

Miscellaneous Medical Spotlight

The Skinny on Weight Loss Facility Risks

by Jennifer Schoenthal



More than 35 percent of adults across the country are considered obese, with a body mass index (BMI) greater than or equal to 30. That's more than 78 million people.¹ Many of them turn to the nation's weight loss centers, a robust \$3.42 billion sector, in hopes of shedding pounds. While some of these individuals find the experience successful, others end up embroiling the center they once trusted in a costly professional liability claim.

It happens every day at weight loss centers coast to coast: A counselor or “technician” records a client’s medical history, considers their specific weight loss goals, and customizes a plan that could combine a low calorie diet and exercise with drug or hormone therapies.

While the routine is often the same, the regulation and oversight at weight loss centers varies widely. Some states require a physician to be onsite if medication is prescribed. Others require a nurse on premises at all times. Some clinics simply contract with physicians as medical directors, with the MD providing broad oversight of operations at several locations. In some locales, an individual with a medical designation could operate a clinic without any special weight loss training; in others even a non-medical professional could operate a facility after obtaining a “certification” from a basic three hour weight loss course.

Weighing the risk

When first entering a facility a patient typically feels a level of anxiety that is centered around past failures, doubt of their ability to follow the program and optimism at the possibility of results. It is a facility’s responsibility to calm prospective client’s emotions so that they are focused on the program and able to make rational choices. Most facilities are setup in a tranquil spa-like environment and have success stories prominently posted throughout the facility. A customer will characteristically register before coming into the facility; this is done online or by telephone. Once they arrive at the facility a clinician or sales representative will sit down with the customer and have them complete a medical questionnaire. Depending on the type of program (medical or non-medical weight loss) the questionnaire may be given to a physician or other medical professional for review. A weight loss plan will be outlined for the client including diet, exercise, goals, length of plan and a prescription or supplement depending on the facility.

Clients may become frustrated if weight loss goals are not met, or if weight is gained back quickly. If they are dissatisfied, they may sue, alleging the center did not deliver promised results.

¹ Source: NCH Data Brief No. 82, January 2012

The drugs and hormone therapies involved add to the exposure. Centers often prescribe the “diet drug du jour.” Today clients are likely to be prescribed the latest fad weight loss drug such as Phentermine, Phendimetrazine, Qsymia, or Belviq. A trend to be carefully watched is the prescribing of drugs that are used off label. For example Metformin is FDA approved for the treatment of diabetes and Topamax is FDA approved as an anti-seizure medication; however, it is very common for these drugs to be prescribed to promote weight loss. These drugs are only put through clinical trials to review their effectiveness on the treatment of the conditions they were created for and therefore have not been tested for their effect on a healthy person for weight loss. Unforeseen complications can therefore occur. In fact weight loss is typically a secondary contraindication or side effect that is listed for these drugs and is not its intended use. Other FDA approved pharmaceuticals might be prescribed off label. The synthetic hormone, HCG, designed for use with a very-low cal diet, has also regained popularity. HCG is approved by FDA as a prescription drug for the treatment of female infertility, and other medical conditions. It is not approved for weight loss.

More severe claims arise from allegations that a prescribed regime led to physical or emotional harm. Low calorie diets and new exercise routines can strain the hearts of overweight individuals who are already at greater risk of heart disease. Rapid weight loss has been linked to permanent heart damage and other potentially fatal health issues.

Illustrative of the exposure arising from these prescriptions is a weight loss center that started a female patient on a typical program of HCG and an extremely low calorie diet. After the hormone caused her birth control to fail, she became pregnant and alleged that the low calorie diet and hormone caused her subsequent miscarriage. She sued for damages, claiming she was not fully educated on the potential side effects of the HCG and her weight loss plan.

A rigorous risk management regimen

The exposures of weight loss centers can vary widely, but certain factors are universally indicative of the level of exposure and are likely to be on any prudent underwriter’s radar screen. These include:

The experience and certification of staff. Who is running the operation and interacting with clients? What is the specific involvement of medical professionals?

Client intake procedures. How thorough is the medical history taken when a new client comes on board? What type of counseling is provided to the client, and what efforts are made to set and manage client expectations? Is nutritional counseling offered to patients? A surprising number of problems can be averted simply by educating clients on proper diet and nutrition. *At one center, a patient had been on a strict low calorie diet for three months –including giving up soda, wine and alcohol – and was frustrated by the lack of results. The center’s counselor, also baffled by the lack of weight loss, asked him to journal his eating. It quickly became clear that the client was drinking a gallon of orange juice daily, believing it to be*

a healthy beverage substitute, not realizing the sugar-filled calories the OJ was adding.

Follow up and relationship-building. The more a center interacts and communicates outside of the clinic with a client, the better. The more connected a center is with its clients, the more likely technicians are to become aware of issues that might be brewing so they can mitigate problems before they escalate.

Informed consent. An informed consent may not completely remove all liability. One's negligence cannot always be waived. The purpose of a consent form is to show your intent and it seeks to diminish the liability should there be a loss, not eliminate it entirely. Consent forms should include detailed language on potential drug interactions and side effects. They should clearly articulate potential adverse effects of the proposed plan and present non medical alternatives. A signed release of liability should be included in all consent forms. The informed consent can be an important tool for an insured and their carrier to use when responding to a claim.

Finding coverage that fits

It is essential to find an underwriter who knows how to design professional liability coverage around each weight loss center and its practices – reflecting the wide variances that exist in different centers' operational structures, regulatory climates, and weight loss practices recommended.

Diet drugs come and go, so finding an underwriter with the experience to understand the risk and loss history of various pharmaceuticals and hormone therapies can be vital to providing lasting coverage for this exposure.

Buyers of this coverage must be cautious and make informed choices since coverage may be narrowed in subtle ways that can have devastating consequences for a center facing a claim.

For example, some policies exclude coverage if a technician is providing services rather than a physician. Policy language should be aligned to with the local regulations affecting a particular center and its day-to-day practices. It must extend not only to the entity, but also to the various individuals on staff. This includes everyone from physicians operating as medical directors, to technicians taking medical history, to registered nurses counseling clients and tracking their progress.

Some professional liability policies expressly exclude coverage for claims arising when an FDA-approved drug is used for something other than its expressly approved purpose. Given that off-label drug use is common practice in this market, such an exclusion could leave a center with no coverage in the event of a serious claim.

Centers and their insurance brokers should be cognizant of whether their policy is auditable and, if so, how. It is hard to predict when business will boom. Sometimes a center might underestimate its revenue for the year.

If the policy is auditable, the center could end up being charged significantly for accrued premium at the end of the policy year.

While the only proven way to prevent and treat obesity long term is with a sensible diet and exercise, the never-ending pursuit of “get thin quick” solutions will keep weight loss centers in business – and making changes to their business models – for years to come. These centers are wise to align their operations with an insurer that understands their business – and can provide the heavyweight insurance and risk management expertise that will lighten their risk.

To learn more about Beazley’s solutions for Miscellaneous Healthcare Professional Liability Risks, contact Jennifer Schoenthal at jennifer.schoenthal@beazley.com.

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