No injured worker overlooked, No injured worker left behind

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To Whom it may concern,

Please find attached Craig's Table's response to the Regulatory Requirement For Workplace Rehabilitation Service Provision In New South Wales Personal Injury Scheme(s) Review 2020.

Craig's Table takes this opportunity to remind sira that not all the required information is found within the workers compensation process, we also take this opportunity to recommend it is time to invite injured workers to the discussion table.

Lastly Craig's Table takes this opportunity to remind sira that injured workers enter into the workers compensation by accident not by choice. Injured workers enter with 4 major issues that the workers compensation system needs to recognize.

1. Pain, injured workers are in pain, physical, emotional and mental. Pain drives how injured workers think feel and react.
2. Grief, injured workers are in grief for what has been lost, the loss can be for the inability to return to a loved job or for a future that was planned.
3. Language, injured workers do not speak or understand workers compensation industry jargon.
4. Professional strangers, injured workers have no idea as to who the professionals are that the workers compensation system requires to be in place within the compensable claim.

Yours in service

Craig's Table
27th November 2020

Missing?

In order to address the questions contained within this Review it is (in my opinion) also important to add comment to some of the dialogue.

At the same time, trends in related scheme performance measures show:

- the proportion of WC claims receiving WR services is decreasing
- the spend on WR services in WC is decreasing. In 2018-19 FY the WC scheme spent $158million on WR providers, equating to 15% of the total medical and related health spend. This is a reduction in spend on WR providers from 19% for 2017/18
- the overall healthcare costs in the WC system are increasing, with workers receiving more care from more providers.

This statement does not appear to be correct to me. The number of medical professionals within the claim may have increased; however, not all medical professionals are medical providers to the injured worker.

There are 3 types of medical professionals within a compensable claim.

1. The treating medical team- this includes all treating specialists as required.
2. The Independent Medical Expert- for the claim's agent, the injured worker receives no treatment from the claim's agent IME.
3. The Independent Medical Expert- for the injured workers legal representative, the injured worker may or may not receive medical treatment from the legal representative IME.

The healthcare cost of the treating medical providers needs to be separate from the Independent Medical Expert cost(s). To not separate the costs of the claims agent IME(s) infers that the injured worker is deliberately running up non-essential medical expenses.

Question

In the current landscape, are there aspects of the WC or CTP schemes that should be extended to the other scheme to optimise WR service provision?

N/A

The most effective WR programs included these three components:

1. **Health care components:** consist of a wide range of programs and support to promote health and wellbeing for workers who have experienced injury or mental health conditions, such as depression.
2. **Service coordination components:** aim to better coordinate the delivery of and access to, services to assist return to work within and involving the workplace. These components facilitate interactions between workers, employers, health care providers, insurance agencies and other stakeholders.
3. **Workplace/employer components:** incorporate worksite adjustments or accommodations offered to better facilitate the worker's return to work process.

On paper this looks good. It is not until you look closer as the case manager component to see that a case manager has between 5-8 minutes per week per case load to read and make decisions based not on what is the best of all possible outcomes for either the injured worker or the employer but based on the profit loss algorthyum used by all claims agents. Even if a case manager wants to provide platinum quality care, they know that their senior manager will not approve all of the costs as requested by either the treating medical provider or by a rehabilitation provider.

This also makes the assumption that the injured worker understands their rights and responsibilities under the New South Wales workers compensation legislation. Many injured workers agree with what is put to them not because they are willing to do what has been recommended but because they know that agreeance is oft times the only way to shut the rehabilitation provider up. Injured workers are simply not informed that they have the right to question what any of the professional strangers in their lives are saying.

I also wonder as to how frustrated the employer(s) are, not because of a workplace injury, but by the costs incurred by the professional providers that drive up the costs of their workers compensation levy, and the continued delays of waiting for case managers to approve required medical treatment(s) or even approve home care in order for the injured worker to be able to rest and heal within an acceptable/known timeframe.

I also doubt that at any time through this process that the directions provided by Australian Human Rights Commission are taken into account.

Australian Human Rights Commission - Workplace Injuries

Supporting an injured worker to return safely to work as quickly as possible makes good business sense.

Getting back to work can reduce the financial and emotional impact on a worker and their family. It can also be an important factor in helping them recover and return to normal life.

When the injured worker does return, an employer should ensure that they are given appropriate duties and assistance while they recover from the injury. This might include making reasonable adjustments to the workplace, although these should not cause the organisation unjustifiable hardship.

> If an employee has a work-related injury, there may be an overlap between work health and safety legislation, workers compensation schemes and the Disability Discrimination Act.
>
> Discrimination against an injured worker is against the law, regardless of whether the injury was sustained at work or outside the workplace. There are some limited exceptions and exemptions.
>
> The employer will need to determine whether the employee can still perform the essential duties of the job – with assistance or adjustments, if required – before considering dismissal.

I would hazard a guess to say that the vast majority of professional providers within the workers compensation system are aware of the requirements from the Australian Human Rights Commission. I also doubt that any of the contracts between the nominal insurer and the claims agents reference the requirements of the Australian Human Right Commission.

Timely access to WR – timely interventions are key to the success of WR programs they raise employment propensity, improve income stability both during and after the intervention period and reduce the risk of transitioning to permanent disability benefits schemes. While the average time to first WR payment in NSW WC has been reducing, there remains considerable room for improvement

Again, this comes down to the what the case manager decides, no rehabilitation provider can step in until the case manager has approved for rehabilitation to start or re-commence. A rehabilitation provider is at all times at the whim of the case manager and the budget(s) allowed within the compensable claim; it is pure folly to believe or infer anything else.

At no time does the injured worker have any idea as to what the claims agent go-no-go profit loss margin is, in truth many injured workers are not even aware that case mangers slow down programmes towards the end of time permissible as a way of preserving funds left within the budget in order to cover costs of medications and costs of medical treatments. At no time are case managers or rehabilitation providers allowed to consider the outcome for any particular injured worker is life on any of the available forms of disability payment.

Optimal interaction between case management and workplace rehabilitation. Service coordination is a key component of best practice in WR. It includes coordinating the delivery of, and access to services and support to involve the workplace to assist workers' recovery and RTW. Case management includes case administration, benefits payments and coordination and approval of services and

support. There continue to be challenges in achieving an optimal balance between some functions of case management and WR. These have been evident as the system has undergone transformative change in recent years and in some cases has resulted in increased duplication of case coordination functions and reduced WR focus on core services leading to poorer performance.

The challenges to achieving the optimal balance (in my opinion) will not alter until case management is required to change. Currently case management know that the sooner an injured worker is removed from workers compensation the sooner the claims agent will receive a bonus payment. There are no penalties in place for the claims agents not doing all that is equitable and morally correct to assist the injured worker. Decisions/requests are delayed for as long as possible knowing that a large percentage of injured workers simply will not understand their rights under the New South Wales workers compensation legislation.

Simple things such as ensuring that an injured worker has a chemist account in place so that all medical expenses are covered by the system and not by the injured worker. Or ensuring that the injured worker lodges travel claim forms.

If the claims agent were required to pay a penalty for not assisting the injured worker with their basic rights of say $100.00 per day with compound interest of 3% after 5 working days for every day this would immediately re-focus the attention of optimal outcomes for the injured worker.

It is also (in my opinion) a requirement to remove all preferred provider lists that the claims agents have. It is simply not in the injured workers best interest for a case manager to decide who is the best rehabilitation provider for an injured worker.

> I would recommend that in place of the preferred provider list that each injured worker be provided with a list of 10 rehabilitation providers within their own locality so that the injured worker can make their own informed decision based on discussion that they have had within their own community and with their treating medical providers.

Questions

Do we have the breadth of WR services, interventions and supports required for optimal recovery and RTW outcomes for injured people in NSW?

What would be the best approach to building capability in WR service provision?

How do we support WR service provision to achieve optimal outcomes?

How do we promote best practice and continued innovation in WR service provision in NSW?

ANSWER

No.

The best and only way to improve this process is to ensure that all the tools the injured workers require are in place. Everything from understand what and why the rehabilitation provider is in place and just what the rehabilitation provider can and cannot do through to medication/medical treatment control information so that at no time will the injured worker be required to rely on memory (this information is currently not provided by any rehabilitation provider in New South Wales)

The breadth of services is not the issue; the issue is what the rehabilitation providers can get the case managers to approve.

The best way forward is to re-set the process of how the claims agents work to enable the rehabilitation process, allow the injured workers to select their own rehabilitation provider and to set realistic outcomes that are in the best interest of the injured worker rather than the least cost possible.

The definition of value-based care used in the Health Outcomes Framework is consistent with national and international principles and definitions. These focus on the four essentials of value known as the Quadruple Aim for delivery of care that improves:

- health outcomes that matter to those receiving care
- experiences of receiving care
- experiences of providing care
- effectiveness and efficiency of care.

My question in regards to these points is do the points fit into the guidelines as set by the Australian Human Rights Commission?

If not, then the guidelines need to be re-aligned as a matter of urgency.

Questions

How do we most effectively measure outcomes associated with WR?

How can we drive value – as articulated in the SIRA Health Outcomes Framework - for WR in NSW personal injury schemes?

ANSWER

The only measure that matters is the outcome for the injured worker and the employer not the outcome for the rehabilitation provider or the case manager.

It matters not what sira has outlined, all that matters is the end outcome for the injured worker and the employer- it must be acknowledged and remembered at all times that neither the injured worker or the employer are involved with a workers compensation claim by choice, the injured worker and the employer are involved because a workplace injury workplace illness has occurred. The only framework that is of any importance is the framework that has the injured worker and the employer engaged as equal partners at all times.

Currently all that matters to the claims agents is piles of paperwork (that the case managers rarely have real time to read or interact with), return to work guidelines set by the preferred outcome by professional providers without taking into account the real-life challenges of the injured worker. Every injured worker comes with their own unique set of challenges and requirements. Not every injured worker has a supportive family or even a family that lives nearby. Not every injured worker has the ability to rely on savings when their income is reduced. Not every injured worker fits into a pre-set pigeon hole. Yet the workers compensation system persists in the calumny that one size fits all.

The opportunity to review the current policy framework to improve outcomes for workers and other stakeholders in the system now exists. The goal of a future policy framework is to support effective service delivery of workplace rehabilitation in NSW personal injury schemes, to address current and emerging challenges and to improve system and personal outcomes.

If this is correct then it is the perfect time to enable the section of the current legislation and enable community providers to enter into the system so that injured workers and employers have a full suite of options open to them. It has already been demonstrated just how successful for purpose not profit injured worker engagement truly is, however because the process enabled injured workers to regain their own self-worth and to realise that they had options rather than dead-ends the claims agents elected to not inform injured workers that they had the right to be involved- which was a breach of the Australian Human Rights as previously outlined.

Guiding principles: are the fundamental building blocks to guide policy development and implementation; inform WR providers approval and management frameworks; and guide evidence based, best practice service delivery.

Best practice when establishing guiding principles requires that all Stakeholders work together to frame the structure. This would require that an injured worker be at the discussion table and have equal ability to add points of view as well as to debate the pro and cons of what is being discussed. With injured worker(s) being at the table then all that will happen is more of the same and vested interests will ensure that little to nothing changes.

Governance – accountability and responsibility. Dynamic, effective and responsive governance is central to a policy framework. In this context, core elements of accountability and responsibility include:

- establishing standards to deliver high quality workplace rehabilitation
- creating and maintaining an efficient and effective system for the approval, implementation and monitoring of WR providers
- facilitating measurement and ensuring compliance of provider performance against established conditions and desired outcomes.

All of this is very noble and very desirable; however without buy-in from the claims agents and without remaining within the guidelines of the Australian Human Rights Commission all that will happen is a set of regulations and requirements will be placed into the rehabilitation process, a training programme will be written and yet another guideline will need to be followed; but for the injured workers and the employers there will be no change.

For the claims agents to buy-in, they will seek another incentive payment, this (in my opinion) is where the removal of preferred providers and penalties for no-adherence would be the better option to take.

I acknowledge that not all rehabilitation providers are capable of doing the required tasks however it is my experience that such people never last long within the workers compensation system.

I also acknowledge that injured workers are churned through the workers compensation system for no other reason than to generate billable minutes and to create an income for either the rehabilitation provider or for the rehabilitation business.

I also acknowledge that there are (still) rehabilitation workers who make one single call and speak about multiple injured workers that they have on their list, then bill the claims agent for each person they spoke about.

Finally, any policy framework should consider best practice along with current and emerging trends to achieve positive return to work and health outcomes for individuals and minimise any economic, health and social consequences of work-related injury or illness.

If return to open employment is not the first clearly stated objective then the rehabilitation provider regardless of who he or she is is simply not doing their job.

The clear role for the rehabilitation provider is to meet the injured worker "where they are" and define where they are heading and how as a team that stated objective is to be achieved.

Anything less is simply neither acceptable or tolerable.

The outcome for the injured worker requires the rehabilitation provider to be an enabler, the outcome for the employer is for the rehabilitation provider to be a cost container.

Question

What elements does a policy framework need to drive quality, innovation, capability and outcomes in WR in NSW?

Answer

1. The Australian Human Rights Commissioner Dr Ben Gaunlet needs to be consulted.
2. Injured workers need to be consulted.
3. Claims agents require a penalty for non-compliance and deliberate time-wasting to be set.
4. Removal of preferred provider lists for case manager.
5. Injured workers provided with a list of rehabilitation providers within the local area who the case managers will have no choice but to accept.
6. Enable for-purpose not profit community engagement providers to form a part of the process.
7. Provide injured workers with real-time tools to enable and to assist them to be informed and able to contain and control their own workers compensation claim without needing to seek legal assistance.