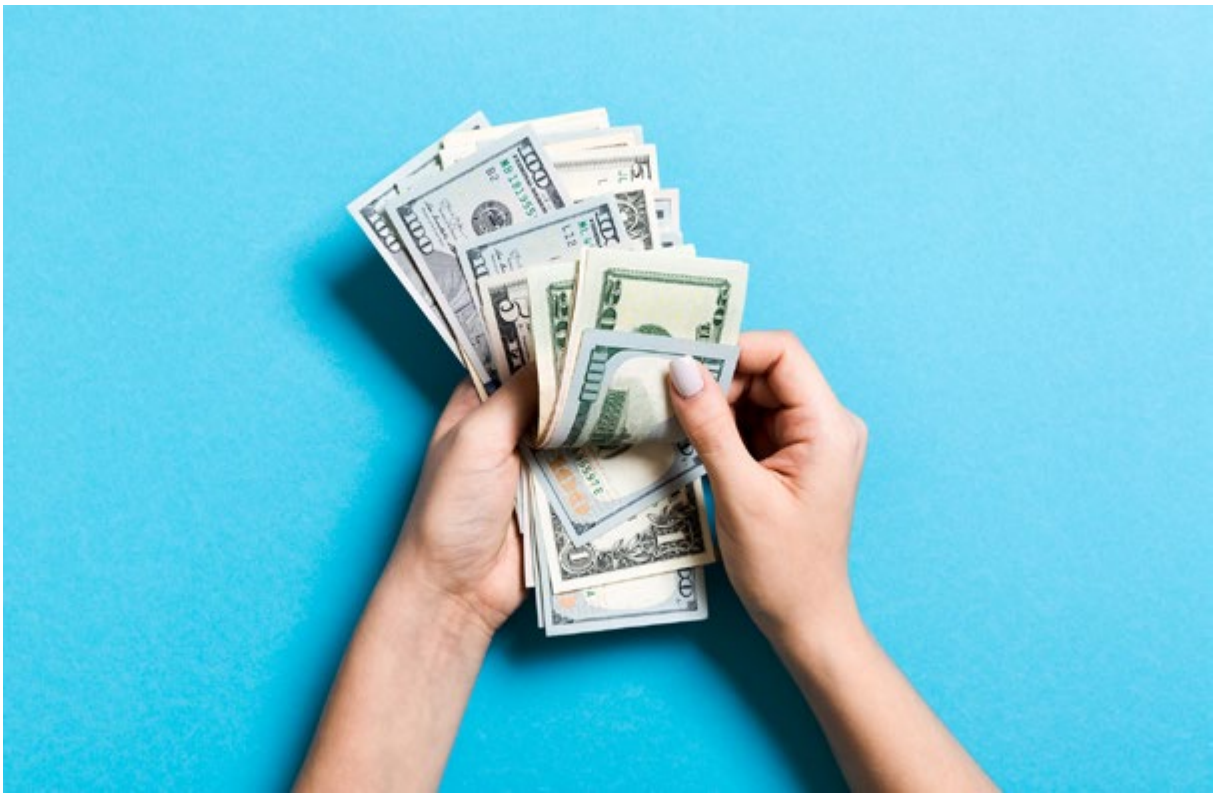

SUBROGATION: THE OLDEST AND MOST EFFECTIVE FORM OF COST CONTAINMENT

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For many health plans, the first interaction with any type of cost containment method usually comes about when they begin to utilize subrogation as a way to keep plan costs low, and recover monies owed to them by third parties. It is one of the original, yet consistently effective, cost containment concepts that, as of recently, tends to get overlooked when discussing new and more innovative ways to enhance plan savings.

The history of subrogation can be traced back to as far as the origins of the Court of Chancery in the Elizabethan period. The English Court of Chancery had jurisdiction over all matters in equity, such as trusts, land disputes, the estates of lunatics and guardianship of infants. In this period, subrogation was a common equitable remedy, where one party was permitted to assume a third party's legal right to collect a debt.

In the present day, when plans pay for claims that are owed to them by third parties, they naturally expect to be reimbursed for those costs. However, during the COVID-19 crisis, many states were locked down, and people were forced to stay home; which meant less car accidents, less elective treatments due to statewide bans, and thus less money paid out by plans for medical claims.

According to information released by UC Davis, traffic accidents and crash-related injuries and deaths decreased by 50% during the first three weeks of California's shelter-in-place order. The or-der began on March 20 and the university estimates that the decrease saved the state about $40 million each day.

In other words, the state saved $1 billion in three weeks by having to respond to fewer car accidents. The department found that the state's reduction in accidents was paired with up to a 55% reduction in traffic and a 40-50% decrease in serious injuries for drivers, pedestrians, and cyclists[1].

While motor vehicle accidents have been less frequent, ironically the drivers that are on the road daily have become increasingly more reckless. According to the National Safety Council's President and CEO, Lorraine M. Martin, "disturbingly, we have open lanes of traffic and an apparent open season on reckless driving," causing more fatal accidents in many states.

Fatalities caused by car accidents increased in Massachusetts and Minnesota[2], with the latter seeing deadly accidents more than double typical rates. Other states like Nevada and Rhode Island experienced an increase in pedestrian accidents[3].

You would think that during a pandemic, plan spending would increase as the injuries in motor vehicle accidents get worse and the cost of a hospital admission for patients with COVID-19, the disease caused by coronavirus, can top tens of thousands of dollars. Especially as there were over a hundred thousand hospitalizations just in the early months of the pandemic.

Eventually, we can expect new additional costs to plans when an effective pharmaceutical treatment is identified, or hopefully a vaccine becomes widely available. However, social distancing measures, concerns over hospital capacity, and fears of contracting the virus are leading to other critical healthcare services being delayed or forgone.

For example, providers have delayed elective surgeries during the pandemic, thus having a downward effect on health costs, at least in the short term. Taken together, this data shows that there has been an abrupt and sizable decrease in healthcare utilization, at least in the early months of the pandemic.

The exception has been telehealth, which has experienced an increase; however, the increase so far in telehealth was not enough to offset the decrease in in-person office visits.

In the first quarter of 2020 (January through March), spending on health services was relatively flat overall. Across all health care services, which excludes prescription drugs and social services, spending was down about -0.4% relative to the first quarter of 2019.

Spending was up on nursing homes (5.9%), physician offices (3.9%), outpatient care centers (1.1%), but spending on medical labs (-2.7%) and hospitals (-4.1%) was down in the first quarter of 2020 compared to last year.

Federal spending data from the BEA are reported monthly on an annualized basis. If sustained for a year, the drop in personal consumption expenditures on health care services seen in April would total roughly $1 trillion dollars over a 12-month period[4].

Property and casualty insurers are also reporting a 40 to 50% drop in claims volume for personal automobile claims and a 30 to 40% reduction for commercial claims due to the COVID-19 pandemic[5]. It is too soon to say whether the drop-in frequency will fully offset the rebates that many auto-mobile insurers have been extending to consumers, which the Information Insurance Institute estimates will amount to $10.5 billion.

With all this information, it is easy to conclude that health plans are also saving money in not paying for motor vehicle accident related claims. According to the National Highway Traffic Safety Administration (NHTSA), U.S. motor vehicle crashes in 2010 cost almost $1 trillion in loss of productivity and loss of life[6].

The Centers for Disease Control and Prevention (CDC) said in 2010 that the cost of medical care and productivity losses associated with motor vehicle crash injuries was over $99 billion, or nearly $500, for each licensed driver in the U.S[7].

In 2015, the CDC reported that the average cost for a treatment for motor vehicle accident was $2,314. Which means, if a health plan has 100,000 employees, and roughly one in 150 lives will be involved in one motor vehicle accident per year, then a plan has a potential exposure of 600 lives with accident-related claims that year. If 600 lives have an average of $2,314 in costs, a plan could have had an expense of approximately $1.3 million in costs that year.

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It is easy to conclude then, if accidents approximately decreased by 50%, then the plan's expenses may have also decreased by 50%, thus saving a plan approximately an excess of $690,000, this year alone. The Phia Group boasts their recoveries for established clients total an average of $30 recovered per employee per year[8]. That could translate, for a 100,000-employee plan, into a $3,000,000 recovery on a good year.

It is apparent, by way of current events in this country, that this new normal will be here for quite some time. It is probable that when social distancing rules become more relaxed, people will feel more comfortable going back to provider's offices and having elective surgeries, thus increasing plan expenses. But until the virus is under control, and an effective treatment is found, we can only assume that we will continue in this pattern of uncertainty.

Plans more likely than not, will see less expenditures this year in claims paid for members. This will allow for next year's premiums to stay low and provide exceptional benefits to members at a low cost.

A plan could determine that not paying claims is less lucrative than getting claims reimbursed back to them. But the only way a plan would get any claims reimbursed to them, would be if they paid the claims in the first place. Even though subrogation tends to be the main form of cost containment for plans, it is safe to say that the best form of cost containment is to not have to pay those claims at all. ■

Maribel E. McLaughlin joined The Phia Group as a subrogation attorney in 2016. Previously, she was a plaintiff's attorney, representing clients in medical malpractice and personal injury lawsuits. She is licensed to practice in the Commonwealth of Massachusetts and in the United State District Court for the District of Massachusetts.

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