioids carry substantial risk but only uncertain benefits – especially compared with other treatments for chronic pain," says CDC director Dr. Thomas Frieden.

The agency's latest guidelines are directed at prescribing physicians, who are often uneasy about managing patients with chronic pain and feel they don't have enough training in prescribing opioids. "Of primary importance, non-opioid therapy is preferred for treatment of chronic pain. Opioids should be used only when benefits for pain and function are expected to outweigh risks," the guidelines state.

"Before starting opioids, clinicians should establish treatment goals with patients and consider how opioids will be discontinued if benefits do not outweigh risks. Clinicians should prescribe the lowest effective dosage, carefully reassess benefits and risks when considering increasing dosage to 50 morphine milligram equivalents or more per day, and avoid concurrent opioids and benzodiazepines whenever possible," the guidelines add.

Knowledgeable observers say the guidelines are significant because they will eventually be seen as the definition of the standard of care, thereby influencing physicians and how insurers determine reimbursement. Dr. Andrew Kolodny, head of Physicians for Responsible Opioid Prescribing, noted to the *New York Times* the guidelines are one of the most significant interventions by the federal government.

"This is the first time the federal government is communicating clearly to the medical community that long-term use for common conditions is inappropriate," he said.

The guidelines are of particular interest to the workers' compensation community. "The use of opioids is by far the most controversial and risky kind of care in workers' comp. In direct and indirect ways, opioids are more risky and costly than all other controversial forms of care combined," concludes an in-depth report by Comp Pharma, a national organization comprised of the industry's leading workers' compensation pharmacy benefit managers.

The report notes that although there has been a shift in thinking in medical circles in recent years, and prescriptions for opioid use in workers' comp appear to have declined, it can take more than 15 years for physicians generally to adopt a best practice after a best practice is set.

Some reports suggest that although the number of opioid prescriptions has declined, the dosage per prescription may not have declined. Earlier studies have documented that the average dose per prescription for OxyContin and Vicodin increased between 2000 and 2010.

INSIDE THIS ISSUE

Judicial Notes

A provision which enables the Commission to retain 50% of the tax levied on self-insurers to pay for its operating expenses is set to expire in July 2018. It must be renewed.

- Page 2

Do we need an association?

To raise the question is but to answer it. Our association provides a forum to discuss common issues, and a voice before the General Assembly and the Commission. More employers should appreciate these benefits.

- Page 3

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Most severe injuries not reported

Based on its year-long experience of requiring employers to report every serious injury, OSHA estimates that, at best, employers are reporting only 50% of all serious injuries.

- Page 3



Judicial Notes by Mike Chase

Commission's Funds Riding off into the Sunset

With the passage of Act 95 in 2013 by the General Assembly, the South Carolina Workers' Compensation Commission received a favorable monetary jolt that it desperately needed. Pursuant to § 42-5-190, the Commission shall assess a maintenance tax on all self-insurers under the Workers' Compensation Act, and "the assessments must be paid to the commission which shall retain in every fiscal year the greater of fifty percent or two million two hundred thousand dollars of the maintenance tax revenues and use these funds to pay the salaries and expenses of the commission."

While this provision provides the Commission with much-needed funds, Act 95 goes on to include a sunset provision, which provides that the law expires on July 1, 2018, thus cutting off this revenue stream.

As surprising as it may seem, July 1, 2018 is just around the corner. It is time to refocus the General Assembly on this important statute for the future financial security of the commission. This provision should be renewed by the General Assembly to provide an ongoing codified source of revenue.

A discussion with Gary Cannon, Executive Director of the Commission, reveals the importance of this tax to the Commission's basic operating functions. He states that the operating budget for the Commission is \$ 5.2 million. Of that, only \$ 1.9 million is appropriated by the General Assembly from the general fund. The rest of the budget is comprised of earmarked funds, i.e. money expected to be collected through the Commission by way of fines or other sources of revenue.

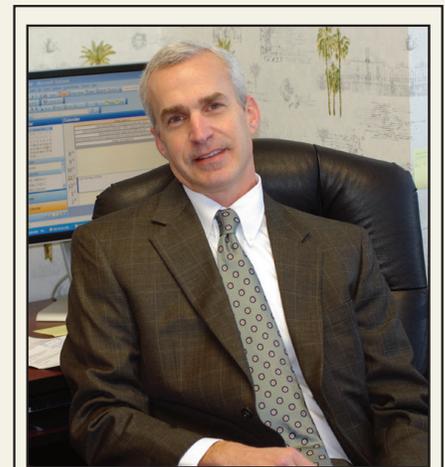
Over the years leading up to 2013, the Commission realized that not only was it receiving less from the General Assembly, but it could also foresee a drop in future revenues from fines collected because of enhancements of electronic filings. Thus the idea of providing the Commission with at least half of the premium tax placed on self-insureds gained traction.

Gary Cannon notes that the money from the general fund is used to pay personnel services, including the salaries of the Commissioners. The earmarked funds are paying for additional staff salaries, operating expenses, leases, travel, and general bills. Last year, the Commission kept \$2.4 million from the premium tax on self-insurers, which was directed into the earmarked funds bucket to pay some of the expenses noted above.

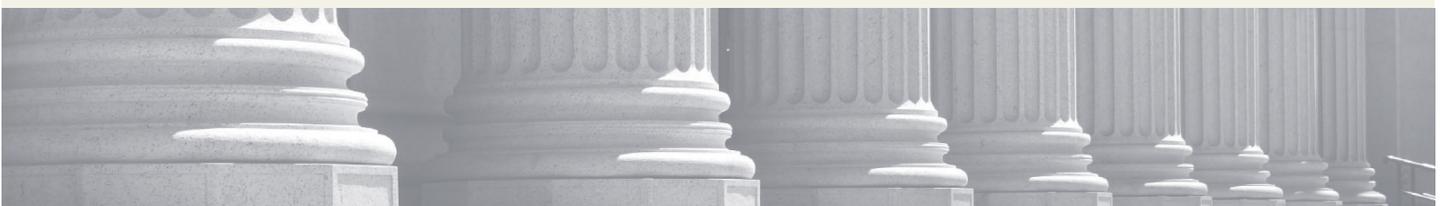
Without this money, numerous areas would have been cut, but the most significant would have been cuts to IT resources, both in manpower and security protection. A decrease in data security is an important issue, and one of the main reasons why this sunset provision should be extended.

Self-insurers are going to have to pay the premium tax regardless of the Sunset provision. Therefore, it is in the best interest of all stakeholders to allow the Commission to continue collecting half of the tax in order to function in an efficient, effective, and protective manner. The time is approaching to contact your Representative and Senators in the General Assembly to request an extension of this provision.

If you have comments, please contact Mike at mchase@turnerpadget.com.



MIKE CHASE
Legal Advisor, SCSIA



President's note

BRIAN TEUSINK
President

Do we need an association?

To raise the question in the headline above is but to answer it: of course we need an association. Our association gives us a forum to discuss common issues, a voice before the General Assembly and the workers' compensation commission, and it also fosters a sense of community and unity among comp professionals in the state.

In other words: if the association did not exist, it would be necessary to create one. But clearly a lot of self-insured employers in South Carolina don't feel the same way. Only a small number support the association with membership dues, and fewer yet attend our annual conference in the spring.

We are trying to figure out why. The problem is not unique to South Carolina as at almost every conference of self-insurers across the country the lament is there are more vendors and attorneys in attendance than there are employer-representatives.

It's a shame because almost everyone who attends our conference gives us high marks for content, organization, and for the spirit of friendliness and hospitality that pervades the event. This year we were at the Hilton Myrtle Beach Resort and the near-unanimous verdict was the location is excellent. A couple of attendees were nostalgic about the Litchfield Beach & Golf Resort, our perennial location for nearly 20 years, but even they agreed the Hilton is a nice venue.

Over the rest of this year, the self-insurers board will explore a number of strategic options to draw more employers to the conference and to the association. Clearly, we have to try new initiatives. Almost everything in the workplace has changed in the several decades since we

formed the association; it is time for us to change also

Until next time,

Brian

OSHA

Nearly 50% of severe injuries not reported

Based on its year-long experience of requiring employers to report every serious injury, OSHA estimates that, at best, employers are reporting only 50% of all serious injuries.

"Because the majority of first year reports were filed by large employers, we believe that many small and mid-sized employers are unaware of the new requirements. For them, we are developing outreach strategies, including working through insurers, first responders, and business organizations," says OSHA administrator David Michaels.

"In other cases, employers are choosing not to report because they perceive the cost of not reporting to be low. They should know that, now that the requirement is in its second year, OSHA is more likely to cite for non-reporting," he warns.

The agency recently increased the unadjusted penalty for not reporting a severe injury from \$1,000 to as much as \$7,000. If OSHA learns that an employer knew about the requirement but chose not to report it promptly, the fine can be much higher. The agency recently assessed one employer \$70,000 for willfully failing to report.

Although employers have long been required to report all work-related fatalities within 24 hours, on January 1, 2015 OSHA also began requiring employers to report any work-related amputation, in-patient hospitalization, or loss of eye. Previously, employers only had to report work-related hospitalizations of three or more employees.

OSHA says its new reporting requirement program is guided by the principle that when employers engage with OSHA after a worker suffers a severe injury – whether or not a workplace inspection is launched – they are more likely to take action to prevent future injuries. The agency says it responded to 62% of severe injury reports in 2015, including nearly 70% of hospitalization reports, not by sending inspectors to the scene but by asking employers to conduct their own incident investigations and propose remedies to prevent future injuries.

In his recent report, Dr. Michaels also addressed who is responsible for notifying OSHA when a temporary worker is injured. "Both host employers and staffing agencies have roles in complying with workplace health and safety requirements. The employer who provides the day-to-day supervision of the worker must report to OSHA any work-related incident that results in a worker fatality, in patient hospitalization, amputation, or loss of an eye," he says.



Calendar

- May 26, 2016** South Carolina State Advisory Forum, hosted by NCCI. Hilton Columbia Center.
- November 3, 2016** General Membership Meeting, SC Self-Insurers Association. Seawell's, Columbia.
- March 29-31, 2017** Annual Conference, NC Association of Self-Insurers. Holiday Inn Resort, Wrightsville Beach.
- April 5-7, 2017** Annual Conference, SC Self-Insurers Association. Hilton Myrtle Beach Resort

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How to Respond to an OSHA Citation

The consulting firm Intelivert recently asked several legal experts for their advice on responding to an OSHA citation. Below are some of their tips:

Don't assume OSHA is correct

Check the cited standard and make sure it applies to your company's work, your facility, and the facts. Read cited standards carefully, and check for exceptions.

Do things before -NOT after

Prevention is indeed better than cure. Take the time to identify workplace hazards, create written safety rules, distribute them to all employees, provide training, create a written disciplinary policy, conduct audits, and encourage communication. Keep written records of everything.

The clock is ticking

You have only 15 working days to settle or contest OSHA citations. No extensions are possible. The clock starts ticking when someone at your workplace signs for the certified mail from OSHA.

Keep an open mind

Regardless of whether you believe you have been cited justifiably or wrongly, you need to take action and do your best to eliminate the possibility that the alleged hazard could cause an employee injury. Therefore:

- Promptly investigate and determine the extent of the allegedly unsafe condition.

- Keep an open mind when considering possible abatement methods.
- Consider hiring an expert in the field to conduct the investigation or audit and make abatement recommendations.
- Implement a documented plan of abatement and periodic review of compliance.

Be aware the stakes are higher now

OSHA has recently become a much more powerful agency. In addition to a likely 80% increase in penalties, OSHA has entered into an agreement with the Department of Justice encouraging inspectors to look for workplace safety violations when investigating

Under the terms of this agreement, workplace safety violations uncovered during environmental investigations will be treated as felony environmental violations for purposes of criminal prosecutions.

Simply accepting an OSHA citation as a cost of doing business is not a wise business practice because it may result in "repeat" or "willful" citations in the future, which frequently run well into six-figure penalties.