



A Claim on the Rise: Future Medical

FILLING YOUR INVENTORY,
TYING UP YOUR RESOURCES

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SUMMARY

Future medical claims are on the rise. It's a phenomenon employers can't afford to ignore. Athens Administrators research has found that future medical claims have proportionately increased relative to all workers' compensation open indemnity claims, in both number of total open claims and total reserve dollars.

Those facts alone make it surprising that future medical claims don't attract more attention. On a per claim average, they can be open for as many as 8, 10, or more years; have \$40,000 or more in reserves; and can represent 35% of a total open indemnity inventory. *The math is shocking:* with 20 to 30 future medical claims in an inventory of 100, that means \$800,000 to \$1,400,000 could be tied up in reserves alone.

To control continued future medical inventory growth, it is critical to analyze and understand this swelling body of claims. This Athens Administrators report offers employers and organizations the information they need to do just that. This explains the history behind future medical claims, examines why they are increasingly common, and explores the implications of growing inventory and escalating medical costs for California's workers' compensation marketplace. It also clarifies for employers how future medical claims impact their programs, and the negative consequences they may hold for an organization.

Medicare settlement arrangements, medical costs that are increasing relative to wages, changing workforce demographics, and a decline in the frequency of new claim submissions, all have affected the demand for settlements with open medical awards. This Athens Administrators report helps employers understand the driving forces behind these influencing factors and other related trends, and offers effective management practices for impacting them. Future medical claims can be open for life. The deeper an employer's knowledge of future claims is, the better the odds are for successful claim resolution.

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INTRODUCTION

Future Medical Claims: Why You Need to Know More

Numbers of settled but open indemnity claims are growing for just about every employer in California. It is not uncommon for future medical claims to represent 20% to *35% of an employer's total open indemnity inventory*. On average, a future medical claim has *\$40,000* in reserves, and has been open 7.96 years. Surprisingly, future medical claims do not often attract much attention, perhaps because they are largely resolved and are much less dynamic than regular active indemnity claims. However, swelling inventory trends and increased financial commitments make it critical to acknowledge this body of claims. Analysis is key to understanding — and ultimately controlling — continued future medical inventory growth. Employers must create opportunities to impact future medical claims, and get them off their books. Doing so can save their organizations hundreds of thousands of dollars.

Think about It »

This means that if your organization has 100 open indemnity claims it is likely that between 20 and 35 are in a future medical status and that \$800,000 to \$1,400,000 could be tied up in reserves.

A Shifting Pattern

Athens Administrators has administered workers' compensation claims for California employers for over 30 years. We work with public and private self-insured entities, self-insured groups, captives and fully insured programs. Our diverse portfolio of workers' compensation programs provides us with unique insight into industry-wide trends and how those trends impact the participants in California workers' compensation marketplace. In recent years, Athens Administrators has noted a shifting pattern for claim settlements. Specifically, we have realized an increase in future medical claims. These claims have been settled in all areas except the medical treatment aspect, which can remain open for life. Athens Administrators has found that in both total number of open claims and total reserve dollars, future medical claims have proportionately increased relative to all open indemnity claims. To help participants better understand the pattern shift, this Athens Administrators report explores the history behind future medical claims, examines why they are increasingly common, and discusses the implications their rising numbers and costs hold for the California workers' compensation marketplace.

Background

Before examining the specifics of the future medical claims growth phenomenon, it is first important to understand the three essential ways to resolve a workers' compensation claim.

- *Compromise and release (C&R)*: a lump sum payment, which terminates the injured worker's right to all future benefits, except vocational rehabilitation. It is usually based on the percentage of permanent disability with an additional amount to settle the injured worker's right to future

INTRODUCTION (CONT.)

medical and indemnity benefits. Occasionally, parties agree to settle by way of C&R with an open future medical claim.

- *Findings and award: a settlement involving a workers' compensation administrative law judge's decision.* The judge's decision determines the applicant's entitlement to disability benefit payments, future medical treatment, or both.
- *Settlement via stipulation, resulting in a future medical claim:* an arrangement in which both parties agree on the award terms. This agreement usually finalizes all issues and liabilities related to the claim with the exception of the anticipated future medical needs of the injured worker. Although the claim has been settled it must stay open with reserves set at a level adequate to cover anticipated future medical costs the claimant may incur due to the work-related injury.

Historically, C&R settlements were frequently used and generally preferred by many employers and claimants. Employers enjoyed the release from future liabilities and the ability to ultimately close the claim. Claimants could take the lump sum settlement and utilize it however they chose. Settlements via stipulations have also always been options to claimants and employers, but in recent years have become much more prevalent, particularly as future access to medicine becomes more valuable than cash in-hand today.



WHY FUTURE MEDICAL, WHY NOW?

History

California's workers' compensation industry was relatively static for many years. Its rules, regulations and processes did not regularly fluctuate. That is until the 1990s, when the dynamic industry we know today was born. The passage of the Americans with Disabilities Act of 1990 (ADA)¹ lit the slow-burning fuse that fueled the growth of future medical settlements. The ADA specifically addressed an employer's obligation to make "reasonable accommodations" for individuals with disabilities; that language ultimately elevated the concept — and resulting benefits — into the business mainstream. Thus began the movement to make return-to-work programs standard throughout corporate America; previously considered progressive, generally only the most sophisticated organizations had implemented them.

Prior to 1990, workplace accommodations for injured workers were relatively uncommon. An injured individual who could not perform his or her duties was often forced to find another job. This reality allowed more C&R claim settlements. The claimant received a lump sum payment and could then move on. In return, the employer was released from future liabilities and also could move forward without looking back. In many ways, it was a less-sophisticated process. Much has changed over the years, and the influences and issues surrounding workers' compensation claim settlements have become increasingly complex.

Today

Several factors influence the California workers' compensation industry, including the state of the economy, unemployment rates, workforce demographics, business trends, medical costs, indemnity costs, state and federal legislation, and more. This report focuses on the trends Athens Administrators believes most clearly affect the demand for settlements with open medical awards, namely Medicare settlement arrangements, increasing medical costs, changing workforce demographics, and a decline in the frequency of new claim submissions.

1) Medicare's Interest in Settlements

Medicare has a definite interest in the settlement of workers' compensation claims. Medicare's mandate is to ensure that it will not bear the medical expenses resulting from workers' compensation injuries. Certain specifically defined instances require that Medicare review a case prior to settlement:

- a. "The claimant is currently a Medicare beneficiary and the total settlement amount is greater than \$25,000."²
- b. "The claimant has a 'reasonable expectation' of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000."³

¹ www.ada.gov

² Centers for Medicare and Medicaid Services, www.cms.hhs.gov/WorkersCompAgencyServices/04_wcsetaside.asp

³ See note 2.

WHY FUTURE MEDICAL, WHY NOW? (CONT.)

If either threshold is met, then settlement discussions must address Medicare's interests. An employer satisfies Medicare's interests by funding, on behalf of the claimant, a Medicare set-aside arrangement (MSA). The set-aside funds may be utilized only to cover future medical costs. If the claimant, employer, and Medicare all agree on the MSA's terms, then the claim can proceed to the final C&R resolution, and the employer is protected from future medical claims.

The MSA Issue: A case's specific facts — such as type of injury, claimant's age and life expectancy, and anticipated future medical costs — determine the MSA value that Medicare will require. Often, Medicare's terms are not financially viable for an employer, who may conclude that the best option is to not settle medical aspects of the claim and instead pay for medical treatment as it occurs (if it occurs). The result: a future medical claim that is open indefinitely, unless the facts surrounding the claim change or the claim is administratively closed. This scenario — opting not to settle a claim because of the MSA requirement — occurs regularly, and contributes to the growing inventory of open future medical claims.

2) Medical Costs Are Growing at a Greater Rate Than the Average Weekly Wage

Medicine and medical costs are becoming more valuable relative to wages. A 2008 analysis of worker's compensation results prepared by Dennis Mealy, chief actuary of the National Council on Compensation Insurance, Inc. (NCCI)⁴, revealed that increased medical costs have influenced individuals to approach workers' compensation settlement discussions with longer-term perspectives. At least since 1990, on an annual basis, medical treatment and service costs have grown at a greater rate than average weekly wages. This continuing disparity will rightfully place an even greater premium on access to future medical benefits, elevating the demand for future medical settlements; in turn, that demand will create a larger proportion of open future medical claims in an employer's open claim inventory. If all things remain constant, Athens Administrators anticipates that medical costs' growth rate will continue to outpace wage increases into the foreseeable future.

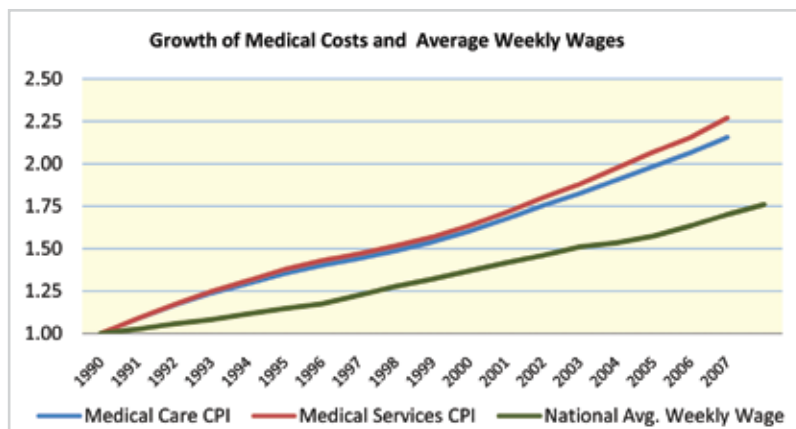


Figure 1:
chart Athens Administrators; data
source Medical Care CPI and
Medical Services CPI, Bureau of
Labor Statistics, National Average
Weekly Wages, U.S. Department
of Labor

⁴ Dennis C. Mealy, FCAS, MAA. "2008 State of the Line," (NCCI Holdings, Inc., 2008), www.ncci.com/documents/AIS-2008-SOL-Complete.pdf; pages 39, 41

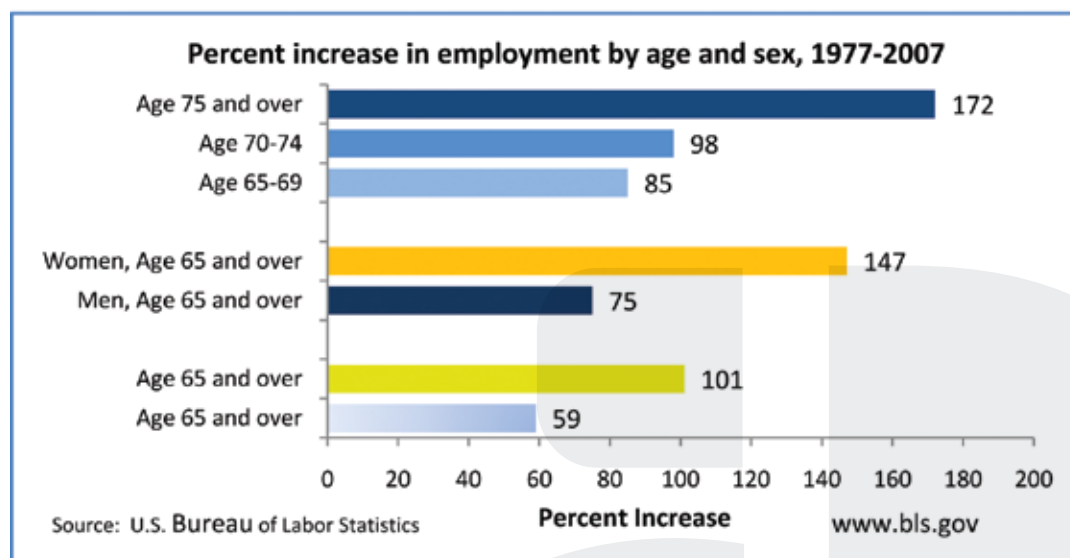
WHY FUTURE MEDICAL, WHY NOW? (CONT.)

3) Changing Workforce Demographics

Two key developments in United States' demographics — an aging workforce and skyrocketing obesity rates — have had the greatest direct impact on the workers' compensation industry, contributing to the increasing swell of future medical settlements.

a. Aging workforce

Today people work to an older age than in the past. Thus, a greater portion of the workforce is close to or at the age range that requires Medicare involvement in workers' compensation claim settlement discussions. This alone leads to greater levels of future medical settlements. Medicare-approved settlements can be difficult and costly to accomplish. From an employer's point of view the required settlement value is often not financially feasible, a reality that tends to lead to a breakdown of settlement discussions and, ultimately, results in settlements with stipulations for future medical awards.



b. Obesity in the Workforce.

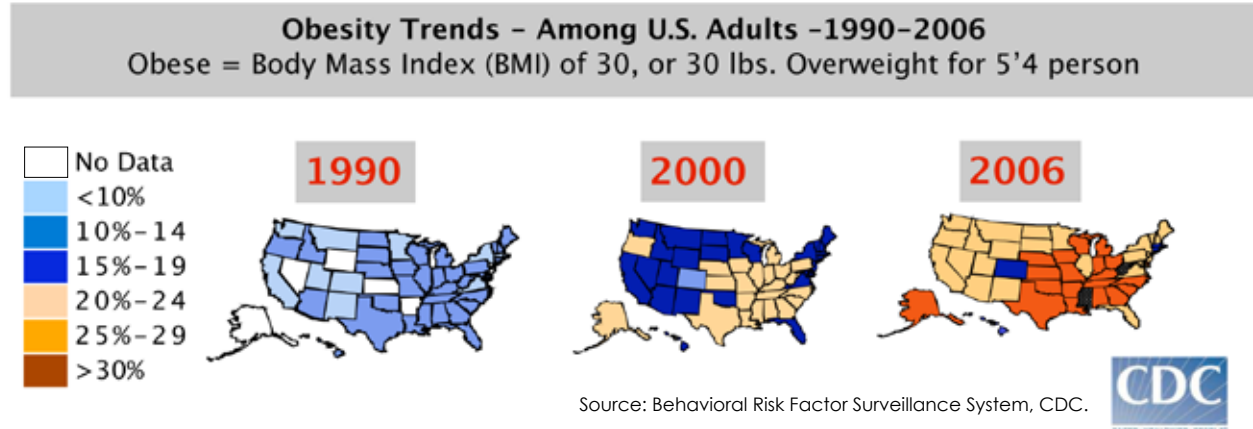
Since 1990, California has experienced a significant growth rate of obesity in its general population. In 1990, the CDC reported that less than 10% of the population had a body mass index (BMI) of greater than 30, the definition for obesity. However, only 16 years later, in 2006, that percentage doubled, increasing to between 20% and 24% of the population. A 2007 Duke University study found that individuals whose BMI is greater than 40 have two times as many claims, which result in 12.94 times as many lost days and cost 6.79 times more, than the claims of individuals with BMIs less than 40.



WHY FUTURE MEDICAL, WHY NOW? (CONT.)

"The researchers found that workers with a BMI greater than 40 had 11.65 claims per 100 workers, compared with 5.8 claims per 100 in workers within the recommended range. In terms of average lost days of work, the obese averaged 183.63 per 100 employees, compared with 14.19 per 100 for those in the recommended range. The average medical claims costs per 100 employees were \$51,019 for the obese and \$7,503 for the non-obese."⁵

— Duke Medicine and News Communications, April 2007



This trend's impact on future medical settlements is very real. Based on Duke University's study, Athens Administrators projects that the increasingly obese population within the United States will experience increasing numbers of severe claims, which will require greater levels of medical treatment. We further speculate that the greater demand for medical treatment, in conjunction with the rapidly increasing costs of medical care, will increase demand for future medical settlements.

c. Related trends. Several other business and medical trends influence future medical inventory growth.

i. **Health insurance companies' aggressive approach to exclude pre-existing conditions, including those stemming from industrial injuries.** Claimants are aware of the prohibitive costs of medical treatment without insurance. Where a strong likelihood exists that their case will require future treatment, individuals strongly consider the reality of exclusions for their workers' compensation claim settlement. The impact: Individuals place an increased sense of value on funding for future medical treatments.

⁵ Duke Medicine News and Communications, April 23, 2007, www.dukehealth.org/HealthLibrary/News/10044

WHY FUTURE MEDICAL, WHY NOW? (CONT.)

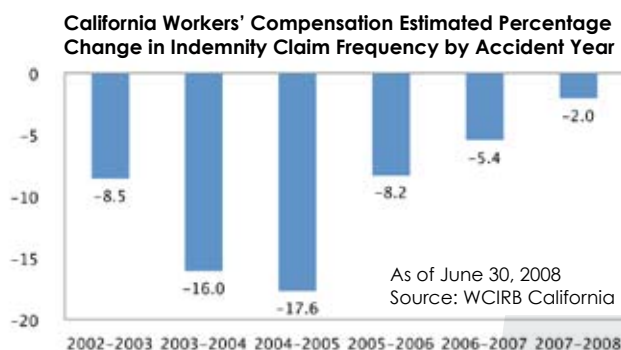
ii. **Increased dependence on prescription drugs.** Prescription drugs have positively impacted both treatment and prevention of injury and illness. As more prescription drugs are developed, doctors increasingly prescribe them to patients. Many pain-management programs revolve around medication regimens. As a result, claimants are more dependent on prescription drugs. Increased utilization likely will continue into the future. "The Department of Health and Human Services estimates that prescription drug spending will increase from \$216.7 billion in 2006 to \$515.7 billion in 2017."⁶ Claimants will place an increasingly high value on continued access to prescription drugs, a consideration that could result in swelling numbers of claims left open to cover drug costs.

1. A recent survey⁷ by USA Today/Kaiser Family Foundation/Harvard School of Public Health noted that 54% of the adults interviewed currently take prescription medicine. Of that group, 35% take between 1 and 3 different drugs, and 19% take 4 or more.

iii. **High levels of employee retention.** An organization that enjoys high levels of employee retention tends to have a greater level of future medical claims within its inventory of open indemnity claims. Often it is not in that company's best interest to settle a claim via C&R with a current active employee because a new claim — due, for example, to reinjury — could be filed, negating the benefit of a lump sum settlement. This stance increases levels of stipulated settlements.

4) Declining Frequency Rate of Lost-Time Claims

California has experienced a favorable trend related in the frequency rate of new indemnity, or lost-time, claim submissions. A September 22, 2008, Workers' Compensation Insurance Rating



Bureau (WCIRB) of California report demonstrated a 57.7% decline in indemnity claim frequency over the past six years. This is great news for both employees and employers. For employees, fewer lost-time claims means fewer workplace injuries, which could signify safer workplaces and maybe better health. For employers, this downward trend means that, in their total open indemnity inventory, the pure number of future medical claims will decline over time.

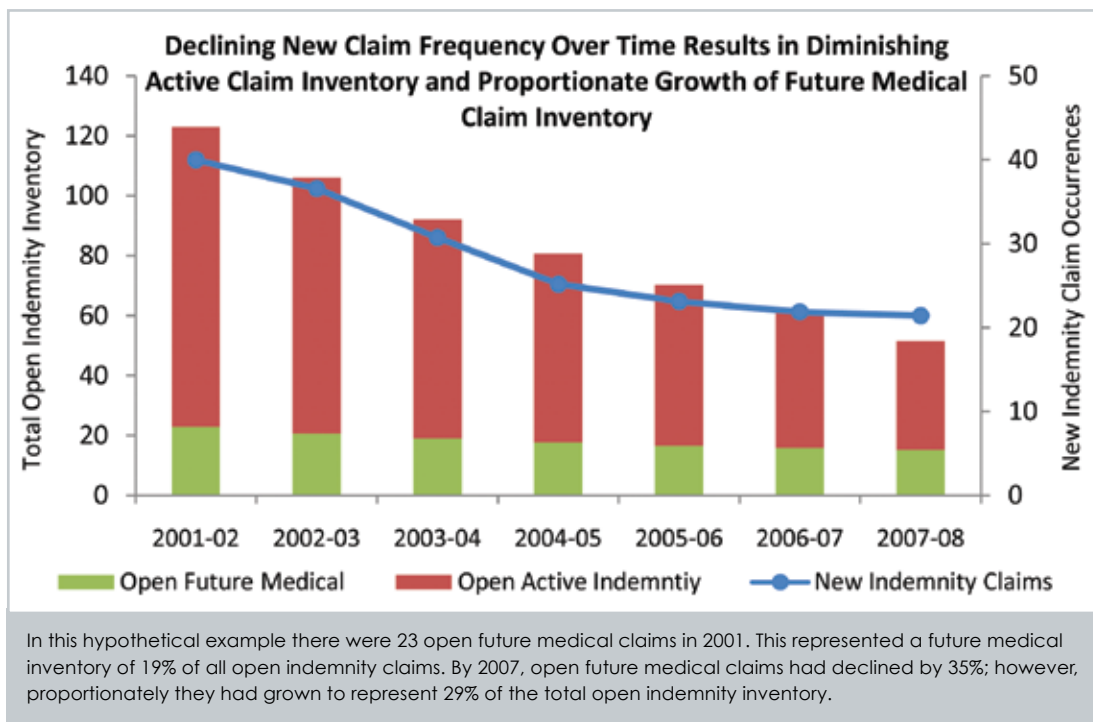
⁶ "Prescription Drug Trends," Kaiser Family Foundation, September 2008, www.kff.org/rxdrugs/upload/3057_07.pdf

⁷ "The Public Health on Prescription Drugs and Pharmaceutical Companies," USA Today/Kaiser Family Foundation/Harvard School of Public Health, January 3-23, 2008, www.kff.org/kaiserpolls/7748.cfm

WHY FUTURE MEDICAL, WHY NOW? (CONT.)

However, because normal active indemnity claims will decline at an even more rapid rate, future medical claims will, at the same time, proportionately become a more significant segment of that total open indemnity inventory. *Here's why:*

- Future medical claims take longer to resolve than non future medical indemnity claims.
- Fewer new indemnity claims results in a proportional growth of future medical claims as a portion of total claim inventory.
- Over time, if frequency rates remain constant, then the proportion of future medical claims to active indemnity claims will continue to shift. Future medical claims will become an even greater segment of all open claims.



HOW DO FUTURE MEDICAL CLAIMS IMPACT YOUR PROGRAM?

Open future medical claims pose several consequences for an organization.

Direct Financial Impact

California self-insured employers are required to post reserves for future medical claims. To better understand this segment of claims, Athens Administrators analyzed the population we administer. The specific details of the individual future medical claims varied widely. However, on average the claimant was 54 years old; the claims had an incurred value of \$114,451; had open reserves of approximately \$40,000; and had been open for nearly 8 years. We also found that, in many instances, 20% to 35% of all open indemnity claims for a mature (more than 5 years since inception) self-insured workers' compensation program were classified as future medical.

Detrimental Impacts

Open future medical claims can negatively impact an organization in several different and meaningful ways:

- Effective management of a workers' compensation program requires active oversight by an employer's staff. The staff time required to perform this function costs the organization money.
 - » Any excess time individuals spend managing a program could be considered **opportunity cost** for the organization. These individuals could instead perform other more proactive and beneficial duties.
- The reserve dollars required for open claims can impede an organization's ability to deploy funds toward core functions. Undesired financial burdens and organizational stress may result.
- An open claim by definition is a claim that is not fully resolved. As long as the claim is open the possibility exists that it may develop into something larger, and more financially painful, than expected.
- Over time, open claims can frustrate both the injured worker and the employer.
 - » Tenuous relationships between the employee and employer may result.
 - » Utilization of treatment may become a source of employee retaliation, and may be exacerbated if the individual's employment status changes (resignation, termination, or performance probation).
- Years of continuous treatment can change an injured worker's mind set. A sense of entitlement to or dependency on treatment can become their new reality. Ongoing medical utilization may become the driving force in all issues related to the claim.
 - » If this attitude surfaces, mutually beneficial settlement discussions become significantly more challenging.



HOW DO FUTURE MEDICAL CLAIMS IMPACT YOUR PROGRAM? (CONT.)

An in-depth understanding of a workers' compensation program allows an employer to better set and manage expectations and objectives related to their program. Future medical claims represent very significant numbers to those programs and should be carefully managed. If future medical claims are not identified, understood, and explained, they can become a major source of aggravation within an organization — **"Why is that claim still open?"**

Employers who understand future medical claims and what drives them can establish specific goals and strategies for these claims that are separate from their organization's objectives for its active indemnity claim population. For example, an organization's actuaries should view future medical claims differently. Because they are largely resolved and much less dynamic than all other unresolved indemnity claims, future medical claims should not be subject to the same loss development factors. *Recognizing this fact can save an employer hundreds of thousands of dollars.* The process of administering future medical claims and active indemnity claims separately results in a more focused approach for both the employer and the claim administrator.

Managing Future Medical Claims: Best Practices

Because future medical claims are settled in all areas except anticipated future medical needs, they are less dynamic on a daily basis than a typical active indemnity claim. Future medical claims generally require that the examiner process medical payments (when they occur) and regularly review and adjust reserves. This is very different than an examiner's role with an active indemnity claim. Effective management of an active indemnity claim requires, at a minimum, that the examiner:

- Communicates regularly with the injured worker and the employer
- Ensures appropriate and timely indemnity payments
- Maintains proper reserves and clear supporting documentation on the file
- Monitors treatment patterns and coordinates with utilization review
- Helps the employer facilitate return-to-work efforts
- Coordinates investigation work (when required)
- Communicates with attorneys on litigated cases
- Performs ongoing review of all aspects of the open file

Time management has become an increasingly critical skill for workers' compensation claim examiners in California. It is not uncommon for claim examiners to have both active and future medical claims within their overall case load, which typically ranges from 145 to 165 open indemnity claims. Active claims are demanding and can monopolize an examiner's time. Short time frames, larger penalties, and additional paperwork requirements brought on by recent reform measures, have made their jobs increasingly more complex and busy. Examiners are forced to tackle the most critical tasks within their



HOW DO FUTURE MEDICAL CLAIMS IMPACT YOUR PROGRAM? (CONT.)

workloads first, which means future medical claims — because they are less-demanding than active claims — could land on the tail end of an examiner's priority list.

A great strategy for addressing an inventory of open indemnity claims is to separate the administration of future medical claims from active indemnity claims when possible. A dedicated future medical examiner can then manage the future medical claims. These examiners should have specific training and guidelines on how to most effectively manage this class of claims. Because future medical claims are static, a manageable case load for a future medical examiner ranges from 200 to 275 open cases. This is a fairly wide range of open cases. Efficient claim administration systems and higher levels of administrative support will allow examiners to effectively manage at the high end of the case load scale.

After placing all open future medical claims with a dedicated future medical examiner, the ideal scenario is to then reduce the active indemnity claims examiner's case load to between 135 and 140 open cases. This segmented and focused approach to administering workers' compensation claims will deliver superior results. It provides active claims examiners with case loads they can manage proactively, and ensures future medical claims receive highly focused and attentive management.

Settling Future Medical Claims: Best Strategies

There is no development on a fully resolved claim. It is important to always work to close a claim as quickly and completely as possible. Once a claim converts from an active indemnity claim to a future medical status it does become more difficult to settle, but not impossible. There are times when moving toward a settlement via compromise and release (C&R) makes sense, and times when allowing the claim to remain open is the best course of action. There are many variables that ultimately influence an employer's decision to settle or not to settle a claim.

When not to consider a C&R settlement

Often it is not in an employer's best interest to settle a future medical claim via C&R for an active employee. The company could pay out a lump sum amount, only to have the employee reinjure the same body part and submit a new claim; in this scenario, the lump sum has been paid to the employee for the settled claim, but the new claim places a liability back on the company books. With an active employee's claims, the best strategy may be to keep the claim open and monitor it closely. If the employee discontinues treatment, the claim administrator can issue an administrative closure, a strategy that takes time to execute, but may be very effective. *A two-year period of inactivity is necessary before an administrative closure can occur on a self insured program in California.* Once the two-year time frame has passed, the employer can avoid the costly lump sum settlement and also remove the liability from its books. However, an administrative closure may not be permanent; if the employee resumes treatment or requires ongoing supplies for the injury, the claim will reopen and reserves will need to be recalculated and applied to the file.

When to attempt a C&R settlement

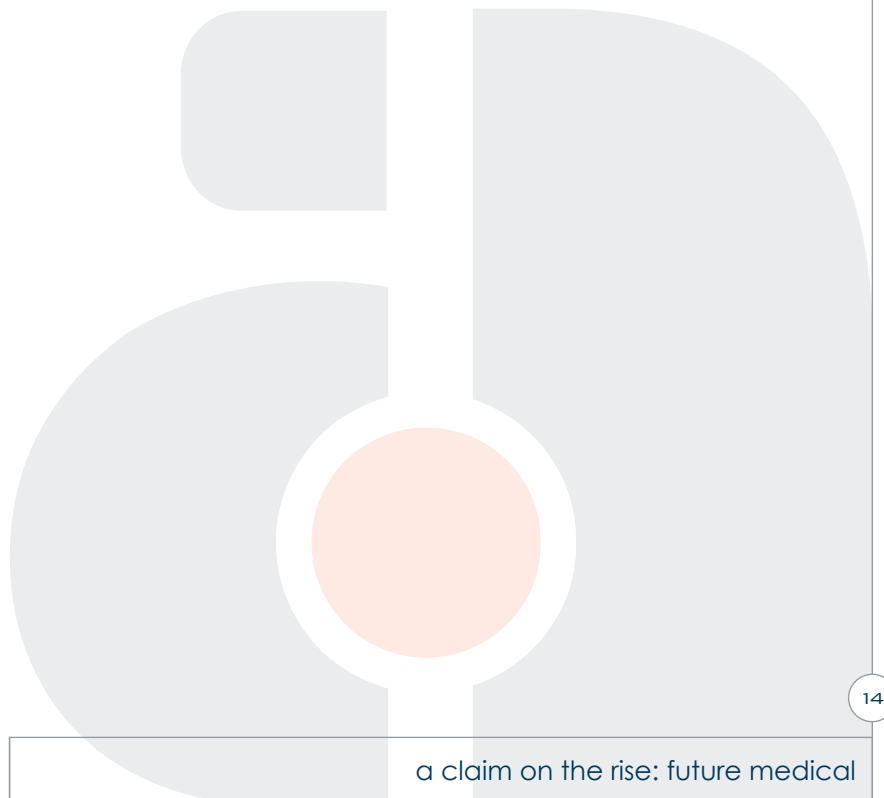


HOW DO FUTURE MEDICAL CLAIMS IMPACT YOUR PROGRAM? (CONT.)

Timing is everything when an organization resolves a future medical claim. Prior to offering a C&R settlement, an employer's key considerations are:

- Is the claimant still an active employee of the company?
- How likely is it that the claim will close administratively in the near future?
- Will the settlement include an MSA?
- How likely is it that the claimant will need treatment in the near future?
- Strategically, is it a good time to make a settlement offer?
- What is the life expectancy of the employee? The reserves on the claim will be based on normal life expectancy for an individual. Is the individual normal? Will they live longer or shorter than what is deemed normal?

Armed with the answers to these questions, organizations can confidently decide whether or not to settle a claim.



CONCLUSION

Future medical claims are a growing segment of all open indemnity workers' compensation claims. The deeper an employer's knowledge of these claims is, the better the odds are of successful resolution.

Employers should know and understand what future medical claims are and what drives them. Recognizing and addressing the external factors that influence the behavioral and health patterns of their employees, such as obesity trends, workforce demographics and increasing medical costs, is critical to effectively managing these claims. Over the years, employers have significantly made their workplaces safer and more accommodating for all employees. These efforts have, for example, resulted in fewer and less-severe industrial injuries.

Continuing these proactive measures — ongoing attention to ergonomics, safety, loss control, and return-to-work efforts — and developing new ones is important to claim management. Looking into the future, the next likely step for employers involves a holistic approach to their employees' overall wellness: implementing life-enhancing plans, including programs that target diet and exercise, and drug, alcohol and tobacco cessation. The outcome will be employees who live healthier and more productive lives, and who will experience fewer claims and be less dependent on medicine. These factors will further drive down claim frequency and result in fewer future medical claims.

The holistic approach to wellness will take time to develop and implement. It will take even longer for these programs to produce quantifiable results. One way to achieve immediate positive impact on a workers' compensation program is to begin by identifying future medical claims within an inventory. Then, establish specific goals and objectives surrounding the treatment and resolution of these claims. Make sure that future medical claims do not receive low-priority treatment. Bring them to the forefront and take advantage of all opportunities for closures that may exist. Effective management will curb expanding populations of future medical claims.

About Athens Administrators:

For over thirty years Athens has administered claims throughout the state of California. We have exceptional clients that include Fortune 500 companies, outstanding regional businesses and some of the most recognizable public agencies in the state. Athens Administrators is passionate about delivering exceptional service and results to our clients. For more information about this document or Athens Administrators please contact:

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