

Law Offices of T. Mae Yoshida

Workers' Compensation

What You Don't Know Can Cost You

A Presentation for the
Northern California HFMA
2011 Spring Conference
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By
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Law Offices of T. Mae Yoshida

Law Offices of T. Mae Yoshida

- Specializing in workers' compensation
 - Over 20 years experience
 - Currently represents over 500 injured workers, primarily in the Modesto area
 - Currently represents hospitals in Northern and Southern California
- Advocacy of medical providers' rights in the workers' compensation system is informed and strengthened by advocacy of injured workers' rights

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Presentation Perspective

For most hospitals, workers' compensation accounts comprise less than 2% of the overall A/R.

So, why care when these accounts are such a small, insignificant part of the greater scheme of things?

But, would **\$1.6M** in additional money in closed workers' compensation accounts be meaningful?

How about **\$2.1M** in additional money in closed accounts that were not known at admission to be workers' compensation?

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Presentation Objectives

- Provide an update on the “electronic” direction of the Division of Workers' Compensation
 - What medical providers need to know
- Examine the workers' compensation system and its direct impact on medical providers in obtaining payments for services provided to injured workers.
 - What is the impact in real dollars on the identified workers' compensation A/R
 - What is the impact in real dollars in other A/R (capitation, self-pay, managed care)

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Topics

- Division of Workers' Compensation
 - Going electronic
- Workers' Compensation Basics
 - An overview of the workers' compensation system, including a few basic rules for providers
- Impact of 2004 Legislation on injured workers, medical treatment, and ultimately on Providers
- Workers' Compensation and the providers' A/R burden
 - Examples from a hospital and a healthcare system

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Division of Workers' Compensation (DWC)

- Part of Department of Industrial Relations
- Provides administrative and judicial services to resolve workers' compensation benefits
- Going "electronic"
 - EAMS
 - E-Billing

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DWC – Going “Electronic”

- Electronic Adjudication Management System (EAMS)
 - “Paperless” database management
 - Filing documents much more efficient
 - You don’t need to wait until the clerk enters the document into the database
 - Allows for faster acknowledgement of hearing dates
 - You can set you own hearing dates
 - Still a long, long ways to go . . .

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DWC – Going “Electronic”

- Electronic billing
 - Allows providers to electronically bill workers’ compensation carriers
 - To be implemented (hopefully) sometime later this year
 - Finally, establishes billing standards
 - UB04, for hospitals
 - HCFA 1500, for physicians
 - NCPDP, for pharmacies
 - ADA 2006, for dentists

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DWC – Going “Electronic”

- Electronic billing
 - Pros: Much faster processing of medical bills
 - Paper Bills: 45 working days to pay a bill or 30 working days to deny payment
 - E-Bills:
 - One day = turnaround time for payor to acknowledge receipt of the bill
 - Five days = amount of time payor has to decide whether or not to accept or reject the bill
 - Fifteen days = amount of time payor has to pay the bill

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DWC – Going “Electronic”

- Electronic billing
 - Cons:
 - Providers must use a clearing house, or establish trading partner agreements on electronic transactions with each claims administrator
 - E-bills must have substantiating treatment reports
 - Can be transmitted with the e-bill, or e-mailed/faxed within 5 days of e-bill transmission
 - No standards on transmission
 - No associated penalty and/or interest provisions against payers who fail the timely response and payment requirements

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DWC – Going “Electronic”

- Resources – Website:

- http://www.dir.ca.gov/dwc/DWCPropRegs/Ebilling/EBilling_Regulations.htm

- Text of proposed regulations [version](#)
 - Medical Billing and Payment Guide 2011 [version](#)
 - Electronic Medical Billing and Payment Companion Guide 2012

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Workers’ Compensation Basics

A Few Basic Rules

- All employers are required by law to have workers’ compensation insurance or be self-insured (or “legally uninsured”)
- Injured workers are entitled to temporary disability, permanent disability, medical treatment, and a job displacement voucher, if the employer cannot accommodate the worker’s restrictions
- Injured workers who are denied benefits must appeal such denials through the Workers’ Compensation Appeals Board

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Workers' Compensation Basics

A Few Basic Rules

- Injured workers are not liable for payment of medical bills
 - Providers cannot knowingly bill injured workers
 - Do not file lawsuit against Injured Worker (in small claims or otherwise) for unpaid medical bills– see Labor Code §3751.1(b)
 - “Any medical provider who violates this subdivision shall be liable for three times the amount unlawfully collect, plus reasonable attorney’s fees and costs”

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Workers' Compensation Basics

A Few Basic Rules

- Employer/carrier has up to 90 days to decide whether to accept or deny an employee’s claim of work injury – delay period
- Employee has right to medical treatment up to \$10,000.00 during the delay period while employer is investigating employee’s claim
 - Medical provider should submit properly documented bill to carrier ASAP

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Workers' Compensation Basics

A Few Basic Rules

- Carriers are required to pay a fully documented bill within 45 working days or provide the legal basis for denial within 30 working days, or be subject to penalty and interest
- The forum for resolving disputes regarding payment of medical treatment is the WCAB, via a lien that is properly filed with the WCAB within the Statute of Limitations

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Workers' Compensation Basics

- Basic rules paint a fairly straight-forward picture
 - Employee gets hurt and gets medical treatment, which is paid for by the carrier.
 - If an employee is denied benefits, he/she can go to the WCAB for assistance
- Reality is much more complicated, ultimately impacting providers
 - Issues of nature and extent of injury
 - Issues of medical treatment authorization, and
 - Issues of carriers' payment practices

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Workers' Compensation Basics

What is required to have a workers' compensation injury?

- Employment
- Injury

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Workers' Compensation Basics

Who is an employee?

- Contract for hire – pay for services rendered
- Independent contractors – excluded, but depend on the facts
- Day laborers - \$100 wage minimum, or 52 hours of work within 90 days prior to injury

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Workers' Compensation Basics

Injury AOE/COE (Arising Out of and Occur in the Course of Employment)

- Arise out of the employment (causal relationship)
 - Violence at work
 - Seizure/idiopathic causes
 - Diabetic seizure vs. diabetic seizure with head trauma
 - Heart attacks – statutory injuries
 - Traveling for work

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Workers' Compensation Basics

Injury AOE/COE (continued)

- Occurs in the course of employment
 - Personal Comfort Doctrine
 - Coffee break/lunch break
 - No lunch facilities provided
 - Going to and Coming from work
 - Regular commute vs. Special Mission
 - Home as a second job site

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Workers' Compensation Basics

Types of Injury

- **Specific Injury**
 - Occurs on a specific day
 - Notice of injury necessary: employer (supervisor) must have notice of an injury
 - Injured worker provides notice directly, or
 - Employer has constructive notice
 - Injured worker obtains medical treatment w/knowledge of supervisor
 - Doctor's First Report of Work Injury also provides notice

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Workers' Compensation Basics

Types of Injury (continued)

- **Cumulative trauma**
 - Occurs in the course of one's employment over time
 - Notice of the injury may not apply – possible to file after you stop working
 - Statute of limitations is from date of notice that a condition is work related

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Workers' Compensation Basics

Types of Injury (continued)

- Compensable consequence of work injury
 - Back as a compensable consequence of knee injury
 - Opposing members – lower and upper extremities
 - Depression
 - Sleep disorder
 - Sexual dysfunction

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Workers' Compensation Basics

Compensable consequence of an industrial injury

- Example: Injured worker sustained an industrial right knee injury. During her recovery from a right knee surgery, she begins to have symptoms in her left knee. The Hospital provides physical therapy for the left knee.
 - The carrier may deny payment of treatment for the left knee
 - Hospital has the burden of proof to establish that the physical therapy treatments to the left knee were reasonably necessary to cure and/or relieve from the industrial right knee injury.

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2004 Changes to the Workers' Compensation System

Purpose: to contain W/C premiums, thus requiring sweeping changes to all W/C benefits

- Temporary Disability – 2 year cap
- Permanent Disability – different rating system
- Vocational Retraining - eliminated
- **Medical Treatment**

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2004 Changes to the Workers' Compensation System

Cost Containment Programs in Medical Treatment

- Most carriers established a Medical Provider Network (MPN) requiring injured workers to receive treatment through their MPN
 - Extensive rules and regulations govern the set-up and maintenance of MPN's
 - E.g., must have certain number of specialists in a 35- mile radius of the patient's residence, etc.
 - All treating physicians, including surgeons, are selected from the MPN

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2004 Changes to the Workers' Compensation System

Cost Containment Programs in Medical Treatment

- Utilization Review (UR) –carriers may use utilization review to authorize, modify, or deny any and all medical treatment requests from the MD
 - Change of primary treating physician
 - X-Rays and other diagnostics
 - Surgeries
 - Physical therapy

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2004 Changes to the Workers' Compensation System

Cost Containment Programs in Medical Treatment

- UR responses have varying time frames – from 72 hours to several weeks – to authorize, deny or modify treatment, depending on urgency
 - Treatment denied by UR will not be paid
- UR agencies may deny or modify treatment requests
- Claims adjusters, who may not have any medical background, can act as its own UR and deny or modify treatment requests

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Impact of 2004 Changes to Medical Treatment

Consequences to Injured Workers

- Injured worker is released by the MPN physician prematurely
 - What is the patient to do if he/she really needs more treatment?
- Injured worker does not like his physician from the MPN and wants a different doctor within the MPN. He/she requests a change, but the change is not authorized.
 - Why is that important? MDs are the ones making medical treatment requests. If the carrier does not authorize a change of MD, there is no one to make treatment requests.

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Impact of 2004 Changes to Medical Treatment

Consequences to Injured Workers

- Medical treatment recommendations are delayed, modified or denied
 - Surgery is denied and without the surgery, the injured worker cannot return to work
 - Post surgical physical therapy – MD requested 12, but only 4 is authorized

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Impact of 2004 Changes to Medical Treatment

What can an Injured Worker do?

- Request to be seen by an expert who will determine whether or not they can have the treatment
 - An appointment may take several weeks to months, and even more time to get the expert's report
- Request a hearing before a WCAB judge
 - May take months to get a hearing
 - May still not get treatment because of insufficient evidence or the judge sides with UR

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Impact of 2004 Changes to Medical Treatment

What can (and does) an Injured Worker do?

- Use other means to get treatment such as private health insurance, Medi-Cal, Medicare:
 - Injured workers only care about getting treatment

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Impact of 2004 Changes on Medical Treatment Providers

Consequences to Medical Providers

- Greater burden on the provider A/R
 - If an injured worker received treatment through a private carrier, that carrier may pay less than the fee schedule, e.g., per diem rates
 - If an injured worker received treatment through Medi-Cal, Medi-Cal rates are definitely less than the fee schedule

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Impact of 2004 Changes on Medical Treatment Providers

- Greater burden on the provider A/R
 - If an injured worker received treatment through Medicare, Medicare will take its payment back if it later discovers that the treatment was for a work injury and provider may have no recourse against the W/C carrier
 - If an injured worker received treatment through managed care capitation, the provider will have absorbed all treatment costs that should have been paid by the worker's compensation carrier

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Carrier Payment Practices Add to Providers' A/R Burden

- Carriers regularly underpay medical bills
 - Carriers misinterpret the regulations regarding the Official Medical Fee Schedule and payment of medical bills to justify underpayments
 - Carriers pay line item charges instead of the outpatient facility fee schedule
 - Carriers narrowly interpret spinal implants as only hardware

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Workers' Compensation and the Providers' A/R Burden

- Should a provider care if some accounts are underpaid?
- Should a provider care if, unknowingly, they have provided medical treatment under some other payor?
 - If less than 3% of the A/R is known to be workers' compensation, wouldn't the number of "unknown" workers' compensation accounts be even more negligible, and the "money left on the table" be just as negligible?

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Workers' Compensation and the Providers' A/R Burden

- To illustrate, examined two medical treatment providers:
 - Medium-sized acute care hospital, with less than 2% of all accounts identified as workers' compensation at time of admission
 - Fairly large-sized health system, with less than 1% of all accounts identified as workers' compensation at time of admission

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Workers' Compensation and the Providers' A/R Burden

- Three Pressure Points on Providers' A/R
 - Identified Workers' Compensation A/R
 - Accounts identified at the time of admission as W/C but which are problematical because payment has been denied
 - Underpaid Workers' Compensation A/R
 - Accounts identified at the time of admission as W/C, but where provider may or may not know that the account has been underpaid
 - Unidentified Workers' Compensation A/R
 - Accounts where the provider does not know that treatment has been provided for an industrial condition

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Workers' Compensation and the Providers' A/R Burden

Pressure Point 1: Identified WC accounts that are denied

- Providers' ultimate recourse is to either write off the account or file a lien with the WCAB within the Statute of Limitations
 - "Business as usual" for provider collections staff, except there are now more denials
 - Send appeals
 - Write off or litigate

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Workers' Compensation and the Providers' A/R Burden

Pressure Point 2: Unknown Underpayments – Outpatient Surgeries

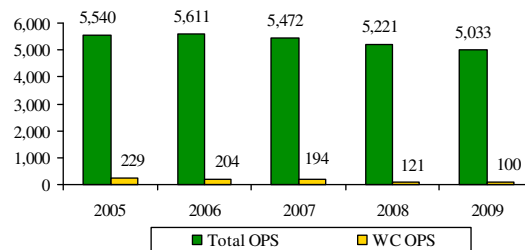
- Carriers often pay an outpatient surgery bill based on the line-item charge for the surgical procedure
- All outpatient surgeries performed by a hospital or ambulatory surgical center are to be paid by the official medical fee schedule formula and not by line item charge
- Because carriers will pay "some" of the charges, many underpayments go undetected and the accounts are closed.

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Workers' Compensation and the Providers' A/R Burden

Underpaid outpatient surgeries ... worth looking into?

- Examined all closed outpatient surgeries of Medium-sized Not-for-Profit General Acute Care Hospital over 5-year period
 - 5,375 = Average total number of outpatient surgeries each year
 - 3.1% = Average % of outpatient surgeries that are workers' compensation

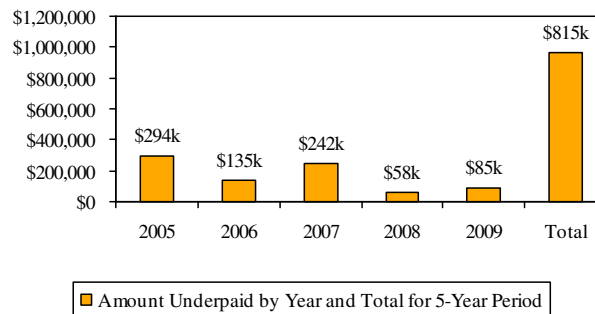


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Workers' Compensation and the Providers' A/R Burden

Underpaid outpatient surgeries ... worth looking into?

- **\$815,170** = Total additional monies found in closed WC outpatient surgery accounts over 5 year period



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Workers' Compensation and the Providers' A/R Burden

Underpaid outpatient surgeries ... worth looking into?

- **\$815,170** is non-negotiable
 - This is the total amount underpaid and due pursuant to the Official Medical Fee Schedule
 - When litigated, carrier may be subject to 15% penalty and 10% interest for failure to pay properly, in addition to the full amount of the underpayment
- What is an additional, net \$815k worth to your bottom line?

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Workers' Compensation and the Providers' A/R Burden

Pressure Point 2: Underpayments - Implants

- Fee schedule regulations permit reimbursement for the actual cost of implants in spinal surgeries over and above the payment for the facility
- Carriers often refuse to reimburse all implants based on their interpretation of the regulations
 - Implants = only hardware
 - Regulations state implants = devices, implants, hardware etc.

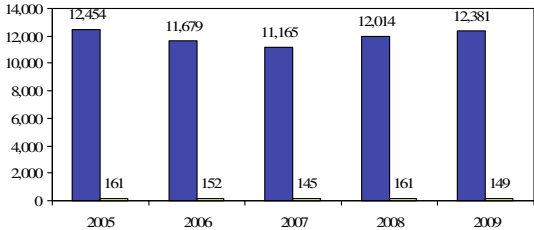
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Workers' Compensation and the Providers' A/R Burden

Implant Underpayments – Worth looking into?

- **Ex. 1: Medium-sized General Acute Care Hospital**
 - 11,938 = Avg # of IP admissions per year over 5-year period
 - 1.3% = Avg % of IP admissions identified as WC at admission



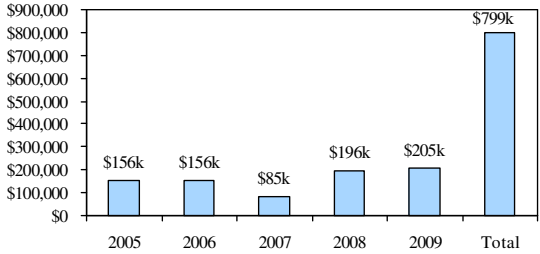
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Workers' Compensation and the Providers' A/R Burden

Implant Underpayments – Worth looking into?

- **\$799,049 = Total unreimbursed amount for implants over a 5-year period**



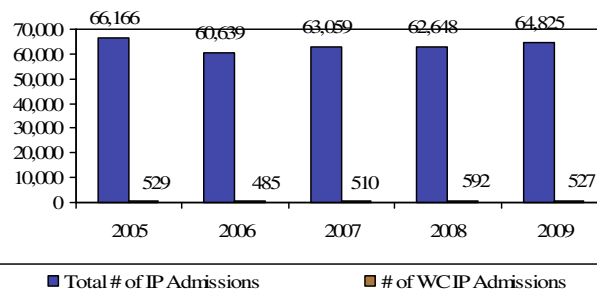
Year	# of Accounts w/Underpaid Implants
2005	15
2006	14
2007	11
2008	9
2009	11

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Implant Underpayments – Worth looking into?

- Ex. 2: Not-for-profit Healthcare System with ≈1,500 beds
 - 63,467 = Avg # of IP admissions per year over 5-year period
 - 0.8% = Avg % of IP admissions that are WC over same period

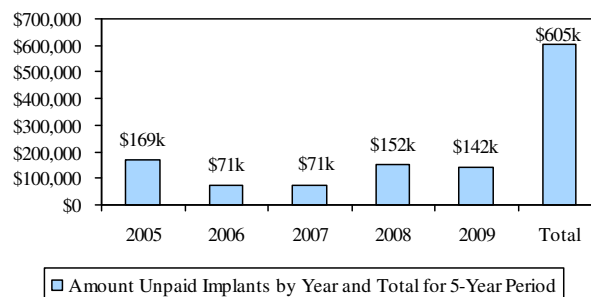


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Workers' Compensation and the Providers' A/R Burden

Implant Underpayments – Worth looking into?

- \$604,997 = Total unreimbursed amount for implants over a 5-year period



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Workers' Compensation and the Providers' A/R Burden

Underpaid Spinal Implants ... worth looking into?

- **\$604,997** in additional dollars for one healthcare provider;
\$799,049 for another
 - This is the total amount underpaid and due pursuant to the Official Medical Fee Schedule
 - When litigated, carrier may be subject to 15% penalty and 10% interest for failure to pay properly, in addition to the full amount of the underpayment
- What is an additional several hundred thousand dollars worth to your bottom line?

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Workers' Compensation and the Providers' A/R Burden

Pressure Point 3: Unidentified Workers' Compensation

- Injured workers are seeking treatment through means other than the workers' compensation system – knowingly or unknowingly
 - Medicare, Medi-Cal
 - Group, or private insurance

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Workers' Compensation and the Providers' A/R Burden

Pressure Point 3: Unidentified Workers' Compensation Accounts

- Because of the hurdles injured workers have to go through to get medical treatment since the 2004 Legislation, it is very easy, especially for capitated patients, to just use their private health insurance for treatment of their workers' compensation injuries
 - This is perhaps the least discovered area of revenue for providers

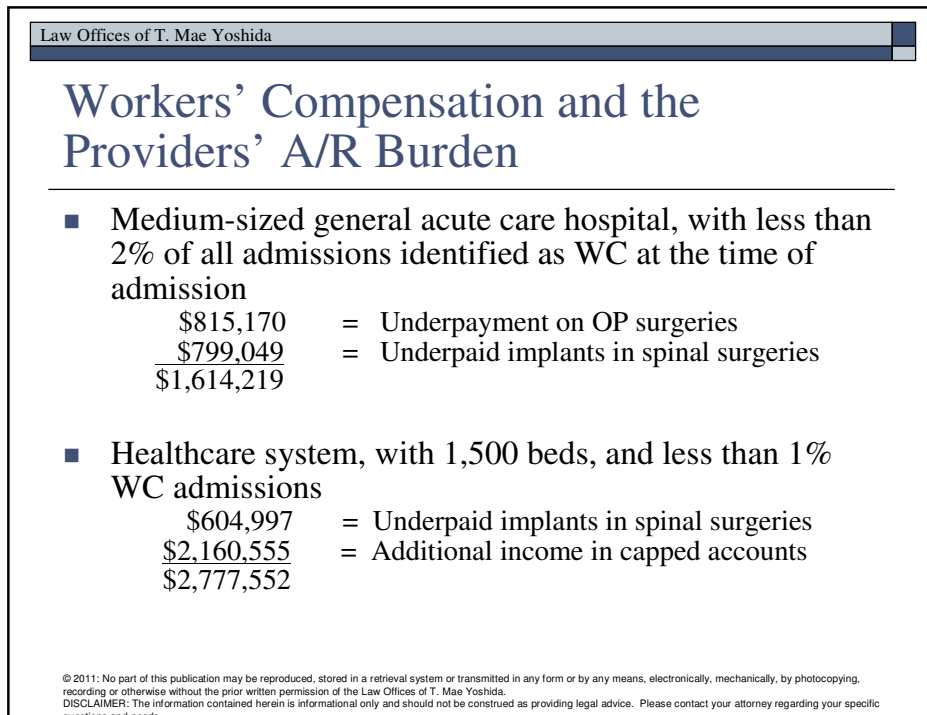
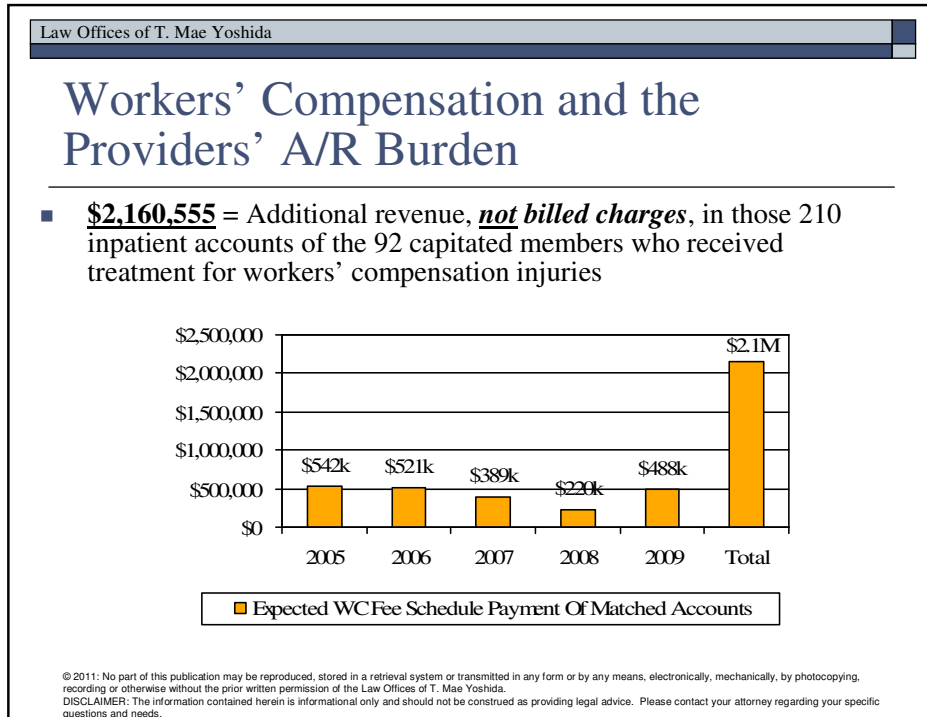
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Workers' Compensation and the Providers' A/R Burden

Capitated accounts – worth looking into?

- Not-for-profit Healthcare System with 1,500 beds also has (on average over a 5-year period) 18,000 capitated members per year
- 23,189 = average number of treatment accounts for capitated members per year over the 5 year period
- 210 = total number of accounts belonging to 92 capitated members who received medical treatment for work-related injuries/conditions
 - Is it worth looking at over 100,000 accounts when only 210 of them are workers' compensation?

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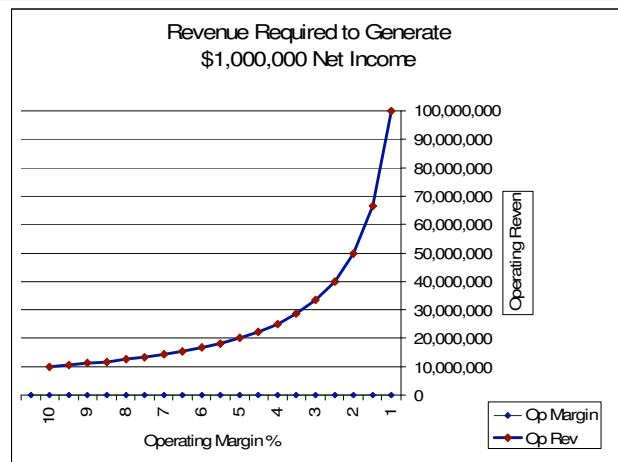
Workers' Compensation and the Providers' A/R Burden

So what does all this mean?

- In order to have a \$1,000,000 in net income, how much total revenue do you have to generate?

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Conclusion

So what does all this mean?

- What is happening in the workers' compensation system can, and does impact the medical provider
 - The system is designed to mitigate the cost of medical treatment to the insurance carrier
 - Carriers depend on providers' lack of knowledge and/or resources in obtaining payment
 - What may seem to be such a small part of the A/R can, and often does, have significant impact – whether the provider knows it or not

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Conclusion

So what does all this mean?

- Providers should not assume that all is well because WC accounts comprise such a small % of A/R
 - Audit payments on outpatient surgeries
 - Audit/re-examine payment of implants in spinal surgeries
 - Datamine self-pay, managed care and capitated accounts
 - Datamine Medicare accounts – stay ahead of the curve
- What you don't know can cost you

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