

The biggest loser — workers' comp?

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These days, when you run into a friend you haven't seen in a few months, you're likely to say: "Gee, you look great. Have you lost weight?" The answer is usually either Ozempic, Wegovy or Mounjaro. Ozempic and Mounjaro were developed to treat Type 2 diabetes; Wegovy was developed specifically as a weight loss medication, employing the same semaglutide formula as Ozempic.

The impact of new treatments and breakthroughs in medicine are nothing new to workers' compensation systems. However, the advent of weight loss drugs and their potentially staggering costs should cause any employer or carrier to be concerned.

These medications have become the new "Botox party" drugs, with physicians, celebrities and influencers alike promoting their use. Wegovy is FDA approved for weight loss; Ozempic and Mounjaro are not. Yet. The question arises — if Wegovy is FDA approved for weight loss (with the others undoubtedly not far behind), should weight loss drugs be approved under workers' compensation laws?

The impact of new treatments and breakthroughs in medicine are nothing new to workers' compensation systems. However, the advent of weight loss drugs and their potentially staggering costs should cause any employer or carrier to be concerned. The cost impact on workers' compensation programs is largely unforeseen, premiums weren't charged or collected for them, and a very large percentage of injured workers could try to take advantage of them, all at their employer's expense. This is a burden no workers' compensation system is prepared for.

Obesity is one of many comorbidities that can impede an injured worker's recovery. Throughout the United States, workers' compensation insurers have accepted and funded various weight loss methods. For example, in 2022, in *Robin Kluttz-Ellison v. Noah's Playloft Preschool and Erie Ins. Group*, the Court of Appeals of North Carolina approved bariatric surgery for an injured worker who needed to lose weight for her knee replacement surgery to be successful.

Even Louisiana — the seventh most obese state in the United States — has approved weight loss programs under its workers' compensation laws. In 1988, the Louisiana Court of Appeals ordered an energy company to pay the cost of a swimming exercise program at a local YMCA for an injured worker. *Fontenot v. Citgo Petroleum Corp.* Bariatric surgery, lap bands, YMCA memberships, and diet programs can be expensive, but nothing compared to these medications. Is approval of weight loss drugs like Wegovy, Ozempic, and Mounjaro, next?

Most weight loss methods are only effective while in use. A person who stops dieting or exercising usually regains the weight they lost. Likewise, those who stop taking weight loss drugs usually gain their weight back. Wegovy is currently one of the only weight loss drugs approved by the FDA. Approved in 2021, Wegovy is a once-weekly injection dose for chronic weight management. While this drug was specifically designed for chronic weight management, there is the possibility that one's weight could plateau, ultimately defeating the purpose of the medication. With Ozempic, which has less semaglutide in its formula than Wegovy, a person is more likely to plateau. So as with other weight loss methods, the desired ends may not be reached in an effort to make the injured worker capable to return to work.

Even more concerning? The price. According to *SingleCare.com*, in August 2023, without insurance, four Wegovy auto-injectors cost around \$1,800. That's \$450 per week, or up to \$23,400 per year. Mounjaro costs roughly the same — four injectors cost \$1,582. Ozempic, however, is \$1,255 for a single injector. Presuming an injured worker requires one injection per week, that's \$65,260 per year. While most states have a workers' compensation fee schedule, medications are usually not included or are reimbursable at the "usual and customary price." This could mean that workers' compensation insurers could bear the high cost for these possibly ineffective weight loss drugs.

It is common in the United States for pharmaceutical companies to make incentive payments to health care providers for prescribing their drugs, in the form of entertainment, meals, promotional speeches, and consulting arrangements. Studies show that these incentive payments influence health care providers' decision making when prescribing medication to patients. "Are Financial Payments from the Pharmaceutical Industry Associated with Physician Prescribing? A Systematic Review," *Ann Intern Med.* 2021 Mar; <https://bit.ly/3EtXCLH>.

The federal Anti-Kickback Statute applies to financial arrangements with health care providers under federal health programs (Medicare, Medicaid and CHIP), but does not apply to workers' compensation programs. A resource for determining payments made to any health care provider can be found at <https://bit.ly/45SnlsE>. Employers and carriers have real reason to be concerned about the marketing of weight loss drugs to health care providers.

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Another issue is whether weight loss drugs will only be approved for weight loss. Like obesity, another comorbidity facing injured workers is diabetes. Wegovy, Ozempic, and Mounjaro are all FDA approved diabetes medications. If these medications were to become workers' compensation approved, shouldn't they also be approved if an injured workers' diabetes was aggravated, accelerated, or contributed to an injury? Employers and carriers

would then be brought right back to the challenges of the price of these medications.

While workers' compensation insurers may be resistant to the use of weight loss medication in trying to cure injured workers and return them to their usual employment, the very real possibility exists that weight loss drugs will be approved treatment in workers' compensation claims. For years, many states denied chiropractic treatment as a covered claims cost, but many have seen the benefits in their workers' compensation claims, with Oklahoma recently enacting a bill in 2020 approving chiropractic treatment under its workers' compensation laws. The federal Longshore and Harbor Workers' Compensation Act still only allows chiropractic care under very limited circumstances.

Even for those medications that are not FDA approved, it is common for "off-label" use of medications to be approved under workers' compensation programs. Employers and carriers will be challenged to contain the costs of these medications.

So when your friend quietly confides that their weight loss is due to Ozempic, Wegovy or Mounjaro, go ahead and ask if their workers' compensation carrier is paying for it.

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