

A Weighty Problem



The high percentage of overweight and obese injured workers filing workers' comp claims is resulting in greatly increased workers' comp payments.

by Christine M. Fleming

Obesity is frequently characterized as an epidemic in the United States and is considered by many to constitute a national health crisis. This is not surprising, based upon the numerous studies that have been published on the issue. A Kaiser Family Foundation study, for instance, found that 70% of males and 58% of females were overweight or obese.

People are considered obese when they have a body mass index greater than 30.0, as defined by the Centers for Disease Control and Prevention, while individuals who have a BMI of 25.0 to 29.9 are considered overweight. The National Heart Forum estimates that 37% of American adults are obese—and that number is expected to climb to a staggering 50% over the next 14 years, according to a study published in *The Lancet* in 2011. Consistent with these statistics, the CDC found that 33% of American adults were overweight and another 33% were obese, with those figures expected to grow.

The percentage of obese and overweight individuals in the U.S. population is not only mirrored in the workers' compensation claimant population—it is significantly more prevalent. Obese workers filed twice as many claims as normal-weight workers,



Best's Review contributor **Christine M. Fleming** is a claims management consultant with Milliman. She can be reached at christine.fleming@milliman.com.

Key Points

The Situation: Not only is the number of obese people in the United States getting higher, the proportion of obese and overweight workers filing workers' comp claims is very high.

At Issue: Workers' comp claims involving obese and overweight claimants have higher indemnity and medical costs associated with them than claims of normal-weight workers.

Management Plan: Workers' comp insurers should implement programs, processes and procedures that are specifically designed to manage obesity-related claims and control their costs.

according to a 2007 study *Obesity and Workers' Compensation: Results From the Duke Health and Safety Surveillance System*, by Duke University Medical Center. And, as the proportion of obese adults in the general population grows, it is likely that obese claimants will comprise an even higher multiple of the normal-weight workers' comp claimant population. The high percentage of overweight and obese injured workers filing workers' comp claims is resulting in greatly increased workers' comp payments. Is there a way for workers' comp insurers to manage and control these costs?

Claims Involving Obesity Are More Expensive

Obesity affects both the medical cost component of a workers' comp claim as well as the associated indemnity costs. Temporary and permanent total disability claims of obese injured workers resulted in indemnity benefit durations five times longer than similar claims involving normal-weight injured workers, according to a 2012 study *Indemnity Benefit Duration and Obesity* by the National Council on Compensation Insurance. If partial disability benefits are included, indemnity costs for obese workers climbs to six times that of benefits for normal-weight workers, according to the study. One study found that obese workers lost 13 times as many workdays. Another study specific to California workers' comp claims found that obese workers lost 80% more time from work than normal-weight workers.

That same study, *Obesity as a Medical Disease: Potential Implications for Workers' Compensation* from the California Workers' Compensation Institute, found that average paid losses for claims involving an obese claimant were 81% higher than payments on claims involving normal-weight claimants. Claims filed by obese injured workers tend to stay open longer, becoming more expensive the longer they remain open. A claim open for one year involving an obese injured worker is three times more expensive than a claim open for one year filed by a normal-weight worker. If the claim is open for three years, it is 4.5 times more expensive, and if the claim is open for five years, it is 5.3 times more expensive according to a 2010 study, *Reserving in the Age of Obesity*, by the National Council on Compensation Insurance.

Medical costs are also generally higher for obese claimants. It is estimated that Americans spend about \$147 billion a year in medical costs associated with obesity and obesity-related diseases, according to a 2009 report, *Annual Medical Spending Attributable To Obesity: Payer-And Service-Specific Estimates* published in the journal *Health Affairs*. In the general population, medical costs on average are \$1,429 higher for an obese individual. This relationship also applies to the workers' comp claimant population. The medical costs for obese workers' comp claimants are significantly higher than the medical costs of normal-weight claimants—up to seven times higher, according to one study. Studies have also found that workers' comp medical costs increase directly with the degree of obesity. That is, the more obese the injured worker, the more expensive the medical costs. For example, the medical expenses of overweight workers' comp claimants were about 77% higher than claimants of normal weight, while extremely obese claimants, those with a BMI of 40.0 or greater, had medical expenses that were 580% higher than claimants of normal weight.

There are several reasons why medical costs are higher for obese claimants relative to their normal-weight counterparts. Obesity complicates and prolongs medical treatment. Obese claimants are more likely to delay surgery, lengthening treatment durations. Obese claimants also tend to have longer recovery times after surgery. Special and costly durable medical equipment and diagnostic testing equipment may be required for use with obese patients. Finally, obese claimants are more likely to have comorbidities than normal-weight claimants, adding further complexity and expense to medical treatment plans. Individuals who are obese are more likely to develop cardiovascular disease, diabetes, musculoskeletal disorders, arthritis, high cholesterol and certain cancers, according to the CDC.

Not only do workers' comp insurers of obese claimants pay higher medical costs for the same compensable workplace injury—they may also be responsible for costs associated with treating the obesity itself. While obesity and obesity-related diseases may not at first appear to be covered by workers'

comp insurance. Arguably, obesity could be considered a preexisting condition brought on by lifestyle choices, and should not be characterized as “arising out of and in the course of employment.” However, an increasing number of jurisdictions are determining that workers' comp insurers are responsible for obesity-related medical treatment.

Several sources and studies are cited in support of those determinations. According to the American Medical Association, obesity is a disease and not a lifestyle choice. The Centers for Medicare and Medicaid Services considers obesity to be an illness, and has determined that obese individuals eligible for Medicare benefits are entitled to behavioral therapy such as screening, dietary assessments, counseling, and programs to promote sustained weight loss, as well as certain obesity-related surgical treatments.

A growing number of courts are holding that obesity is a disability, an impairment that substantially limits one or more major life activities, under the Americans with Disabilities Act, and that obese individuals are therefore entitled to protection under that act.

Treating obesity as an illness or a disability, and not a lifestyle choice, influences how it is treated in the workplace. For example, physicians may favor a certain course of medical treatment for the work-related injury only if the claimant participates in a weight-reduction program or undergoes gastric bypass surgery. Physicians may also recommend weight-loss programs after treatment for the work-related condition has been completed. As a result, an increasing number of jurisdictions are holding that obesity-related medical treatments should be covered as part of the compensable work-related injury.

Controlling Claims Involving Obesity

The evidence suggests that workers' comp claims involving obese injured workers could fairly be categorized as near-catastrophic. It therefore makes sense to treat them as such. Workers' comp insurers should consider the following when implementing processes and procedures for managing claims involving obese and overweight injured workers:

- **Document information about claimants.**

Determine and document in the file the current weight and height of the claimant as well as the weight and height at the time of the injury. Weight gain trends should be monitored throughout the life of the claim, because claimants who gain a significant amount of weight after the date of injury could face substantially higher future medical costs even if they were not obese at the time of the injury. Because most adjusters capture weight and height in pounds and feet, respectively, consider an add-on to the claims system that converts to metric so that BMI can be easily calculated.

Text mining can also be used as a tool to identify overweight and obese claimants. However, care should

be taken as the lack of key words does not necessarily indicate a normal-weight claimant. Rather, it could be that obesity information or terminology simply was not captured in the claims system notes or fields.

- **Carve out an obesity claims unit.** Similar to adjusters in a catastrophic claims unit, claims handlers designated to work with obese claimants should be trained in obesity-related medical conditions, and should become familiar with vendors who specialize in working with obese individuals such as medical providers, behavioral therapists, weight management programs and durable medical equipment providers. Adjusters should also be well-versed in obesity laws and decisions in all applicable jurisdictions.

- **Communicate with claimants.** Communication is the key to favorable claims outcomes. Claimants who are contacted immediately and consistently, and who are clearly informed of rights and expectations, tend to respond positively to and work well with the adjuster to resolve claims. Claimants who view the adjuster as an adversary tend to retain legal counsel and pose barriers to equitable claims resolution options. Because overweight and obese individuals often face negative attitudes, rejection, and prejudice in society, it is important that claims handlers be trained to avoid negative stereotyping of obese individuals and treat obese claimants with the same respect and courtesy afforded all injured workers.

- **Consider early intervention of medical management.** Careful consideration should be given to early intervention of medical management. For obese claimants who are surgical candidates, such as claimants with serious back injuries, presurgical medical treatments could be longer and more expensive because of doctors' reluctance to perform surgery, post-surgical recovery times could be prolonged, and post-surgical treatment plans could involve more complications. Obese claimants are also more likely to have comorbidities, prolonging and complicating medical treatment and hindering return-to-work efforts. Finally, some studies suggest that obese and overweight claimants tend to suffer from similar work-related injuries involving the same body parts. For example, obesity was found to increase the risk for vibration-induced injury and certain occupational musculoskeletal disorders, according to a 2007 study in the *American Journal of Public Health*. Adjusters working with obese claimants should have training focused on common injuries and treatment options.

- **Implement training on settling claims.** Procedures and training should be implemented with respect to negotiation and settling claims involving obese claimants. Because future medical needs are more uncertain for obese claimants, obese claimants may be less likely to settle claims than normal-weight

claimants. Moreover, because obtaining a Medicare Set-Aside is considered a necessary step in settling a claim, it is essential to fully understand CMS's obligations with respect to obesity-related future medical costs.

Claims adjusters should also be trained to identify opportunities for reimbursements from second injury funds. Second injury funds were created to relieve a portion of the employer's or insurer's claims costs when the employer hired an employee with a preexisting medical condition who then suffered a second injury at work. The second injury fund laws vary significantly from state to state, but some SIFs will accept obesity as a preexisting condition.

- **Consider incentives for employers.** Consider offering incentives to employers that implement a stress-reduction program. Studies have shown that tension and anxiety in the work environment contribute to obesity. In particular, the risk of obesity increases in high-demand, low-control work environments, and for those who work long hours.

Also consider covering some or all of the costs of a weight-loss program—in some jurisdictions, this may be required—or provide employers with incentives to implement fitness, nutritional and wellness programs. Note, however, that the findings from studies are inconsistent with regard to the effectiveness of these programs. For example, a 2010 study by *Obesity, Fitness & Wellness Week* found that for every dollar companies spend on employee wellness, medical costs fall an average of \$3.27. However, a 2014 study by *Health Affairs* found that implementing a weight-loss and fitness program did not result in obesity-related medical costs savings, although it did decrease costs associated with chronic medical conditions such as diabetes.

- **Keep employees active.** Keeping employees active and productive is important to maximizing their chances of improving medically and returning to work. In situations where an injured worker cannot return to work in the same capacity for a prolonged period of time, consider implementing a voluntary program to keep the claimant active until return to work is possible. Under such a program, the claimant is involved in volunteer work and paid part or all of a temporary benefit by the employer, insurer, or both.

In conclusion, the number of obese and overweight individuals in the United States is growing, and the proportion of obese and overweight workers filing workers' comp claims is very high. Workers' comp claims involving obese claimants tend to have much higher indemnity and medical costs associated with them than claims of normal-weight workers. Because of these trends in the frequency and severity of workers' comp claims involving obese claimants, workers' comp insurers should consider implementing programs, processes, and procedures specifically designed to manage these claims and control associated costs.

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