



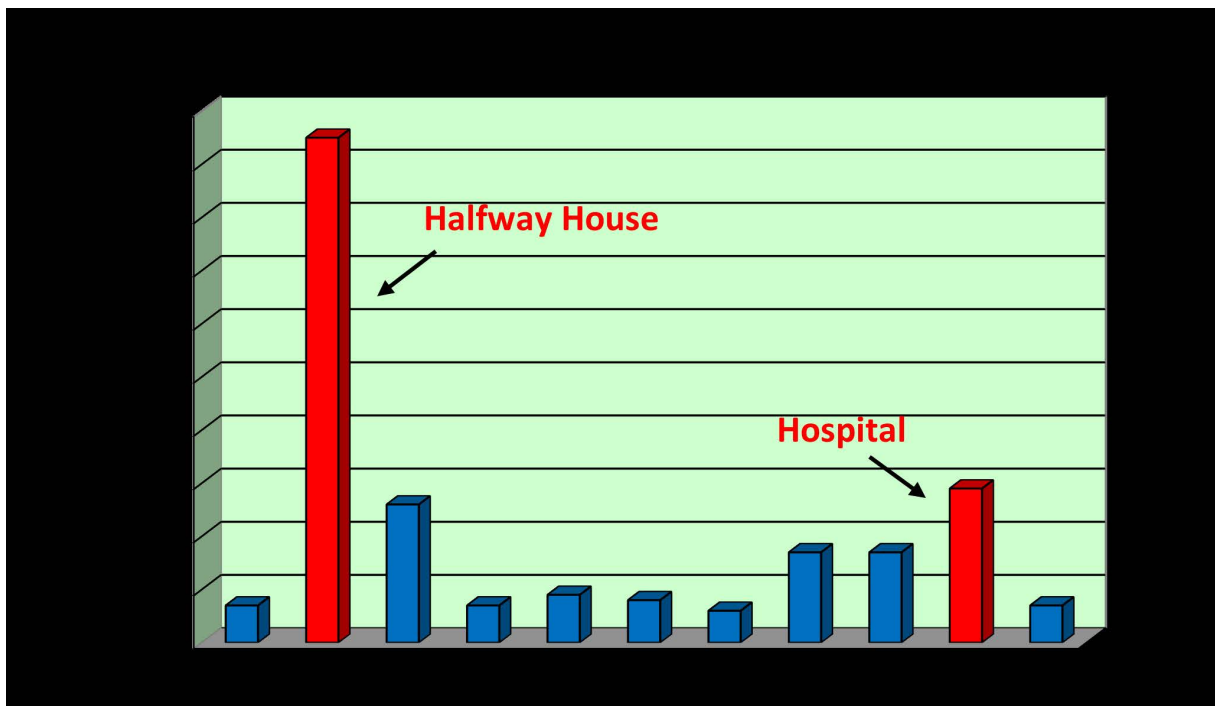






would not include an indemnification agreement so any damage or injury that might occur would be the Center's responsibility. In one case, a very common service provider was running a mental health clinic for a Fund member. A very unstable client came in the clinic and threatened people with a knife. During the attempt to gain control of this person he cut himself and sprayed blood all over the clinic waiting area. When the Center tried to get the vendor to pay for the cleaning and repairs the claim was denied because there was no indemnification agreement in the contract. The Center had to pay several thousand dollars to clean and repair walls, furniture, and replace carpet. The Fund issued a Risk Alert to all members about the use of hold harmless and indemnification agreements in contracts. Continued education about contracts and the development and use of standardized contracts containing language to protect the Center has almost eliminated the contract that only protects the vendor. The lesson learned about contracts is that if the Center is paying someone to do work for them then they can usually dictate the terms of the contract including indemnification and hold harmless agreements that favor the Center.

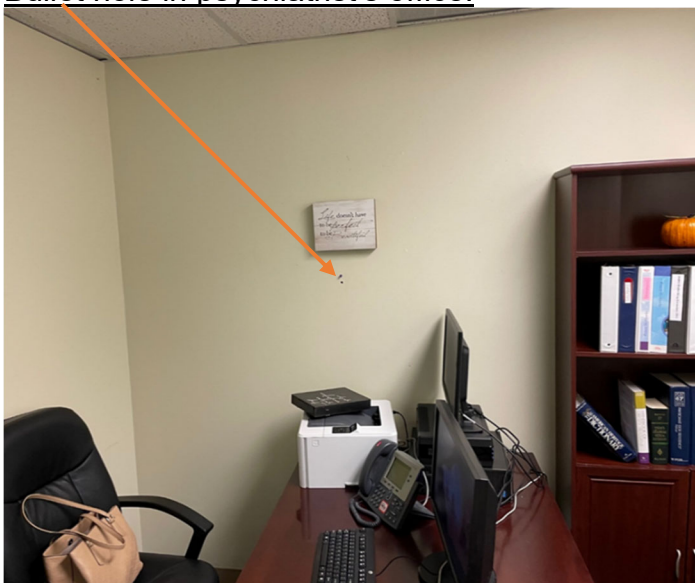
As mentioned in the first part of this article, one of the objectives of risk management is learn about the sources of risk and how to deal with them. An important tool in this process is the use of data. When visiting a Center several years ago a concern arose about "med errors." The Center operated a mental health hospital and that facility seemed like the most likely place to have a med error problem. However, when two years of data by location was charted, a surprise emerged from the data. The hospital had far fewer errors than the halfway house facility where clients were in charge of self-medicating under nurse supervision. The Center was able to take immediate action to remedy the situation and at the same time learned that the practices and protocols at the hospital were effective. Metrics can expose the good and the bad, but both allow the Center to better manage risk.



As part of the decision-making process regarding risk, Centers use cost of risk to help measure the effectiveness of risk management efforts. Cost of risk includes contributions paid to the Fund, deductibles, loss of use of vehicles or facilities due to claims and repairs, use of replacement facilities, or services to continue operations, time cost dealing with risk, and amounts spent to mitigate or avoid losses. One way the Fund expends money to mitigate loss is through attorneys appealing court judgments against Centers. Matters to be appealed usually involve local courts and attorneys not understanding the provisions of sovereign immunity and the Texas Tort Claims Act which limits amounts that community centers can pay due to their own fault. A recent example that the Fund appealed all the way to the Texas Supreme Court involved a local judgement against a Fund member that tried to circumvent the tort limits applicable to community centers. The local court imposed an award far more than the law allowed by categorizing the Center as a municipality which has higher tort claim limits. Although the Center was at fault, sympathy cannot trump Texas law or the Texas Constitution. The Texas Supreme Court ruled for the Center and public entities all across the state breathed a sigh of relief. Although the appeal cost several thousand dollars, the Fund saved more than that in claim payments and public entities all over Texas could have saved millions if a bad precedent had been set breaching tort limits. The funds spent for the appeal mitigated the potential cost by preventing a judicial breach of tort claims limits.

One important and devastating cost of risk is the potential for loss of a human life. Although the Fund has only experienced a few fatalities from automobile accidents there was a recent near miss from a gunshot. Death is a very heavy price to pay for a risk event, especially one that might have been prevented. The photo below displays a bullet hole that went into the wall where the Center's psychiatrist had been. When the client displayed a gun from under his sleeve the psychiatrist jumped up from his chair, ducked, and ran past the client and out of the office. The client chased him out of the clinic entrance and fired another shot.

Bullet hole in psychiatrist's office:



*Photo by TCRMF staff*

Many difficult lessons were learned from this event especially when the client came back into the clinic and tried to open doors where staff were sheltering. Fortunately, no one was physically injured by this attempted assault. What was the risk management lesson here?

The client had recently been released from prison where he served a twenty-year sentence for trying to kill a Center psychiatrist. The lesson is that if there is a history of violence this must be documented in the client's file, and everyone involved in his or her treatment should be aware of the history and take necessary precautions. The file should be flagged and reviewed on a periodic basis for any behavioral or medication changes that might precede new episodes of violence.

One aspect of every claim the Center deals with is that something is learned that may help prevent future claims. Fund Loss Control and Risk Management Consultants will help you analyze claim data to determine causes that may lead to effective prevention efforts. Consult the claim data that you receive monthly for trends and patterns that indicate where action can be taken. Effective risk management requires that we learn from the successes and the failures to better protect clients, the public, our staff, and the Center.