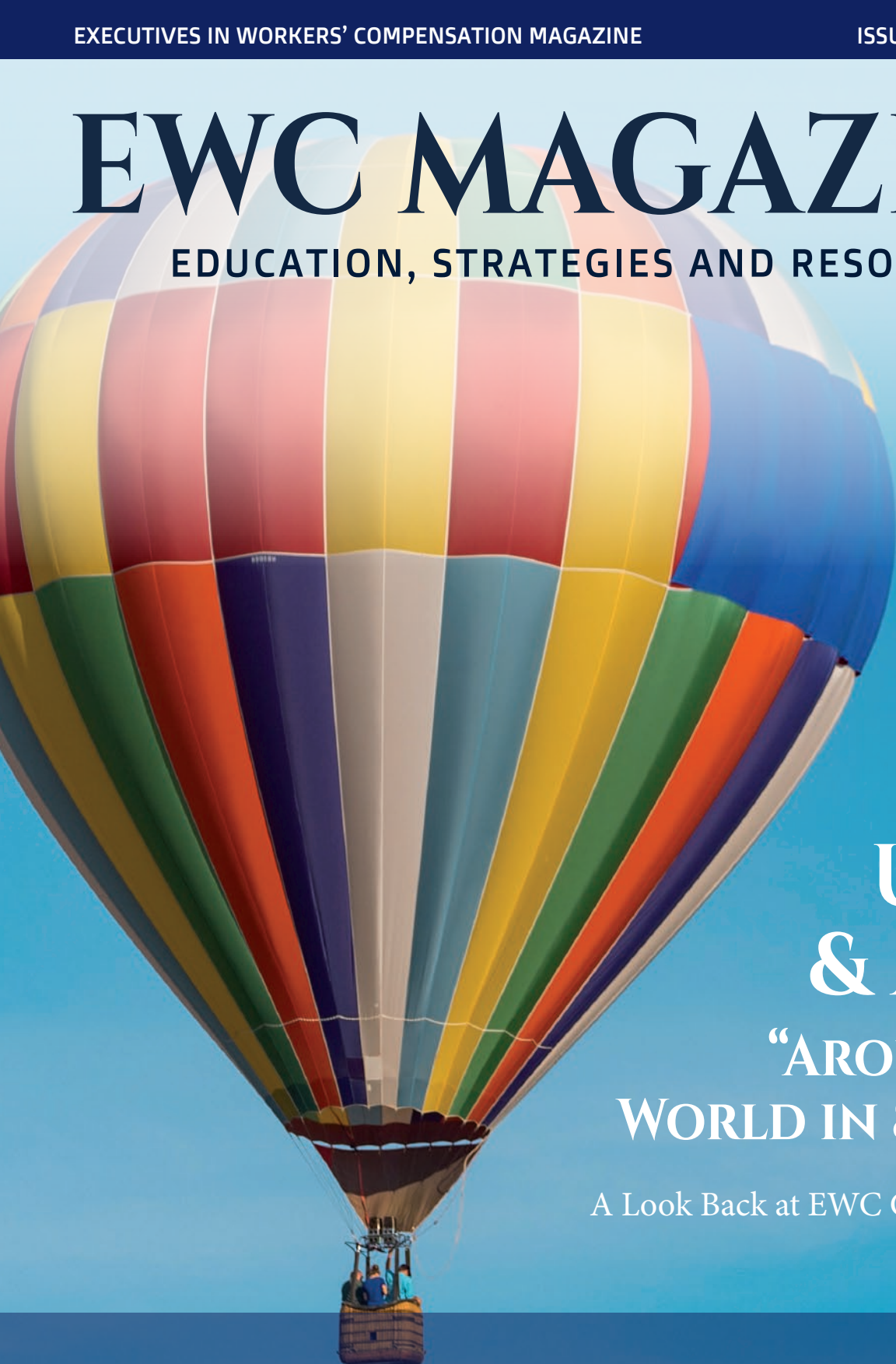


EWC MAGAZINE

EDUCATION, STRATEGIES AND RESOURCES



UP, UP & AWAY!

“AROUND THE WORLD IN 80 DAYS”

A Look Back at EWC Conference 2019

HEALING THE WHOLE
INJURED WORKER
THE LOMA LINDA
APPROACH TO
WORKERS' COMPENSATION

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BY FOSTERING
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TO ALL OF OUR PRESTIGIOUS
PARTNERS WHO HAVE HELPED MAKE
THIS GUIDE SO COMPREHENSIVE

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GAINING COOPERATION

FOR THE WORKERS' COMPENSATION PROFESSIONAL

By Carl Van (Author) with Debra Hinz (Contributor)

3 Simple Steps to Getting the Injured Worker to Do What You Want Them to Do.

Gaining Cooperation is designed to help any Workers' Comp Professional who deals with injured workers on a regular basis. Sometimes injured workers can be uncooperative. They may not want to sign a form, give information, or supply documentation, even if it is to their benefit. This book provides a simple 3-step process to not only getting the injured worker's cooperation, but to improving customer service. Basic maxims are explained to help the reader gain the cooperation they are seeking.

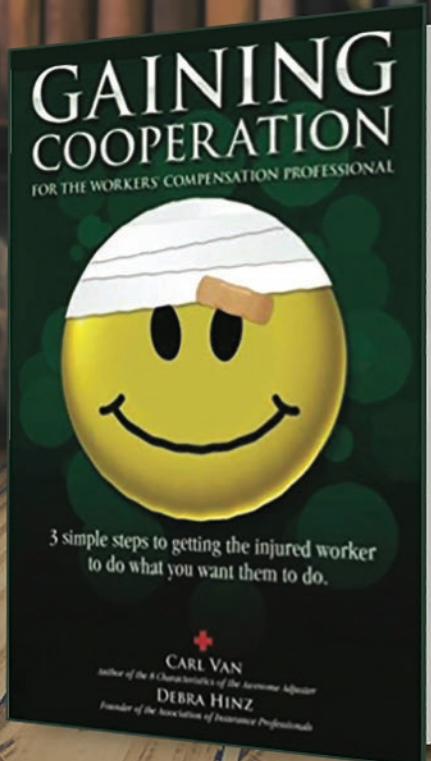
Maxim #1
Great negotiators never argue with reasons, they argue with facts.

Maxim #2
You never have to prove anyone wrong, you only have to prove yourself right.

Maxim #3
People will consider your point of view to the exact degree that you demonstrate you understand their point of view.

This book relies heavily on the "acknowledgment tool" to help readers see that a little bit of empathy can go a long way.

Available at Amazon.com \$19.95 paperback/\$7.99 Kindle



GAINING COOPERATION
FOR THE WORKERS' COMPENSATION PROFESSIONAL

3 simple steps to getting the injured worker to do what you want them to do.

CARL VAN
Author of the 8 Characteristics of the Incomplete Adjuster
DEBRA HINZ
Founder of the Association of Insurance Professionals

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Providing Service Excellence



Offering Your Injured Worker a 360-Degree Complete Mobility Solution

When an individual who is active in the workforce sustains a catastrophic injury, that person's life – and his or her family's life – changes immediately and dramatically. Most everything the injured individual used to do without assistance will now require intervention by a caretaker and/or medically necessary equipment. In addition, home modifications will likely be needed to allow the injured worker to remain comfortable and mobile inside and outside the home, and to complete most, if not all, activities of daily living.

National Seating & Mobility (NSM) understands the life-changing mobility and accessibility needs an individual with a serious work injury faces. The company has been providing mobility and adaptive product solutions for individuals with disabilities and profound health care challenges since 1992. As the nation's premier Complex Rehab Technology Solutions provider, our national network of more than 400 RESNA-Certified Assistive Technology Providers (ATPs), operating from 140 U.S. branch locations spanning 46 states and six locations in Canada, work alongside physicians and therapists to design customized innovative mobility, rehabilitation and adaptive product solutions for our clients.

NSM's Centralized Referral Intake and Dedicated Account Management Team

Given our 25+ years of experience as a service-focused provider, NSM understands the demand for service excellence in the workers' compensation sector. As a result, we have developed a central intake process and a dedicated account management team supporting a best-in-class service approach including proactive communication, real-time updates, and an assigned point of contact to streamline communications.

A 360-Degree Complete Mobility Solution
NSM's approach positions the company as a one-stop mobility and accessibility solutions partner giving workers' compensation organizations the convenience of working with one trusted company as opposed to several.

NSM knows that injured workers and carriers demand service excellence, and responds to this critical need with A+ service levels in the workers' compensation arena. Therefore, you can expect a quality service experience for your teams and clients. Our number one goal is to deliver all required services and equipment as quickly as possible to your injured workers.

"Having spent much of my career in Health Plan Operations, both on the group health and workers' compensation ends of the business, I have seen firsthand just how important it is for a service provider to offer a proactive and dedicated service model. NSM has implemented a best-in-class one-on-one service solution that allows our valued payer partners and their teams the proactive case management and communication that their clients demand. More importantly, NSM prioritizes trusted relationships with our partners' clinical operations teams."



Brendan Swift - VP, Workers' Compensation Account Management

HELPING CLIENTS MOVE THROUGH LIFE

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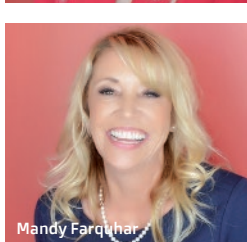
From the Editor...

And that's a wrap!



April may be known for showers that bring May flowers, but at EWC, April means conference season is in full bloom! The beginning of April found the EWC staff and board pouring a vast amount of time, effort and expertise into producing a symposium that we purposed to be your best conference of the year. As we closed out the conference at the end of the month, we collectively caught our breath and looked back at the fond memories we made of connecting with old friends, meeting new people, and learning much from each other.

With conference production over, post-event briefing began. To make sure the conference hit all our marks, we sent out a short survey to find out what worked – and what didn't go quite as planned. When reviewing the attendee responses, 96 percent said the Executives in Workers' Comp Conference was superior when compared to similar conferences, that they planned to return, and they enjoyed the education as well as the networking.



Overall, the feedback was tremendous, but the following statement summed it up best: "Great speakers, great networking, excellent venue – it was obvious a lot of hard work went into this event. Outstanding job to the team that made it all happen! It was a huge success!"

Speaking of the team, I would be remiss if I did not thank Cindy Mariani with SMS National, Mandy Farquhar with ISO Partners, Victoria Maker with Argus West Investigations, and Lacey Atkinson with EWC Events for all of their help in making our vision for this conference come to life. After four years of putting on this event, I know firsthand how much time, energy and expertise it takes to produce a conference of this caliber. From the big-picture planning

sessions down to the final touches on the name badges, our advisory board willingly devotes countless hours to every last detail to ensure our event-goers have a top-tier experience. Thank you to our board who makes EWC Conference such a success. They are the most delightful board members I've had the pleasure to work with, and I am honored to call them my friends. Each one of them has her unique style of getting things done, but they are all fiercely committed to providing outstanding educational opportunities to benefit the workers' comp and risk management community.

"Great speakers, great networking, excellent venue – it was obvious a lot of hard work went into this event. Outstanding job to the team that made it all happen! It was a huge success!"

Just as each spring we see the buds of new growth burst into bloom, so has EWC Conference grown exponentially, and every two years we have had to move to a new location to accommodate the increase. Right on schedule, we are moving our conference for 2020 to the Hyatt Regency Huntington Beach Resort & Spa in hopes that this will be our last move for many more years. Not only will we have a new venue, but we will be joined once again by the Women's Alliance, making our conference a 1-1/2 day event. I hope that you will join The Executives in Workers' Comp Conference 2020 for a full day of education on Thursday, March 19th and join The Women's Alliance on Friday, March 20 for a half day event. It promises to be a memorable affair brimming with Glamour, Gambling & Grand Prix!

Together we can do great things!

Debra Hinz
Editor in Chief



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Lacey Atkinson



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Tracking the most pressing issues impacting Medicare Secondary Payer compliance

By Mark Popolizio, VP of MSP Compliance & Policy, and Sid Wong, AVP of Policy, ISO Claims Partners

As a new year settles in, it is even more important to keep tabs on the evolving issues, trends, and initiatives that affect claims and settlements. To help you prepare for what is ahead, the following explores the primary topics to keep on your radar in 2019.

CMS READY TO TACKLE SECTION 111 PENALTIES

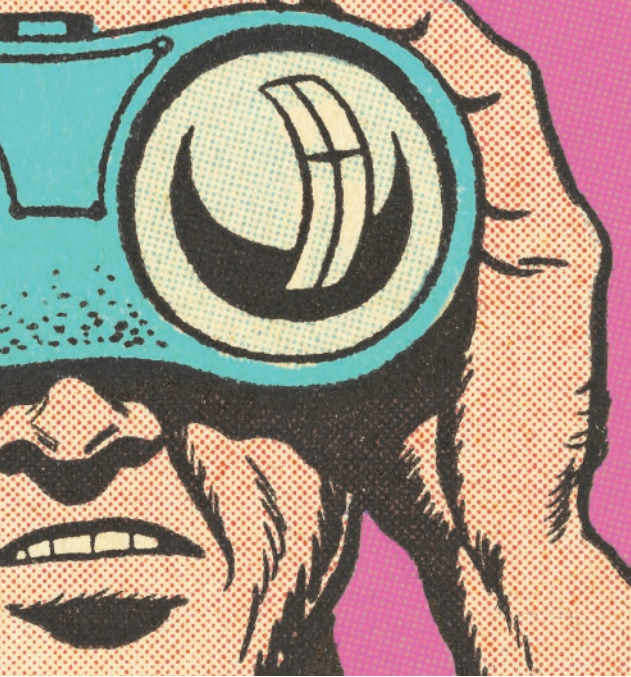
After several years of silence, Centers for Medicare & Medicaid Services (CMS) appears ready to revisit establishing formal Section 111 penalty provisions. In December 2018, the Office of Information and Regulatory Affairs (OIRA) issued a notice indicating that CMS is planning to release proposed rules for public comment regarding Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, reporting civil money penalties (CMP) for Non-Group Health Plans (NGHPs).

Based on this notice, CMS is apparently ready to take the next steps toward implementing formal criteria and practices to which CMPs would apply relative to Section 111's "\$1,000 per day" penalty as required under the Strengthening Medicare and Repaying Taxpayers Act of 2012 (SMART Act).

The Office of Information and Regulatory Affairs notice does not provide any information on the specific penalty proposals; rather, it simply advises the public that CMS will be issuing proposed rules on Section 111 CMPs at some point in the future. Thus, the industry needs to be on alert for the release of CMS' formal proposals which will, according to the OMB notice, allow for public comment. It will be interesting indeed to assess the nature and extent of CMS' proposals including proposed criteria for establishing "good faith" safe harbor provisions.

NEW TRENDS AND CHALLENGES FOR WORKERS' COMP MEDICARE SET-ASIDES

In March 2018, Capitol Bridge, LLC, replaced PRI as CMS' Workers Compensation Review Contractor (WCRC). The WCRC is the contractor that reviews and approves Workers' Compensation Medicare Set-Asides (WCMSAs). Capitol Bridge's new role has resulted in significant changes in the handling and pricing of services and prescriptions for WCMSAs. For example, the WCRC has been including off-label medications, such as Lyrica, in instances where they were



previously excluded; requiring medical records to be submitted in conjunction with all zero-dollar WCMSA requests; including additional urine drug screens involving Schedule II drugs; and adding treatment if Medicare-covered treatment is merely referenced in the medical records.

These trends appear to be firmly directed at both increasing the price of services and including more treatment in WCMSAs. It will be critical to monitor whether CMS will continue this trend by implementing other changes to the WCMSA review process.

To meet these challenges, claims payers need to have a firm grasp of the new WCRC's approaches and implement practices aimed at mitigating their impact to keep WCMSA allocation amounts reasonable.

LIABILITY MEDICARE SET-ASIDES (LMSAs) BACK ON THE RADAR

This may be the year CMS revisits the issue of future medicals for liability claims. Of note, in December 2018, the Office of Information and Regulatory Affairs issued a notice indicating

Claims payers should have processes in place to address Part D recovery notices to assess what responsibility may be owed and whether grounds exist to challenge said claims.

that CMS plans on issuing proposed rules regarding options to address future medicals in relation to liability, workers' compensation, and no-fault cases. Per the OIRA, a Notice of Proposed Rulemaking (NPRM) is targeted for release by September 2019.

In the bigger picture, this announcement will likely generate interest in liability circles where questions regarding future medical obligations and LMSAs have been a vexing issue for years. On this front, CMS issued proposed regulations for liability cases back in 2012 but then withdrew them in 2014.

OIRA's notice indicates that CMS is prepared, in some manner yet to be determined, to explore options for parties to address future medical obligations in relation to liability, workers' compensation, and no-fault settlements. The exact nature and extent of what CMS is contemplating is unknown at this time but will be unveiled when the NPRM is ultimately released.

MEDICARE ADVANTAGE PLANS' MARCH FOR DOUBLE DAMAGES CONTINUES

Over the past several years, Medicare Advantage Plans (MAPs) have been on a judicial quest to establish private cause of action rights, which would allow them to sue claims payers (and potentially other parties) for "double damages" to the extent their recovery claims are not properly addressed. So far, the United States Third and Eleventh Circuit Courts of Appeals¹ have ruled that MAPs enjoy double damages rights. In addition, United States District Courts in Louisiana, Tennessee, Texas, and Virginia have also ruled in favor of MAPs on this issue.²

In 2018, the United States District Court for Connecticut and a second Texas District Court joined the growing jurisdictions finding that MAPs enjoy double damages rights, while a district court in Illinois gave a strong signal that it too viewed MAPs as possessing these rights.³ Entering 2019, we will need to keep a close eye on pending litigation in other states to see if additional courts will continue this trend.

WILL PRESCRIPTION DRUGS (MEDICARE PART D) BE THE NEXT COMPLIANCE FRONTIER?

In October 2018, CMS amended its Medicare Prescription Drug Benefit Manual (Part D Manual) to add, in part, stronger language regarding Medicare Part D sponsors' secondary payer rights and recovery.⁴

As part of these changes, CMS is directing Part D sponsors to ensure processes are in place to effectuate proper secondary payer recovery efforts. Further, the new updates preclude Part D sponsors from paying for a prescription that should be paid under the Medicare Secondary Payer (MSP) provisions or submitting these claims to CMS for payment.

If acted upon, these updates could lead Part D plans to assert more aggressively their secondary payer status, either through coverage denial or increased Part D recovery claims regarding workers' compensation, liability, and other non-group health claims. In this regard, it is noted that Part D recovery efforts have been changing over the past year or so. Initially, Part D sponsors were simply sending letters to claims payers asking them to confirm primary payer status, injury date, claimed injuries, and other claim-related information. However, an increasing number of sponsors are now sending letters asserting recovery and providing a breakdown of alleged payments for reimbursement.

Whether these CMS policy updates will propel more aggressive practices in collection or denying coverage is something all claims payers should closely watch going forward. As the recovery spotlight shifts to Part D recovery, claims payers should have processes in place to address Part D recovery notices to assess what responsibility, if any, may be owed and whether grounds exist to challenge said claims.

STAY ON TRACK DESPITE THE TWISTS AND TURNS

Keeping pace with all these changes can seem daunting. But being aware of the issues *and* knowing how to respond to them affect your efficiency, costs, and bottom line. 🌟

¹ *In re Avandia*, 685 F.3d 353 (3rd Cir. 2012) and *Humana v. Western Heritage*, 832 F.3d 1229 (11th Cir. 2016).

² *Collins v. Wellcare Healthcare Plans, Inc.*, 73 F.Supp.3d 653 (E.D. La. 2014), *Humana Ins. Co. v. Farmers Tex. Cnty. Mut. Ins. Co.*, 95 F.Supp.3d 983 (W.D. Tex. 2014), *Cariten Health Plan, Inc. v. Mid-Century Ins. Co.*, No.: 2015 WL 5449221 (E.D. Tenn. 2015), and *Humana Ins. Co. v. Paris Blank LLP*, 187 F.Supp.3d 676 (E.D. Va. 2016).

³ *Aetna v. Guerrero*, 300 F.Supp.3d 367 (D. Conn. March 13, 2018), *Humana v. Shrader*, 584 B.R. 658 (S.D. Tex. March 16, 2018); and *MAO-MSO Recovery II, LLC v. State Farm*, 2018 WL 340021 (C.D. Ill. January 9, 2018).

⁴ Medicare Part D was added to the Medicare program in 2003, with benefits commencing in 2006. Part D is a voluntary outpatient prescription drug benefit plan available to all Medicare beneficiaries. Beneficiaries enrolled in traditional Medicare can purchase what is known as a "stand-alone" Part D plan, while Medicare Advantage Plans (MAP) beneficiaries may purchase a plan as part of their coverage under their particular MAP program. Similar to Part C (Medicare Advantage) MAPs, Part D benefits are provided by private companies (referred to as sponsors), and the scope of coverage varies from plan to plan. In 2018, more than 43 million Medicare beneficiaries were enrolled in a Part D plan. Of this total, 58% of traditional Medicare beneficiaries were enrolled in a stand-alone prescription drug plan, while roughly 42% were enrolled in a Medicare Advantage Drug plan. "See The Henry J. Kaiser Foundation, *An Overview of the Medicare Part D Prescription Drug Benefit*, October 2018." Currently, United Health, Humana, and CVS Health account for 55% of all Part D enrollees. "The Henry J. Kaiser Foundation, *Medicare Part D in 2018: The Latest on Enrollment, Premiums, and Cost Sharing*, Data Brief, May 2018."

Create a Competitive Advantage

by Fostering Continuous Learning and Thought Leadership

By Greg Johnson, Director Marketing & Operations/Consultant at Insurance Educational Association

"Some people might see Virgin's 50,000 employees as a cost to be managed, but I see 50,000 potential passionate brand ambassadors." Richard Branson

Labor is one of the highest costs of any business. Because of this, there is constant pressure to find ways to reduce costs. At the same time, any organization is only as good as the service the employees provide to the customers. Employees are also the backbone of every organization. The risk of focusing too much on reducing employee costs is that it creates an environment of constant turnover, which actually ends up increasing costs. The quote above from Richard Branson demonstrates a perspective of employees as an investment. It is not labor costs, but human capital.

If turnover increases costs, employee retention reduces costs. Many people automatically think the best way to increase retention is to increase salaries. It is not quite that simple. A high salary doesn't always translate to employee satisfaction. We only need to turn to professional sports to see unhappy athletes getting paid millions of dollars yet demanding trades. Yes, having competitive salaries is important, but paying more than the competitors is not the answer to employee retention.

One of the most important ways to improve retention is to foster an environment that encourages continuous learning. When you motivate employees to grow and develop, there are two key results: performance improves, and retention increases.

The key to having your team running at peak efficiencies is to ensure they are keeping up with the latest trends and best practices for both function and industry. No matter how long employees are in specific positions, there is always more they can and should learn. So how can we empower our employees to quench their thirst for knowledge?

1. Encourage and provide opportunities for active participation in professional and industry associations.
2. Encourage and provide opportunities for formal professional development.
3. Encourage informal learning through continuous reading.
4. Encourage employees to be your Brand Ambassadors on professional platforms such as LinkedIn.



Professional and Industry Associations

There is no better avenue for continuous learning and staying abreast of best practices than involvement in a professional association. Participation in organizations such as EWC

allows employees to actively engage with peers in the industry, offering the opportunity to learn from each other and share best practices. Attending events enables attendees to hear from industry experts and take newly acquired skills and tools right back to their daily jobs. Finally, in attending events, employees are given the opportunity to be an ambassador for your organization. When you encourage your employees to attend events, the subtle message conveyed is that you value them enough to represent your organization. This support goes a long way in building morale and dedication.

Formal Professional Development

What does it mean to your organization that your team pursues professional development? First, when employees achieve professional designations, it demonstrates that they have the knowledge and expertise to fulfill the company's mission and service the needs of their customers, whether they are internal or external. Additionally, it is imperative that industry professionals keep up to date, especially in an area such as workers' compensation, with the convoluted nature of the laws and the constant changes. The risks of not doing so are too great.

The most important thing is to have the thirst to get better, the thirst for knowledge. – Kobe Bryant

Continuous Reading

As Kobe Bryant stated in the quote above, the most important thing is to have the motivation to get better - the thirst for knowledge. Often our information is only as current as what we read today. Reading professional publications and industry news daily is critical to keeping current. Are we fostering an environment for our employees to be curious and forward thinking, or are we cultivating an environment where employees have to grind every day just to complete tasks, burning them out and reducing morale? In this scenario, the employee focuses only on completion of the task without concentration on optimal results. A better success strategy is to ensure that employees have opportunities to learn thereby ensuring they remain fresh, innovative, and most of all motivated to complete tasks at optimal performance.

Brand Ambassadorship

What does it mean to be a Brand Ambassador? It is essentially representing your organization. We all know that marketing and building a brand identity recognized in your industry is an expensive and never-ending venture. How can you leverage your employees to be your Brand Ambassadors? First, ensure that they are on the leading edge with their subject matter expertise. Next? Train them and encourage them to use platforms such as LinkedIn to engage with their peers and your customer base where their subject matter expertise will be recognized and become an asset to your organization. Encourage them to share news of your organization. Sharing your company culture, milestones, and events the organization is participating in is an excellent start to building more awareness not only of your company but of the strength of your employees as trusted thought leaders in your industry.

Train people well enough so they can leave, treat them well enough so they don't want to. – Richard Branson

Is your employee base a cost to be managed and reduced, or an asset to be invested in? Empowering your team to succeed motivates them to go the extra mile. Think of our roles as managers not just as task driven, but as a vital contribution to the success of a team effort. When everything we do helps our team to thrive, we are motivated to be better. How are you helping your employees to succeed in growing your organization to its full potential? 🌟

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

Fostering an environment where employees are encouraged to continuously cultivate their thought leadership and subject matter expertise results in:

- Increased retention and decreased cost of turnover,
- Increased productivity and efficiencies,
- Improved reputation and brand recognition of your organization, and
- An environment where employees want to go the extra mile for the organization.



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The case for treating injured workers with EMPATHY

*Seeing the world through the eyes of an injured worker
is the fastest and least expensive path to recovery*

By David Deitz, MD, PhD, Chief Medical Advisor to ChronWell

Empathy is widely recognized as an attribute that helps people communicate better, but it's also difficult to quantify and is generally considered a soft skill. However, today's most profitable companies are starting to view empathy as a hard skill – something definable, measurable, and a core value that's crucial to their financial success.

A groundbreaking report in *Harvard Business Review* (HBR) found that the top 10 companies on HBR's Global Empathy Index generated 50 percent more earnings than the bottom 10. HBR also found an 80 percent correlation between higher empathy and individual performance. And HBR isn't the only one noticing; studies featured by every major business publication, from *Forbes* to *Fast Company*, indicate that

Training supervisors and claims adjusters to respond to workplace injuries with care, concern and information to address injuries promptly leads to lower disability durations and reduced litigation.

companies incorporating empathy into their culture have better retention rates and financial results. Empathy is particularly impactful (but remains uncommon) in workers' compensation. While injured worker advocacy programs have generated great interest over the last few years, they can be difficult to implement, particularly when adjusters have high caseloads. New technologies offer an opportunity to deliver empathy-based advocacy programs on a scalable level.

WHY EMPATHY IN WORKERS' COMPENSATION? Anxiety and fear of the unknown are among the primary factors driving injured workers toward litigation. When workplace injuries occur, many companies disengage from injured workers to prevent potential liabilities. Injured workers are left on their own to navigate initial treatment, medical bills and insurance claims. This detachment can be frightening for anyone facing uncertainty about their health and medical care, their ability to provide for their families, and potentially, a fractured relationship with the employer.

It's no surprise, then, that so many people turn to personal injury lawyers and sue their employers after they've suffered an on-the-job injury. In some states, up to 52 percent of injured workers retain an attorney for their workers' compensation claim, according to the Workers Compensation Research Institute. When employers disengage, workers who are uncertain about how to get treatment may turn to the emergency department (ED) as a quick option. For minor injuries, this compounds the problem, as such work injuries are better handled at occupational clinics or through self-care. ED visits usually drive up claims costs through expensive bills and poor care coordination. Focusing on empathy in your workers' comp program can change much of that. Published studies confirm that training supervisors and claims adjusters to respond to workplace injuries with care, concern and information to address injuries promptly leads to lower disability durations and reduced litigation. When you approach work injuries with empathy and put yourself in the position of the worker, you expedite the process of recovery by getting involved in every step of the process – from the moment of injury, to follow-up care, all the way through the resolution of the claim. An empathetic approach dictates that you open lines of communication between employers, employees and insurers. You stay in constant contact with the worker, making them feel they're not alone. While scheduling appointments or arranging transportation is often considered managed care basics, making these arrangements

work smoothly can provide an immense return in goodwill (litigation costs) and productivity (return to work).

TECHNOLOGY IS THE KEY TO EMPATHY How do you inject empathy into an inefficient workers' comp system? You build an intelligent platform that connects and informs everyone, learns about each injured worker, creates personal, customized engagement plans and monitors progress. This platform includes advanced technology, Artificial Intelligence (AI) and skilled employees able to connect with injured workers on a personal level. Taking the time to explain the claims process to the injured worker can have a favorable impact on their anxiety levels and their perception of the care they receive. When the worker understands what will happen next, who will work with them, or why they will have to go through a particular procedure, they are less likely to engage in litigation. Applying technological solutions to empathy-based programs accomplishes three things:

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- ▶ 34% reduction in higher risk claims
- ▶ 22% reduction in overall claim costs
- ▶ Improved coordination and communication




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- 1. It makes empathy scalable.** Considerable advances in AI and natural language processing have made relationship management and chatbot technologies more accurate than ever. By automating mechanical work, employees are freed up to create human connections and are able to help more people. Modern technology can understand and respond to simple questions, monitor worker progress, assess risks and build intervention plans with minimal effort.
- 2. It opens lines of communication.** In today's legacy environment, adjusters are responsible for contacting injured workers and shepherding the claims process. However, studies have shown that TPAs tend to overload adjusters to the point where they become unresponsive to injured workers. It is essential to open lines of communication from the first day of an injury and continuously follow up in order to engage the worker in their recovery.
- 3. It facilitates training for supervisors.** Supervisors are the first responders for on-site injuries. Technology that helps them with basic triage, injury reports, and keeping workers informed and engaged in the process is an integral part of the solution. Having supervisors who are trained to handle these tasks is especially important for high-risk industries like agriculture, construction or retail.

If you treat injured workers with empathy and compassion, you'll see better outcomes. Workers' comp is one of the industries least disrupted by technology – but it's time. Taking a high-tech approach to treating injured workers with empathy will allow employers to engage, rather than overlook, their workers in the recovery process. Ultimately, this will result in less litigation and lower claims costs. 🌟


TIPS AND TAKEAWAYS




WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- A significant amount of companies view their employees as a strategic asset and creating a personalized experience for their return to work is paramount.
- Today's most profitable companies consider empathy a key element for their financial success.
- Treating injured workers with empathy can save employers money in litigation and claims costs by engaging with the worker in his or her recovery.
- Incorporating empathy into your workers' comp program efficiently and effectively requires technology.



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Healing the Whole Injured Worker

The Loma Linda Approach to Workers' Compensation

By **Kimberly Kinney**, WCCP, CPDM, Director, Workers Compensation, Abilities and Accommodations at Loma Linda University Health-Risk Management, and **Jay Garrard**, Vice President, Operations at CompAlliance, LLC



Loma Linda University Medical Centers (“Loma Linda”) in the Inland Empire of Southern California believes in a “whole-person” approach to treating patients in our health systems.

So, in 2015 it was appropriate as we looked to enhance our workers' compensation claims management program that we would apply this whole-person approach to help our injured employees return to health and work. Recovery from injury involves more than the simple process of healing; there are financial concerns for employees who miss work, they may have co-morbidities that affect their healing, and their attitudes about injury and their prospects for recovery may require additional attention.

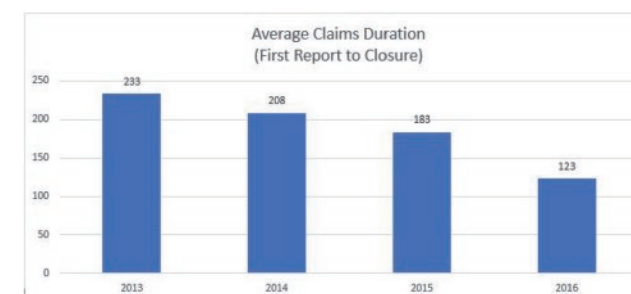
We knew that we could not simply “adjust claims.” We needed to manage claims, and we needed to take a team approach, utilizing all the tools at our disposal.

We implemented an Early Intervention Nurse Case Management program, which included 24-hour Nurse Triage/Incident Reporting, along with evaluation of all new claims for nurse case management within 24 hours of the report of injury. Claims identified to have a potential for lost-time or complex ongoing treatment would be opened to nurse case management with embedded utilization review. At the same time, nurse case management services became available for claims that occurred prior to the start of the program. This enabled us to compare an early intervention approach versus a “delayed referral” approach to case management.

Simultaneously, we undertook an education campaign to train all the University and Medical Center supervisors and managers on workers' compensation, the benefits of the Return to Work (RTW) program, and why it was important

for those managers to support RTW efforts for the best outcomes for recovering employees. The workers' comp team also put a renewed emphasis on coordinating RTW efforts with the various departments. The communication bridges that were built enhanced the collaboration between the employer and the claims team to facilitate modified duty and RTW.

Intervening from the first report of injury, Loma Linda takes a collaborative approach to claims management. Claims adjusters, nurse case managers, and the RTW team work as a unit to address the needs of the injured employee. This approach yields a quicker return to work, faster claim resolution, and a reduction in the overall cost of claims.



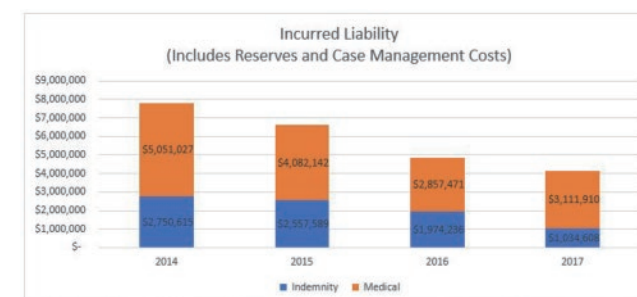
Loma Linda University's proactive and collaborative claims strategy paid off with a dramatic decrease in Claims Duration

Additionally, when Loma Linda undertook this approach, the open claim inventory was 743; we were ecstatic that at the close of 2018 there were only 489 open claims. Further, our deposit with the State dropped from \$35.1 million to \$32.6 million.

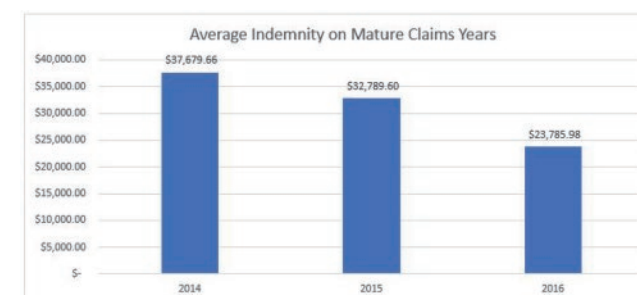
As we looked at the impacts of nurse case management, the benefits of the early intervention strategy became very apparent as well:

- Nurse Case Management files that were referred within seven days of the date of injury were closed to Case Management within 56 days on average, versus over 180 days for files referred more than 30 days from the date of injury.
- 96 percent of files referred to Nurse Case Management within seven days of the date of injury achieved their RTW goals at closure, versus 77 percent for files referred more than 30 days from the date of injury.
- The 24-hour Nurse Advice line that directed employees to self-care and first aid as appropriate, thus reducing total claims exposure, led to a 14 percent reduction of new claims. Additionally, the advice nurses set an expectation with the injured employee and their treating physician from the outset that the employee should not be written off work. Rather, Loma Linda emphasizes RTW by asking treaters to provide abilities and restrictions, if necessary, for modified duty, which allow the employee to return to work.

To measure the impact of Loma Linda's refocused claims strategy, we evaluated claims at 2 years' maturity. Much like the rest of California, claims costs were on a steady rise through 2014. Loma Linda University's costs peaked in 2014 and have trended in a positive direction every year since.



Versus the peak on 2014, Total Incurred Costs (Medical and Indemnity, including reserves and case management costs) were reduced by 15% in 2015, another 27% in 2016, and are trending down another 14% for 2017.



The average Indemnity cost per Lost-Time Claim was reduced from a high of \$37,700 in 2014, to under \$23,800 in 2016. A 37% decrease.

A utilization review program that is incentivized to show savings by denying care can ultimately run counter to the long-term goals of your organization.

Being involved from the first report of injury allows the nurse case manager to immediately set the expectation with the treating provider that Loma Linda is committed to RTW efforts. The nurses who take the first report-of-injury calls send the treating provider information on Loma Linda's approach to RTW, and make sure that the provider addresses abilities, as well as restrictions, so the Loma Linda RTW coordinators can place an injured employee in an alternate duty position if they cannot be accommodated in their own department. This early intervention approach also allows the nurse case manager to collaborate with the treating provider on a proactive, appropriate treatment plan to maximize the injured worker's progress toward recovery and maximum medical improvement, reducing the expense of utilization review by eliminating the need to review (and potentially deny) unnecessary, inappropriate treatment.

Our experience at Loma Linda illustrates how partnering with your vendor to develop a comprehensive program with clear goals, guidelines for collaboration, and delineation of responsibilities and interactions can produce dramatic improvements in your injured workers' recovery and return to work.

When evaluating your workers' compensation program, bear in mind that no single change led to our program's success. Rather, we made many changes that worked in concert with each other:

- The claims team had to be educated and buy into the concept of nurse case management and the value that their clinical eyes could bring to helping resolve the claim.
- Clear parameters for the involvement of nurse case managers needed to be set. Further, clear goals for each file needed to be delineated and, barring any additional complications, achievement of those goals should be triggers for case closure.
- Corporate-wide, supervisors and managers had to be trained on the benefits of RTW and modified duty, and to be accepting of accommodating employees from other departments in support of the organization's goal of providing injured employees with work opportunities.
- The provider community had to be trained and consistently communicated with that Loma Linda wanted to accommodate every injured worker's abilities and restrictions. Providers were educated that it was the doctors' responsibility to outline the employees' abilities and restrictions, and it was the employer's responsibility to take the injured worker off work if they could not be accommodated. This message was continually reinforced by the 24-hour triage nurses taking the first reports of injury, as well as by the nurse case managers assigned to the claims.

- A utilization management program that is tightly coordinated with the nurse case managers reduced unnecessary delays in providing appropriate treatment, thus assuring faster recovery and resolution of claims. A utilization review program that is incentivized to show savings by denying care can ultimately run counter to the long-term goals of your organization. Make sure your utilization review organization understands that the emphasis should be on outcomes, and that they are collaborating with your nurse case managers who see the big picture.

TIPS AND TAKEAWAYS



- **Treating the whole person at Loma Linda University Medical Centers requires a team approach.** Recognizing that we needed to treat the whole injured worker also required a team approach.
- **Building a team among the claims department, the return-to-work staff, our nurse case managers and our occupational medicine providers within the Loma Linda Health System resulted in better communication, collaboration, and ultimately better outcomes for Loma Linda employees.**

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The Nuts and Bolts of Field Case Management

By Mollie Kallen, MS, CRC, CCM, President and CEO of MKCM, Inc

I have been in the workers' compensation case management space for almost 30 years, and while there are always a great deal of changes in our industry, there are some basics that stay the same. It is always a good time to examine the fundamentals of being a successful field case manager. I call this the "nuts and bolts" of case management—or Case Management 101.

In my career as a case manager, I have seen many other case managers in my travels, and one can't help but notice different case management styles. Some of us come from a nursing background, and others come from a more vocational background. I believe that your educational and practical framework truly shapes your case management style. Here are my top five pointers for effective case management.

Basic Concept #1: Showing Up

Sounds simple, but many times I see case managers that don't even bother to attend their appointments with the injured worker. There is indeed a place for case management by telephone, but if a file was assigned to you for field management, then there is a good reason. You cannot fully understand your client, physician and treatment plan (especially if there are complicated issues, prior injuries, noncompliance, etc.) without being there. The amount of information that you glean from an expression and how someone walks in and out of the appointment—all of these things must be seen in person. This is the reason you were assigned this case. Don't underestimate the importance of viewing everything and everyone with your own two eyes.

Basic Concept #2: Do Your Homework

It is crucial to review a file (as much as you have been given) prior to your initial appointment with the injured worker and to review the file each time before you go to a follow-up appointment. We all are so busy that sometimes we let something slide and this often is it. Knowing a client's medical, educational, and vocational history is crucial, as many times a client forgets surgeries, diagnostics, physicians, etc. on the initial intake form and when they speak with the doctor. It is our job to fill in those gaps. Important information is frequently left out (intentionally or unintentionally), and this impacts the progress and outcome of the case. For more complicated cases, I usually do a timeline; this assists the physician, the adjuster and employer as well. Also, the more

you do your homework, the more prepared you are if a deposition comes your way.

Basic Concept #3: Document, Document, Document

Every email, every phone call, every letter and every meeting is documented. I use a dictating option on my phone immediately after each activity in order to best capture billing (another concept to come). I always get the name of the person I am speaking or meeting with (first and last), as many times things are forgotten or lost and having the name helps enormously in tracking down issues. To effectively move your case forward you need to think of yourself as the scribe of the triage (account, employer, and client). It is our job to effectively document everything that is happening in a case. There are times, however, when there is sensitive information, and that should not be documented. That warrants a phone call.

Basic Concept #4: Communication and Scanning Applications

This is a key concept. If something occurs in the case, then documenting it is just the first step and the crucial next step is to communicate it. It does no good to observe and document something yet fail to communicate it to all parties. Email is a wonderful invention, and it has made our lives as case managers so much easier. It is crucial to have either a smartphone, iPad or laptop with you on the road. I am not a fan of using these devices when you are with the client or physician as that appears a bit intrusive, but accessing them after or before the appointment is appropriate. Not only does

this give you the capability to effectively update all parties in a timely manner, but it also decreases your workload by eliminating the need to document and send information out at a later time. It should also be mandatory that case managers use scanning apps on their phones. This enables you to do real-time updates and better capture your billing. It's a win-win for you and the customer. Technology is handy, but with that being said, it is important to call people personally about a file. Sometimes emails are misread, etc. and nothing substitutes for a personal conversation.

Basic Concept #5: Know When To Close a File

This pointer is something that is not really taught to case managers but is a crucial concept, especially for those of us who are independent contractors and whose inventory is referral-based and not contractual. There are times when field case management is needed on a file, and there are times when your role is minimal (injured worker is almost at maximum medical improvement [MMI] and compliant). If the entire team is working seamlessly and communicating effectively, then it is your role as case manager to know when to recommend file closure. So many referrals now are "task assignments," referrals to field case management to accomplish a specific task then closed (i.e., clarify major contributing cause, obtain MMI rating, etc.). But if you have a case that is a full field assignment, it is imperative that you self-identify when it is appropriate to recommend file closure. It is cost effective for the customer and shows your ethics and commitment to honesty as well as ensures future referrals from a thankful customer. All the cost savings documentation in the world cannot outweigh the importance of dealing with your customers in an honest and ethical manner.

As a case manager I am so proud to be a part of this marvelous profession that keeps evolving in a positive direction year by year. Case management is a crucial link in workers' compensation and in all other areas (geriatric care management, hospital case management, etc.). Do not lose sight of your pivotal role in assisting the lives of so many others. 🌟

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- If it's a field case you're working, that means you need to *be there* – you can't be effective if you're handling a field management case as a telephonic case.
- Do your homework – review your medicals.
- Document, document, document (unless it's sensitive information).
- Scanning apps can be your friend, saving you time and money.
- Know when it's time to close a file – when there is no ROI for your customer.
- Last but not least: be ethical with everyone. Do the right thing always even if it means owning a mistake.

Top 3 Traits of Superior Workers' Comp Claims Teams

By Rachel Fikes, VP & Work Comp Benchmarking Study Program Director, Rising Medical Solutions and Peter Rousmaniere, Risk Management Consultant



For every injured worker, there is at least one claims adjuster who is assigned to that person's claim. Yet, despite the central role of claims adjusters, very little is known in a meaningful way about what they do. Most information collected about adjusting relates to compliance with procedural rules and does not shed light on the quality of their work. As a result, reliable information about claims team performance, generally or comparatively, has been scarce.

Now we have cumulative data of a five-year, 1,700 participant survey project to shed light on what makes a claims team – especially a superior one – tick. The annual Workers' Compensation Benchmarking Study, founded in 2013 and published by Rising Medical Solutions, pinpoints the three key traits that make the top quarter of claims teams – as measured by claims closure ratios – better than the rest.

1. BEST PERFORMERS FOCUS MORE ON WHAT'S MOST IMPORTANT

Since the Study's onset, claims executives – the majority of whom work for employers, insurers, and third-party administrators – have been asked to rank in order of importance the 10 core competencies most vital to successful claims outcomes.

Survey Question: Please rank in the order of highest priority the core competencies most critical to claim outcomes, with 1 being the 'highest priority' and 10 being the 'lower priority'.

Answer	Overall Rank	Mean
Medical Management	1	3.06
Disability / RTW Management	2	3.08
Compensability Investigations	3	3.65
Claim Resolution	4	4.28
Case Resolving	5	5.65
Litigation Management	6	5.99
Oversight Governance / Supervisory Oversight	7	6.47
Bill Review	8	7.03
Fraud & Abuse Detection	9	7.23
Vocational Rehabilitation	10	8.56

Source: 2017 Workers' Compensation Benchmarking Study¹

Survey participants have consistently ranked medical management, disability/return-to-work (RTW) management, and compensability investigations as the top three capabilities most critical to claim outcomes.

Survey participants also define an "employee's return to the same or better pre-injury functional capabilities" as the number one criterion for a good claims outcome. This definition reflects a shift away from a more compliance-based, reactive culture and toward a more proactive, service-oriented approach. The 1,700-plus survey respondents clearly say that this is the business they are in.

However, there are striking stratifications in this "business" with higher performing claims teams outpacing

lower performers by factors of five, six, and 10 respectively when it comes to measuring their performance within core competencies, measuring claim outcomes based on evidence-based treatment guidelines, and measuring claim outcomes based on evidence-based disability duration guidelines.

For claims executives and system designers, higher performers send a clear message: focus on and measure key core competencies more in order to succeed.

Action Item: Strategically apply medical resources by assessing claim risk factors and prescribing the best interventions, particularly through the use of both predictive and prescriptive analytics – something higher performers use eight and three times more.

Action Item: Measure medical provider outcomes. Specific examples include gauging provider performance by average medical spend, average narcotic use, and average number of temporary total disability (TTD) days, which higher performers do five, six, and three times more than lower performers.

2. BEST PERFORMERS INVEST MORE IN PEOPLE

Superior claims teams better equip and better capitalize on their most important asset, their claims talent. They arm adjusters with decision support tools known to improve claims outcomes four to five times more than lower performers.

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Higher performers are also more engaged in developing their claims staff. In response to the industry's talent crisis, higher performers are more likely to raise staff performance expectations, spend money on training, and nurture mastery in claims management. For instance, they invest in career-long learning opportunities seven times more throughout their adjusters' employment.

Action Item: Build up the claims staff's soft skills. The adjuster must listen, describe, assign, explain, and negotiate. Currently, 42 percent and 32 percent of claims organizations conduct communication skills and critical thinking training for adjuster staff respectively. Top performers are four times more likely to do so for both aptitudes.

Action Item: Adopt an advocacy-based claims model, which is used by high performers at four times the rate of lower performers. This employee-centric approach is in stark contrast with the industry's adversarial and compliance-focused methods of employee interaction. Customer service-driven models around injury recovery are a competitive advantage, both from a claims outcome and a claims staff recruitment and retention perspective.

3. BEST PERFORMERS INVEST MORE IN ADVANCED TOOLS AND TECHNIQUES

The most successful claims organizations are far more likely to have higher IT budgets and engage in numerous technology initiatives. Here are a few differentiators that claims executives can act upon.

Action Item: Use a data warehouse to integrate claims, medical bills, legal documents, case management files, and numerous other data sources into a coherent display of a claim. The day of searching for that bit of information is gone. About half of all organizations use a data warehouse today, and usage among high performers is five times the rate of lower performers.

Action Item: Adjuster teams are more focused when they use measurable claims outcomes. Do what 41 percent of claims organizations teams do, and what top performers do six to 10 times more: leverage various outcome-based systems/data (e.g., evidence-based guidelines). This finding confirms many informal impressions that the average claims organization remains wedded to process management as its key business endeavor, rather than outcomes management.

Action Item: Like the leading claims teams, develop integrated systems across multiple programs to generate targeted medical interventions. Higher performers integrate their claims system with their diagnostic testing and fraud/abuse detection programs at four times the rate of lower performers, and at five times the rate for their bill review, evidence-based medicine, nurse case management, pharmacy benefit management, predictive modeling, and utilization management programs.

CLOSING THE PERFORMANCE GAP
With only 24 percent of claims teams achieving top performer status, what steps can the remaining 76 percent take to advance their operations?

The data is clear. The best claims teams use an outcome strategy, versus a process improvement strategy, for success. As the industry moves forward, we can count on employers being predominantly interested in outcomes. Injured workers are only interested in outcomes – theirs. For those claims teams that choose to close their performance gap, the path to success is well-marked. 🌟

¹ Rising Medical Solutions. (2018). *How to Close the Claims Performance Gap*. Retrieved from https://www.risingms.com/wp-content/uploads/2018/06/How-to-Close-the-Claims-Performance-Gap_WorkCompBenchmarkStudy.pdf

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- The best claims teams:
- Measure outcomes.
 - Equip their claims talent to better influence outcomes.
 - Allocate more financial resources to outcome management tools.

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First-hand accounts of unlocking smart solutions to real-world challenges



Finding the Right Fit

By D. Diann Cohen, Vice President Client Relations, MacroPro, Inc.

A 2018 SHRM/Globoforce Employee Recognition Survey found that 47percent of the companies polled see employee retention and turnover as one of the top challenges they face.¹ As executives and managers, it is our job to ensure that the employees we hire not only stay with us but are successful. I can recall an instance when I experienced this personally.

THE ISSUE
I was working for a third party administrator and the president of the company called me into a meeting to discuss some of my job duties.

During that meeting, he told me that I wasn't the right person for an assignment I was handling. I remember feeling extremely deflated and wanting to crawl under a rock. However, he went on to say that he saw many strengths in me that would be beneficial to the company. Therefore, they were going to restructure my duties to take advantage of my skill sets. He explained that doing so would allow both the company and me to excel. Because of the way he framed the discussion, I went from feeling like a zero to a hero.

THE SOLUTION
Focusing on an employee's strengths, career growth, and leadership development shows the employee that they are valued and that their contributions matter to the organization. Providing training and new opportunities for employees expands his or her role, and encourages creativity, longevity, loyalty, and pride in what they do.

THE RESULTS
Less than a year later I was promoted to head up the marketing department, ran a monthly magazine and had many new opportunities to take part in. I was given duties that frankly I was afraid to accept because I didn't have what I thought was the right experience, but management saw something in me and allowed me time to develop those skills. My mantra, when given a new assignment or task, was "consider it done" even if I had no clue what to do. Because the company believed in me, I was confident I could figure out how to accomplish each new task and made sure the result reflected well not only on me but also on the company. 🌟

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- Not every employee is going to be right for the job we hire them for, but that doesn't mean they aren't right for the company.
- When reassigning an employee, don't focus on the negatives; instead, emphasize the positive aspects.
- Employees who are mentored and trained feel valued, which creates loyalty. This increases retention, reduces turnover and the need for recruiting, and ultimately saves time and money spent on onboarding.

¹ SHRM/Globoforce Survey Reveals Human-Centered Approaches in the Workplace Help Organizations Better Recruit and Retain Employees.(2018).

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Runner-up: Parker & Irwin

EWC aimed high and took flight with our 2019 conference, "Around the World in 80 Days," held April 23, 2019, at The Waterfront Beach Resort & Spa in Huntington Beach, California.



Runner-up: Work Comp Resolutions





To all who helped make EWC Conference 2019 a smashing success, from set-up volunteers to engaged attendees, dynamic speakers, and outstanding sponsors and exhibitors, we say THANK YOU!



Mindfulness Principles at Work

By Brenna Hampton, San Diego Office Managing Partner, Hanna Brophy LLP,
California State Bar Association Certified Legal Specialist in Workers' Compensation



First, an exercise: Are you breathing? I mean *really* breathing. Try this: breathe in slowly through your nose, counting to three. Feel your nostrils, lungs, and stomach expand. Breathe out through your nose, counting to five. Let any remaining breath go. Rest your jaw muscles. Release your tongue from the roof of your mouth. Unless you're reading this as a passenger in a convertible, go ahead and open your jaw gently a couple of times. Feel the strength of the front line of your neck supporting this movement. Dip your chin to your chest. Feel the strength of the muscles in the back of your neck. Breathe in three, out five. When you breathe out longer than you breathe in, your central nervous system responds; this is a state of controlled relaxation.

The only thing you need to control right now is your breath: Three in, five out. Three in, five out. Stretch your arms up to extend the diaphragm, increase your lung capacity, and let your whole belly fill. Stretch your legs, flex your toes, and release. Appreciate the feeling of enhanced circulation throughout your body. Tighten your abdomen and hold while you clench your thighs and glutes, and curl your toes. Inhale deeply and let. It. All. Go.

You are in control, simply by breathing. Nothing more is required of you at this moment from anyone or anything. You are your own island of resiliency and self-determination.

MINDFULNESS

Mindfulness is the art of noticing, connecting, observing, and reflecting on the experience that is your life. Focus on each of your five senses and notice the little things. You are not your thoughts. You do not need to engage, plan, or control each of the thoughts you observe. You can find happiness watching a child devour an ice cream cone without grabbing the cone from him, right? The same concept applies here. Thoughts of people, of work, of kids or family, of deadlines...let each of them float past you. Identify the thought, observe it as a cloud moving through the sky, but don't attach to it. There is no need to plan, no need to fix anything right now.

APPLYING MINDFULNESS IN YOUR LIFE

The above exercise may be the simplest, but most difficult personal challenge you undertake on a daily basis. This is an excellent mental and physical exercise to ground yourself at any time of the day. It's a great exercise to escape anxiety without

completely ditching your responsibilities or breaking the pocketbook. Like a good Kegel, no one will even know you're doing it. Like a deep yawn, your calm, measured breathing will be infectious to those around you on a subconscious level. When you are centered, you radiate *la pura vida*.

As you go through your day, observe who and what is around you. Notice your reactions to noises, cranky clients, controlling bosses, beautiful nature, excited coworkers, the smell of coffee...and notice when you are feeling overwhelmed. Come back to your breath: three in, five out and put that song on repeat. You are in control. You decide whether the experience is a cloud floating by, or whether you will reach out and bring it closer to prioritize it.

Physical relaxation is a precursor to mindfulness exercises. Neurologically, your body and brain are connected. "You can use your mind to change your brain to benefit your mind – and everyone else" (Rick Hanson, *Buddha's Brain: The Practical Neuroscience of Happiness, Love, and Wisdom*).

So often we start the day off by checking social media, sleepily responding to emails, and gulping down a caffeinated beverage of choice before running off to a hectic day. Put down the phone and start your day with a brief meditation. The world will wait. Notice if staying more connected to yourself leads to greater resiliency and self-control throughout the day. Rinse. Repeat.

APPLYING MINDFULNESS IN THE WORKPLACE

If you're preoccupied with personal matters, it will be more difficult for you to fully engage all of your senses within the workplace. Engaging is vital because it allows you to be mindfully proactive (acting deliberately and strategically) rather than reactive (rushing when you don't anticipate a situation brewing). When your attention is divided, you can only give so much of yourself to each responsibility, and nothing gets your best self. Everyone feels stretched thin at times. The world goes on. Controlling your breath clears your head and put you in the mindset to prioritize your responsibilities. There is always time for what you want to do.

It is often true of good workers, and especially in the risk management and insurance industry, that the reward for doing good work is...more work! We are conditioned to have a dopamine rush/reward response to new projects, claims or puzzles to tackle. The external pressures placed on you by management and your clients are met with internal pressure to perform at a high level. As an esteemed colleague noted: every day is a new fire drill.

Think of mindfulness training as an internal spreadsheet for your brain full of if/then scenarios and pivot tables providing myriad solutions to continually new challenges. Being mindful and staying focused and alert to the little moments in life and at work will train your brain so that when the situation becomes chaotic and fraught with stress, your brain reverts to this state of self-controlled focus. If you make it part of your daily experience, you will notice a difference.

APPLYING MINDFULNESS AS LEADERS AND MANAGERS

Being mindful will enable essential leadership skills, including

increased situational awareness. A strong leader pays attention to the efforts and activities of their team in addition to their own projects. To help your team meet their goals, you should identify their challenges. You can only do this if you yourself are calm and present enough to SEE your team and FEEL the environmental pressures around them, to HEAR the watercooler gossip and pay attention (not react), to TOUCH the work and take in the quality that is being produced, or missing.

Linguistic experts will tell you a second language can only be learned to the extent you know a first language. *It's a skill of acquisition, rather than creation (unless you're J.R.R. Tolkien). By comparison between the two languages, we learn to express similar concepts in different ways.* Similarly, your insight and ability to direct another person's work will match your ability to understand and manage yourself. Managing others well requires you to know yourself first. While it is easier to avoid your own issues by focusing on those of your team, you are doing a disservice to both of you if you fail to "put your mask on first."

MINDFULNESS PRACTICE IN MOTION

"Stress-related health problems are responsible for up to 80 percent of visits to the doctor and account for the third highest health care expenditures, behind only heart disease and cancer. Mind-body practices like yoga and meditation reduce your body's stress response by strengthening your relaxation response and lowering stress hormones like cortisol." ("Now and Zen," Longwood Seminars, 3/08/16).

Neurologically, the same area of your brain that focuses during an emergency is activated when meditating, meaning an anxiety trigger can be mitigated with mindful meditation practices. "[Mindfulness] training for emergencies or for military service is all about teaching the basal ganglia and other brain structures to learn the automatic reactions needed to survive" (Arnstern, Mazure, Sinha; Sci Am. 2012 Apr; 306(4): 48–53). When you meditate regularly, something akin to muscle memory takes over. The same brain under pressure has less activity in the frontal lobe and reduced stress hormones like cortisol, enabling rational thought rather than panic – greater peace of mind, just by breathing. No yoga pants or man-bun required. 🧘

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- **Mindfulness is the practical art of noticing, connecting, observing, and reflecting on the experience of your life.**
- **In order to ensure your team meets its goals, you need to be aware of their efforts and activities in addition to your own.**
- **Being mindful and staying focused and alert to the little moments in life and at work will train your brain so that when the situation becomes chaotic and fraught with stress, your brain reverts to this state of self-controlled focus.**

Start your new job right: Why you should strive to be likable

Contributed by TheBestIRS Blog Team

Claims adjusters, do you want to make a good impression at your new insurance job? Starting a new position is both nerve-racking as well as exciting, so it makes sense you want to make a solid first impression. Besides knowing your insurance job like the back of your hand, how else can you stand out for all the right reasons? By being likable. Showing colleagues how friendly of a peer you are is vital to your job, but why does it matter?

You don't get to redo your first impression

This is excellent advice for a claims adjuster or any new employee because it's the absolute truth. You only get one chance at making a first impression at your job, so you need to make it count. Be sure to offer a firm handshake, plenty of eye contact, a friendly smile, and a clear introduction of your name.

It can also be helpful to ask questions in an effort to get to know others. Maybe your new co-worker binge watches the same show on Netflix or enjoys the same Thai restaurant you love. Finding commonalities helps break the ice and build an instant connection.

Being likable improves morale

Have you ever been in an office where co-workers cannot or will not get along? It makes for a very awkward, tense and unproductive day for everyone. By being likable right away, you won't have to wonder whether you'll be a nuisance or an asset to the team. Having a positive, friendly attitude can improve team morale, and it will make going to your job every day that much more enjoyable.

You catch more flies with honey than vinegar

Reciprocity can work in your favor; if you are able to provide a helping hand, others will be more likely to do the same for you. If you're known for being a likable claims adjuster, more people will want to help you succeed. People want to help the friendly co-worker complete his or her tasks. By being that likable claims adjuster, you'll get people behind you who can assist, support and mentor you.

A manager will look upon a likable claims adjuster more favorably than the adjuster's peers

According to a blog from CareerBuilder, "Managers often view workers who get along well with their colleagues in a positive

light." Many of you might be wondering why that matters. Work shouldn't be a popularity contest, right? While that may be true, managers want a claims adjuster who can get along well with others. They want a cohesive team that can get the job done in a pleasant and positive way.

Don't confuse likability with friendship

The biggest misconception with being likable at your insurance job is that you need to make everyone your new best friend, which isn't true. If you're likable, it's because you're hardworking, respectful, and an all-around team player at the office. However, that doesn't necessarily mean you'll be attending happy hour with everyone or inviting them to your kid's birthday party. Although, by being likable, you make for a better work environment for every claims adjuster around you.

A positive attitude goes a long way

No one likes a "Negative Nelly." Coming into work with a smile and an encouraging attitude has a positive impact. Others will notice and see you as a positive influence around the office, and your positivity may even rub off on others. There are going to be ups and downs in every job, but remaining upbeat and composed makes you more pleasant to be around and reaffirms that your manager can trust you not to complain or moan when times get tough.

There are plenty of insurance jobs waiting for a likable claims adjuster like you. So, adjusters, what are you waiting for?

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- Making a conscious effort to be likable isn't always easy, but it can truly impact your professional journey.
- It will help you to build connections with peers and mentors for years to come.
- People will be more likely to help you.
- It will impress your manager.



The Orchestrator:

How risk managers maintain an effective return to work program

By Ken Hernandez, Managing Director at The Law Offices of Stacey L. Tokunaga



Risk managers wear several hats while carrying out their daily assignment to mitigate risk for their agencies. In addressing workers' compensation claims, many risk managers perceive their role as administering the provisions and monitoring and enforcing compliance with the state-mandated program.

To fully achieve the goals of workers' compensation claims management, risk managers must fully understand and promote the goal of an injured worker's expeditious return to his usual and customary work as it serves the best interests of injured workers, employers, and society.

Risk managers have a significant influence on the outcomes and costs of workers' compensation claims. One of the greatest challenges faced by the risk manager is the development of an effective Return to Work (RTW) program and holding all parties involved accountable. While risk managers may not control specific medical interventions or benefit levels in their state or jurisdiction, they must be familiar with multiple approaches to preventing chronic or long-term disability, reducing the lengthy duration of a small population of claims that represent the highest costs in any workers' compensation system.

Understanding the key roles and responsibilities of each stakeholder in the workers' compensation program and the critical role each stakeholder plays is crucial to the development of an effective RTW program. Therefore, it is incumbent upon the risk manager to ensure that all stakeholders are adequately trained and fully cognizant of the goal of the RTW program. Continuous training and constant communication are imperative to overcome the impediments to full reintegration of injured workers.

There are many negative attitudes in society regarding stakeholders and participants involved in the management of an injury. Some are based strictly on perception and some on reality. Risk managers must confront and resolve negative perceptions to develop a system that prevents impairments from becoming lifelong disabilities. Most injuries, however, do not lead to lost time following medical treatment, and the worker returns to his job prior to lost time. It is commonly known that 15 to 20 percent of workers' compensation claims account for 80 to 90 percent of claims costs.

Injured workers are sometimes perceived as malingering, not interested in returning to work or function, or even as seeking fraudulent opportunities. The reality is the worker often returns to function and work before the insurance carrier

is even aware of the injury. Workers in most cases receive reduced compensation from the compensation or social systems compared to their pre-injury wages and would rather return to work at full pay. Risk managers, in collaboration with human resources teams, must ensure that injured workers are actively involved in the progression of their return to function and proactively pursue early return to work to maintain or increase earning capacity and ultimately improve their quality of life.

Unions are often seen as defending an injured worker's entitlement to compensation and resisting an early return to work at the expense of the worker's functional recovery. Many times, lack of understanding of the workers' compensation system and lack of trust in the administrators leads union leadership to inform members to seek legal representation. These perceptions cause employers, insurance companies, and co-workers to question the legitimacy of the impairment and absence from work. This perception likewise extends to modified duties that are legitimately associated with an RTW plan. The reality is that when unions understand the inherent benefits of Return to Work and Function, they can influence and send a positive message to the injured worker and co-workers they represent. Risk managers can foster trust in the system by working with human resources departments and union leadership to fully understand the workers' compensation process.

Employers are sometimes perceived as uncaring and only being interested in reducing insurance costs. Many employers are reluctant to accept workers back to work until they are 100 percent recovered from their injuries. The reality is that when employers understand the importance of and the financial and non-financial benefits of keeping a trained, valuable worker employed and re-integrating them into the workplace, higher productivity, financial savings, and a healthier work atmosphere can be achieved.

Caregivers can be perceived as unwilling participants in an RTW program. Physicians, in particular, are bound by oath to act in the interest of the injured worker and prevent further harm to the individual. Caregivers often do not associate an effective RTW program as being an integral part of the healing process and restoration of the individual to maximum function. In reality, most caregivers want the injured worker to return to function, and with a better understanding of the benefits of a successful RTW program, caregivers are in a pivotal position to begin that process with the injured worker.

Insurance companies are often perceived as being interested in profitability at the expense of the well-being of the injured worker. Closure of claims in the interest of capping insurance costs as opposed to an effective return to function is seen as the primary objective of the carrier. In reality, the expedient return of an injured worker through a robust claims management process where communication with all parties is critical can keep caseloads down and improve intrinsic relationships with employers, workers, providers, and others in the system.

Attorneys pledge to represent the best interests of their clients which could be injured workers, insurance companies, or employers. Attorneys who represent injured workers are perceived as being more concerned with the highest dollar value of a claim settlement than supporting RTW for their client.

Full integration of the injured person can only be possible when the participants commit to the restoration of the health and function of the injured person.

They can also be perceived as drivers of government disability insurance claims such as Social Security Disability (SSDI) in the United States. Those who represent insurance companies or employers can be perceived as striving to avoid claim costs by denying the claim or medical interventions. In reality, attorneys play a significant role in supporting and advocating RTW since they counsel injured workers, insurance companies, and employers when there is a dispute. Collectively, attorneys from both sides of the aisle should embrace the RTW mantra to the benefit of all stakeholders.

Regulators and legislators are often seen as being disinterested in return to function and as responsible for a compensation system that focuses on cost reduction over balancing the needs of the injured worker and policyholder. Partisanship and re-election are viewed as taking precedence over the well-being of society as a whole. The reality is that regulators should care about creating fair systems that meet the needs of all stakeholders but most importantly, those of the injured worker and employer. The regulatory and legislative frameworks, however, do not often support this effort.

Whether perception or reality, the resolution of these issues is critical to adopting a collaborative approach to a Return to Work and Return to Function program. Full integration of the injured person can only be possible when the participants commit to the restoration of the health and function of the injured person. Risk managers must orchestrate the integration of the respective roles and responsibilities of all stakeholders to ensure an effective Return to Work and Function program. Continuous progress in learning, training, and communication between all stakeholders are the keys to overcoming the barriers to an effective integration process. 🌟

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- A good RTW program benefits the injured worker, employer, and society.
- Risk managers are the orchestrators in the RTW program.
- Stakeholders must be thoroughly educated on their roles in and the goals of the program.
- Risk managers must decipher perception versus reality to facilitate change.

Will the real ERM please stand up?

By David B. Dolnick, President, Dolnick Risk Advisors



One of the questions I often ask new practitioners in the workers' compensation field is, "What do you think this industry is all about?" I get the occasional blank stare, but the vast majority of people entering workers' compensation give me one of two answers. The first is some version of, "It's part of the insurance industry." True enough for some of us in this business, but not for all. The second is along the lines of, "We are how workers who get hurt on the job get medical care and disability payments." This is also accurate, but still not entirely complete. As most of us with years of experience in the industry will attest, workers' compensation is a very complex and sometimes profoundly intricate field.

In the broader picture, though, workers' compensation and all of its different activities and specialties is the

primary mechanism by which employers manage the risk of employment-related injuries or illnesses. That, in turn, is part of the broader effort that businesses engage in, that of managing their risks. Many of you have, no doubt, heard the term "Enterprise Risk Management" (ERM), which describes a broad-based approach to managing business risk. The concept has been around for a long time; the basic terms and tenets of ERM were first formalized in 2004, but it recently received some heightened attention when the International Standards Organization (ISO) issued an extensive update to their documents describing the process. Over the years, it has proven to be a highly scalable and flexible management process which helps a business recognize and deal with the core risks of conducting its operations. Another international organization, the Risk and Insurance Management Society, has also devoted much effort to helping

businesses work with ERM, publishing a Risk Maturity Model which helps assess how far along an organization is in implementing ERM. Despite all this international attention, however, a different meaning has begun to grow and gather momentum in response to some of ERM's perceived shortcomings. Primary among those, the erection of a process alone is not sufficient to ensure success in the effort. Success also depends on how that process is implemented, and that's where we all have an interest in how this impacts our industry.

For most medium-to-large scale businesses, workers' compensation is a major expense. The risks of employee injury are significant for almost all companies, and for some, especially those in heavier industries like construction or agriculture, workers' compensation is among their largest expenses behind labor and materials costs. That is undoubtedly true of many public sector employers as well. No organization can function long without controlling the occurrence and the costs of employee injury. Many studies have documented that unsafe employers have higher levels of turnover and lower levels of productivity than do similar ventures who are better at controlling those risks. ERM provides a robust method of integrating a business's efforts at accident prevention and injury/illness management with all the other risks that need to be addressed; that's what makes ERM so important to all of us. The companies that are implementing ERM are our clients, our vendors, our insurers, or our brokers. Their businesses range from agriculture to health care, and if you haven't run into a business that's implementing some form of ERM, you likely soon will.

There are, however, some in the risk management community who feel that ERM itself does not go far enough, and that merely establishing a series of internal steps and procedures will not in and of itself be about the kinds of activities and behaviors that help an organization fully embrace and manage its risks. Traditional ERM involves a structured set of internal controls and a formal process of identifying, assessing, and treating business risks, and a formal mechanism for tracking those steps (usually called a risk register). While those are all well recognized and sound management practices, a growing body of risk managers are coming to believe that, by itself, ERM is not enough. While there isn't a consensus on terminology, a newer meaning for ERM is taking root, and to many, the phrase now refers to "Embedding Risk Management." The key position these risk professionals advocate is that an organization must fully embed the processes and principles of risk management to fully realize the potential of ERM, and that the application of risk management practices must become second nature to all decision-makers at all levels of a company. This, they point out, is far more than a structural activity, and requires a broader range of tools and training. It also will typically require distribution of authority and decision making, something that not all organizations are comfortable implementing.

So, what does all this have to do with us, the workers comp professionals trying to make sense of all that is happening around us? Let me approach answering that by asking a question in turn: Would you like to reduce the frictions in our industry, along with reducing the sheer number of employees

who need to use the workers' compensation system every year? I have not met many people who do not want to reduce the number or severity of workers' comp injuries. Most of us would be delighted to see fewer employees enter the system every year, or to see those who file claims travel a smoother path toward resolution and a return to employment if possible. Despite our best efforts, however, occupational injuries continue to occur, and while our friends and colleagues in the safety profession have made great strides in preventing accidents, we all have much work still before us, and we don't appear to be in any danger of closing our industry down for lack of work anytime soon. We have made great strides in protecting workers in the last century, but the pace of change in industry makes further improvement mandatory if we are to keep up. Thus, a new push toward the recent take on ERM, embedding risk management, may provide us with some of the answers we need to help keep people safe and uninjured, and to help them recover more rapidly and effectively if an occupational illness or injury occurs. Improving an organization's ability to prevent suffering is never a bad activity, nor is helping it develop more effective methods of dealing with the problems of recovering employees and bringing them back into the workforce, and that is the potential that embedding risk management, "the other ERM," offers.

If you would like to know more about the two different meanings of ERM, a pair of expert and experienced risk managers, Alexey Sidorenko (Алексей Сидоренко) and Chris Mandel, released a YouTube video of their discussion, viewable at <https://youtu.be/jZcKUOCcy68>. Mr. Sidorenko is a recognized expert in risk management, with experience in private equity and sovereign wealth fund risk management in Australia, Poland, Kazakhstan, and Russia, and specializes in integrating risk management into strategic and investment planning. He is a widely published author and public speaker and created Risk-Academy in 2012 to provide training in the field. Mr. Mandel is a internationally known US-based risk management expert and thought leader in the field of enterprise risk management. He was selected as Risk Manager of the Year in 2004 and has served as president of the Risk and Insurance Management Society, and many years on that organization's Board of Directors. 🌟

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- Simply performing the tasks associated with risk management isn't enough in today's nimble and competitive business environment.
- Risk management needs to become embedded as part of an organization's culture and should be core component of all business decisions.
- Embedding risk management into an organization's culture is time consuming and difficult, but ultimately more effective in overcoming the challenges a business will face.

Keeping up with changes in orthopedic surgery

Platelet Rich Plasma and Stem Cells

By Gary Brazina, MD, FACS, FAAOS, Diplomate, American Board of Orthopedic Surgery

The science of orthopedic surgery and the treatment of early osteoarthritis as well as soft tissue injuries is rapidly changing. The goals and trend today remain how to preserve and rejuvenate articular cartilage to prevent or delay the need for total joint replacement. Articular cartilage is the smooth, glistening, white surface at the ends of bones that allows motion in joints. Articular cartilage has no blood supply and therefore relies on joint fluid for its nutrients. Arthritis is the roughening or wear of this cartilage surface which is caused by trauma, overuse, joint instability, and some metabolic conditions.

Orthobiologics in Use

The use of platelet rich plasma (PRP) and mesenchymal stem cells (MSCs) is now more widely accepted as an alternative to early surgery and has grown in popularity for the treatment of early osteoarthritis, especially in the knee and hip joint and in certain difficult soft tissue overuse syndromes such as tennis elbow, Achilles tendonitis, and hamstring tears.

While acceptance in the orthopedic community has proliferated, insurance carriers and especially workers' compensation carriers have been reluctant to accept and authorize the use of these new "biologic" modalities. Research has exploded over the past several years looking into the role of these agents and the makeup, usage, actions, and advantages and disadvantages of each.

Platelet Rich Plasma

Platelets are a part of the white blood cells and are most often thought of as helping in clotting and found in the serum

of blood. Platelets contain several protein growth factors in high concentrations that can turn these platelet cells into polymorphic cells that can form muscle, cartilage or bone. We have yet to discover the exact molecule responsible for this growth factor and ability to morph into different tissue.

The platelets are easily harvested in an office setting. The physician draws blood from the patient and then spins the blood in a centrifuge to separate the red cells from the white cells. For intra-articular injections, the white cells are then filtered to separate the white cells from the platelets. The platelets are then easily injected in the knee, shoulder or hip.

Following the injection, the patient may leave the office. The use of anti-inflammatory agents such as aspirin, Motrin or Naprosyn is prohibited in the first two weeks; and we recommend no vigorous exercise or stress on the joint for two weeks. The patient can get a flair reaction with swelling and pain for several days, which is managed by ice and Tylenol, but this is not common. Usually, the patient can return to work within 48 hours, and heavy work within one to two weeks.

Most patients begin to feel improvement at about six weeks and continued improvement over the next six to 12 months. The cost of this treatment in office is approximately \$1,500.

Mesenchymal Stem Cells

Mesenchymal stem cells are another type of cell that has the potential to transform into a variety of cell types including bone, muscle and cartilage. The two most common sources for the cells are adipose tissue (fat) and bone marrow.

In our center, we have found adipose harvesting easiest and

is an abundant source of MSCs. We use a plastic surgeon to harvest a patient's adipose (fat) cells in an operating room setting, much like doing a mini liposuction procedure.

The patient's own harvested fat cells are then centrifuged to obtain the "buffy layer" of stem cells, filtered and then injected into the affected joint by the orthopedic specialist.

Stem cells from bone marrow are harvested much like a bone marrow transplant. In a sterile operating room environment using a small incision and a special needle-like tool, the bone marrow is harvested from the patient. Again, it is centrifuged, filtered and injected into the patient's joint. The same post-operative precautions are used.

Because of the more invasive nature of these two methods, there are possible risks of complications including infection at the donor sites. However, using the patient's own cells creates a safe acceptance rate and no rejection of the cells because the procedures are using the patient's own cells.

Viscoelastic Supplementation

Hyaluronic acid (HA) is considered the "building block" to nourish the cartilage surface. Natural and synthetic HA (such as Synvisc, Supartz, Hylgan et al.) is given to patients as an injection into the joints to try rejuvenating and repairing the articular surface.

Recently most insurance companies, including Medicare and worker's compensation, have stopped authorizing this procedure which typically costs \$750-\$1,000 for the substrate and the physician office fee for between one and five injections.

Chorionic Stem Cells

Many companies are marketing commercially harvested chorionic stem cells taken from placental tissue. There is very little research to support the use of this modality and is not approved as yet by the FDA. Since the source of the cells and the process used to harvest and preserve these cells are not well defined, I have been reticent to utilize this method until more research is available.

The Research

The number of research and peer-reviewed articles has gone from one in 2001 to 1,500 studies in 2018. The research is trying to uncover the exact protein that promotes the polymorphic potential of these cells. Many studies are now underway to compare and contrast different methods and even the use of a combination of both MSCs and HA.

The *Journal of Arthroscopy* in 2017 published an article comparing HA to PRP and found no difference at six months but significant improvement at one year post-injection in the PRP group.

The findings of the research have led to the conclusions that the use of orthobiologics are:

- Safe (there have been no serious complications in all the subjects studied), and
- Most effective in patients with normal BMI, under 50 years old, and with early stage osteoarthritis.

The management of the patient's expectations remains essential.

Orthobiologics in the WC Setting

Approval through UR is spotty at best. There is no mention of orthobiologics, PRP or stem cells in MTUS and ACOEM guidelines. The Official Disability Guidelines does cite articles and recommends the use of PRP in patients with symptomatic early to moderate osteoarthritis who have failed a conservative course of treatment including NSAIDs, physical therapy, and other modalities. 🌟

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- The uses of PRP and stem cell preparations are extremely promising, cost-effective and safe.
- More research is needed to refine techniques and help isolate the active growth factors in the platelets and stem cells which can increase the ability of these cells to morph into bone, cartilage, muscle and hopefully nerves. Research is needed to explore the use of systemic stem cells in the treatment of autoimmune-type diseases and even complex regional pain syndrome.
- We as an industry must increase monitoring of the supposed "stem cell centers" who want to ride the wave of popularity to use them only as a profit center, at inflated prices. As a specialty, we must instead incorporate fact-based science to provide quality and expert treatment protocols to achieve success in returning function to injured workers.



Can You Answer this Question?
How do you know if the person you are hiring can perform the physical demands of the job?

It makes sense to hire persons who qualify they can perform the physical abilities of the job.

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The Independent Bill Review System

Part 1 of a 2-part series

By Paul C. Herman and Aidan P. McShane, Law Offices Paul C. Herman

Here it is, the most dreaded topic: bills, invoices and liens. In this article, we provide information and timeframes mandated by Senate Bill (SB) 863 to combat and control the cost services provided post January 1, 2013.

With SB 863, the Legislature removed much of the decision-making process on med-legal invoice dispute issues from judges and put it in the hands of independent experts. That legislation is Independent Bill Review (IBR), a process by which a bill review expert examines fee disputes.

The IBR structure controls the submission and response to *all* medical and med-legal billing. However, IBR is only applicable where 1) services were provided on or after January 1, 2013, and 2) the only issue left to be determined is the value of services. IBR does not apply to services where there is no fee schedule. IBR does *not* address any *threshold issues* related to lien resolution. These threshold issues include but are not limited to whether services were preauthorized, liens were properly filed, or if there are defenses like Statute of Limitations. Once the WCAB decides upon threshold issues, the disputed balance is processed through IBR.

Two types of services are submitted to IBR: Med-Legal Costs and Treatment Expenses. Each service is processed differently. In this article, we will be focusing on Med-Legal Costs.

Per Labor Code §4620(a): “a medical-legal expense...may include X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and...interpreter’s fees ...for the purpose of proving or disproving a contested claim.” All other charges (medical, surgical, chiropractic, durable medical equipment, interpreter, home health care, etc.) are Medical Treatment Expenses.

IBR PROCESS FOR MED-LEGAL COSTS

If a dispute is only to the proper amount payable per the fee schedule, then the dispute must go through IBR. (LC 9794)

The process begins with a service provider serving a completed bill/invoice to an adjuster, with supporting evidence, such as a medical report, photocopy orders, or proof of attendance by an interpreter with the certification number. Thereafter, Defendants must object or pay within 60 days. Objections must be on the Defendant’s Explanation of Review (EOR). Any services that are not objected to must be paid in full.

Within 90 days from the Defendant’s service of the EOR, the service provider may contest the EOR and request a second review.

The Defendant then has 14 days from the request for a second review to respond with a final written determination. Any services not objected to in the final written determination are payable within 21 days.

At this point, the second review is completed. After the Defendant has submitted its final written determinations from the second review of the submitted bill/invoice, the service provider has 30 days to object or respond. If the service provider’s only issue is the amount paid per the applicable fee schedule, the service provider may request IBR. *The service provider must pay the IBR fees up front.*

At this time, the disputed bill/invoice is reviewed and analyzed by an independent bill review expert. Upon the completion of the review, the bill review expert issues his or her findings. The following are the options:

1. If it is found that the Defendant owes more money, then the Defendant shall pay the additional amounts and reimburse the IBR fees advanced by the service provider.
2. If the report determines the employer prevails, then the employer owes nothing further.

IMPORTANT! If any of the foregoing deadlines are missed, then the consequences are as follows:

1. If the service provider fails to timely comply with its obligations, the bills submitted are deemed paid and neither Applicant nor Defendant are liable for anything further.
 2. If the employer fails to timely comply with a deadline, then the full amount is payable, along with interest and fees.
- If the med-legal dispute is *about anything other than the application of the fee schedule*, then that issue must be determined through the Non-IBR system. (LC 9794 and CCR 10451.1(c).)

The Non-IBR system is processed as follows:

1. Service provider submits billing with information validating the invoice.
2. Defendant has 60 days from receipt to pay any uncontested services and to object by way of EOR, with supporting evidence of those services which are disputed.

3. Service provider now has 90 days to object to the EOR.
4. If the provider’s objection is timely and *not* based on just the amount per fee schedule, then the Defendant must file a Petition for Determination of Non-IBR Medical-Legal Dispute *and* a DOR, with Proof of Service, within 60 days.
5. Defendant’s failure to timely respond is a waiver of all objections to that provider’s billing, except as to the issue of the amount.
6. If the employer does not proceed with Step 5 above, then the *service provider may file* the Petition for Determination of Non-IBR Medical-Legal Dispute. The service provider does not need to file a DOR.

At this point, the matter will be submitted to the WCAB for determination of the noncost-related threshold issues. The WCJ has the option to defer until the case-in-chief is ready to be heard in the interest of judicial economy. Once those are decided and only disputes regarding amounts remain, then the parties return to and begin the IBR process as initially described.

TIPS AND TAKEAWAYS



WHAT TO CONSIDER



RED FLAGS



STEPS TO TAKE



DON'T FORGET

- **Timely compliance with the IBR deadlines is mandatory for the submission of all bills and failure is accompanied by severe consequences.**
- **This is an adjuster-driven system and will require adjusters to carefully and timely consider all bills and invoices submitted. They can no longer be relegated to the end of the case-in-chief.**

In the Spotlight

Industry leaders answer our most searching questions.

LUIS SOTO

Manager, Workers' Compensation
The Cheesecake Factory



Name a person who has had a tremendous impact on you as a leader or mentor.

Kurt Leisure, VP of Risk for The Cheesecake Factory, is someone I would like to emulate. Not only does he serve as my boss but he has become a loyal friend who has extended an amazing mentorship program to me.

One of the most valuable lessons I have learned from him as a mentor is to avoid complacency, as it only promotes mediocrity. I believe the reason we have come so far with our program is due to Kurt's resilience and commitment to always being ahead of the game. His teachings are strategically inclined and promote progressive thinking. Kurt is always pushing for the next great thing. We have implemented successful programs together, and we intend to change the world of risk one day at a time.

What is one characteristic that you believe every leader should possess?

Integrity. A leader who takes the fall when things go awry is honored more than a leader who is quick to take credit for someone else's successes.

What is one mistake you witness leaders making more frequently than others?

Entitlement. Professionals who take on a leadership role feel entitled to demand respect but I have learned that respect has to be earned.

What is your most significant achievement to date professionally or personally?

To have been able to run a successful nationwide workers' compensation program and being afforded the proper tools to do so. Our litigation rate is at an all-time low of 1.8 percent. I would not have been able to accomplish this if it wasn't for the fantastic teams and partnerships I have cultivated during my career. The year 2019 will be about how we can exceed past accomplishments and create new ones.

Luis can be reached at lsoto@thecheesecakefactory.com and at (818) 871-8372.

MARITZA MARTORANA

U.S. Workers' Compensation Manager
Technicolor U.S.A, Inc.



Name a person who has had a tremendous impact on you as a leader or mentor. Why and how did this person impact you?

One person who stands out is Ilse Spivack, retired Risk Manager of the L'Ermitage Hotel Group. Ilse introduced me to the world of workers' compensation and liability

claims. She taught me to think "out of the box" when managing workers' compensation, and encouraged my continuous education to further my success in this field. I learned from her that, in any profession, the keys to success are: to be truthful, to take responsibility, to show compassion, and to help others. She inspired me to have courage and determination, especially during challenging times.

What are 3 words to describe Technicolor?

Innovative: At Technicolor, there is a passion for innovation; some of the most vibrant and talented people work very hard uniting artistry with technology to create the most amazing entertainment experiences for audiences.

Creative: Technicolor's award-winning creative talent empowers storytellers to bring their artistic visions to life throughout the entertainment industry, spanning motion pictures, episodic television, animation, games, and commercial advertising.

Dedicated: Technicolor's dedication has built a legacy of historic contributions to film and television for more than 100 years – making it only the second company to be honored by the Hollywood Chamber of Commerce with a "Star of Recognition."

What is your proudest moment at your company?

My proudest moment is becoming a U.S. Workers' Compensation Manager at Technicolor because it gave me an opportunity to grow personally and professionally. It has allowed me to serve as Environmental, Health & Safety Co-auditor when visiting manufacturing plants and other subsidiaries of Technicolor throughout the U.S., Mexico, and Brazil. This experience gave me the opportunity to learn Portuguese and facilitate communication and understanding of other cultures while co-auditing in São Paulo and Manaus, Brazil.

What do you do for fun?

In my free time, I enjoy going to the theater, reading – and I also make custom jewelry!

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Carl's Corner

By Carl Van, ITP

Delivering Bad News When Negotiating

In part two of a three-part series, Carl talks about saying the right things at the right time.

As a workers' compensation claims professional, you often have to deliver bad news. You have to say "no" for many different reasons: "There is no pain and suffering consideration;" "There is no reimbursement for finance charges on medical bills;" and more. Don't shy away from delivering bad news. You are in the customer service business and even relaying disappointing news is an opportunity to have an impact on the customer. It's all in how you control and deliver the information. As a professional, this is when you strategize and prepare your message.

Delivering bad news is the perfect time to express empathy with a short and clear empathic statement. This gesture demonstrates you are a human being and you understand the injured worker is, too. Who knows – show a little empathy and you might even get a "Thank You" at the end of the conversation.

When explaining the reasons for rejection or denial to the injured worker, never say "but" and debate the reason. Remove the "but." When delivering bad news, take extra care to say "and," not "but," in the sentence. Saying "but" removes the positive impact from the front of the sentence and shifts the focus to the negative. "Leading with the positive" still delivers the necessary bad news to the injured worker and helps the injured worker see you are working for their benefit.

Just like when you are on the receiving end of bad news, the injured worker also has a right to how they feel. During the negotiation process, the injured worker may respond when you deliver the news. Don't consider this an attack on you or a reason to argue. Listen carefully to the injured worker and take this as a gift. For example, you tell the injured worker you can't pay for their claim whether in part or in full, and they respond, "Oh, that's lousy" or "That really stinks." There's your gift. That response tells you that, even though they don't like the news, they believe you and understand what you just said. Here is your opportunity to express empathy, which will help mend the wound.

Great negotiators use their skill in delivering bad news to their customers and keep the negotiation moving along to closure.

BIDDING AGAINST YOURSELF

We've all heard the phrase, "never bid against yourself." For the most part, that's accurate. There is, however, an exception.

Great negotiators use their skill in delivering bad news to their customers and keep the negotiation moving along to closure.

Great claims negotiators know you can bid against yourself as long as you stay in your conversation (see "Negotiation Tips," EWC Magazine Winter 2019). "Staying in your conversation" means you negotiate by starting at your offer of \$5,000, increasing it to \$5,500, then increasing it to \$5,750, rather than wasting your time trying to bring an injured worker down from their demand of \$50,000.

You can bid against yourself all day, as long as you and the injured worker stay in your conversation. Your conversation is your value of the claim, and that's where you want to be.

WHEN TO INCREASE YOUR OFFER

Just like with humor, timing is everything. During negotiation, many workers' compensation claims professionals will increase their offer when the other side has made a valid argument. We hear this all the time while monitoring claims phone calls. An injured worker or other party makes a good point, and the next thing the claims adjuster says is, "Okay, let me increase the offer," or the dreaded, "Let me throw in a little bit of money." This is the wrong time to increase the offer.

This practice conditions an injured worker to believe that every time they make a good point, you are going to reward them with more money. Think about a pet you trained by giving them a treat to reinforce the behavior you wanted them to continue. If you "reward" an injured worker with an increased offer when they make a point, what are you training them to do? Make more points.

The best time to increase your offer is once you've demonstrated to an injured worker that you shouldn't have to raise your offer. The powerful concept here is to show an injured worker that your offer is already fair – then you can increase it. Consider this example:

“Mr. Smith, if you believe your case is worth more than the \$32,000 I mentioned because you lost some potential job opportunities and you might have to have an additional surgery later, I understand that. In fact, those were both heavily considered in this evaluation along with your disability rating. So, based on what you just said, I am even more convinced that the \$32,000 figure is fair. However, to be exceptionally fair to you, I am going to increase the figure to \$34,000.”

Skilled claims negotiators know this timing is vital because it makes an injured worker feel you have made a concession and are being extraordinarily fair. When making the increased offer, it is essential you make it sound like a concession for you, instead of a “win” for an injured worker. A “win” for an injured worker would tempt some injured workers to continue pushing for increases. Remember: timing is everything.

SAYING IT THE RIGHT WAY

Many times in workers’ compensation claims, you are negotiating merely for a response from a customer. Here are four examples of things we often hear while monitoring phone calls, which can have the opposite effect from what is intended. We will look at the pitfalls with certain words and propose options with the best wording so you can excel with your customers.

To encourage an injured worker to be patient:

What the adjuster says: *“Sir, you’re going to have to be patient.”*

What the customer hears: *“Sir, since I’m not taking your situation seriously, and I’m overworked and don’t have the time necessary to do a good job for you, you’re going to have to be patient.”*

What the adjuster should say: *“Sir, I understand the need to get this claim resolved promptly and efficiently for you. I will do everything I can to keep it moving.”*

To encourage an injured worker to trust you:

What the adjuster says: *“Ma’am, you’re going to have to trust me on this.”*

What the customer hears: *“Ma’am, I have no reason for the things I do or say. If I did, I would explain them to you in a way you could understand. So, question everything I tell you. And for heaven’s sake, DON’T TRUST ME.”*

What the adjuster should say: *“Ma’am, you have every right to question the process. You, like me, want to make sure you get everything you are entitled to receive. I’ll do my best to make things clear.”*

To encourage an injured worker to calm down:

What the adjuster says: *“Sir, I don’t know if there is any reason to get excited over this.”*

What the customer hears: *“Sir, you have no reason for your actions, and your feelings have no value. What a hysterical moron you are.”*

What the adjuster should say: *“Sir, I can understand why you’re frustrated. Let me see if I can help.”*

To encourage an injured worker to be reasonable:

What the adjuster says: *“Ma’am, you’re going to have to be reasonable about this.”*

What the customer hears: *“Ma’am, you are an unreasonable person. I’m going to make you change your mind. And when you do, you’ll be proving that I was right for calling you unreasonable.”*

What the adjuster should say: *“Ma’am, I understand your points. You are obviously a reasonable person. You are entitled to an explanation, and I’d like to provide that to you now.”*

You control your own behavior and how you speak to your customers. On the flip side, your customers have a right to how they feel. So, whether it’s asking an injured worker to be reasonable, to be patient, to trust you more, or to calm down, say it in a manner that shows respect and moves the claims process forward. ★

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