



**Michigan
Public Risk
Management
Association**

June 2010

Michigan PRIMA



The Public Risk Management Association promotes effective risk management in the public interest as an essential component of public administration.

CALENDAR OF EVENTS

Stay informed on the latest national and local events.

Conference

MIPRIMA Summer Conference
August 12-13
Kalamazoo Radisson

Educational Resources

**American Institute for CPCU and
Insurance Institute of America**
www.aicpcu.org

**Lawrence Technological University
Professional Development Center**
Insurance Studies
http://ltu.edu/pdc/insurance_studies.asp

PRIMA Institute

www.primacentral.org

Public Entity Risk Institute (PERI)
E-Training Center
www.riskinstitute.org

**Risk and Insurance Management
Society (RIMS) – Education**
www.rims.org

OTHER USEFUL RESOURCES

AM Best Rating Center
www.ambest.com/ratings

**Dept. of Treasury's Listing of
Approved Sureties**
www.fms.treas.gov/c570/c570.html

**Michigan Office of Finance and
Insurance Services Search Criteria for
Insurance Entities**
www.cis.state.mi.us/fis/ind_srch/ins_comp/insurance_company/criteria.asp

**Michigan BWDC Employer Insurance
Coverage Inquiry
Current Workers Comp Insurance
Coverage Lookup**
www.cis.state.mi.us/bwuc/wkrcomp/asp/sr_bwdc.asp

Risk Management Library
www.BetterManagement.com

Library and Resource Directory
www.IRMI.com

President's Message



*Stephen
Cooperrider*

The Health Care Reform Act is upon us. What will be its impact? What are we supposed to do as Risk Managers, Benefit Administrators, HR Directors, Finance Directors, etc? I'll tell you. Get busy! The Act is creating a lot of turmoil because no one is quite sure how to interpret all the regulations. Even those who wrote and passed this law cannot give you a straight answer. Article after article that I have read offer various interpretations regarding the law. For example, employers who provide prescription plans equal to Medicare Part D would see a tax break erode starting in 2013. But wait, how does this affect us as municipalities since we are tax exempt? Another example, flexible spending accounts would be capped at \$2,500. Hummm...maximum pretax dollar contributions employees can make to their account. How does the employer shift health care costs to employees, if employees are capped at what they can put in their account? Here is another, the law establishes a national voluntary long-term care insurance program. It's the law, but it's voluntary? It's another conundrum to say the least. There is obviously a lot more to each of these examples, but alas I lack the space. Well, there is nothing you can do about it except get busy. We all have a lot to learn about the new law. We cannot sit around and grouse about it. This is another opportunity to prove your worth to your organization. As Abraham Lincoln once said, "The best thing about the future is that it only comes one day at a time."

The Summer Conference is coming in August. The City of Kalamazoo and surrounding area are very nice. I spent my college years there some time ago. Visit the Air Zoo (real cool), Kalamazoo Institute of Art (there is an art show Thursday and Friday), Kalamazoo Valley Museum, etc. Downtown is also a great place to visit and shop. Just park and walk. You can visit the campus of any one of five colleges in K-Zoo if you are looking for a place to send your high school graduate. I hope you are planning to attend, you'll find a reservation form in this issue. The Program Committee has put together an excellent group of speakers. Judy T-T and our own PRIMA Donna do an awesome job putting all our programs together each year. This will be another thought provoking, subject timely, and important topic program for all of us. As an added bonus we get to network with our fellow practitioners.

The Website Committee is moving along in their quest to build a MIPRIMA website. There is an update in this issue of the newsletter from our illustrious Committee Chair, Christine Underwood, City of Birmingham.

Continued...



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Continued...

MIPRIMA is here to promote risk management, and to help you be more effective in your job. I hope to see you all very soon at our annual summer conference in Kalamazoo.

Stephen L. Cooperrider
MIPRIMA President

Save the Date

MIPRIMA Fall Conference
November 4, 2010
Speakers to be Announced
St. John's Golf & Conference Center
Plymouth, MI

Website Development Committee Report

Christine Underwood, Website Committee Chair

The Committee's Request for Proposals for website software were mailed to nine companies in late March. Responses were received from three companies by the April 30 deadline. The committee reviewed the three responses, and selected two of the three to demonstrate their products on June 3. The committee intends to prepare and submit a recommendation to the MIPRIMA Board at its next meeting. If the Board approves the committee's recommendation, it is anticipated that the site and its various features and functionalities will be up and running in approximately 8 weeks. Stay tuned!

2010 Membership Achievement Award

Leigh Stepaniak, Membership Award Committee

Congratulations to Shirley Priskorn, Workers' Compensation and Disability Manager for Wayne County Government for winning the 2010 Membership Achievement Award. Shirley's submission was a creative Return to Work Program. She was able to create a "restricted work" department that would enable Wayne County to return injured employees to work in a bona fide work assignment. This program will be used in returning employees with temporary and permanent restrictions to full time employment. This was a well thought out approach to reduce overall claim and litigation costs and settlements. The ultimate benefit is the job security she has provided to the injured workers while providing productivity to Wayne County. Shirley will be at our summer education conference in Kalamazoo and will be one of our speakers providing you with the details!

MIPRIMA will be asking for your participation in the 2011 Membership Achievement Award Program. We know you have great cost and time saving programs and ideas. Please share them with our members and be rewarded for your success!

Michigan Public Risk Management Association 2010 Summer Educational Program

Thursday, August 12 and Friday, August 13, 2010

Radisson Plaza Hotel & Suites ♦ 100 W. Michigan Avenue ♦ Kalamazoo, MI 49007 ♦ Phone: 269-343-3333 ♦ Fax: 269-381-1560
(For hotel reservations at the Radisson, please indicate that you are a MIPRIMA conference attendee.)

Thursday, August 12, 2010

8:00 – 9:00 REGISTRATION & FULL BUFFET BREAKFAST

9:00 – 9:15 Opening Remarks

Stephen Cooperrider, MIPRIMA President

9:15 – 10:45 Violence in the Workplace

Marshall S. Johnson,
Senior Vice President
Marsh Risk Consulting Practice

10:45 – 11:00 BREAK

11:00 – 12:00 Employee Theft

S. Randall Field
Johnson, Rosati, LaBarge,
Aseityne & Field, P.C.

12:00 – 1:00 LUNCH

1:00 – 2:00 Liability Case Law Update

Paul Pedersen
Pedersen, Keenan, King,
Wachsberg & Andrzejak, P.C.

2:00 – 6:00 AFTERNOON ACTIVITIES

2:30 Best Ball Scramble 9-Hole Golf at THE PRAIRIES (or) Free Time*
(Golf includes cart, beverage & prizes)

6:30 PRESIDENT'S RECEPTION & DINNER

Friday, August 13, 2010

8:00 – 9:00 FULL BUFFET BREAKFAST

9:00 – 10:30 Creative Vocational Alternatives and Return to Work Programs in a Difficult Economy (Panel)

Connie Jo See, Claims Supervisor
Meadowbrook Insurance Group

Harold Scott, RN, CCM,
Rehabilitation Consultant
ReviewWorks

Kimberly Warner, MA, CRC, LPC, MSCC –
Vocational Regional Manager, *Brown Rehab and Review Management*

10:30 – 10:45 BREAK

10:45 – 11:45 Workers' Comp Claims Update (including the impact of U.S. v. Strickler)

Denice LeVasseur
LeVasseur & LeVasseur, P.C.

11:45 BOX LUNCH



Radisson Website provides additional directions

MIPRIMA 2010

Summer Educational Program Registration

Please Return by July 30, 2010

Name _____
Title _____
Organization _____
Address _____
City _____ State _____ Zip _____ Tel _____
Email Address: _____

Be sure to check meals you plan on attending:

Breakfast Thursday ♦♦ Lunch Thursday
♦♦ Dinner Thursday
Breakfast Friday ♦♦ Lunch Friday

One Registration Form Per Attendee, please. You must RSVP for guests and pay \$50 for their meals. (Guests are invited to meals only)

Registration Fee: (Registered No Shows charged!)

Public Entity-- MIPRIMA Member -- \$75

Public Entity -- Not a MIPRIMA Member -- \$100

Not a Public Entity -- MIPRIMA Member -- \$100

Not a Public Entity -- Not a Member -- \$220

Name(s) of Person(s) Playing Golf () _____

_____ @ \$45 each
for golf (Send a Separate Check for Golf to MIPRIMA Secretary)

NOTE: You will be charged if you register but do not attend unless cancellation is received by July 30.

Please enclose payment payable to MIPRIMA and return to:

Chris Underwood
MIPRIMA Secretary/
Finance Assistant
City of Birmingham
PO Box 3001
Birmingham, MI 48012-3001
Phone: 248-530-1822
Fax: 248-530-1082

2010 Spring Educational Program

Paul VanDamme, Trustee from City of Roseville

The MIPRIMA 2010 spring educational program was held at the East Lansing Marriott at University Place on March 25, 2010.

President Stephen Cooperrider started the program with his welcoming remarks and introduction of Mark J. Upfal, MD, MPH, Corporate Medical Director DMC Occupational Health Services.

Doctor Upfal's presentation on medical marijuana and the workplace is a new and unfamiliar topic that employers will have to accommodate under the Michigan Medical Marijuana Act. He discussed that cannabinoid comes in the form of herbal marijuana, pill and mouth spray. They can all be used for many qualifying diseases such as: cancer, HIV, Glaucoma, Hepatitis C, Alzheimer's and Nail Patella Syndrome. Recent studies support that medical marijuana may be effective for some who don't respond to standard treatments. Like any medical treatment marijuana has short and long term adverse effects.

Doctor Upfal concluded his presentation with impairment – Section 7 (b) Prohibitions while "under the influence." This addresses operating a vehicle and performing tasks of negligent or professional malpractice. Also under Section 7 part (c) there is no requirement that an employer accommodate workplace use. If an employer does accommodate marijuana use then they should consider fitness for duty, costs for health plans and drug testing.

The next speaker was Anne McClorey McLaughlin Attorney and Counselor at Law for Cummings,

McClorey, Davis and Acho. Her presentation focused on the Michigan Medical Marijuana Act Initiated Law 1 of 2008 and Administrative rules effective April 4, 2009. The act describes who is a qualifying patient and issuance of their registry identification card. The act dictates the amount of marijuana a qualified patient may have in his/her possession, the scope of activities, tasks and public areas where it's not permitted to engage in the medical use of marijuana. The scope of the act does not require an employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana. Attorney McLaughlin ended with stating the Controlled Substances Act under federal law still defines marijuana as a Schedule I hallucinogen and employers should have a clear, written policy on medical marijuana.

The last speaker of the morning was Bernie Cybulski, Executive Board member of the Detroit Police Officers Association (DPOA). He discussed how the DPOA and the City of Detroit are working together with developing policy and procedures for medical marijuana in the workplace. This is an ongoing negotiating process between the City and the association.

Jerome Konal and Nicole Mitchell of Mercer started their presentation with the company's 2009 Employer Sponsored Health Plan survey results. This is the oldest survey of its kind marking 24 years of measuring health plan trends with 3,000 employers participating in 2009.

Based on the 2009 survey, cost increases remained stable at 5.5% for health benefits despite the fear of a spike in utilization. The survey showed that Michigan

Continued...

Thank You to Our Sponsors



employers tend to have more generous employee cost-sharing requirements for PPO.

The forecast for Michigan for 2010 is for employers to shift more health care costs to employees by raising deductibles and copays and increase out-of-pocket maximums and other cost sharing features. This is a trend that will align Michigan's health care costs to the national average.

The second part of the presentation was a discussion on the key employer health care reform elements. The Patient Protection and Affordable Care Act, passed March 21, 2010 by Congress and signed into law by President Obama March 23, 2010 and the Health Care and Education Reconciliation Act of 2010, passed by the House on March 21, 2010 and sent to the Senate.

These Acts address the employers mandated and shared responsibility, individual coverage mandates, health plan standards, tax changes and fee and exchanges. For more detailed information on this legislation visit Mercer's website at www.mercer.com/webcasts.htm?siteLanguage=100 for already recorded webcasts.

The last session of the day was an update on The Use of Tasers and Sudden Death, presented by Audrey Forbush, LEAF Legal Advisor, Plunkett Cooney PC and Gene King, LEAF Coordinator, MML Loss Control Services. Attorney Forbush discussed the reasons for the design of the taser as a weapon. This includes: incidents resolved with least force possible, reduced officer injuries, reduced governmental liability and the toll on officers who have to take a life.

Attorney Forbush also discussed legal rulings regarding taser use of force and why it is important for police departments to have internal strategies, policies and training in place for the use of tasers.

Mr. King ended the session on why it is important for officers to be trained in the use of tasers and how to handle suspects in the state of excited delirium (acute agitation psychosis due to illicit stimulant intoxication). He also stated law enforcement should have goals for encountering exited delirium and be knowledgeable with taser training bulletin 15.0 on firing a taser.

Mr. King concluded with a discussion on the Open Carry in Michigan. It is legal for a person to carry a fully exposed firearm in Michigan under the law (MCL 750.234F). It is also allowed in the United States Constitution under the Second Amendment. Mr. King suggested tactics for training and review of ordinances for officers and management to deal with the increasing amount of citizens carrying fully exposed firearms.

2010 Scholarship Award Winners

Jerry Ragsdale

The following students received **\$2,000 MIPRIMA 9-11 Memorial Scholarships**:

- **Megan Ward** – Megan attends Olivet College and has a 3.91 GPA. She is majoring in Insurance and Risk Management. She is active in the Olivet's Chapter of Gamma Iota Sigma and she is on the President's List and Dean's List.
- **Timothy Puffer II** – Tim attends Olivet College and has a 3.2 GPA. He is majoring in Insurance and Risk Management. He is active in Olivet's Chapter of Gamma Iota Sigma and has received the Outstanding Member of the Year Award and is on the Dean's List. He also works at the State Farm Insurance Agency in Jackson Michigan.
- **Linda Jaboro** – Linda attends Oakland University and has a 3.34 GPA. She is in the Master of Public Administration program. She currently works in the Clarkston School System as a Communications and Marketing Coordinator. She is interested in entering the Risk Management field in the public sector.

The following students received **\$2,000 Donald Althoff Memorial Scholarships**:

- **Kathleen Maddocks** – Kathleen attends Oakland University and has a 3.6 GPA. She is in the Master of Public Administration Program. She has worked as an intern in the office of Senator Carl Levin as an intern research assistant at Oakland University and as an intern Grant writer with The Community House in Birmingham, MI.
- **Robert Bridson II** – Robert attends Oakland University and has a 3.82 GPA. He is in the Master of Public Administration program. He is Treasurer of the Sociology Club; He works at the Oakland County Friend of The Court and as a System Support Clerk and has been a research assistant in the Oakland County Health Division.
- **Mollie Delano** – Mollie received her Associate Degree from Delta College and will be attending Ferris State University this fall. She will be majoring in Criminal Justice. She has worked in the Rieman & Reyes Law Firm as a Secretary and at the Bay County Community Center.
- **Jason Novess, AIS** – Jason attends Olivet College and has a 3.46 GPA. He is majoring in Insurance and Risk Management. He has received the Olivet College Outstanding Freshman Leadership Award; Gamma Iota Sigma Breakout Freshman of the Year Award and has been active in baseball and football. He works in the State Farm Lisa Sands Agency in Marshall, Michigan.

Donald P. Althoff Scholarship Golf Outing

Stephen Cooperrider DPA Scholarship Golf Outing Chair

While wearing the hat as Chair of the 8th Annual MIPRIMA Donald P. Althoff Scholarship Golf Outing Committee I was pleasantly surprised at the level of participation this year, 124 golfers. The event was held Wednesday, June 16th. The weather was beautiful and all had a great time. I want to give you all a great big THANK YOU (Sponsors and Golfers) for stepping up to help out others feeling the pinch in these economic times. You are not only helping the students, but their families as well.



Golf Sponsors included:

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- The Accident Fund of Michigan
- O'Connor, DeGrazia, Tamm & O'Connor, P.C.
- Plunkett Cooney, P.C.

Congratulations to our scholarship recipients:

- Kathleen Maddocks – Oakland University
- Robert Bridson II – Oakland University
- Mollie Delano – Ferris State University
- Jason Novess – Olivet College



Mrs. Althoff and Tom Wolff



*Mary Beth Butala, Andy Alvey, Alice Alvey, Andy Alvey, Jr
Althoff Family*



Keith Potter; Lorraine Zurenko; Bill O'Keefe; Larry Doyle

The views set forth below are those of Allen G. Lux, Sr Vice President of GlobalOptions, Inc. and do not necessarily represent the view of MIPRIMA.

Fighting Internal Crime Before It Happens

Allen G. Lux, Sr. Vice President GlobalOptions Inc.

The statistics are staggering:

- Half of all job applicants misrepresent their credentials.
- Of that half, 53 percent falsify their length of employment, 51 percent inflate their past salaries, 45 percent lie about their criminal records, 44 percent misrepresent their former job and titles, and 35 percent falsely identify their former employers.
- One-third of all bankruptcies are caused by employee theft. Employee theft accounts for more than 44 percent of annual retail losses.
- Approximately 70 percent of computer hacks come from within a company.



Allen G. Lux

Clearly, businesses no longer can feel comfortable within their own walls. Some of the most potentially crippling crimes against an enterprise are generated by the organization's own employees. We have met the enemy, and he is us.

It is not just the large businesses that suffer. Studies show that small businesses endure the same rate of loss through employee crime as large corporations.

To wage a battle against the enemy, it is necessary first to identify the enemy. Companies can undertake the identification process by using candidate background screenings prior to hiring. Skillful, well-trained screeners can pinpoint job candidates who present a greater-than-average risk to the company. Violent behavior, occupational fraud and abuse generally are not isolated incidents. Perpetrators of in-house crime display patterns of behavior that often can be detected by background screening.

Red Flags

Professional background screeners work with a script when interviewing job candidates. The script is based on years of research into the types of behaviors and attitudes employee-criminals convey and the questions the screeners ask are carefully worded to encourage the candidates to reveal those behaviors and attitudes. Generally speaking, the screeners are looking for these types of characteristics:

- Irregular work history-Several jobs within a short period of time, with questionable reasons for leaving; long periods of unemployment
- Dishonesty-Misrepresentations in factual categories, such as education, licensure or previous employment
- Character/attitude problems-Poor relationships with coworkers and/or supervisors
- Expensive habits-For example, use of drugs or overindulgence in gambling, which may place the employee under financial strain

Different types of troubled employees tend to display differing characteristics. Those who engage in cyber crime often are introverted, and may not openly display hostility toward employer policies. (A good reason to ensure a strong firewall is in place!) Disgruntled employees-those who might explode into violence in the workplace-feel cheated or wronged somehow, leading to a "get even" mentality. They believe the world, or at least the employer, "owes" them for a wrong done to them in the past.

2010

MIPRIMA Committees

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Chair: Judy Thomson-Torosian
Program Coordinator: Donna Ciancolo
Leigh Stepaniak
Cheryl Smith

Legislative

Chair: Mike Ellis
Christopher Johnson
Craig Noland
T. Joseph Seward
Rick Hensley
William Reising

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Chair: Leigh Stepaniak
Rick Hensley
Paul Van Damme

Scholarship

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Donna Ciancolo
Michael Ellis
Chuck Schwab
Tom Wolff
Leigh Stepaniak
Judy Thomson-Torosian

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Chair: Tammy Richison
Cheryl Smith
Andrea Smutz (*photographer*)
Louise Duchesneau (*editor*)
Fred Hill
Phil Van Dyke
Chris Underwood

Web Site Development

Chair: Chris Underwood
Stephen Cooperrider
Rick Hensley
Jerry Ragsdale



The views set forth below are those of Robert A. Bartlett, Vice President, Review Works and do not necessarily represent the view of MIPRIMA.

Medical Cost Containment WHAT ARE YOU FORFEITING?

Robert A. Bartlett, Vice President, ReviewWorks

Medical costs now engulf 56% of the total cost of the average Workers' Compensation case; sure the Michigan Workers Compensation Fee Schedule will save you money but the fact is what you DID NOT save is costing you the most money.

In these days of shrinking revenue bases employers and municipalities can not afford to leave sometimes as much as 20-25% of un-owed medical expenses un-noticed.

As the Michigan Fee Schedule has matured over the past 20 years, so have medical billing and coding guidelines, Hospitals and Providers employ legions of professional coders and billers to assure they maximize their reimbursements

Self insured employers and Municipalities often overlook a viable source of substantial hard dollar savings. Although a minor part of Risk Management program as a whole, the difference between a basic fee schedule program and a focused, stratified program can equate to hundreds of thousands of dollars and many times millions of dollars. These savings represent REAL DOLLARS that are retained rather than being paid out in medical costs.

If Worker's Compensation and/or Automobile Liability are included in an insured or self-insured program, it is well worth the time to investigate the savings achieved by an integrated medical bill review program as part of or as an adjunct to your existing claims processing.

Michigan implemented a fee schedule in 1989 and has embraced the use of Reasonable and Customary review in Auto Liability for injuries that occur as a result of Worker's Compensation, Auto or Liability claims. These fee checking legislative actions have proven to save employers and municipalities significant claims costs, however when used as a stand alone process and as a single source of cost containment the resultant savings are minimal in comparison to what could be achieved with a more focused and stratified approach

Professional Review

Since medicine and medical billing are not an exact science, neither is the review of the same. The utilization of a simple fee checking system captures only a small portion of the savings. Basic fee checking systems do not and cannot evaluate provider billings for a host of intricate treatment complexities and medical billing.

- Treatment relationship to injury
- Intensity of treatment

- Utilization of services
- Appropriate duration of services
- Unbundled services
- Appropriate bed days
- Appropriate level of treatment and/or place of service
- Treatment billed but undelivered or undocumented

Almost 50% of medical billings submitted contain one or more these billing issues. Finding them takes extensive training and experience.

Professional review conducted by experienced medical bill reviewers and peer review physicians is the one component many cost containment programs are lacking or woefully underutilize. Yet it is professional review that consistently produces the greatest savings, frequently upwards of 40-50% of the entire savings available. Quite frankly without it you forfeit these valuable savings and voluntarily overpay providers from already over stressed budgets.

Gone are the days when medical cost containment included only the auditing of complicated large exposure medical treatments or large hospital bills. While having these bills audited by trained medical staff may generate substantial reductions, the savings generated from "smaller, routine" bills can easily equal and exceed that of the large medical bills, substantially limiting your liability, and reducing your claims costs.

Preferred Provider Organizations (PPO)

Utilization of a PPO network, or multiple networks is critical in maximizing your savings. It is important to evaluate and conduct an analysis of PPO Network availability by state and employee population as a one size fits all scenario will achieve savings but will not maximize your savings.

Many employers and municipalities are not aware what level of savings their cost containment programs are achieving (if any) and frequently assume it is part of their claims administration program. What they do not see are the potential savings lost and only what is saved under the current program. As a result, we can no longer afford to say, "Oh, my TPA handles that".

It behooves you to investigate the sophistication and effectiveness of their cost containment program. An increase of one or two percentage points in savings could equate to tens to hundreds of thousands of dollars and is well worth the time to conduct a comparative analysis of all programs available.

A comparative analysis should start with a historical savings report detailing how the savings were achieved. The cost containment provider should produce these reports when requested and a sophisticated program will be generating these reports on a regular basis. Cost

Continued...

containment providers who do not enthusiastically share these reports with you on a regular basis should raise a red flag.

The report should identify savings by:

1. Total savings, complete with specific drill down reports
2. Savings achieved through Fee Schedule and/or R & C
3. Savings achieved through professional review
4. Savings achieved through PPO networks

Criteria for evaluating and selecting cost containment programs should also include comparisons of benchmark data. The historical analysis of savings, fees and return on investment will provide the best insight into the effectiveness of a program, along with the methodology used.

Sample testing of actual medical bills is another effective method of evaluating a cost containment program. This method easily documents actual historical billing and savings data within your program, for an accurate comparison of multiple cost containment programs.

It is important to ensure that the medical bills being utilized in the sampling are an accurate reflection of the majority of the medical bills incurred. These should include the common medical providers as well as types of medical services, i.e., routine office visits, physical therapy, hospital bills, and chiropractic bills. Bill samplings do not have to be a large number of bills, but rather a realistic cross section of actual bills routinely paid.

The disparity in cost containment programs can be very dramatic; increasing your savings by just one or two percentage points can generate tens if not hundreds of thousands of dollars in additional savings. A comprehensive review program typically beats a fee checking program by 20% to 25%.

Reinsurance carriers frequently evaluate savings that are achieved through a comprehensive Cost Containment Program and the effect it has on the bottom line for a self-insured program; reducing claims costs, decreasing the potential for broaching specific or aggregate retentions, and the positive effect on their profitability. Risk Managers need to take similar heed and look at what you may NOT be saving as part of their on-going service evaluation.

Medical providers employ certified professional coders to bill their services with fee schedule rates in a way that maximizes their reimbursement. Who is making sure that your medical payments are accurate?

The views set forth below are those of Plunkett Cooney and do not necessarily represent the view of MIPRIMA.

Legislative Committee Report

Legislature May Need To Step Up On Sidewalk Two-Inch Rule To Protect Local Units

H. William Reising and Rhonda R. Stowers, Plunkett Cooney

Local units have long enjoyed a presumption that their sidewalks are properly maintained when claims involve defects less than two inches in depth. This presumption first existed as a bright-line, common law rule and most recently as a rebuttable presumption by statute. However, a recent decision by the Michigan Supreme Court likely leaves townships, cities and villages without the benefit of this presumption for their sidewalks.



H. William Reising

Robinson v. City of Lansing involved a trip-and-fall on a sidewalk that ran along a state highway. As the alleged defect was less than two inches, the City raised as an affirmative defense the two-inch rule as codified in MCL 691.1402a(2), which states that a discontinuity defect of less than two inches creates a rebuttable inference that the sidewalk was maintained in reasonable repair. The plaintiff moved to strike this defense, claiming that the defense only applied to sidewalks along county highways.



Rhonda R. Stowers

In a unanimous decision, the Michigan Supreme Court agreed with the plaintiff, holding that MCL 691.1402a, when read as a whole, only applied to county highways, not state roads.

Without the benefit of the presumption, townships, cities and villages will have to fight it out with plaintiffs on the issues of notice and whether there has been reasonable time to repair an existing sidewalk defect under the provisions of MCL 691.1403. While confident in their ruling, members of the Court seemed concerned about this result. Drafting separate concurring opinions, Justices Young and Weaver called the Legislature to action to clarify the scope of the two-inch rule. Such legislative action may serve to restore the long enjoyed benefit of the two-inch rule to local units. In the meantime, local units should take extra care to document sidewalk complaints and act quickly to repair a sidewalk when given notice of a defect.

BEWARE!



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- **Lacey & Jones, LLP.** The firm's practice is divided into three practice groups: 1) Workers' Compensation Litigation, Appeals and Legal Research; 2) Civil Litigation; and 3) Employment Law, Commercial, Litigation and Labor Law. Dawn Drobnich (248) 283-0740.
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