

Risk ADVISOR



Spring Safety Tune-up

Every spring the Fund publishes articles about hurricane season, working in hot weather and other seasonal hazards such as bites, stings and poisonous plants. Instead of long, sometimes boring articles about these seasonal hazards we offer the following list of things to check and watch out for this Spring:

★ Yes, hurricane season is approaching. It runs from June 1 to November 1 although tropical storms can occur year round given the right conditions. Every year the Texas coast could be impacted by tropical storms. What should you do now to prepare? Now is the time to review and update your center plan for dealing with disaster from whatever source. In the past few years, centers have dealt with severe hail and wind storms, tornadoes, tropical storms, range fires, refinery explosions, winter weather, power outages and cyber attacks. Anything can happen but if you're prepared to recover from disaster your consumers can be protected. Pull out your disaster plan and update it for new information, new names and contacts, the latest information about storm surge or flooding potential and the latest advice from the experts at FEMA, the Red Cross, local and state emergency planners. Review the changes with your staff and make new appointments to key positions that have responsibilities during disasters. Then stage a table top drill to make sure everyone in the center knows what to do. Call on your Fund Loss Control Consultants and particularly Loss Control Manager Regan Rychetsky, Associate in Business Continuity Professional for help in your emergency preparedness planning.

★ It's spring time in Texas when the temperature can be 45 in the morning and 85 by the afternoon and a few days later up in the 90's. That's hot enough to cause serious heat related illness to your employees or consumers who are doing heavy work outside. Make sure your outdoor crews are furnished with plenty of water, hats, sunscreen and an awareness of the temperature and humidity they will be working in. Supervisors especially should keep an eye on their crews for any signs of heat exhaustion or heat stroke and know first aid and when to get medical assistance. Take frequent water and heat relief breaks during the heat of the day and knock off work early if possible to avoid the hottest part of the day. Heat Stroke is the most serious heat related illness and can cause death or permanent disability. It occurs when the body loses its ability to shed heat. When this happens the body's temperature rises rapidly. Symptoms include

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Loss Control Briefs

Specialty Drugs

Medical inflation in 2016 ran at a rate of 3.8%, a rather low rate compared to only a few years ago when double digit increases were common. Despite this favorable trend, the cost of drugs continues to rise. The cost of drugs is estimated to account for 17% of total medical costs with a growing percentage of this related to specialty drugs. The accounting and consulting firm of PriceWaterhouseCoopers estimated that the top seven specialty drugs represented over \$9 billion in costs. These drugs were used to treat hepatitis C, melanoma, cystic fibrosis, hypercholesterolemia (high blood cholesterol) and other conditions. This trend is likely to continue in 2017 and future years and affect both general healthcare and workers' compensation costs.

Specialty drugs are carefully defined in the American Journal of Managed Care as:

- ★ Costing over \$600 per month
- ★ Treats a rare condition
- ★ Requires special handling
- ★ Uses a restricted distribution network, and
- ★ Requires ongoing clinical assessment during the course of treatment

In addition to the diseases mentioned above other conditions requiring specialty drugs include hemophilia, multiple sclerosis, HIV, other cancers, deep vein thrombosis following serious orthopedic surgery and rheumatoid arthritis.

Treatment of hepatitis C is a good example of the costs and benefits of specialty drugs. With specialty drugs hepatitis C is now about 98% curable. A typical course of specialty drugs used to treat hepatitis C ranges from \$65,000 to \$180,000. Before their development the only real effective treatment was a liver transplant which now averages close to \$600,000. So, although the cost of the drugs is quite high, the alternative could be much more expensive.

Many of the conditions mentioned above rarely have any effect on workers' compensation costs because the infection or development of disease is not work related. However the Centers for Disease Control and Prevention estimates that there is a 1.8% chance of infection from hepatitis C infected needles or cut exposures. There is also significant work related exposure to HIV from similar medical events. Other occupational situations where specialty drugs are used include deep vein thrombosis from orthopedic surgery and the presumption of cancer from work related exposures to firefighters and EMT's in Texas and many other states. The use of specialty drugs is expensive, but their efficacy could reduce the ultimate costs of the conditions they are designed to treat.



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Questions, comments, tips, advice, ideas, opinions, criticism, and news are welcomed and encouraged. Every effort has been made to ensure the accuracy of the information published in *Risk Advisor*. Opinions on financial, fiscal, and legal matters are those of the editors and others. Professional counsel should be consulted before taking any action or decision based on this material.

Fund Administrator: York Risk Services Group, Inc.
800-580-6467

Sources: *Texas Government Code Chapter 607, Subchapter B - Diseases or Illnesses Suffered by Firefighters and EMTs*, Centers for Disease Control and Prevention, *Hepatitis C article*, Power Point presentation by Phil Walls, RPH, Matrix Healthcare Services, Inc., *The Rise of Specialty Drugs in Workers' Compensation*

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Zika Alert

Zika hasn't gone away and according to the Centers for Disease Control and Prevention it is now present in all 50 states. CDC statistics also reveal that of the over 1,500 American women who became pregnant after exposure to Zika, about ten percent gave birth to babies with serious birth defects associated with the virus. The virus is now being transmitted by native mosquitos in a few locales, including the Rio Grande Valley in Texas. Most of the cases reported countrywide were acquired while traveling but the spread of the virus into native mosquito populations is a cause for concern and use of precautions in these areas. Please consult the CDC at www.cdc.gov/vitalsigns/zika-babies/index for important information about how to prevent infection and possible devastating birth defects.

TCRMF Safety Workshops

The topics and locations of the annual Safety Workshops have been announced. The workshops are open to Fund members without cost at several locations around the state. You are welcome to attend any of them, but please first register at tcrmf.org. The workshop includes a workbook with presentations and supporting materials, lunch and snacks. This year's presentations are designed to address current safety issues, work hazards and lessons learned from the claims experience of the Fund. Topics are:

Lessons Learned

Lessons Learned provides an opportunity to gain knowledge from recent claims experience. This presentation will review the Fund's claims activity, case studies and identify effective practices, while avoiding ineffective practices.

Driver, Vehicles, Clients, Their contribution to Losses

Based on claims, driving on Center business can be a risky and possibly deadly endeavor. This presentation will include three specific areas to address the risks and behaviors associated with driving on center business.

- ✦ The Driver – What distractions are encountered while driving on Center business?
- ✦ The Vehicle – What do you need to know about your vehicle and route before starting?

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Does the Fund Respond to the Disciplinary Actions of Licensing Boards?

Most Professional Liability Insurance policies cover only allegations of injury as a result of errors, omissions or mistakes in the rendering or failure to render professional services to your clients and consumers. Often there is some kind of injury alleged as a result of the error. Prior to September 1, 2014 the Fund's Professional Liability coverage would not have responded to any action by a licensing board to bring disciplinary charges against a center staff member performing their professional duties. However, the Fund was made aware of situations when staff members were placed in professional jeopardy by a lack of competent legal representation. Staff involved in the complex processes of board disciplinary action sometimes mistakenly thought that they could handle their own case without legal assistance. Arrayed against the individual was a disciplinary bureaucracy staffed with investigators and attorneys whose job was to bring actions and make them stick using the immense resources of state government. In response to this kind of heavy weight bureaucracy the Fund explored a way to help center staff professionals even the odds. As a result of this process a new coverage was devised to afford legal defense when an investigation is commenced by "a licensure commission" against a center professional.

Simply, the coverage developed by the Fund provides legal counsel for the targeted individual. Since there are only a few attorneys who specialize in representation for licensed professionals the Fund will choose the attorney or firm to provide representation. There is a limit of \$25,000 each occurrence and \$50,000 for all claims in the policy year. The result is that an accused professional will be provided up to \$25,000 worth of legal defense in a disciplinary proceeding against them. There is no coverage for any resulting fines or penalties imposed as a result of the disciplinary action.

As with any insurance coverage there is complicated language designed to give only the coverage intended and limit the scope of coverage to some extent. Definitions, exclusions, limitations and a statement of deductibles sometimes makes something simple hard to understand. The coverage is called Expanded Professional Liability Professional Defense Endorsement. In the endorsement there is coverage for the legal expenses of the appointed counsel on behalf of the covered party in the course of a covered investigation, arising out of the provision of professional services,

if:

- ✦ The incident giving rise to the covered investigation occurs on or after the latter of September 1, 2014 or the retroactive date, if any, shown on the declarations and prior to the termination of the agreement; and

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- ★ Clients as Passengers – What special risks are associated with transporting clients?

Housekeeping Safety

Poor housekeeping can contribute to accidents, injuries and fire hazards. This presentation will highlight areas to focus your Center's housekeeping efforts in order to avoid claims and improve efficiency.

What's Your Question?

Bring your most challenging safety situations and questions! Don't have any? We will discuss frequently asked questions, concerns, claims and safety issues.

One workshop has already been held in Tyler. Future dates and locations are:

- ★ June 7, West Texas Centers, Big Spring
- ★ July 12, Behavioral Health Care of Nueces County, Corpus Christi
- ★ August 23 and 24, The Harris Center, Houston
- ★ October 4, 2017, Tarrant MHMR, Fort Worth

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- ★ The covered party first receives written notice of the commencement of the covered investigation during the trust year; and
- ★ The covered party provides written notice of the covered investigation to the Fund within 15 days of receiving notice.

Words in bold are defined in the coverage document. That also means that there are usually limitations and exclusions that may apply. In the language above, the "covered party" is the accused professional against whom a disciplinary action is being brought by their licensing agency. A "covered investigation" includes:

- ★ A disciplinary proceeding which accuses a covered party of, or investigates an accusation that a covered party engaged in, improper or unprofessional conduct in the course of such covered party's professional services
- ★ An investigation or proceeding charged with determining whether the covered party participated in the improper transfer of a patient ("dumping")
- ★ An investigation or proceeding to determine whether the covered party provided professional services improperly to a patient covered by Medicare or Medicaid
- ★ An investigation or proceeding, to determine whether or not the covered party was in violation of regulations pertaining to the Clinical Laboratory Improvement

Amendments of 1988 ("CLIA")

- ★ An investigation or proceeding charged with the enforcement of compliance with regulations pertaining to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the Omnibus Budget Reconciliation Act of 1990 ("OBRA '90"),
- ★ An investigation alleging violation by any covered party of Medicare or Medicaid laws, rules or regulations relating to reimbursement for medical services.
- ★ A proceeding alleging violation of the federal Anti-Kickback statute or liability under the Federal False Claims Act or the Patient Protection and Affordable Care Act,
- ★ A proceeding against a covered party alleging violations of sections 1877 and 1903(s) of the Social Security Act (Stark Law).

The items quoted above have been abridged to provide clarity about what kinds of investigations are covered.

The next section of the endorsement lists exclusions to the coverage. The coverage is for legal defense only. Any fines or penalties are excluded. Investigations arising out of or resulting in criminal prosecution are also excluded. Other exclusions are listed in the endorsement. Finally, the endorsement states that there is a \$1,000 deductible that the "covered party" is responsible for.

Since implementation of the coverage there have been several claims reported and assigned to counsel. Coverage has been provided for both centers and individual licensees. Disciplinary allegations by licensing agencies have included a parent alleging that a center employee should not have filed a complaint with CPS about child abuse or neglect. An incarcerated person alleged that the center staff person should have prevented them from committing murder. A complaint was also made that a center had used a title for a professional designation as a job title for unlicensed staff. In all cases the appointed attorney responded to the licensing board with extensive documentation to refute the allegations or comply with the requirements of the board.

The letter advising a licensee of potential disciplinary action usually contains extensive reference to the Texas Administrative Code and is not easy to determine what all of the possible accusations are. For this reason any center professional accused of violations should seek professional legal assistance through the Fund.

Remember, if you are charged in a disciplinary action by your licensing board, report it immediately to your supervisor so they can report the allegation to the Fund within the 15 day window. This will insure that counsel can be retained and begin to respond to the agency on your behalf in a way that is most advantageous to your defense and protecting your license.

Slips, Trips, and Falls

The claims analysis for the Fund presented in the latest round of safety workshops (see Loss Control Briefs for locations and schedule) presents the most frequent causes and cost of injuries. The chart below taken from the workshop presentation shows Slip/Trip/Fall as the leading cause of worker injury at centers over the past ten years averaging over 200 claims per year during this time.

TCRMF Workers' Compensation Cause of Claims 2007-2017			
Cause	Number of Claims	Total Incurred	Cost per Claim
Slip/Trip/Fall	2,033	\$ 7,813,539	\$ 3,843
Motor Vehicle Acciden	1,864	\$ 6,624,117	\$ 3,554
Strain/Sprain	1,257	\$ 5,896,569	\$ 4,691
Consumer Related	1,401	\$ 1,798,425	\$ 1,284
Strike/Struck by	689	\$ 1,040,023	\$ 1,509
Caught In	115	\$ 559,263	\$ 4,863
Exposure	758	\$ 446,885	\$ 590
Bite - Animal /Insect	508	\$ 257,693	\$ 507
Total	8625	\$24,436,514	\$ 2,833

Most of the slip, trip and fall claims occur on center premises in offices, hallways, stairways, parking lots and sidewalks and most of these claims are preventable.

According to a recent article in Safety and Health Magazine slips are defined as a “loss of traction between a person’s feet and the surface he or she is walking on.” Slips are caused by wet floors, oily floors, spills, loose floor coverings such as rugs and mats and a change in traction from one area of a floor to another. Trips are caused by the foot striking an object or structural element that causes a person to lose their balance. Trips can be caused by an elevation change of as little as ¼ inch such as a door threshold, an uneven sidewalk or change in floor coverings like a transition between tile and carpet. Falls, of course, are the result of slips, trips, missteps, unexpected openings, lack of guarding, ladders and holes.

The injuries inflicted by slips, trips and falls are caused both by the physical act of losing balance in the form of musculoskeletal strains and sprains and the impact with floors and objects as a result of the fall. Impacts usually result in contusions, cuts, sprains and strains and sometimes broken bones. Although the average cost of slips, trips and falls is not the most expensive it is the third highest at \$3,843 representing both payments for time lost from work and the medical expenses to treat the injuries.

There are some basic ways to prevent slips, trips and falls at your center. The most important principal in prevention is a commitment from center leadership to implement and enforce efforts to reduce and eliminate the causes of such injuries. This effort starts with awareness of the extent of the problem at a particular center. Your Loss Control Consultant can help you define the extent of slip, trip and



Common office trip hazards

fall claims, their result and the locations where they occur. Once the executive director is committed to reducing the frequency and severity of this kind of claim the chief administrative/operating officer, facilities manager and safety coordinator have a powerful tool to effect change.

Specific measures that will help reduce slip, trip and fall injuries include:

- ★ Quick response to cleaning up spills wherever and whenever they occur. Just placing a wet floor marker is not enough because people still need to move through areas affected by a spill and the problem can migrate as water or other fluids are tracked out of the spill area. If a staff member sees or creates a spill they should clean it up or immediately report the condition that caused a spill if a repair is necessary. Use the wet floor signage if the spill can't be cleaned up immediately.
- ★ Keep walkways and hallways clear of debris, clutter and other obstacles to free and safe passage.
- ★ Cover cables or cords in walkways and route them appropriately under desks and work surfaces.
- ★ Dark or poorly lit stairwells cause a number of falls each year. Replace burned out bulbs right away. Notify facilities or safety coordinators of the problem immediately. Don't assume that someone else will report it. Carrying boxes or other objects that block downward vision on stairs or steps also contributes to injuries.
- ★ Close desk drawers and file cabinets when not in use or you are away from your workspace.
- ★ Watch where you are going to sit. A surprising number of claims occur each year when desk chairs roll out from under someone who is trying to sit down without paying attention to where their chair is or how easily it can start rolling.
- ★ Use non-skid mats in front of entries especially when it's raining outside. Use these mats in other areas where traction is suspect.
- ★ Take a comprehensive approach to evaluating flooring throughout the center. Repair and replace as budgets permit and use consistent non-skid wax on tile floors. Carpets should also be repaired or replaced when they become worn, ripped, wrinkled or loose.
- ★ Center staff should wear comfortable, low rise footwear that provides good traction in the center environment.
- ★ Distraction is a growing cause of vehicle accidents but it also affects the frequency of slip, trip and fall claims. Texting and walking causes the same lack of focus as while driving. Pay attention to where you are going on foot.
- ★ Some centers have even banned high heels and seen a reduction in slips, trips and falls as a result.

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hot, dry skin or profuse sweating, hallucinations, chills, throbbing headache, high body temperature, confusion or dizziness and slurred speech. Heat exhaustion also has some of these symptoms. When any of them appear in a worker, take action immediately. Call 911, begin first aid and move the worker to a cooler place.

- ★ Warmer weather also brings out all kinds of insects, spiders, bees, wasps, ants, snakes and dangerous vegetation like poison ivy. Educate your workforce in identifying these hazards and what to do if bitten, stung or have contact. Insect repellent, work boots, long sleeve shirts, gloves and a careful lookout for harmful creatures and plants can help protect your outside workers. Mosquitoes in the Rio Grande Valley are now carrying the Zika virus that can cause a terrible birth defect in pregnant women. See the brief article in the Loss Control Briefs section of this newsletter for more information.
- ★ Monitor the weather. Weather radios and cell phones can give you severe weather alerts that might give you enough time to take shelter.
- ★ Spring is also a good time to make sure the safety equip-

ment on center vehicles is in good repair. Wiper blades and tires wear out and need to be replaced. Windshields crack and light bulbs burn out. Replace them so drivers can see and be seen. A state inspection catches many of these items, but don't wait until the inspection sticker expires. Safety is a continuous process.

- ★ Mowing and other landscaping tasks also get into high gear during the spring. Inspect mowers, chain saws, weed eaters and other equipment to make sure safety equipment is properly installed, cutting blades are sharp and motors are tuned up. Sharp cutting edges and efficient power for the equipment actually makes it safer to operate.
- ★ Don't leave these safety principles at work. Take them home and help keep your family safe there, too. The same hazards that expose workers to heat related illness can also affect children and adults in hot and humid weather. Your personal vehicles and lawn equipment should also be kept in safe condition.
- ★ Call on your Fund Loss Control Consultant for help with developing strategies and programs for dealing with any of these Spring Safety Hazards.