

Risk Advisor



SUMMER 2019

Risk Management Considerations in Collaborations

The emergence of the Certified Community Behavioral Health Clinics (CCBHC) concept has Texas community centers moving quickly to qualify for inclusion in the program. The CCBHC concept seeks to combine mental health, substance use and physical health care in one place that is easily accessible to clients. The system also promises enhanced funding based on the increased costs of providing such comprehensive care that includes more immediate access to care in clinics that are fully staffed and available around the clock. The whole CCBHC concept is familiar in the context of what community centers have been doing for their clients for many years especially as part of the 1115 Transformation waiver process. It encourages collaborative efforts with other entities in the community to provide the full wrap around concept of service. As with any new service a community center offers, the risk management ramifications must be considered.

Critical issues during the consideration and planning for new services include, funding, staffing, facilities, necessity for the new service, population served, credentialing and how to operate. Sometimes overlooked until after a new service starts are risk management issues such as the safety of staff, clients and the public at the facility, security issues and the adequacy of the facilities for the proposed service.

A recommended set of security measures in addition to basic life safety measures for new facilities include:

- ★ interior and exterior cameras
- ★ door access by card or keypad
- ★ effective exterior lighting
- ★ buzz-in doors from lobby to treatment areas with escort
- ★ sensible separation of check-in staff in lobby
- ★ alarm and staff alerts

The best time to include risk and safety solutions is during the planning and construction phases. Life safety issues should be addressed by the architect and contractor if extensive construction or remodeling is involved. Safety devices like emergency lighting, exit signs, fire extinguishers, alarm systems, door security systems, security cameras and first aid stations need to be planned and in place when a new operation starts. A Pre-Construction Checklist is available from the Fund. Request one from Richard Wigzell at richard.wigzell@yorkrisk.com or check the Resources page on the www.tcrmf.org website. Another security resource is the Spring 2019 Risk Advisor article “Checklist of Security Practices for Community Centers in Texas” also available on the Fund’s website.

Other fundamental risk management measures are in the risk transfer provisions of contracts with collaborating partners or service providers associated with the new operation. Center contracts should contain indemnification provisions that transfer risk from the center to the service provider, when possible. The contract should also contain insurance requirements that will pay for the provider’s assumption of liability. These provisions are in the service provider’s general liability insurance policy covering contracts that contain indemnification clauses.

Another type of agreement in use in collaborative arrangements is an MOU or Memorandum of Understanding. These are often not much more than a letter agreement stating what the areas of cooperation will be and designating who will do what. They are often entered with incomplete understandings of what each party will or can do. One of the areas of misunderstanding is a collaborator’s expectation that a community center can provide patient information on its clients. Some schools and law enforcement agencies do not understand the absolute restrictions imposed by the Health Insurance Portability and Accountability Act (HIPAA). The best way to gain release of protected information is with the client’s consent.

continued on page 2

Another issue is which entity will provide insurance coverage for the new partnership. This can become a problem when one party is a public entity and the other is a non-profit or private corporation. Community centers are protected by sovereign immunities and the limits of the Texas Tort Claims Act. Non-profits and private corporations have no such protections. Will the center's participation pierce its legal protections? Are the contemplated operations in the collaboration so different from the center's normal operations that it loses its immunity as the local mental health authority? These are questions that should be resolved by legal counsel before entering a collaborative arrangement governed by an MOU or other agreement related to the CCBHC.

A potentially significant restriction on insurance coverage for the community center is that the Fund's liability coverage document does not grant automatic coverage for joint ventures between the center and other entities. In order for the Fund to assume coverage for the new operation, it has to review and underwrite the new exposures that may be outside the normal operations of the center. The "Definitions" section in the coverage document states:

U. JOINT VENTURE means a relationship by which the member and one or more other persons, organizations or legal entities combine their labor, property or resources for mutual benefit in a single undertaking for either a definite period or on a continuing basis as set forth in a written agreement.

Then the "Exclusions" section of the coverage document excludes

N. the liability of the member or any covered party arising out of its activities or participation in a joint venture unless:

1. *disclosed in the application for coverage for the applicable trust year; or*
2. *if commenced during the trust year, reported to the Trust within thirty (30) days of the joint venture's commencement and the appropriate additional contribution paid to the Trust;*

then coverage shall apply to the member.

Consideration of these issues is part of the risk management analysis of the new venture or operation. If the collaboration is entered without giving the Fund notice, the center is going without coverage and its risk could be enormous. Another part of this issue is the insurance coverage of the collaborating partner. Most general liability policies through standard

market insurance companies also include restrictions on joint ventures. Do not enter collaborations or sign an MOU without consideration of the risk ramifications to the community center.

Another set of issues arise if the joint venture decides to purchase property, equipment or vehicles. Some risk issues need to be dealt with like insurance for the property and the liability associated with it. For owned buildings, operational considerations like maintenance, taxes and repairs also need to be handled. Vehicles can raise even thornier issues about driving records and insurance for the vehicles.

Collaborations can be a very effective way to provide services, extend the reach of the center into the community and secure additional funding. However, if the risks associated with the collaboration are not considered and controlled, all the good will and beneficial effects of the effort can evaporate rather quickly. Use the risk management resources and risk control consultants of the Fund when the center is beginning the process of thinking about entering collaborative arrangements.

The Risk Managers Advisory Committee will re-visit this topic in detail with a **Collaborations workshop on October 18, 2019**, at the Renaissance Austin Hotel at the Arboretum in Austin. The workshop will explore risk management, contract, insurance, collaborator's expectations, funding and other issues with center leaders, attorneys and HHSC staff. Watch for additional information in the workshop flyer.

Summer Heat

Most center employees take advantage of air conditioning during the long, hot Texas summers. However, some employees and clients can be exposed to the heat during outside work for TXDOT contracts, community employment, field trips or recreational activities at parks. As a reminder and refresher about heat injuries, prevention and treatment the following updated article from the Spring 2016 Risk Advisor is presented.

Hot Weather Precautions

We often worry about the effect of hot weather on employees and take precautions to prevent heat related illness. The same precautions should be taken for our clients who may be out in the heat for field trips to parks or other outdoor activities. If possible, these outings should be scheduled early in the day or late in the afternoon when the heat is not so bad. Leaders should monitor the "heat index" which

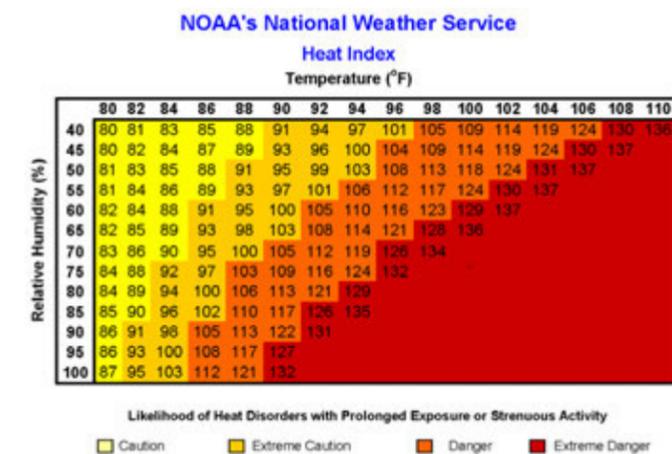
combines the effects of temperature and humidity to create a measure of discomfort. When it is high, consideration should be given to re-scheduling an outing or finding an alternative indoor venue. Other precautions include:

- ✪ replacing lost salt and minerals with sport drinks
- ✪ avoiding extremely cold drinks that can cause stomach cramps
- ✪ don't wait until you are thirsty to drink
- ✪ avoid alcoholic or sugary drinks as these actually work against hydration
- ✪ employees should consult their doctors about working in extreme heat if they are diabetic, overweight, have high blood pressure or other chronic conditions
- ✪ use sunscreen and wear protective clothing such as long sleeve shirts and wide brimmed hats

The National Weather Service chart below indicates the temperature a person feels when temperature and humidity are at the values shown in the axis labels of the chart. The higher the humidity, the lower the temperature it takes to create dangerous heat conditions.

If an outing is not re-scheduled make sure that clients and employees have plenty of water and cool drinks, have a place to get out of the direct sun and are carefully monitored by staff for any signs of heat illness. Be especially aware of signs of confusion or loss of consciousness.

Staff should also be trained in the symptoms of heat illness and first aid measures if someone begins to suffer from the heat.





Board of Trustees

Mary Lou Flynn–DuPart, Chair
Gulf Coast Center

Gus Harris, Vice–Chair
Spindletop Services

Steve Hipes
Gulf Bend Center

John Jackson
Nueces Center for Mental Health and Intellectual Disabilities

Rita Johnston
Betty Hardwick Center

LaDoyce Lambert
Permia Care

Judge Dorothy Morgan
MHMR Authority of Brazos Valley

Hartley Sappington
Bluebonnet Trails Community Services

Judge Van York
West Texas Centers

Risk Advisor
Volume 30, Number 4

Published quarterly by the Texas Council Risk Management Fund. Questions, comments, criticism, suggestions and news are welcome and encouraged. Every effort is made to insure the accuracy of the information published in Risk Advisor. Opinions on financial, fiscal, legal and risk management matters are those of the editors. Consult your own professional counsel before taking any action or decision based on this material. The Fund administrator is York Risk Services Group at 800–580-6467.



Common heat related illnesses, their symptoms and basic first aid include the following:

- ✦ 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:
 - ✦ hot, dry skin or profuse sweating
 - ✦ hallucinations
 - ✦ chills
 - ✦ throbbing headache
 - ✦ high body temperature
 - ✦ confusion or dizziness
 - ✦ slurred speech

First Aid for Heat Stroke: **1st call 911**, move the person out of the heat and direct sunlight and begin cooling by soaking clothes with water or spraying, sponging or showering them with water and fanning their body.

- ✦ **Heat Exhaustion** is the body's response to excessive loss of water and salt through sweating. Older people and those with high blood pressure are more susceptible to heat exhaustion. Symptoms include:

- ✦ heavy sweating
- ✦ extreme weakness or fatigue
- ✦ confusion or dizziness
- ✦ nausea
- ✦ clammy, moist skin
- ✦ pale or flushed complexion
- ✦ muscle cramps
- ✦ fast and shallow breathing

First aid for heat exhaustion includes moving the person to a cooler, preferably air conditioned space. Have them drink plenty of cool water or other non-alcoholic beverage and have them take a cool shower or bath. Monitor for worsening symptoms and be prepared to seek medical aid.

- ✦ **Heat cramps and heat syncope** are other heat related illnesses. Heat cramps usually occur in leg, arm or abdominal muscles and are the result of depleted salt content due to heavy sweating. First aid includes stopping all activity and moving to a cooler place, drinking clear liquids or a sports beverage to replace lost electrolytes and avoiding strenuous effort after the cramps subside. Heat syncope or fainting / dizziness may occur after rising suddenly from a sitting or squatting position or from standing for a long period. It is the result of dehydration or lack of acclimatization to a hot and humid climate. First aid is similar to that for heat cramps. In both cases, the person should be monitored for other



symptoms that may indicate onset of heat stroke or heat exhaustion.

Centers should train their employees to recognize signs of heat related illnesses and basic first aid measures. Although any worker may suffer from some of the symptoms of heat related illness, they are preventable and treatable before a life threatening condition arises. Train all staff to watch out for the signs and symptoms in each other and the clients under their care and to not be afraid to take action.

Sources: Centers for Disease Control & Prevention, "Tips for Preventing Heat-Related Illness." NOAA National Weather Service

Heat Stress Comes Inside

Community center lobbies and waiting areas should be monitored for people who may be suffering from heat related conditions when they come in. Some clients may have been outside for quite some time before they get to the center. They may have walked long distances in the heat. Be aware of the heat illness potential and make sure water is readily available and employees are ready to take first aid measures mentioned above.

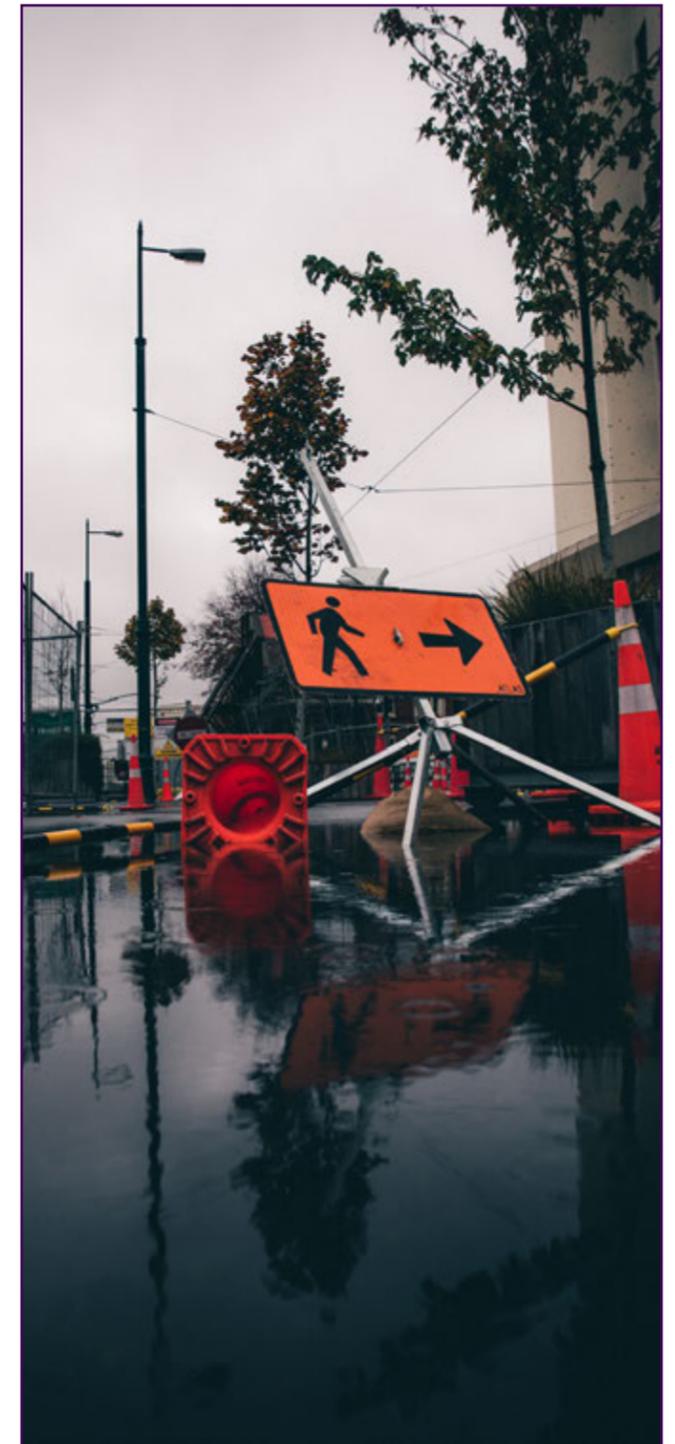
Flood Emergency Response Plan

In cooperation with FM Global, one of the Fund's reinsurance companies, the Fund Risk Control Consultants are developing a series of model emergency response plans. The first plan under development is the Flood Emergency Response Plan. It will have the following elements:

- ✦ Overview of the flood threat at specific locations and facilities. Flood elevations, presence in 100 year or 500 year flood plains and the names and locations of rivers, creeks or lakes that expose each facility to flood.
- ✦ A plan for monitoring the approach or development of flood conditions that threaten each location
- ✦ Recommended preparations before the flood and actions to take during the event
- ✦ Recovery measures and resumption of business after the flood including salvage, clean-up, repair and restoration of services
- ✦ Lists of contractors for various recovery jobs and those pre-contracted to provide equipment or supplies necessary to prepare for the flood and recover from it.

The plan will also provide guidelines for the safety of personnel who respond to the flood during preparation, monitoring the threat, during the event and during the recovery and resumption process.

Other templates for emergency response plans will also be developed as part of this process.



Claims Workshop

Every other year the Fund's Administrator conducts a Claims Workshop in conjunction with the Texas Water Conservation Association Risk Management Fund. This year's workshop is scheduled for September 20, 2019, at the Crowne Plaza Hotel in Austin. The program consists of topics related to the important principles of responding to and handling various kinds of claims. The agenda for the workshop will include:

★ Legislative Changes that Impact Your Programs

Robert Kamm, Jocelyn Dabeau, Pam Beachley, will review key changes from the 86th Legislative session. Recent Texas legislative changes that may impact Member claims, claims handling and possibly create more exposures to loss. The Fund's legislative consultants who monitor legislative matters related to property insurance, liability insurance and workers' compensation will present their findings and observations from the recent session.

★ Tort Claims Act – Litigation Landmines

Mr. Joel Geary, shareholder with Vincent, Serafino, Geary, Waddell and Jenevin, P.C., who recently won a Texas Supreme Court decision protecting the sovereign immunities of one of the Fund's Members will discuss the top five issues regarding liability claims, the importance of the Tort Claims Act and what Members can do to impact their claims.

★ Workers' Compensation Program: Is it covered? – Questions of Course and Scope

Mike Donovan, partner with Burns, Anderson, Jury & Brenner, L.L.P., a workers' compensation defense attorney who has handled Fund claims for years will discuss the intricacies of "course and scope" in establishing eligibility for workers' compensation claims.

★ Property Program: Conducting Motor Vehicle Accident Investigations and Best Practices Post Accident

Jeremy Wade, Loss Control Consultant, will review the key components of an effective motor vehicle accident investigation to help Members learn from the incident and prevent future accidents of the same type. Micheon Balmer, Director of Pool Management, will review the Post Accident Best Practices that Members should consider that may positively impact their claim's duration and costs.

★ Liability, Property and Workers' Compensation Programs: Ask the Fund

The ever popular Greg Womack, Program Executive, will answer (or try to answer) your questions about coverages, programs and claims related to the two Funds. Questions will be collected during the day for his response.

Who Should Attend

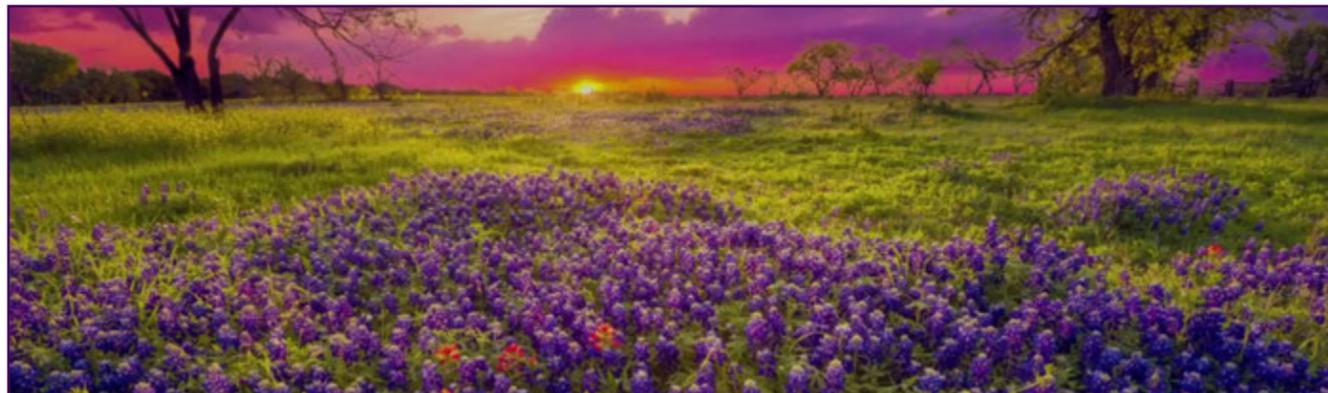
This workshop is designed for all Fund member personnel who handle claims and those who are accountable for claims handling employees. The workshops are open to Fund Members only. There is no cost to attend.

Schedule

The workshop begins at 8:30 and will adjourn at 3:00. Breakfast will be served at 7:30 and lunch will also be provided. There is no charge for attending this interesting workshop. Continuing Education credits will be available for some licenses.

Registration

Please pre-register at www.tcrmf.org so we can be sure to have enough handouts and food. If you have questions or need help with accommodations, please call Kathy Hulse at 800-580-6467, ext. 12420.



2019 Safety Seminars

The Fund is hosting, at no cost to its Members, a safety seminar to provide practical solutions to reduce accidents, injuries, and resulting losses. Safety is serious business for Texas community centers. This one-day seminar will cover current safety issues and provide guidance for managing your safety programs. Seminar topics include:

Claims Analysis

An in-depth review of the Fund's last five years of claims experience. We will identify the most common accident types and discuss effective ways Members can control their own claims costs. Specific connections between claims and center operations will be discussed.

Driving Safety

Motor vehicle accidents rank as one of the top three accident types within the Fund. Vehicle related claims are some of the most serious injuries facing center employees. We will discuss best practices employees can use to keep themselves, passengers and clients safe when in center vehicles or while using their own vehicle in center business.

Security and Threat Assessments

The ability to identify security deficiencies is an important first step to addressing potential safety hazards from threats and aggressive behavior. We will discuss different security measures that will help enhance security and keep employees and clients safe.

Field Safety

Employees who conduct business away from the office face ever changing safety concerns on a daily basis. In this presentation, we will discuss five aspects of visiting clients and how diligent employees manage their own safety while out in the field.

Strains, Sprains, and Ergonomics

Some of the most common and serious injuries are caused by not focusing on the relationship between what we do and how we do it. We will help bring clarity to this relationship in order to reduce sprain and strain types of injuries. The ergonomic conditions that contribute to these injuries will be examined with suggestions for preventing them.

Who Should Attend

This seminar is designed for all center personnel with safety responsibilities including safety or risk management staff, project managers, management, and supervisory staff. The workshops are open to Fund Members only. There is no cost to attend.

Locations for upcoming workshops:

- ★ October 2, 2019 – Fort Worth at MHMR Tarrant County

The workshops begin at 9:00 am. and end at 4:00 pm. Lunch and snacks will be served. If you have questions, please call Kathy Hulse at 800-580-6467, ext. 12420 or email at kathy.hulse@yorkrisk.com. Please pre-register at www.tcrmf.org so we will have plenty of food and handouts for everyone who attends.

**REGISTER ONLINE AT:
www.tcrmf.org**



A Hurricane Harvey Wrap-up

Hurricane Harvey roared ashore near Rockport, Texas on August 25, 2017, as a category 4 storm. It bedeviled Texas with record amounts of rain, winds, tornados and flooding for days and affected several Fund Members across eight counties. The following table shows what those effects were in terms of property damaged and claims paid. All of the totals are as of April 4, 2019.

Now Members face the current Hurricane season with predictions of several named and major storms impacting the US and Texas coast. Take this recap as an alert to be watchful of the Gulf and prepared to take action in the event of a tropical storm or hurricane headed your way. Fund Loss Control Consultants can help evaluate and update your emergency response plans as you prepare your center for the current season. Loss Control Consultants can

Hurricane Harvey Claims for TCRMF

Total Paid	\$ 1,232,323
Total Number of Claims	52
Property Claims	16
Auto Claims	36
Number of Members affected	6
Number of Counties	8

be reached at 1-800-580-6467. The recent Risk Alert sent during the first week of June about a potential tropical disturbance in the Gulf of Mexico was good notice to prepare. Although the “storm” was never named it did bring very heavy rains to areas around Houston. Take the time to be prepared.

