MARSH & McLENNAN AGENCY

HEALTH CARE/ SENIOR LIVING

SEPTEMBER 2016

PAYROLL BASED JOURNAL REPORTING & ITS POTENTIAL IMPACT ON WORKERS' COMPENSATION

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Despite the additional obligations now confronting long-term care communities since the Centers for Medicaid and Medicare Services (CMS) launched its Payroll-Based Journal (PBJ) system on July 1, 2016, there are some very real opportunities for these employers as well. These include the potential for reductions in workers' compensation insurance premiums.

This article will provide a brief background of the PBJ, then look more closely at just how this new regulatory challenge can deliver opportunities for possible savings to communities and facilities providing skilled nursing services.

"CMS believes the PBJ will, among other things, reduce fraudulent reporting and develop greater accountability and transparency."

PBJ'S ORIGIN AND INTENT

PBJ came about as part of the Affordable Care Act (ACA). Section 6106 of the ACA directs all skilled nursing facilities to collect and electronically submit direct care staffing information. CMS defines direct care staff as those individuals who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest physical, mental, and psychosocial wellbeing. Direct care does not include individuals whose primary duty is maintaining the physical environment of the long-term care facility—for example, housekeeping. This system is to be used by providers to submit total direct care hours worked, including agency and contract staff, employee hire and termination date, and facility census.

In short, CMS believes the PBJ will, among other things, reduce fraudulent reporting and develop greater accountability and transparency among providers. This is just another step in an ongoing process that's been occurring over the past several years, as consumers of Medicare and Medicaid services are being offered greater access to more quality data.

Under PBJ, by regulating how staff data is reported, accurate comparisons can be made by consumers, regulators, community leadership and others. While in the past, some staffing measurements were self-reported, the standardized measurements outlined in PBJ are intended to help ensure more accurate comparisons and ratings, such as the five-star report card system currently used by CMS.

The first quarterly deadline for mandatory reporting is Nov. 14, 2016, and, as is common with industry changes, new technology solutions are hitting the market to help manage this requirement more easily.

THE POTENTIAL FOR WORKERS' COMPENSATION INSURANCE SAVINGS

PBJ provides a distinct opportunity for many employers working with forward-thinking insurance consultants to reduce their workers' compensation premiums. If employers expand the PBJ's reporting requirements a bit and keep adequate and accurate payroll records, they may be able to work through their agent/broker to adjust their payroll codes with their insurance carrier and secure a lower-cost insurance product. An additional bonus is that, by tying together your accounting and payroll records, future workers' compensation audits could be considerably easier because you basically already have the required documentation completed.

So how can you take advantage of the potential for lower rates? It's all about the record-keeping. In the senior care industry, it's not uncommon for an employee to function in multiple roles. For example, consider an employee who spends most of their time working in the assisted living building, but also spends a little time in the nursing home. These different jobs will have different classification codes under PBJ and also by your workers' compensation carrier. Most insurers will rate that employee fully at the highest-cost code, even if they split their time between a higher-cost and lower-cost class codes. Since you are now maintaining these records under PBJ and can prove that your employee worked 50% of the time, for example, in a lower-rated (and lower-cost) class code, you may be able to request that the carrier rate your employees according to your records. This could result in a reduction to your workers' compensation premium.

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The ability for an employer to do this, however, depends on several things, most immediately apparent is the state(s) in which its employees work. Employers with employees in states operating under National Council on Compensation Insurance (NCCI) rules or in other non-monopolistic states whose state workers' compensation board allows insured employers to request a division of labor will be able to explore this option. Check with your insurance agent or broker to determine your own eligibility.

TOO GOOD TO BE TRUE?

As is often the case, however, there are additional things to be aware of before you get too excited about the prospect of lower insurance costs. First of all, as mentioned above, your state regulations must allow for this division of labor, as it's called, by the insurer. Secondly, your insurer has to be either legally compelled to do it (which is questionable in some states) or be convinced to by you and your agent or broker.

Furthermore, by moving a percentage of your employees' work time into lower-rated class codes, which could result in lower premiums, you could end up actually increasing your experience modification rating and bring about higher costs down the road. Your experience modification could rise because lower-rated class codes have lower expected losses.

> "Ensuring you remain attractive to workers' comp insurers is ultimately the key."

Conversely, higher-rated class codes have higher expected losses. The ratio of expected losses to actual losses and the number of losses is what determines your experience modification. So, if you move more payroll into lower-rated class codes, your expected losses are also expected to decrease. If your actual losses don't also decrease proportionately (or even increase), the ratio of actual to expected losses increases, resulting in a higher experience modification. Higher experience modification may also create the appearance that you are a less favorable risk from the insurance companies' standpoint.

The combination of lower premiums, due to the use of the lower-rated class codes, and higher actual losses increases your loss ratio. Higher loss ratios are not looked favorably upon by insurance carriers. This could lead to the worst case scenario: your insurance carrier could decide to not renew your workers' compensation coverage. An alternative negative outcome is that your premiums go back up again, and possibly higher than before.

On the flip side, it's possible that higher-rated job codes, while delivering increased premiums could actually lower your experience modification rating over the next one to three years or more. As you can see, it's important for you to be working with a strategic insurance broker or consultant who understands the nuances associated with your industry and workers' compensation to help you work through the potential implications for your unique situation.

HOW AND WHY STAYING PROFITABLE (TO INSURERS) IS IMPORTANT

Ensuring you remain attractive to workers' comp insurers is ultimately the key. The best way to do that is to stay profitable for the insurer that's providing your workers' compensation insurance. Choosing to split your employees' payroll will have complex implications that only a strong insurance consultant can help you navigate.

Staying profitable amounts to little more than ensuring your losses, or claims, amount to no more than what the underwriter expects them to be. Keeping your losses at the expected level makes you an average account. Lowering your losses to below expectations makes you a more attractive account, and could result in additional savings through underwriting credits, where permitted by state. Underwriters use these discretionary credits to help lower premiums and encourage better performing risks to remain with their existing insurer. Schedule credits can also be used by carriers competing to get your business. The tricky part, of course, is developing strategies to help keep your work comp claims under control. This can be done primarily by effectively managing claims to mitigate the financial damage and by eliminating future claims.

The best insurance brokers and agents have claims management and advocacy specialists in-house to help you manage claims that occur. They can also assist you with identifying problematic claim trends. These are often seen by location, by shift and by type of loss.

Once identified, the next step is to work with safety and loss control specialists to develop customized strategies designed to help your community reduce future claims and/or to lower the average cost per claim. Again, the best insurance consultants have this expertise in-house and can provide you with detailed action plans and expected outcomes, and even work closely with your internal teams to implement and train you on ways to develop a culture of safety. The cost you may incur for these services is often recouped through lower future insurance premiums. In addition, reductions in other soft costs--such as productive time lost to report claims or replacing injured workers are often realized. These soft costs can run as much as four to 10 times the amount of the claim itself.

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SEEK SPECIALIZED EXPERTISE

Now, more than ever, it's imperative for long-term care communities to work with a strong agent or broker with significant workers' compensation experience and long-term care industry knowledge because the details are where the devil exists. These professionals can and will work hard to not only understand your operation, but they are also able to proactively determine what carriers will and won't do for communities like yours. They understand the larger market issues that are likely to affect rates next year and going forward and can help you develop a more solid and cost-beneficial plan.

With PBJ in its infancy, the challenges and opportunities are yet to be fully understood. You should develop a workers' compensation strategy that accounts for the new regulations and that delivers the best return and protection for your operation and your employees.

For more information on how the PBJ may affect your community, contact your local Marsh & McLennan Agency office

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